EB-2015-0175

ONTARIO ENERGY BOARD

IN THE MATTER OF the *Ontario Energy Board Act*, *1998*, S.O. 1998, c. 15, Sched. B, as amended;

AND IN THE MATTER OF an Application by Enbridge Gas Distribution Inc. for an Order or Orders Pre-Approving the Cost Consequences associated with a Long-Term Natural Gas Transportation Contract.

ENBRIDGE GAS DISTRIBUTION
COMPENDIUM FOR REPLY ARGUMENT

December 2, 2015

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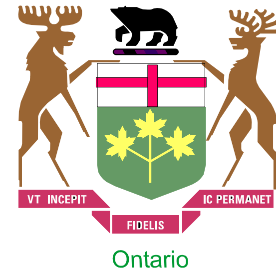

Natural Gas Regulation in Ontario:

A Renewed Policy Framework

Report on the Ontario Energy Board

Natural Gas Forum

March 30, 2005

MESSAGE FROM THE CHAIR

I am pleased to present the Ontario Energy Board's report from the Natural Gas Forum (NGF). This report outlines our vision for a regulatory framework for the sector and lays the groundwork for improved efficiency and effectiveness in the regulation of natural gas.

The Board has regulated the natural gas sector for many years and has overseen the development of the competitive market. Although the gas market is functioning well in Ontario, there are improvements to the regulatory framework that are in the public interest.

First, we believe that all stakeholders will benefit from a more predictable and longer-term treatment of rates. Utilities will benefit because they can make longer-term decisions and customers will benefit through downward pressure on rates. The Board's report identifies the specific components of the incentive regulation plan that the Board believes will lead to these results.

Second, we believe that Ontario's transportation and storage infrastructure is important to our energy future. The province benefits from having a natural gas hub, with a number of interconnecting pipelines and an abundance of natural gas storage. The Board will ensure that the regulatory treatment of Ontario's storage and transmission assets optimizes the value of the opportunities that accompany having a hub. Most immediately, the Board will commence a process to review the infrastructure needs of natural gas-fired generation. More generally, the Board will review the appropriate pricing and access entitlements for storage and transportation assets and services.

Third, the role of the utility in natural gas supply and transportation goes to the core of two intersecting principles. On the one hand, it is important to ensure the strength of retail and wholesale competition as a way to ensure optimal commodity supply. On the other hand, the Board recognizes that there may be the need for regulated utilities to participate in ensuring the adequacy of pipeline infrastructure to serve the province.

With respect to commodity, the Board has concluded that natural gas utilities should continue to provide a regulated gas supply option for consumers. The Board has also determined that the costs of regulated natural gas supply need to be reviewed in order to make it easier for consumers to compare their options in the marketplace.

The Board is not currently in favour of utilities entering into long-term supply contracts, but it may be appropriate for utilities to enter into long-term transportation contracts to support security of supply. The Board will provide a process whereby utilities can apply for pre-approval for either type of contract.

The plan laid out in this report is substantive and thorough. Its implementation over the next several years will lead to improved regulation in the province. The Board is committed to its timely and effective implementation.

The Natural Gas Forum has been an open and transparent initiative that, over a year, fostered a dialogue in the sector among utilities, marketers, sector associations, storage developers, municipalities, and consumer and other public interest groups. Their contributions were immeasurable. On behalf of the Board, I want to thank them.

The Board looks forward to implementing the report's conclusions over the next several years through public processes where stakeholder participation will continue to play a vital role.

Sincerely,

Howard I. Wetston, Q.C.
Chair
Ontario Energy Board

March 30, 2005

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EXECUTIVE SUMMARY

The natural gas market is changing. On the supply side, conventional supply sources are expected to experience flat to declining production. The anticipated increased reliance on non-conventional supply sources has raised questions about the need for infrastructure within Ontario to meet changing flow patterns and about the adequacy of the current regulatory treatment of utilities' acquisition of upstream gas supply and their transportation arrangements. On the demand side, the anticipated expansion of gas-fired power generation will affect the extent and type of investment required in gas infrastructure in Ontario and will drive the convergence (financial and operational) of the gas and electricity markets.

In light of these developments, the Board believed that it was time for a deliberate analysis and review of the policy underlying the key structural components of the natural gas regulatory system: rate regulation, storage and transportation, and regulated gas supply. The Board initiated the Natural Gas Forum as a means of investigating these issues, to get the input of stakeholders and to help the Board develop its policies in these areas. In the Board's view, important incremental changes can and must be made to the structure of natural gas regulation in Ontario. These changes are needed to address the emerging trends in the industry and to fulfil the Board's legislated objectives.

Summary of Conclusions

Rate Regulation

To fulfil its statutory objectives related to consumer protection, infrastructure development and the financial viability of the industry, the Board has determined that the gas rate regulation framework must meet the following criteria:

- establish incentives for sustainable efficiency improvements that benefit customers and shareholders
- ensure appropriate quality of service for customers

- create an environment that is conducive to investment, to the benefit of customers and shareholders

The Board believes that a multi-year incentive regulation (IR) plan can be developed that will meet these criteria. A properly designed plan will ensure downward pressure on rates by encouraging new levels of efficiency in Ontario's gas utilities. By implementing a multi-year IR framework, the Board also intends to provide the regulatory stability needed for investment in Ontario.

The following are the Board's conclusions on the key parameters:

In a multi-year IR plan, the **annual adjustment mechanism** embodies the combined assessment of cost changes and productivity improvements. The Board concludes that making an appropriate determination of this component will ensure that the benefits of efficiencies are shared with customers during the term of the plan. The Board will determine the methodology for the annual adjustment mechanism through a generic hearing.

The Board's view is that a thorough cost-of-service **rebasing** must occur at the end of each IR plan's term before a new plan is put in place. Rebasing is an important consumer protection feature. Through robust rebasing, efficiency improvements will be revealed and the benefits passed on to customers through base rates for the next period. The Board will determine the base rates through a hearing for each utility.

The Board does not intend for **earnings sharing mechanisms** to form part of IR plans. The Board views the retention of earnings by a utility within the term of an IR plan to be a strong incentive for the utility to achieve sustainable efficiencies. The Board will ensure that the benefits of efficiencies are shared with customers through the annual adjustment mechanism and thorough rebasing.

The Board expects that the **term** of IR plans will be between three and five years.

In the Board's view, an appropriate balance of risk and reward in an IR framework will result in reduced reliance on **deferral or variance accounts**, and reliance on **off-ramps** or **z-factors** in limited, well-defined and well-justified cases only.

The Board will develop the **service quality framework** and will undertake a consultation to finalize the measures, standards and reporting mechanism.

The Board will consult with stakeholders and modify the Gas Reporting and Record Keeping Requirements (RRRs) as necessary to meet the requirements for **financial reporting** in the new ratemaking framework. While the Board intends to conduct this consultation and modify the RRRs before the development of the first IR plan, it expects that these RRRs may be further refined in the context of specific IR plan development.

The Board will undertake a review of the gas utility **data filing guidelines** for the rate hearing process, and then develop a set of draft filing guidelines, which it will distribute for consultation.

The Board will not decide at this time the precise structure of the **alternative dispute resolution (ADR) process** for the IR framework. The Board has already undertaken a review of the ADR process, and it will consider the submissions made through the Natural Gas Forum before releasing its conclusions in the ADR review.

Storage and Transportation

The Board believes that it is necessary to ensure that Ontario has adequate gas infrastructure and the appropriate rate design to facilitate the anticipated increased reliance on gas-fired power generation. The Board will hold a review to determine the impact of increased gas-fired power generation on storage and transportation infrastructure and services in order to ensure a reliable supply of electricity and gas. This review may lead to a formal proceeding resulting in orders setting rates, granting leave to construct or other remedies.

The Board will hold a hearing to determine whether it should refrain, in whole or in part, from regulating the rates charged for natural gas storage in Ontario.

The Board will not restrict the rates charged for new storage developed by new independent storage operators. However, the Board will develop, through a consultative process, filing guidelines for proponents of new independent gas storage facilities.

Regulated Gas Supply

The Board concludes that the utilities should continue to provide a regulated gas supply option. However, the regulated gas supply option should be seen as a default supply option and structured to facilitate customer choice.

The Board will hold a generic cost allocation hearing to review the costing of regulated gas supply. As part of this hearing, the Board will also assess whether further unbundling is required and how any further unbundling will be implemented.

The Board will develop guidelines for the standardization of the quarterly rate adjustment mechanism process. As part of this activity, the Board will consult in more detail on the underlying pricing that should be incorporated.

The Board believes that a utility-provided fixed-term, fixed-price contract is inappropriate at this time. The fixed term could reduce the utilities' ability to ensure the full mobility of customers, and the fixed-price aspect would compete with the product offered by the retail marketers.

The Board believes that there is a role for utilities in long-term upstream transportation contracting, but the Board is not in favour of new long-term utility supply contracts at this time. However, the Board will offer utilities the opportunity to apply for pre-approval of long-term supply and/or transportation contracts. Further, the Board will consult on the

development of guidelines that will inform all stakeholders of the principles and issues the Board will consider when evaluating an application for contract pre-approval.

The Board will develop guidelines for the standardization of the quarterly rate adjustment mechanism, with the above objectives in mind. As part of this activity, the Board will consult in more detail on the underlying pricing that should be incorporated.

With respect to whether utilities should be able to offer fixed-term, fixed-price contracts, the Board concludes that it would not be appropriate at this time. The regulated gas supply option should be seen as a default supply – a no-written-contract, no-obligation, market-priced choice – where the mobility of the customer is essential. The Board believes that introducing a utility-provided fixed-term, fixed-price contract offer at this time would present two risks. First, the fixed-term aspect could reduce the utility's ability to ensure full customer mobility. Second, the fixed-price aspect would compete with the product offered by the retail marketers. It would move the regulated supply away from being a default supply, and result in more direct competition between the utility and competitive suppliers. A fixed-term, fixed-price contract offer would require substantial additional regulatory oversight related to the underlying contracting, the customer-utility interface and the allocation of risk. The Board does not believe that this is the appropriate direction to take, and most stakeholders shared this view.

The Board believes that a utility-provided fixed-term, fixed-price contract offer is inappropriate at this time.

Long-Term Supply and Transportation Contracts

Stakeholders' Views

Many of the stakeholders (including customers, upstream players and utilities) asserted that the regulated gas supply is implicitly used to underpin future infrastructure development in the natural gas market. Some emphasized the importance of the utilities' creditworthiness, noting that utilities are among the few parties able to enter into the long-term contracts needed for infrastructure development. Views on the appropriate

length and mixture of contracts within the portfolio were consistent among these stakeholders – the utilities should be allowed to enter into a range of contract terms from short-term to long-term. This mixture of contract terms would facilitate the development of infrastructure for new supply and allow the utilities to manage their risk, and thereby minimize price volatility for the customer. The only stakeholder that did not support a mixture of contract terms was the Vulnerable Energy Consumers Association, which stated that the regulated gas supply procurement portfolio should be based on an average of one-year forward gas supply contracts.

Other stakeholders, including the marketers, were not convinced that the utilities' role in regulated gas supply was essential to support upstream infrastructure investment. Noting the prominence of the Dawn Hub with its many counterparties and the large size of the Ontario natural gas market, these stakeholders questioned the claim that major capacity infrastructure additions depend on the utilities. In addition, one submission stated that the availability of substantial surplus capacity in TransCanada PipeLines' Mainline system suggests that utilities do not need to make any major decisions in the immediate future about contracts for new capacity.

Stakeholders who expressed the views outlined in the previous paragraph also expressed concerns about the risks associated with long-term supply commitments by the utilities, including stranded costs, reduced customer mobility and commitments that favour the upstream investments of the utility's parent company or affiliates. In their view, the utilities should be allowed to enter into only short-term commitments of one year or less.

Some stakeholders suggested that the Board develop guidelines or a regulatory framework and, in some cases, provide pre-approval of contracts to allow the utilities to make the necessary commitments in a timely manner. Others felt that the current review process was sufficient. Many stakeholders, including the ones that favoured long-term contracts for the utility, stated that the Board needed to verify that any actions taken by the utility were truly market driven and/or were the least-cost option, and not related to the utility's other commercial interests.

The Board's Conclusions

The Board believes that it is useful to separate the consideration of upstream transportation contracting from long-term supply contracting. The utilities currently undertake these activities separately: supply is contracted primarily on a short-term basis, whereas there is a "portfolio" of terms for upstream transportation contracts. And whereas supply contracting is related primarily to the regulated supply function, transportation contracting extends beyond that function.

The Board is mindful of the importance of security of supply. However, it is not convinced that long-term utility supply contracts are essential for security of supply. The Board is of the view that access to a liquid hub provides the best assurance of secure access to competitively priced supply. In contrast, the Board is concerned that the potential risks to ratepayers from long-term supply contracts could be significant. Further, the Board views the regulated supply option as a default supply, which means that customer mobility is essential, prices need to reflect the market and retroactive adjustments (related to the PGVA) are kept to a minimum.

The Board is not in favour of new long-term utility supply contracts at this time.

The Board agrees that, to some extent, utility upstream transportation contracts provide benefits to all customers, may reduce barriers for competitive suppliers who want to enter the market and help reduce gas price volatility. The trade-off is the potential risk involved, and the Board believes that utilities need a diversified portfolio to reduce that risk. To the extent that upstream transportation contracts underpin security of supply to the whole market, the Board believes that all customers should bear the costs.

The Board believes that there is a role for utilities in long-term upstream transportation contracting, subject to a prudence review.

Given the importance of security of supply and to provide greater clarity in the marketplace, the Board will offer utilities the opportunity to apply for pre-approval of long-term supply and/or transportation contracts. Further, the Board will consult on the development of guidelines that will inform all stakeholders of the principles and issues the Board will consider when evaluating an application for contract pre-approval.

The guidelines could include the following considerations:

- risk allocation – the appropriate allocation of risk between ratepayers and shareholders
- the impact on competition – an assessment of customer mobility, market entry, supplier flexibility and affiliate relationships
- the public interest – an assessment of just and reasonable rates and enhanced reliability/service quality
- a diversified portfolio of contract terms – the appropriate balance of short-, medium- and long-term contracts
- the least-cost option – a detailed description of the proposed project with an outline of the costs, benefits and timelines involved, and an assessment of the proposal against the alternatives

TAB 2

Guidelines for the Pre-Approval of Long-Term Gas Supply and/or Upstream Transportation Contracts ("LTC Guidelines")
EB-2008-0280
Summary Comments Received at the October 15 – 17 Stakeholder Meetings

Considerations	Stakeholder Groups				
	Wholesalers / Marketers	**Others**	**Consumer Groups**	**Transportation and Supply Providers**	**Regulated Gas Distributors**
Gas Supply LTCs					
What is your definition of a gas supply LTC?	Longer than 1 year.	Longer than 2 years. Length of pricing commitment is the relevant factor.		Longer than 1 year.	
Is there a need for LDCs to enter into gas supply LTCs?	No. The exception would be supply LTCs to go with transportation LTCs needed to access new resources (e.g., LNG).	No, but long-term supply that is specific to new long-term transportation could be an exception.	Most stakeholders responded "Yes." Needed for price stability and to access gas supply.	Generally, no. Supply LTCs may be needed to access a new resource (e.g. Rockies supply and LNG).	Supply LTC are not needed at this time, but utilities should have the ability to contract for new supplies (e.g. LNG) if necessary.
What are the benefits associated with LDCs entering into gas supply LTCs?	Only potential benefit is security of physical supply.	No benefits unless needed to support transportation LTC.	Support fixed-price supply LTC to increase price stability in the default gas supply and may support security of supply.	No benefits unless needed to support transportation LTC.	Gas utilities should continue to have a role in gas supply, including LTC. Increases supply security.
What are the risks associated with LDCs entering into gas supply LTCs and how should they be allocated?	Oppose fixed-price supply LTCs, which would "muddy the market" for consumers. Would not oppose LTCs with indexed prices. Any risk should be borne by the shareholders.	A diversified portfolio approach helps manage risk (e.g., stranded costs).	Stranded cost is a risk, but can be managed in a portfolio context.	Supply LTCs should not be at a fixed-price.	Any allocation of risks to customers would need to be addressed in the utility filing. Allocation of risk to shareholders would be unacceptable.

Please note that some of the comments are individual participant comments and may not necessarily reflect a consensus position of the entire stakeholder group. This summary reflects the comments received at the October 15 to 17 stakeholder meetings; additional stakeholder comments provided through written materials can be found on the Board's website.

Considerations	Stakeholder Groups				
	Wholesalers / Marketers	**Others**	**Consumer Groups**	**Transportation and Supply Providers**	**Regulated Gas Distributors**
What would be the impact on competition of LDCs entering into new gas supply LTCs?	Supply LTCs with fixed prices would have negative implications for competition.				
Should gas supply LTC pre-approval guidelines be developed? What type of pre-approval should be considered?	No, if it means that contracts falling within parameters set out in guidelines would be deemed "pre-approved," without a separate application to the Board and review proceeding.	Recommend simplified approval process without formal hearing. Board should approve rate consequences, not the contracts themselves (consistent with current practice).	Not convinced there is a need to change the current process.	Yes. The Board should approve the rate implications of LTC. A safe harbour for LTC meeting pre-defined criteria could be appropriate.	Yes. Pre-approval would apply only to the cost consequences of the LTC. The Board would not approve—and may not even see—the contract itself. Process should include expedited Board approval (e.g., 90 day clock).
Should pre-approval of gas supply LTCs be an option or a requirement?	Requirement. Support case-by-case review before contracts are executed. Requirement should not be tied to the contract term (i.e., one-year renewal may be of sufficient magnitude to require approval).	Both. It should be a requirement for any supply contracts longer than two years, but utilities should also have the option to apply for approval where not required under the guidelines.	There may need to be pre-approval of major commitments, such as LTC to access frontier gas supplies.	Option. Utilities should not be prevented from applying for pre-approval based on the term of the LTC.	Option. Utilities should be able to bring contracts of any length to the Board for approval. Expect that only LTC for large infrastructure projects would be brought to the Board (e.g. Rockies, LNG).

Please note that some of the comments are individual participant comments and may not necessarily reflect a consensus position of the entire stakeholder group. This summary reflects the comments received at the October 15 to 17 stakeholder meetings; additional stakeholder comments provided through written materials can be found on the Board's website.

Considerations	Stakeholder Groups				
	Wholesalers / Marketers	**Others**	**Consumer Groups**	**Transportation and Supply Providers**	**Regulated Gas Distributors**
What should the Board consider when evaluating a gas supply LTC pre-approval application?	The only reason for an LTC is supply security. Applications should include price, commercial terms, contract term, and supplier credit rating. Supplier name may be redacted.	Contracts that provide an obligation or right to a third party, either affiliated or non-affiliated, should always be reviewed by the Board.	Board may need to consider a utility's entire gas procurement process, not just a single LTC.	Reliability of supply should be the primary justification for LTC. Board must consider how LTC fits into a portfolio. Board approval of utility's long-term supply and transportation contracting plan would be appropriate, perhaps as a separate process.	Guidelines agreed to by Union in EB-2005-0520 (Appendix B of Settlement Agreement) could be used to define minimum filing standards. Disclosure of confidential information is a concern, but signing of Board's current Declaration and Undertaking on confidential filings by intervenors should suffice.
Other Comments		Board-approved due diligence standards could reduce regulatory risk for contracts that are not pre-approved.	Reducing regulatory uncertainty of after-the-fact prudence review would be beneficial.	LTC involving affiliates require a "finer tooth comb."	Current process for review of utility procurement is adequate. No need for Board to approve long-term resource plans.

Please note that some of the comments are individual participant comments and may not necessarily reflect a consensus position of the entire stakeholder group. This summary reflects the comments received at the October 15 to 17 stakeholder meetings; additional stakeholder comments provided through written materials can be found on the Board's website.

Considerations	Stakeholder Groups				
	Wholesalers / Marketers	**Others**	**Consumer Groups**	**Transportation and Supply Providers**	**Regulated Gas Distributors**
Transportation LTCs					
What is your definition of a transportation LTC?	Longer than 1 year.	Five years or longer.		Five years or longer.	
Is there a need for LDCs to enter into transportation LTCs?	Distinguish between existing capacity and new builds. LTCs not needed when contracting for existing capacity, but may be needed to support new pipeline facilities.	Yes. Utilities should continue to be involved in transportation LTC to support infrastructure development.	Yes.	Yes. LDCs have the best creditworthiness among shippers.	Yes. LDCs have a role to play in supporting new long-term transportation infrastructure through LTCs.
What are the benefits associated with LDCs entering into transportation LTCs?	Access to new gas resources to increase supply security (including diversity).	Access to gas supply.		Support infrastructure to access gas supply.	Support infrastructure to access gas supply.
What are the risks associated with LDCs entering into transportation LTCs and how should they be allocated?				Vertical slicing and capacity reassignment mitigates risk.	Assignment of capacity reduces risk (e.g., stranded costs, customer mobility). Any allocation of risks to customers would need to be addressed in the utility filing. Allocation of risk to shareholders would be unacceptable.

Please note that some of the comments are individual participant comments and may not necessarily reflect a consensus position of the entire stakeholder group. This summary reflects the comments received at the October 15 to 17 stakeholder meetings; additional stakeholder comments provided through written materials can be found on the Board's website.

Considerations	Stakeholder Groups				
	Wholesalers / Marketers	**Others**	**Consumer Groups**	**Transportation and Supply Providers**	**Regulated Gas Distributors**
What would be the impact on competition of LDCs entering into new gas transportation LTCs?	Competitive concerns related to fixed-price supply, not transportation.				
Should transportation LTC pre-approval guidelines be developed? What type of pre-approval should be considered?	No, if it means that contracts falling within parameters set out in guidelines would be deemed "pre-approved," without a separate application to the Board and review proceeding.	Yes. Recommend simplified approval process without formal hearing. Board should approve rate consequences, not the contract themselves (consistent with current practice).	Maybe. Appendix B of Union's 2007 rate case settlement agreement (EB-2005-0520) may provide a starting point to develop filing requirements.	Yes. The Board should approve the rate implications of LTC. A safe harbour for LTC meeting pre-defined criteria could be appropriate.	Yes. Pre-approval would apply only to the cost consequences of the LTC. The Board would not approve—and may not even see—the contract itself. Process should include expedited Board approval (e.g., 90 day clock).
Should pre-approval of transportation LTCs be an option or a requirement?	Requirement. Support case-by-case review before contracts are executed. Requirement should not be tied to the contract term (i.e., one-year renewal may be of sufficient magnitude to require approval).	Both. It should be a requirement for any transportation contracts five years or longer, but utilities should also have the option to apply for approval where not required under the guidelines.		Option. Utilities should not be prevented from applying for pre-approval based on the term of the LTC.	Option. Utilities should be able to bring contracts of any length to the Board for approval. Expect that only LTC for large infrastructure projects would be brought to the Board.

Please note that some of the comments are individual participant comments and may not necessarily reflect a consensus position of the entire stakeholder group. This summary reflects the comments received at the October 15 to 17 stakeholder meetings; additional stakeholder comments provided through written materials can be found on the Board's website.

Considerations	Stakeholder Groups				
	Wholesalers / Marketers	Others	Consumer Groups	Transportation and Supply Providers	Regulated Gas Distributors
What should the Board consider when evaluating a transportation LTC pre-approval application?	Board should consider affiliate relationships and potential impacts on other market participants.	Utilities should have a long-term transportation plan approved by the Board, which would be considered in evaluating transportation LTC.		Reliability of supply should be the primary justification for LTC. Board must consider how LTC fits into a portfolio. Board approval of utility's long-term supply and transportation contracting plan would be appropriate, perhaps as a separate process. Confidentiality of commercially-sensitive information would need to be addressed, but transporters do not see a problem.	Guidelines agreed to by Union in EB-2005-0520 (Appendix B of Settlement Agreement) could be used to define minimum filing standards. Disclosure of confidential information is a concern, but signing of Board's current Declaration and Undertaking on confidential filings by intervenors should suffice.
Other Comments	Retroactive review benefits no one.	Guidelines should not encourage or discourage LTC (maintain level playing field).	Reduced rate rebasing frequency under incentive regulation may be one consideration supporting pre-approval of LTCs.	Benefit of LTC pre-approval would be greater regulatory predictability. Timeliness of pre-approval is essential.	The objective should be to eliminate hindsight review entirely.

Please note that some of the comments are individual participant comments and may not necessarily reflect a consensus position of the entire stakeholder group. This summary reflects the comments received at the October 15 to 17 stakeholder meetings; additional stakeholder comments provided through written materials can be found on the Board's website.

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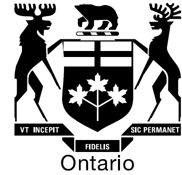

BY E-MAIL AND WEB POSTING

February 11, 2009

To: All Participants in EB-2008-0280

**Re: Draft Filing Guidelines for the Pre-Approval of Long-Term Natural Gas Supply and/or Upstream Transportation Contracts
Board File No.: EB-2008-0280**

The purpose of this letter is to notify participants of the release of draft filing guidelines for the pre-approval of long-term natural gas supply and/or upstream transportation contracts ("LTC filing guidelines"), which have been posted on the Board's website at www.oeb.gov.on.ca.

Background

In the Natural Gas Forum ("NGF") report, the Board concluded that it will:

- offer natural gas utilities the opportunity to apply for pre-approval of long-term natural gas supply and/or upstream transportation contracts; and
- consult on the development of guidelines that will inform all stakeholders of the principles and issues the Board will consider when evaluating an application for contract pre-approval.

Further to the NGF report, the Board in a letter dated August 22, 2008 outlined the issues to be addressed when developing a pre-approval process for long-term natural gas supply and/or upstream transportation contracts. The Board indicated that it would hold a consultation to discuss the needs, benefits and risks of entering into long-term contracts, the impact on competition and the filing guidelines.

Also, in its letter dated August 22, 2008, the Board stated that it planned to conduct the consultation in two phases. In the first phase, staff would hold stakeholder meetings which would lead to the development of a staff discussion paper. In the second phase,

the Board would consider whether it is appropriate to develop filing guidelines for the pre-approval of long-term contracts.

On October 15-17, 2008, staff held a number of meetings with stakeholders. At these meetings, staff and its technical expert presented material to initiate discussion on whether: (i) it is appropriate for natural gas utilities to enter into long-term natural gas supply and/or upstream transportation contracts; and (ii) the Board should develop guidelines for the pre-approval of long-term contracts, and if so, what should be included in these guidelines.

At these meetings, no substantive issues were raised and stakeholders generally agreed to a pre-approval process for long-term contracts that support the development of new natural gas infrastructure (e.g., new pipeline facilities to access new natural gas supply sources such as Liquefied Natural Gas plants and frontier production). As a result, a staff discussion paper, as originally contemplated in Phase I of the consultation, was not necessary. The Board has decided to proceed directly to Phase II and release its draft LTC filing guidelines for stakeholder comment. The draft LTC filing guidelines are outlined in Attachment A.

The Report of the Board, Draft Filing Guidelines for the Pre-Approval of Long-Term Natural Gas Supply and/or Upstream Transportation Contracts, is provided as Attachment B.

Draft Filing Guidelines

The draft filing guidelines provide information about the filing requirements for natural gas utility applications to the Board for the pre-approval of long-term natural gas supply and/or upstream transportation contracts.

The Board believes that these applications should be limited to those that support the development of new natural gas infrastructure. The Board does not believe that a pre-approval process for long-term contracts should be used for the natural gas utility's normal day-to-day contracting, renewals of existing contracts and other long-term contracts. These contracts should continue to be addressed in the utility's rate application.

The Board is inviting written comments from parties on the draft LTC filing guidelines as outlined in Attachment A. All written comments will be posted on the Board's website.

Timelines

Written comments on the draft LTC filing guidelines must be filed with the Board by March 26, 2009.

Filings to the Board must quote file number **EB-2008-0280** and include your name, postal address, telephone number and, where available, an e-mail address and fax number. Three paper copies of your filing must be provided. The Board requests that parties make every effort to provide electronic copies of their filings in searchable/unrestricted Adobe Acrobat (PDF) format, and to submit their filing through the Board's web portal at **www.errr.oeb.gov.on.ca**. A user ID is required to submit documents through the Board's web portal. If you do not have a user ID, please visit the "e-filings services" webpage on the Board's website at **www.oeb.gov.on.ca**, and fill out a user ID password request. Additionally, parties are requested to follow the document naming conventions and document submission standards outlined in the document entitled "RESS Document Preparation – A Quick Guide" also found on the e-filing services webpage. If the Board's web portal is not available, electronic copies of the comments may be submitted by e-mail at **BoardSec@oeb.gov.on.ca.**

Written comments must be received by **4:45 p.m.** on the required date.

Cost Awards

As indicated in the Board's letter dated August 22, 2008, costs awards will be available for written comments on draft LTC filing guidelines. Cost awards will be available under section 30 of the *Ontario Energy Board Act, 1988* to eligible participants **to a maximum of 10 hours per eligible party**. The costs to be awarded will be recovered from Enbridge Gas Distribution Inc., Natural Resource Gas Limited and Union Gas Limited and will be allocated based on distribution revenue.

For any questions regarding the draft LTC filing guidelines please contact Laurie Klein at laurie.klein@oeb.gov.on.ca or (416) 440-7661. The Board's toll free number is 1-888-632-6273.

Yours truly,

Original signed by

Kirsten Walli
Board Secretary

Attachments

Attachment A

Draft Filing Guidelines for Pre-Approval of Long-Term Natural Gas Supply and/or Upstream Transportation Contracts

This form applies to all applicants who are requesting pre-approval of long-term natural gas supply and/or upstream transportation contracts that support the development of new natural gas infrastructure.

All applicants must complete and file the information requested in Part I, II, III, IV and V.

Part I – Identification of Applicant

Name of Applicant:	File No: (OEB Use Only)
Address of Head Office:	Telephone Number:
	Facsimile Number:
	E-mail Address:
Name of Individual to Contact:	Telephone Number:
	Facsimile Number:
	E-mail Address:

Part II – Needs, Costs and Benefits

2.1	A description of the proposed project that includes need, costs, benefits (such as this project improves the security of supply and the diversity of supply sources) and timelines.
2.2	An assessment of the landed costs (supply costs + transportation costs including fuel costs) for the newly contracted capacity and/or natural gas supply to the landed costs of the possible alternatives.

Part III – Contract Diversity

3.1	A description of all the relevant contract parameters such as transportation/supply provider, contract length, conditions of service, price, volume, and receipt and delivery points.
3.2	An assessment on how the contract fits into the applicant's overall transportation and natural gas supply portfolio in terms of contract length, volume and services.

Part IV - Risk Assessment

4.1	Identification of all the risks (such as forecasting risks, construction and operational risks, and commercial risks) and plans on how these risks are to be minimized and allocated between ratepayers, parties to the contract and/or the applicant's shareholders. For example, forecasting risks include future demand, prices, actual landed costs and performance of basin; commercial risks include competitive and credit-worthiness of provider/operator; and construction and operational risks include costs escalations, delays or reliability issues pertaining to new construction; and gas interchangeability and quality issues.

Part V – Other Considerations

5.1	A description of the relationship between parties to the contract and the applicant's parent company and/or affiliates.
5.2	An assessment of retail competition impacts and potential impacts on existing transportation pipeline facilities in the market (in terms of Ontario customers).

Attachment B

Ontario Energy Board

Report of the Board

Draft Filing Guidelines for the Pre-Approval of Long-Term Natural Gas Supply and/or Upstream Transportation Contracts

EB-2008-0280

February 11, 2009

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1 Introduction

This report sets out the Board's draft filing requirements that should be used by a natural gas utility seeking pre-approval for long-term natural gas supply and/or upstream transportation contracts. The draft filing guidelines for long-term contracts ("LTC") are outlined in Appendix A.

1.1 Background

In the Natural Gas Forum ("NGF") report, the Board concluded that it will:

- offer natural gas utilities the opportunity to apply for pre-approval of long-term natural gas supply and/or upstream transportation contracts; and
- consult on the development of guidelines that will inform all stakeholders of the principles and issues the Board will consider when evaluating an application for contract pre-approval.

Further to the NGF report, the Board in a letter dated August 22, 2008 outlined the issues to be addressed when developing a pre-approval process for long-term natural gas supply and/or upstream transportation contracts. The Board indicated that it would hold a consultation to discuss the needs, benefits and risks of entering into long-term contracts, the impact on competition and the filing guidelines.

Also, in its letter dated August 22, 2008, the Board stated that it planned to conduct the consultation in two phases. In the first phase, staff would hold stakeholder meetings which would lead to the development of a staff discussion paper. In the second phase, the Board would consider whether it is appropriate to develop filing guidelines for the pre-approval of long-term contracts.

On October 15-17, 2008, staff held a number of meetings with stakeholders, as shown in Appendix B. At these meetings, staff and its technical expert presented material to initiate discussion on whether: (i) it is appropriate for natural gas utilities to enter into long-term natural gas supply and/or upstream transportation contracts; and (ii) the Board should develop guidelines for the pre-approval of long-term contracts, and if so, what should be included in these guidelines.

At these meetings, no substantive issues were raised and stakeholders generally agreed to a pre-approval process for long-term contracts that support the development of new natural gas infrastructure (e.g., new pipeline facilities to access new natural gas supply sources such as Liquefied Natural Gas ("LNG") plants and frontier production).

As a result, a staff discussion paper, as originally contemplated in Phase I of the consultation, is not necessary. The Board has decided to proceed directly to Phase II and release its draft LTC filing guidelines for stakeholder comment.

All materials related to this consultation are on the Board's website.

1.2 Structure of the Report

This report is organized into three sections and each section includes the issues and options raised by stakeholders at the consultation as summarized by staff and the Board's conclusions.

2 Are long-term contracts appropriate?

2.1 Consultation Highlights

Stakeholders stated that long-term upstream transportation contracts ("long-term transportation contracts") may be justified to support new pipeline facilities and some of these stakeholders suggested that this could also support access to new natural gas sources.

Many stakeholders did not support long-term natural gas supply contracts ("long-term supply contracts") except when these contracts are linked to long-term transportation contracts that access new resources such as LNG, United States Rockies and Canadian frontier production. Others supported long-term supply contracts to increase price stability.

2.2 The Board's Conclusions

The Board agrees with stakeholders that long-term supply contracts may be justified in limited circumstances such as supporting the development of new natural gas infrastructure.

With regards to long-term transportation contracts, the Board notes that the natural gas utilities ("utilities") currently have a portfolio of contract lengths. This reflects an upstream transmitter's market requirement to have long-term contracts to support new large infrastructure investments while contracts for existing capacity are generally shorter. Also, the Board is of the view that long-term transportation contracts may help to ensure an adequate natural gas supply in the Ontario market from a diverse portfolio of sources. This may increase supply reliability and reduce price volatility, which would benefit all market participants. Consequently, long-term transportation contracts may be justified.

3 What approach should be used to pre-approve long-term contracts?

3.1 Consultation Highlights

Stakeholders discussed two approaches to a pre-approval process for long-term contracts. The first approach would be a process in which the cost implications of the long-term contracts would be pre-approved by the Board provided that the long-term contracts met a pre-defined set of criteria. The second approach would be an application reviewed by the Board on a case-by-case basis. Stakeholders supported the second approach which is in essence the status quo.

Also, stakeholders generally agreed to a pre-approval process for long-term contracts (where the utility applies on a case-by-case basis) that support the development of new natural gas infrastructure (e.g., new pipeline facilities to access new natural gas supply sources such as LNG plants and frontier production).

A number of stakeholders wanted the Board to require pre-approval for all long-term contracts that meet certain defined criteria, while others supported having the pre-approval process as an option available to the utility.

3.2 The Board's Conclusions

It is recognized that a utility may file an application to the Board at any time. However, in the case of long-term contracts, the Board agrees with stakeholders and concludes that a pre-approval process is appropriate for specific types of long-term contracts. The Board is of the view that filing guidelines need to be developed to assist a utility when it makes an application to the Board for the pre-approval of long-term contracts. The Board believes that these applications should be limited to those that support the development of new natural gas infrastructure (e.g., new transportation facilities to access new natural gas supply sources). The Board does not believe that the pre-approval process for long-term contracts should be used for the utility's normal day-to-day contracting, renewals of existing contracts and other long-term contracts. These contracts should continue to be addressed in the utility's rate application.

The Board also agrees with stakeholders that the process should allow a utility to apply to the Board on a case-by-case basis to pre-approve the cost implications of the long-term contracts (as per section 36(2) of the *Ontario Energy Board Act, 1988*). The utility is to file its application with the Board either prior to contract execution, or after execution (with a condition precedent regarding Board approval), but before it incurs costs under the long-term contracts. The Board will approve the costs associated with these contracts, not the contracts themselves.

In addition, the Board believes that the pre-approval process for long-term contracts can be used at the discretion of the utility.

4 What should be included in the filing guidelines?

4.1 Consultation Highlights

Several stakeholders thought that it was necessary to examine how the proposed long-term contracts fit into the utility's overall natural gas supply and transportation portfolio. Stakeholders also emphasized the importance of considering affiliate relationships or other related transactions.

In the 2007 rates proceeding (EB-2005-0520) Union Gas Limited ("Union") agreed to prepare an Incremental Transportation Contracting Analysis for each new upstream transportation contract with a term of one year or longer. Enbridge Gas Distribution Ltd ("Enbridge") and Union suggested using this analysis as the basis for the filing guidelines, with the appropriate changes for long-term supply contracts.

In addition, stakeholders stated that the pre-approval process would reduce (but not eliminate) the need for after-the-fact prudence reviews and therefore would decrease the regulatory risk for the utilities. Some of these stakeholders also noted that there are risks, separate and apart from regulatory risk, associated with long-term contracts. For example, large infrastructure projects with long lead times may increase the risk of cost overruns and forecasting errors. Therefore, the risks should be identified in the application.

4.2 The Board's Conclusions

Based on stakeholders' comments, the Board believes that the utilities should file the following information:

- **Need, costs and benefits** – a description of the proposed project that includes need, costs, benefits (such as this project improves the security of supply and the diversity of supply sources) and timelines.

- **Cost effectiveness** in comparison to other alternatives – an assessment of the landed costs (supply costs + transportation costs including fuel costs) for the newly contracted capacity and/or gas supply to the landed costs of the possible alternatives.

- **Contract term, volume and services diversity** – an assessment on how this contract fits into the utility's overall transportation and natural gas supply portfolio.

- **Risk mitigation plan and risk allocation** – identification of all the risks (such as forecasting risks, construction and operational risks, and commercial risks[1]) and plans on how these risks are to be minimized and allocated between ratepayers, parties to the contract and/or shareholders.

- All relevant **contract parameters** such as transportation/supply provider, term, conditions of service, price, volume, and receipt and delivery points.

- **Affiliate relationships** – a description of the relationship between parties to the contract and the utility's parent company and/or affiliates.

- **Other Considerations** – retail competition impacts and potential impacts on existing transportation pipeline facilities in the market (in terms of Ontario customers).

[1] Forecasting risks include future demand, prices, actual landed costs and performance of basin. Commercial risks include competitive and credit-worthiness of provider/operator. Construction and operational risks include costs escalations, delays or reliability issues pertaining to new construction; and gas interchangeability and quality issues.

The Board recognizes that the pre-approval process needs to allow for timely decision making, especially in the situation where the utility includes the Board's approval as a condition precedent in its long-term contract. The Board notes that the process must also allow for evidence, discovery and argument.

5 Next Steps

The Board concludes that the draft LTC filing guidelines be issued for stakeholder comment. Stakeholders can file submissions within six weeks of the draft LTC filing guidelines being released. After stakeholder submissions are received, it is expected that the Board will issue the final LTC filing guidelines.

Appendix A

Draft Filing Guidelines for Pre-Approval of Long-Term Natural Gas Supply and/or Upstream Transportation Contracts

This form applies to all applicants who are requesting pre-approval of long-term natural gas supply and/or upstream transportation contracts that support the development of new natural gas infrastructure.

All applicants must complete and file the information requested in Part I, II, III, IV and V.

Part I – Identification of Applicant

Name of Applicant:	File No: (OEB Use Only)
Address of Head Office:	Telephone Number:
	Facsimile Number:
	E-mail Address:
Name of Individual to Contact:	Telephone Number:
	Facsimile Number:
	E-mail Address:

Part II – Needs, Costs and Benefits

2.1	A description of the proposed project that includes need, costs, benefits (such as this project improves the security of supply and the diversity of supply sources) and timelines.
2.2	An assessment of the landed costs (supply costs + transportation costs including fuel costs) for the newly contracted capacity and/or natural gas supply to the landed costs of the possible alternatives.

Part III – Contract Diversity

3.1	A description of all the relevant contract parameters such as transportation/supply provider, contract length, conditions of service, price, volume, and receipt and delivery points.
3.2	An assessment on how the contract fits into the applicant's overall transportation and natural gas supply portfolio in terms of contract length, volume and services.

Part IV - Risk Assessment

4.1	Identification of all the risks (such as forecasting risks, construction and operational risks, and commercial risks) and plans on how these risks are to be minimized and allocated between ratepayers, parties to the contract and/or the applicant's shareholders. For example, forecasting risks include future demand, prices, actual landed costs and performance of basin; commercial risks include competitive and credit-worthiness of provider/operator; and construction and operational risks include costs escalations, delays or reliability issues pertaining to new construction; and gas interchangeability and quality issues.

Part V – Other Considerations

5.1	A description of the relationship between parties to the contract and the applicant's parent company and/or affiliates.
5.2	An assessment of retail competition impacts and potential impacts on existing transportation pipeline facilities in the market (in terms of Ontario customers).

Appendix B

List of Participants in EB-2008-0280
Alliance Pipeline Ltd.
Association of Power Producers of Ontario
BP Canada Energy Company Ltd.
Building Owners and Managers Association of The Greater Toronto Area
Canadian Manufacturers & Exporters
City of Kitchener
Consumers Council of Canada
Direct Energy Marketing Ltd.
ECNG Energy L.P.
Enbridge Gas Distribution Inc.
Federation of Rental-Housing Providers of Ontario
Gazprom Marketing and Trading USA, Inc.
Industrial Gas Users Association
London Property Management Association
Natural Resource Gas Ltd.
Ontario Energy Savings L.P.
Ontario Power Generation
Shell Energy North America (Canada) Inc.
Superior Energy Management
TransAlta Cogeneration L.P. and TransAlta Energy Corp.
TransCanada PipeLines Limited
Union Gas Limited
Vulnerable Energy Consumers Coalition

TAB (

Ontario Energy Board
P.O. Box 2319
27th. Floor
2300 Yonge Street
Toronto ON M4P 1E4
Telephone: 416- 481-1967
Facsimile: 416- 440-7656
Toll free: 1-888-632-6273

Commission de l'énergie de l'Ontario
C.P. 2319
27e étage
2300, rue Yonge
Toronto ON M4P 1E4
Téléphone; 416- 481-1967
Télécopieur: 416- 440-7656
Numéro sans frais: 1-888-632-6273

BY E-MAIL AND WEB POSTING

April 23, 2009

To: All Participants in EB-2008-0280

Re: Filing Guidelines for the Pre-Approval of Long-Term Natural Gas Supply and/or Upstream Transportation Contracts
Board File No.: EB-2008-0280

The purpose of this letter is to notify participants of the release of the final filing guidelines for the pre-approval of the cost consequences of long-term natural gas supply and/or upstream transportation contracts ("LTC filing guidelines"), which have been posted on the Board's website at www.oeb.gov.on.ca.

Background

In the Natural Gas Forum ("NGF") report, the Board concluded that it will:

- offer natural gas utilities the opportunity to apply for pre-approval of long-term natural gas supply and/or upstream transportation contracts; and
- consult on the development of guidelines that will inform all stakeholders of the principles and issues the Board will consider when evaluating an application for contract pre-approval.

In a letter, dated August 22, 2008, the Board outlined the issues to be addressed when developing a pre-approval process for long-term natural gas supply and/or upstream transportation contracts. The Board indicated that it would hold a consultation to discuss the needs, benefits and risks of entering into long-term contracts, the impact on competition and the filing guidelines.

Also, in its letter dated August 22, 2008, the Board stated that it planned to conduct the consultation in two phases. In the first phase, staff would hold stakeholder meetings which would lead to the development of a staff discussion paper. In the second phase, the Board would consider whether it is appropriate to develop filing guidelines for the pre-approval of long-term contracts.

On October 15-17, 2008, staff held a number of meetings with stakeholders. At these meetings, staff and its technical expert presented material to initiate discussion on whether: (i) it is appropriate for natural gas utilities to enter into long-term natural gas supply and/or upstream transportation contracts; and (ii) the Board should develop guidelines for the pre-approval of long-term contracts, and if so, what should be included in these guidelines.

At these meetings, no substantive issues were raised and stakeholders generally agreed to a pre-approval process for long-term contracts that support the development of new natural gas infrastructure (e.g., new pipeline facilities to access new natural gas supply sources such as Liquefied Natural Gas plants and frontier production). As a result, a staff discussion paper, as originally contemplated in Phase I of the consultation, was not necessary. The Board decided to proceed directly to Phase II and release its draft LTC filing guidelines for stakeholder comment. On February 11, 2009, the Board issued the draft LTC filing guidelines for stakeholder comment and the Report of the Board entitled Draft Filing Guidelines for the Pre-Approval of Long-Term Natural Gas Supply and/or Upstream Transportation Contracts ("the Report").

Ten stakeholders submitted comments on the draft LTC filing guidelines. The majority of these stakeholders supported the draft LTC filing guidelines and commented on the following matters:

- the actual contract itself should be filed as part of this process;
- this process should also include renewals of long-term contracts;
- this process should include any long-term contracts that involve an affiliate of the natural gas utility; and
- the Board should define what is meant by long-term.

One stakeholder, however, submitted that there is no need to determine at this time whether long-term contracts are appropriate since there are no current issues with security of supply or upstream transportation constraints. Therefore, it would be best for the Board to make a determination in the future if and when these concerns arise.

All materials related to these consultations (including stakeholders' comments) are available on the Board's website.

Final Filing Guidelines

The Board has decided to proceed with the finalization of the filing guidelines for the pre-approval of the cost consequences of long-term natural gas supply and/or upstream transportation contracts.

The filing guidelines in Attachment A reflect the comments by stakeholders, as appropriate. In response to the comments raised, the Board reiterates its policy as set out in the Report.

The Board believes that applications for pre-approval of the cost consequences of long-term contracts should be limited to those that support the development of new natural gas infrastructure. The Board does not believe that the pre-approval process should be used for the natural gas utility's ("utility") normal day-to-day contracting, renewals of existing contracts and other long-term contracts that are not related to new natural gas infrastructure. These contracts should continue to be addressed in the utility's rate proceedings.

Further, the Board is of the view that this pre-approval process should be an option available to the utility and not a requirement (even if the long-term contract involves an affiliate). As a consequence, the Board offers utilities the opportunity to apply on a case-by-case basis for pre-approval of these long-term contracts that support new natural gas infrastructure.

In its Report, the Board stated that it would pre-approve the costs associated with these contracts, not the contract itself. However, based on stakeholder comments, the Board believes that the contract should be filed as part of this process to allow for an appropriate review. The Board notes that the utility may request confidential treatment of its contract in accordance with the Ontario Energy Board's *Practice Direction on Confidential Filings*.

For additional clarity, the Board is of the view that defining long-term is not necessary since the pre-approval process is limited to projects that would support the development of new natural gas infrastructure. It is expected that the length of the contract will vary with, amongst other things, the nature and magnitude of the new natural gas infrastructure.

For any questions regarding the final LTC filing guidelines please contact Laurie Klein at laurie.klein@oeb.gov.on.ca or (416) 440-7661. The Board's toll free number is 1-888-632-6273.

Yours truly,

Original signed by

Kirsten Walli
Board Secretary

Attachment A

Attachment A

Filing Guidelines for Pre-Approval of Long-Term Natural Gas Supply and/or Upstream Transportation Contracts

This form applies to all applicants who are requesting pre-approval of the cost consequences of long-term natural gas supply and/or upstream transportation contracts that support the development of new natural gas infrastructure.

"Long-term" has not been defined since this pre-approval process is limited to projects that would support the development of new natural gas infrastructure. It is expected that the length of the contract will vary with, amongst other things, the nature and magnitude of the new natural gas infrastructure.

All applicants must complete and file the information requested in Part I, II, III, IV, V and VI.

Part I – Identification of Applicant

Name of Applicant:	File No: (OEB Use Only)
Address of Head Office:	Telephone Number:
	Facsimile Number:
	E-mail Address:
Name of Individual to Contact:	Telephone Number:
	Facsimile Number:
	E-mail Address:

Part II – Needs, Costs and Benefits

2.1	A description of the proposed project that includes need, costs, benefits (such as this project improves the security of supply and the diversity of supply sources) and timelines.
2.2	An assessment of the landed costs (supply costs + transportation costs including fuel costs) for the newly contracted capacity and/or natural gas supply compared to the landed costs of the possible alternatives.

Part III – Contract Diversity

3.1	A description of all the relevant contract parameters such as transportation/supply provider, contract length, conditions of service, price, volume, and receipt and delivery points.
3.2	An assessment on how the contract fits into the applicant's overall transportation and natural gas supply portfolio in terms of contract length, volume and services.

Part IV - Risk Assessment

4.1	Identification of all the risks (such as forecasting risks, construction and operational risks, commercial risks and regulatory risks) and plans on how these risks are to be minimized and allocated between ratepayers, parties to the contract and/or the applicant's shareholders. For example, forecasting risks include future demand, prices, actual landed costs and performance of basin; commercial risks include competitive and credit-worthiness of provider/operator; construction and operational risks include costs escalations, delays or reliability issues pertaining to new construction, and gas interchangeability and quality issues; and regulatory risks include changes in laws or regulations.

Part V – Other Considerations

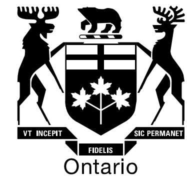
5.1	A description of the relationship and any other conditions, rights or obligations between the parties to the contract and the applicant's parent company and/or affiliates.
5.2	An assessment of retail competition impacts and potential impacts on existing transportation pipeline facilities in the market (in terms of Ontario customers).

Part VI – Contract

6.1	The contract for which the utility is seeking pre-approval for is filed in this application. The utility may request confidential treatment of its contract in accordance with the Ontario Energy Board's *Practice Direction on Confidential Filings.*

TAB)

Ontario Energy Board | **Commission de l’énergie de l’Ontario**



EB-2010-0300
EB-2010-0333

IN THE MATTER OF the *Ontario Energy Board Act, 1998*, S.O. 1998, c.15 (Sched. B);

AND IN THE MATTER OF an Application by Union Gas Limited for an order or orders pre-approving the cost consequences associated with three long-term natural gas transportation contracts;

AND IN THE MATTER OF an Application by Enbridge Gas Distribution Inc. for an order or orders pre-approving the cost consequences associated with a long-term natural gas transportation contract.

BEFORE: Paul Sommerville
Presiding Member

Marika Hare
Member

Karen Taylor
Member

DECISION and ORDER

January 27, 2011

INTRODUCTION

The Applications

Union Gas Limited ("Union") filed an application on October 5, 2010 with the Ontario Energy Board (the "Board") seeking approval of the cost consequences associated with three long-term natural gas transportation contracts. The three contracts make provision for transportation services on the TransCanada PipeLines Limited ("TCPL") system between Niagara and Kirkwall (the "Niagara contract"), between Parkway and Union's Eastern Delivery Area and between Parkway and Union's Northern Delivery Area. The application was assigned Board File No. EB-2010-0300. By letter dated January 17, 2011 Union amended its application, withdrawing its request for pre-approval of costs consequences of the Parkway contracts.

The Niagara contract is for firm transportation of 21,101 GJ/d on the TCPL system. The term of the contract is ten years commencing November 1, 2012. The receipt point of the contract is Niagara and the delivery point is Kirkwall. The annual demand commitment of the contract at current National Energy Board (NEB)-approved rates is $697,000 CDN per year.

Enbridge Gas Distribution Inc. ("Enbridge") filed an application dated November 9, 2010 with the Board seeking approval of the cost consequences associated with a long-term natural gas transportation contract. The contract is for transportation service on the TCPL system between Niagara and Enbridge's Central Delivery Area. The application was assigned Board File No. EB-2010-0333.

Enbridge's contract is also for a term of ten years commencing November 1, 2012. For the first year of the contract the delivery point of the contract is Kirkwall and the costs associated with the contract at currently NEB-approved rates is $991,000 CDN. The Enbridge CDA is the delivery point for the remaining nine years of the contract with an annual cost of $1,325,000 CDN, again at current rates.

Both Enbridge and Union indicated that they would require a Board decision on their respective contracts no later than January 28, 2011. After this date each would be responsible for penalties associated with termination of the respective contracts.

The Proceeding

On November 1, 2010, the Board issued a Notice of Application and Procedural Order No. 1 with respect to Union's EB-2010-0300 application setting November 17, 2010 and November 30, 2010 as the dates for filing interrogatories and filing interrogatory responses, respectively.

All parties to the EB-2008-0280 proceeding were adopted as intervenors in the EB-2010-0300 and EB-2010-0333 proceedings. Parties who intended to seek costs were required to advise the Board by dates set out in the Procedural Order of each respective application.

On December 1, 2010, the Board issued a Notice of Application and Procedural Order No. 1 with respect to Enbridge's EB-2010-0333 application setting December 10, 2010 and December 29, 2010 as the dates for filing interrogatories and filing interrogatory responses, respectively.

By letter dated December 21, 2010, the Board requested additional information from Union regarding the EB-2010-0300 application. Union responded to the Board's request by letter dated January 6, 2011.

In its Notice of Hearing and Procedural Order dated January 7, 2011, the Board stated that it would consider these applications together (the "Applications") through a consolidated oral hearing to be held at its offices on January 20 and 21, 2011.

Oral arguments, in support of their respective Applications, were made by Union and Enbridge on January 21st, 2011. The following parties also made oral submissions on January 21, 2011; TCPL, Canadian Manufacturers & Exporters (CME) and Consumers' Council of Canada (CCC).

Written submissions were filed by Board staff and the following parties on January 24, 2011; Association of Power Producers of Ontario (APPrO), Industrial Gas Users Association (IGUA), Federation of Rental-housing Providers of Ontario (FRPO) and Energy Probe Research Foundation (Energy Probe).

Written reply arguments were filed by Enbridge and Union on January 25, 2011.

Background

In the fall of 2003, the Board undertook a comprehensive sector review called the Natural Gas Forum ("NGF") in order to further improve the efficiency and effectiveness of natural gas regulation in Ontario.

The result of this review was a report, *Natural Gas Regulation in Ontario: A Renewed Policy Framework* (the "Report") which was released on March 30, 2005. The conclusions of this Report were implemented over the following years through public processes that included stakeholder participation.

As part of the NGF, the Board reviewed the role of natural gas utilities with regard to the long-term contracting of gas supply and upstream transportation. In the Report, the Board stated that it would "offer utilities the opportunity to apply for pre-approval of long-term supply and/or transportation contracts" and that it "will consult on the development of guidelines that will inform all stakeholders of the principles and issues the Board will consider when evaluating an application for contract pre-approval."

By letter dated August 22, 2008, the Board outlined the process and the issues to be addressed when developing a pre-approval process for long-term natural gas supply and/or upstream transportation contracts (EB-2008-0280). The Board indicated that it would hold a consultation to discuss the needs, benefits and risks of entering into long-term contracts, the impact of pre-approval of the cost consequences on competition, and the content of the filing guidelines. The Board stated that it planned to conduct the consultation in two phases: in the first phase, stakeholder meetings would be held by Board staff which would lead to the development of a Board staff discussion paper; and in the second phase, the Board would consider whether it was appropriate to develop filing guidelines for the pre-approval of long-term contracts.

On October 15-17, 2008, staff held a number of meetings with stakeholders. At these meetings, no substantive issues were raised and stakeholders generally agreed to a pre-approval process for long-term contracts that support the development of new natural gas infrastructure, such as new pipeline facilities to access new natural gas supply sources such as Liquefied Natural Gas ("LNG") plants and frontier production).

On February 11, 2009 by way of a letter, the Board released The Report of the Board (2009 Report of the Board) and set out Draft Filing Guidelines for the Pre-Approval of

Long-Term Natural Gas Supply and/or Upstream Transportation Contracts for comment by participants in the proceeding. In the 2009 Report of the Board, the Board stated that a pre-approval process is appropriate for specific types of long-term contracts. The Board also stated:

> The Board believes that these applications should be limited to those that support the development of new natural gas infrastructure (e.g., new transportation facilities to access new natural gas supply sources). The Board does not believe that the pre-approval process for long-term contracts should be used for the utility's normal day-to-day contracting, renewals of existing contracts and other long-term contracts. These contracts should continue to be addressed in the utility's rate application.

In its April 23, 2009 cover letter to all participants in the proceeding, the Board approved the LTC Filing Guidelines for the Pre-Approval of Cost Consequences for Long-Term Natural Gas Contracts (LTC Filing Guidelines). In that letter, the Board also reiterated its conclusions from the 2009 Report of the Board:

> The Board believes that applications for pre-approval of the cost consequences of long-term contracts should be limited to those that support the development of new natural gas infrastructure. The Board does not believe that the pre-approval process should be used for the natural gas utility's ("utility") normal day-to-day contracting, renewals of existing contracts and other long-term contracts that are not related to new natural gas infrastructure. These contracts should continue to be addressed in the utility's rate proceedings.

Further, the Board is of the view that this pre-approval process should be an option available to the utility and not a requirement (even if the long-term contract involves an affiliate). As a consequence, the Board offers utilities the opportunity to apply on a case-by-case basis for pre-approval of these long-term contracts that support new natural gas infrastructure

The Applications filed by Union and Enbridge are the first that have been filed pursuant to the LTC Filing Guidelines.

THE ISSUES

In considering the Applications, the Board did not establish an Issues List as the 2009 Report of the Board and the LTC Filing Guidelines dated April 23, 2009 form an adequate point of reference. Prior to determining whether all aspects of the LTC Filing Guidelines have been fulfilled, the Board will determine whether the contracts for which pre-approval is sought qualify for pre-approval pursuant to the 2009 Report of the Board.

Do the contracts for which pre-approval is sought qualify for pre-approval pursuant to the 2009 Report of the Board and the LTC Filing Guidelines?

Union submitted that its contract is an appropriate contract for pre-approval under the Board's LTC Filing Guidelines. More specifically, Union pointed out that there are new facilities required as a result of these transportation arrangements and that compression, valving and metering would be needed to meet the contract requirements. In response to the arguments put forward by intervenors that there are no "new facilities" Union countered that the types of applicable facilities for the purpose of pre-approval under the LTC Filing Guidelines should not be limited to pipe in the ground.

Enbridge also argued that "infrastructure is going to be required and facility work is going to be needed to allow for bidirectional flow on the Niagara to Kirkwall line". Enbridge pointed to Exhibit K2.1 which estimated the total cost of that work at $13 million over a ten year period.

Enbridge suggested that TCPL would also need to "add compression and looping to expand capacity between Parkway and Maple to allow delivery into Enbridge's CDA". TCPL confirmed that it is planning to spend about $110 million to expand capacity from Niagara to Kirkwall and Parkway to Maple as set out in Exhibit K2.1. In addition Union would also have to install some infrastructure to allow bidirectional flows from Kirkwall to Dawn. These costs were estimated at $5 million. Enbridge argued that given these facilities costs, "entering into this contract is not business as usual".

Board staff, APPrO, IGUA, CCC and CME argued that the Applications filed by the utilities did not qualify to be considered under the LTC Filing Guidelines for a number of reasons. The first argument put forward was that there was no security of supply issue. Second, the natural gas infrastructure underpinning the contracts was small and could not be characterized as significant. Third, the pre-approval process was not intended to eliminate normal prudence risk for normal day-to-day contracting.

Board staff submitted that the Applications filed by Union and Enbridge were not within the spirit of the Board's policy as outlined in its April 23, 2009 letter with respect to the types of contracts which are appropriate for pre-approval. The contracts should, more appropriately, be considered in the utility's normal rate proceedings.

The purpose of the pre-approval process, Board staff offered, was to address specific types of contracts such as long-term contracts that support new large infrastructure investments (i.e., new pipeline facilities) to access new natural gas supply sources. It was Board staff's submission there was no "new large infrastructure" associated with these contracts. Instead, only relatively modest modifications need to be made to existing infrastructure in order to enable bi-directional flow on existing pipelines. At the oral hearing, the utilities indicated that they did not know the exact infrastructure investments required but believed that TCPL needed to invest in metering and valving[1] to modify its existing pipeline system. Board staff concluded that the facilities required to move gas on TCPL's Niagara-Kirkwall system were minimal and could not be construed as a facilities expansion of a magnitude sufficient to support pre-approval of the cost consequences of the respective contracts.

Energy Probe supported the Enbridge application on the grounds that, in its view, the criteria set out in the LTC Filing Guidelines had been met. Energy Probe did not support Union's application as its contract had "little or no prudence risk exposure should the Board require review of the contract at its next rates application."

FRPO contended that Enbridge's contract warrants consideration due to the nature of facilities, financial commitments required and benefits to the marketplace. However, according to FRPO, Union's contract failed to meet the requirements as there was limited investment in infrastructure and limited exposure for the company.

[1] Transcript Volume 1, page 52

IGUA argued that “the types of contracts at issue do not involve material infrastructure development associated with “frontier” supply or otherwise, are not of the type envisioned by the Board’s policy on pre-approval of the cost consequences of long-term gas transportation contracts. These gas supply and transportation contracts, according to IGUA, should be subject to review in the normal course of regulatory review of such arrangements.

APPrO suggested that the nature of infrastructure required to access Marcellus shale gas may not be material enough to invoke the application of the Board’s Guidelines.

Board Findings

The Board finds that for the reasons provided below, the applied-for contracts do not qualify for pre-approval of their costs consequences.

It is the Board’s view that its process for the pre-approval of the costs consequences of long-term transportation or supply contracts was intended to serve a very specific role in the development of natural gas infrastructure in the interests of Ontario consumers. Adoption of the process was recognition by the Board that as a matter of commercial reality the developers of natural gas infrastructure must in some circumstances require long-term commitments to support large infrastructure investments. With such assurances in hand the developer can proceed with the project with confidence and can secure financing on the strength of such commitments.

The Board recognized that the enrolment of regulated utilities for such long term arrangements would be a necessary and desirable element in new infrastructure development. It considered that in order to facilitate such developments it was reasonable to make provision for an extraordinary process wherein the costs consequences of such long term arrangements could be pre-approved. This was so because regulated utilities whose sourcing decisions are typically and conventionally subject to ex post facto prudence review would be reluctant or unwilling to accept very significant long-term commitments without assurances of costs recovery. The result would be a frustration of demonstrably needed new natural gas infrastructure.

As the 2009 Report of the Board and the LTC Filing Guidelines make clear, pre-approval is an unusual regulatory instrument reserved for cases where it is genuinely needed in order to enable infrastructure development.

Do the long-term contracts support the development of new natural gas infrastructure?

Surprisingly, neither Union nor Enbridge were able to state with any degree of particularity what new natural gas infrastructure would be required to meet the relatively modest transportation volumes of 21,101 GJ/d and 30,000 GJ/d respectively as per the Precedent Agreements with TCPL. They could only provide assurances that some facilities would be required and some examples of the types of facilities that may be needed were provided. The Board notes that the Precedent Agreements signed by Enbridge and Union do not contain any description whatsoever of the facilities to be constructed. In fact, the only reference to infrastructure in the contracts allows TCPL to make efficient use of existing infrastructure to minimize the need for new facilities. Importantly, all of the facilities that may or may not be constructed would be part of a mature and well developed existing natural gas transportation infrastructure.

In short, the Applicants were not able to confirm that estimated facilities costs would result in the construction of new natural gas infrastructure as opposed to creating new capacity and/or services on existing natural gas infrastructure. It is apparent to the Board that a portion of the facilities underpinning the applied-for contracts would result in the creation of a natural gas hub at the Niagara delivery point on existing natural gas pipeline infrastructure and the remainder would support actions to expand and potentially reverse the flow on existing natural gas pipeline infrastructure. The Board believes that these types of modifications to existing natural gas pipeline transportation infrastructure are not of a nature to require the extraordinary measure of providing the utilities with the comfort of pre-approval. Conversely such development is not sufficient justification to forego the normal process of a prudence review at the next cost of service reviews for these utilities. These arrangements are consistent with a utility's day-to-day activities and should not be afforded the unusual treatment contemplated by the LTC Filing Guidelines.

Finally, a significant portion of the cost set out in the application by Enbridge relates solely to demand charges incurred by a third party pipeline on Enbridge's behalf. This third party is, in turn, contracted for long-term, firm service on an existing natural gas pipeline facility. The Board is of the view that this arrangement clearly does not constitute new natural gas infrastructure. Again, it is representative of a utility's normal, day-to-day contracting and transportation portfolio management activities.

As such, the Board finds that the contracts for which the Applicants seek pre-approval do not support the development of new natural gas infrastructure.

In so doing, the Board is in no way suggesting that the proposed contracts are not prudent, or that costs recovery should in any degree be limited or precluded. That is an issue that a subsequent panel may have to decide upon if the utilities proceed with these or analogous long term contracts for access to Marcellus or any other gas supplies. The Applicants should take some comfort in the Board's decision in EB-RP-2001-0032 which established that in making a finding of prudence the Board should not apply hindsight, but rather should be guided by what utility management knew, or can reasonably be considered to have known at the time of contracting. Much of Union's reply argument is directed to advancing the reasons why it considers the proposed contract desirable. These reasons may well be relevant in a subsequent prudence review.

Do the long-term contracts provide access to new natural gas supply sources?

Both Applicants argued that given the size of their respective contractual commitments, at Niagara a total of 51,101 GJ/d of a possible maximum contracted capacity of 800,000 GJ/d to 1,200,000 GJ/d, it was not appropriate to characterize them as "anchor" shippers on the applied-for contract path. The Applicants also indicated that even if their applied-for contracts were not approved by the Board, given the small portion of the contracted capacity, there is a reasonable chance that whatever infrastructure changes or expansion may be needed would be built anyway. This view was further reinforced by TCPL who indicated that there are other developments, as yet undisclosed, happening at this time, involving other shippers, that are directly relevant to whether the facilities will ultimately be constructed. TCPL acknowledged that these activities had not been discussed in the context of the Applications filed with the Board.

While it is true that Marcellus natural gas is a new source of supply – technological innovation having created access to otherwise non-recoverable natural gas supplies – it is important to note that it is not so new that it is not already being produced and transported - it has been integrated into the market, and it is having an effect on the market. Moreover, Pennsylvania and New York State can hardly be described as "frontier" areas, being relatively well populated with significant and mature natural gas pipeline infrastructure. As noted earlier, the purpose of the pre-approval process is to

support the development of new transportation facilities to access new natural gas supply sources. This is clearly not the case.

There is no basis for the Board to conclude that the contracts for which pre-approval has been sought provide access to new natural gas supply that would not be accessible if pre-approval is not granted.

To be clear, the Board has stated as a matter of policy that there is a role for long-term transportation contracts within the utility transportation portfolio. The Board also identified the specific type of long-term contract where pre-approval of the cost consequences of the contract may be appropriate. In the normal course, the prudence of the cost associated with a long-term contract is appropriately addressed in the utility's rate application. Pre-approval of the cost consequences of a long-term transportation contract forecloses the opportunity for a future prudence review. It is a departure from the Board's conventional approach and therefore must meet a high standard. There must be a compelling case that without the reallocation of risk to the ratepayer from the shareholder arising from pre-approval, new natural gas transportation infrastructure would not be constructed and new natural gas supplies would remain beyond the reach of the market. The Applicants have not met this standard.

Finally, and as discussed in the following section, the Board is reluctant to consider pre-approval in the absence of more reliable and specific costs information.

Did the applicants fulfill the LTC Filing Guidelines?

Although the applied-for long-term contracts do not qualify for pre-approval, the Board notes that these are the first applications for pre-approval filed with the Board. Accordingly, the Board believes it may be helpful to the Applicants to understand whether the Board considers that the LTC Filing Guidelines have been met.

Part II – Needs, Costs and Benefits

Both Applicants argued that pre-approval of the cost consequences of the applied-for contracts was necessary to ensure the diversity and security of natural gas supply. The Applicants did not file evidence that diversity and security were at issue. Moreover, since the applied-for contract volumes comprise less than 5% of each respective utility's system supply and the facilities that underpin the contracts would not be in-service prior

to late 2012, it is not immediately apparent that these contracts will have a consequential impact on natural gas supply diversity and security.

As it relates to the costs for which pre-approval would be granted, without being able to definitively identify the nature, type and cost of the facilities that TCPL would need to construct to fulfill the terms of the Precedent Agreements and meaningfully quantify the potential effect of changes to TCPL's rate design and cost allocation, the Applicants were not able to identify with certainty the costs of the proposed contracts, as outlined in Part 2.1 of the LTC Filing Guidelines. As such, given this uncertainty, even if the Board had found that the applied-for contracts qualified for pre-approval, in this instance pre-approval may not extend to all costs associated with the respective contracts, and some portion might still be subject to a prudence review. Where an application for pre-approval has such fundamental uncertainty, pre-approval may be limited to only reasonably discernable categories of costs.

This lack of cost certainty also had the effect, as discussed by a number of parties, of exacerbating the difficulties that are inherent in the assessment of the landed costs of Marcellus gas delivered over the applied-for contract paths over the contract term versus the landed costs of the possible alternatives, as outlined in Part 2.2 of the LTC Filing Guidelines. As such, given this uncertainty, even if the Board had found that the applied-for contracts qualified for pre-approval, the reliance that the Board could have placed on this analysis to inform its decision process would likely have been limited.

Part IV – Risk Assessment

The issue of whether the Applicants adequately identified and analyzed the relevant risks associated with the applied-for contracts was discussed during the proceeding. Neither Application was complete from the point of view of risk identification and analysis. But for the interrogatories filed by various intervenors, including Board staff, little or no information relating to environmental risks or to the TCPL tolling risks, for example, would have been placed on the record. It is not adequate to simply produce a non-exhaustive, high level list of potential risks without adequate analysis. The discussion relating to risk in this proceeding did not support the appropriateness of shifting risk to the ratepayer from the shareholder in advance of the prudence review that would normally be conducted in the context of a rates case.

Part V – Other Considerations

As indicated by the Board's Letter to Union dated December 21, 2010, the adequacy of the record with respect to this section of the LTC Filing Guidelines has been a concern of the Board. The Board has had similar concerns with respect to the application filed by Enbridge. At a minimum, the financial impact exhibit filed by TCPL in support of the Applications by Union and Enbridge was helpful and it is this sort of analysis that the Board expects to see in applications of this type in the future. Applicants should consider the benefit of having the developer of the new infrastructure which is supported by the long term contracts, providing an authoritative and detailed presentation of the nature of the facilities contemplated to the Board and thereby forming an integral part of the evidentiary record.

Little or no information was provided that would inform the Board as to activities occurring in the Ontario market that appear to have a bearing on the facilities that would be supported by the applied-for contracts. Moreover, little context was provided to explain the relationship between the applied-for contracts and Union's recently approved C1 and M12X application. Absent meaningful information and analysis to support Part 5.2 of the Guidelines, it appears that the Board was asked to approve the applied-for contracts in isolation.

The Board is aware that the Applicants' transportation contracting activities have an impact not only on each respective utility's natural gas transportation portfolio for in-franchise customers, but also on retail competition and may have potential impacts on existing transportation pipeline facilities (in terms of Ontario customers). The current uncertainties arising from the potential changes to TCPL's rate design and cost allocation are illustrative of this point. The Applicants did not provide a reasonable assessment of these impacts upon which the Board could confidently rely to inform its decision process.

COST AWARDS

The Board may grant cost awards to eligible stakeholders pursuant to its power under section 30 of the *Ontario Energy Board Act, 1998*. The Board will determine eligibility for costs in accordance with its Practice Direction on Cost Awards. When determining the amount of the cost awards, the Board will apply the principles set out in section 5 of

the Board's Practice Direction on Cost Awards. The maximum hourly rates set out in the Board's Cost Awards Tariff will also be applied.

All filings to the Board must quote the file numbers, EB-2010-0300 and EB-2010-0333, be made through the Board's web portal at www.errr.oeb.gov.on.ca, and consist of two paper copies and one electronic copy in searchable / unrestricted PDF format. Filings must clearly state the sender's name, postal address and telephone number, fax number and e-mail address. Parties must use the document naming conventions and document submission standards outlined in the RESS Document Guideline found at www.oeb.gov.on.ca/OEB/Industry. If the web portal is not available, parties may email their documents to the address below. Those who do not have internet access are required to submit all filings on a CD in PDF format, along with two paper copies. Those who do not have computer access are required to file 7 paper copies.

All communications should be directed to the attention of Board Secretary at the address below, and be received no later than 4:45 p.m. on the required date.

THE BOARD ORDERS THAT:

1. The application filed by Union Gas Limited (EB 2010-0300) for pre-approval of the cost consequences of a long-term natural gas transportation contract is denied.

2. The application filed by Enbridge Distribution Inc. (EB 2010-0333) for pre-approval of the cost consequences of a long-term natural gas transportation contract is denied.

3. Intervenors shall file with the Board and forward to Union Gas Limited and Enbridge Gas Distribution Inc. their respective cost claims within 21 days from the date of this Decision and Order.

4. Union Gas Limited and Enbridge Gas Distribution Inc. shall file with the Board and forward to intervenors any objections to the claimed costs within 28 days from the date of this Decision and Order.

5. Intervenors shall file with the Board and forward to Union Gas Limited and Enbridge Gas Distribution Inc. any responses to any objections for cost claims within 35 days of the date of this Decision and Order.

DATED at Toronto, January 27, 2011

ONTARIO ENERGY BOARD

Original Signed by

Kirsten Walli
Board Secretary

TAB *

In the Court of Appeal of Alberta

Citation: Altus Group Limited v Calgary (City), 2015 ABCA 86

Date: 20150227
Docket: 1301-0356-AC
Registry: Calgary

2015 ABCA 86 (CanLII)

Between:

Altus Group Limited on behalf of Various Owners

Cross-Appellant on Cross-Appeal
(Respondent on Appeal)
(Applicant)

- and -

The City of Calgary

Cross-Respondent on Cross-Appeal
(Appellant on Appeal)
(Respondent)

- and -

The Assessment Review Board for City of Calgary

Cross-Respondent on Cross-Appeal
(Not a Party to the Appeal on Appeal)
(Respondent)

- and -

The Minister of Justice, Attorney General for Alberta

Not a Party to the Appeal
(Respondent)

The Court:

The Honourable Mr. Justice Peter Martin
The Honourable Madam Justice Patricia Rowbotham
The Honourable Madam Justice Barbara Lea Veldhuis

Memorandum of Judgment

Appeal from the Judgment by
The Honourable Madam Justice K.M. Eidsvik
Dated the 22nd day of October, 2013
Filed on the 28th day of November, 2013
(2013 ABQB 617, Docket: 1101-01047)

2015 ABCA 86 (CanLII)

Memorandum of Judgment

The Court:

I. Introduction

[1] This appeal and cross-appeal arise from a review of a Local Assessment Review Board (the "ARB decision"), which interpreted a municipal taxation bylaw and assessed business tax against the respondent, a group comprising landlords of commercial office space in the City of Calgary, for the lease of parking spaces to their tenants for the 2010 taxation year. The ARB held that the landlords were liable for business tax, as lease of the parking spaces constituted the use or operation of a "business in premises" within the meaning of s.4 of the City of Calgary Bylaw 1M2010 (the "Bylaw").

[2] An appeal to the Court of Queen's Bench of Alberta was allowed, and the ARB's decision to assess business tax liability against the respondent landlords was cancelled and referred back to the ARB for rehearing.

[3] The question of tax liability at issue in this case is not novel. This court addressed that same issue only two years ago in ***Calgary (City) v Alberta (Municipal Government Board)***, 2012 ABCA 13, 519 AR 259 (the "BTC Decision"). In that case, the Municipal Government Board interpreted the same Bylaw and found that the landlords of commercial space were *not* liable for business tax in connection with the lease of parking spaces to their tenants. On judicial review to the Court of Queen's Bench, a chambers judge found that the Board's decision was reasonable. An appeal to this court was dismissed. The court held that in the context of leased parking facilities, it was reasonable to require that the landlord be "operating a parking business" in the premises in order to assess tax under the Bylaw.

[4] The respondent landlords rely on the BTC Decision and say that the ARB unjustifiably refused to follow that reasoning. The appellant City argues that the BTC Decision is not binding and is inapplicable to assessing the reasonableness of the ARB's decision.

[5] The Bylaw in question provides:

> 4(1) Every person who operates a Business in Premises within the City shall be assessed by the Assessor for the purposes of imposing a Business tax.

II. Judicial History - *Altus Group Ltd v Calgary (City)*, 2013 ABQB 617

[6] On the appeal before the chambers judge, both parties agreed that the applicable standard of review was reasonableness – requiring review of the ARB's interpretation of the Bylaw for justifiability, transparency and intelligibility, and whether the result fell within a range of

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reasonable outcomes defensible on the facts and law: (***Dunsmuir v New Brunswick,*** 2008 SCC 9, [2008] 1 SCR 190, at para 47; ***Canadian Natural Resources Limited v Wood Buffalo (Municipality),*** 2013 ABQB 91, 230 ACWS (3d) 353 at paras 40-41).

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[7] Following a detailed review of the legislation and case law, the chambers judge held that the ARB had erred, in part, by failing to distinguish the BTC Decision and reaching an opposite interpretation of the law without reasonable justification. In so doing, she rejected the City's assertion that the ARB decision was reasonable even though it came to a conclusion opposite to prior authority on point. She explained at paragraphs 83-85 of her reasons:

> The City however suggests that the analysis and opposite result found by the ARB here is defensible as an alternate reasonable decision on the law even though it is opposite to what our Court of Appeal has found to be a reasonable interpretation of the law.
>
> I agree that there is case law that may support such a bold statement in certain situations which I will discuss. However, in my view, this does not apply when you are dealing with a question of law and the interpretation of a section of legislation. The City's position would result in taxation chaos. For example, how can the City or taxpayers budget from year to year if the City's assessment on landlord/tenant parking may change from year to year depending on how an assessment board may chose and apply a test for assessiblity. Surely some clarity in the law would be better for all concerned. In my view, the legislature allowed for an appeal on the law to the Court of Queen's Bench from an ARB Decision in order to guard against such a result.
>
> In my view, the cases cited do not allow administrative boards to come to opposite results when they have failed to identify and misapplied the tests as is the case here – where there is an error of law.

[8] As a result, the chambers judge held that the ARB's decision to impose business tax on the landlords was unreasonable and not within the range of possible acceptable outcomes. The ARB decision was cancelled and the matter returned for rehearing to determine whether the respondent landlords were operating a business in premises, i.e. a business in the parking spaces in question.

[9] The City appeals.

III. Grounds of Appeal

i) Did the chambers judge properly apply the reasonableness standard of review and was she correct in concluding that the BTC Decision should have been followed by the ARB?

ii) Did the fact that the Chambers judge heard both the application for leave to appeal and the appeal itself, and some statements made by her at both hearings, give rise to a reasonable apprehension of bias?

iii) Issue on Cross-Appeal - Whether the chambers judge erred in finding the Bylaw establishing the Calgary Assessment Review Board satisfied the requirement of institutional independence.

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Standard of Review

[10] The appeal before us proceeded on the basis that the correct standard of review for the chambers judge to apply to her review of the ARB decision was reasonableness. The chambers judge also agreed that that was the applicable standard of review. That is entirely understandable as that was also the standard of review endorsed by this court in the BTC Decision. The complaint now is that notwithstanding that acknowledgement the chambers judge failed to apply that standard of review.

[11] The concern is this. Since this appeal was argued and these reasons prepared, another panel of the court has heard a case which directly challenged the appropriateness of that standard of review where an assessment review board is interpreting provisions of the *Municipal Government Act*; ***Edmonton East (Capilano) Shopping Centres Limited v. Edmonton (City)*, 2015 ABCA 85**, released contemporaneously with this judgment. Following a thorough analysis and after noting that determination of the appropriate standard of review is in a state of flux and evolution, the court concluded that the appropriate standard of review in such cases is correctness. (para 30). The case before us involves the interpretation of a municipal bylaw, not a provincial statute, but we will leave any debate that may arise from that distinction for another day. Rather than invite further submissions from the parties we will decide this appeal on the basis it was presented, mindful that that standard of review is the most favourable to the appellant. As will be seen the outcome would be the same in any event.

i) Did the chambers judge properly apply the reasonableness standard of review and was she correct in concluding that the BTC Decision should have been followed by the ARB?

(a) Position of the Appellant

[12] The appellant submits that although the chambers judge said she would apply the reasonableness standard, she in fact applied a “disguised correctness” standard in her review of the ARB’s decision and by applying the BTC Decision as binding precedent on interpretation of the Bylaw. With respect to the BTC Decision in particular, the appellant submits that it was open to the ARB to accept an alternative interpretation of the Bylaw in determining whether the landlords were operating a business in premises in the parking spaces, as one of a range of reasonable outcomes. Further, the appellant argues that the BTC Decision does not represent the current consensus on the proper interpretation of the Bylaw.

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[13] To the extent that there is conflict between the ARB's Decision in this case and the reasoning in the BTC Decision, the appellant maintains that judicial deference requires this court to allow the ARB to resolve that conflict without interference.

(b) Position of the Respondent

[14] The respondent argues that the chambers judge properly identified and applied the reasonableness standard of review in assessing the ARB's decision. In particular, the respondent explains that in referring to the governing law, the chambers judge was required to consider the divergence from the BTC Decision and whether the ARB's interpretation of the Bylaw was reasonable in that context. In this respect, according to the respondent, the reasonableness standard requires a review of both the ARB's decision-making process and the merits of its decision.

[15] The respondent concedes that an administrative tribunal is entitled to deference and may choose from any reasonable interpretation that its home legislation may bear. However, in the face of jurisprudence that has supported an alternative interpretation of the law, the respondent argues that it was incumbent on the ARB to explain why, on the same facts and legislative provisions, its opposite conclusion was also reasonable. In failing to complete this path of reasoning or otherwise supporting their conflicting interpretation of the law, the respondent submits that the ARB decision is unreasonable and cannot stand.

c) Analysis

***Stare Decisis* and the Standard of Reasonableness**

[16] Strictly speaking, an administrative tribunal is not bound by its previous decisions or the decisions of its predecessor: ***Irving Pulp & Paper Ltd v LEP, Local 30***, 2013 SCC 34, [2013] 2 SCR 458 at para 6; ***Halifax Employers Assn v International Longshoremen's Assn, Local 269***, 2004 NSCA 101, 243 DLR (4th) 101 at para 82, leave to appeal to SCC refused, [2004] 334 NR 197. Where numerous reasonable interpretations exist, the administrative tribunal may change its consensus or policy with respect to which one it will adopt. There is no rule of law that an administrative tribunal can never change its policies, nor change its interpretation of a particular policy, nor change the way that the policy will be applied to particular fact situations: ***Thompson Brothers (Construction) Ltd v Alberta (Appeals Commission for Alberta Workers' Compensation)***, 2012 ABCA 78, [2012] AWLD 2212 at para 39.

[17] Similarly, even where an appellate court has found one interpretation to be reasonable, that decision will not necessarily bind a future administrative tribunal considering the legislation afresh. Sara Blake summarizes this point in her text, *Administrative Law in Canada*, 5d ed (Markham: LexisNexis Canada Inc, 2011) at pages 140 – 141.

> If, in another case, a court determined the correct interpretation of a statutory provision, the tribunal must apply the court's interpretation. However, if a court has

> merely upheld an earlier tribunal interpretation of the provision as reasonable, the tribunal need not follow that interpretation if it prefers another interpretation that is also reasonable.

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[18] Nevertheless, prior decisions provide important context to the analysis. In ***Irving Pulp & Paper***, the Supreme Court dealt with arbitral decisions of the Labour Board and the interpretation of a collective agreement. The majority referred to existing precedents as a "valuable benchmark against which to assess the arbitration board's decision" (at para 6). Rothstein and Moldaver JJ., (in dissent, with McLachlin C.J.C. concurring), went on to explain this point in agreement with the majority's comment (at paras 75, 78).

> The context of this case is informed in no small part by the wealth of arbitral jurisprudence concerning the unilateral exercise of management rights arising under a collective agreement in the interests of workplace safety. We will say more about the "balancing of interests" test that has emerged from that jurisprudence in a moment, but for now the salient point is that arbitral precedents *in previous cases* shape the contours of what qualifies as a reasonable decision *in this case*. In that regard, we agree with our colleague, Abella J., who describes this "remarkably consistent arbitral jurisprudence" as "a valuable benchmark against which to assess the arbitration board's decision in this case" (paras. 16 and 6).
>
> …
>
> Respect for prior arbitral decisions is not simply a nicety to be observed when convenient. On the contrary, where arbitral consensus exists, it raises a presumption — for the parties, labour arbitrators, and the courts — that subsequent arbitral decisions will follow those precedents. Consistent rules and decisions are fundamental to the rule of law. As Professor Weiler, a leading authority in this area, observed in *Re United Steelworkers and Triangle Conduit & Cable Canada (1968) Ltd.* (1970), 21 L.A.C. 332:
>
>> This board is not bound by any strict rule of *stare decisis* to follow a decision of another board in a different bargaining relationship. Yet the demand of predictability, objectivity, and impersonality in arbitration require that rules which are established in earlier cases be followed unless they can be fairly distinguished or unless they appear to be unreasonable. [Emphasis added; p. 344.]
>
> See, also D. J. M. Brown and D. M. Beatty, *Canadian Labour Arbitration* (4th ed. (loose-leaf)), at topic 1:3200 (including discussion of the "Presumption Resulting From Arbitral Consensus"); R. M. Snyder, *Collective Agreement Arbitration in Canada* (4th ed. 2009), at p. 51 (identifying Professor Weiler's view as "typical").

> … Reasonableness review includes the ability of courts to question for consistency where, in cases like this one, there is no apparent basis for implying a rationale for an inconsistency.

d) Addressing conflicting decisions

[19] Little direct authority exists for reviewing conflicting statutory interpretations by the same administrative body (See: L.J. Wihak, "Wither the Correctness Standard of Review? Dunsmuir, Six Years Later" (2014), 27 Can J Admin L & Prac 173 at 174).

[20] This issue was first addressed by the Supreme Court of Canada in ***Domtar Inc v Quebec (Commission d'appel en matière de lésions professionnelles)***, [1993] 2 SCR 756, a pre-**Dunsmuir** decision. In ***Domtar***, the question was whether divergent interpretations of the same legislation, albeit by two different administrative tribunals, could be raised as an independent basis for judicial review. The Supreme Court held that it could not. L'Heureux-Dubé J., writing for the Court, noted the importance of consistency in administrative decision making (at para 59):

> While the analysis of the standard of review applicable in the case at bar has made clear the significance of the decision-making autonomy of an administrative tribunal, the requirement of consistency is also an important objective. As our legal system abhors whatever is arbitrary, it must be based on a degree of consistency, equality and predictability in the application of the law. Professor MacLauchlan notes that administrative law is no exception to the rule in this regard:
>
> > Consistency is a desirable feature in administrative decision-making. It enables regulated parties to plan their [page785] affairs in an atmosphere of stability and predictability. It impresses upon officials the importance of objectivity and acts to prevent arbitrary or irrational decisions. It fosters public confidence in the integrity of the regulatory process. It exemplifies "common sense and good administration".
> >
> > (H. Wade MacLauchlan, "Some Problems with Judicial Review of Administrative Inconsistency" (1984), 8 Dalhousie L.J. 435, at p. 446.)

[21] ***Domtar*** was considered by the Supreme Court in ***Ellis Don Ltd v Ontario (Labour Relations Board)***, 2001 SCC 4 [2001] 1 SCR 221 at para 28, in the context of institutional consultation by an administrative body. Noting the importance of proper consultation to ensure consistency in decision making, the majority held (at para 28):

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> Inconsistencies or conflicts between different decisions of the same tribunal would not be reason to intervene, provided the decisions themselves remained within the core jurisdiction of the administrative tribunals and within the bounds of rationality. It lay on the shoulders of the administrative bodies themselves to develop the procedures needed to ensure a modicum of consistency between its adjudicators or divisions (*Domtar*, *supra*, at p. 798).

[22] The same approach was endorsed in ***Thompson Brothers,*** where this court considered the authority of the Workers' Compensation Appeals Commission to change its interpretation of existing policies: "The existence of allegedly conflicting decisions by a tribunal on a particular subject does not itself warrant judicial intervention, unless the particular decision under review is unreasonable" (at para 39, citing ***Ellis Don*** at para 28). Also see: ***I.A.F.F., Local 255 v Calgary (City),*** 2003 ABCA 136, 7 WWR 226 at para 27, leave to appeal to SCC refused, [2003] 328 NR 194; ***Hydro Ottawa Ltd v International Brotherhood of Electrical Workers, Local 636,*** 2007 ONCA 292 at para 59, 281 DLR (4th) 443, leave to appeal to SCC refused, [2007] 385 NR 379; ***National Steel Car Ltd v United Steelworkers of America, Local 7135*** (2006), 278 DLR (4th) 345, 159 LAC (4th) 281 (Ont CA) at para 31, leave to appeal to SCC refused, [2007] 374 NR 389.

[23] Canadian courts and commentators have noted the difficulty in accepting two conflicting interpretations by the same administrative tribunal as reasonable. In the context of a public statute, the rule of law and the boundaries of administrative discretion arguably cannot be served in the face of arbitrary, opposite interpretations of the law.

[24] For example, in ***Novaquest Finishing Inc v Abdoulrab***, 2009 ONCA 491, 95 Admin LR (4th) 121 at para 48, while the decision did not turn on this issue, Juriansz J.A. observed:

> From a common sense perspective, it is difficult to accept that two truly contradictory interpretations of the same statutory provision can both be upheld as reasonable. If two interpretations of the same statutory provision are truly contradictory, it is difficult to envisage that they both would fall within the range of acceptable outcomes. More importantly, it seems incompatible with the rule of law that two contradictory interpretations of the same provision of a public statute, by which citizens order their lives, could both be accepted as reasonable.

[25] Similar concerns were raised by the Ontario Court of Appeal in ***Investment Dealers Association of Canada v Taub***, 2009 ONCA 628, 311 DLR (4th) 389 at para 67:

> I agree with Juriansz J.A. that it accords with the rule of law that a public statute that applies equally to all affected citizens should have a universally accepted interpretation. It follows that where a statutory tribunal has interpreted its home statute as a matter of law, the fact that on appeal or judicial review the standard of review is reasonableness does not change the precedential effect of the decision for

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> the tribunal. Whether a court has had the opportunity to declare the decision to be correct according to judicially applicable principles should not affect its precedential status. As in *Abdoulrab*, it is not necessary to decide the issue in this case.

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[26] These comments were endorsed by the Federal Court of Appeal in ***Canada (Attorney General) v Mowat***, 2009 FCA 309, 4 FCR 579 at paras 45-47, aff'd ***Canada (Canadian Human Rights Commission) v Canada (Attorney General),*** 2011 SCC 53, [2011] 3 SCR 471. In that case, the court noted the diversity of opinions between the Federal Court and Human Rights Commissions regarding the authority to award legal costs to a successful complainant in determining the proper standard of review. The issue did not receive direct comment by the Supreme Court of Canada on appeal.

[27] While some statutory provisions may be amenable to different, yet reasonable interpretations, it is difficult to conceive of meaningful legislation that would allow diametrically opposed interpretations, both of which are reasonable, not to mention correct.

[28] Opposite interpretations of a legislative provision are also difficult to accept under the presumption of legislative coherence. An interpretation that is so broad that it fosters inconsistency or repugnancy should be avoided: ***Alberta Power Limited v Alberta Public Utilities Board***, 66 DLR (4th) 286, 19 ACWS (3d) 763 at para 31, leave to appeal to SCC refused, [1990] 120 NR 80. In the context of the statutory interpretation of taxation powers, consistency is also particularly important. Tax legislation should be interpreted to achieve "consistency, predictability and fairness" to achieve equity and finality in taxation and allow taxpayers to manage their affairs (***Husky Energy Inc v Alberta***, 2011 ABQB 268, 11 WWR 282, at para 12 leave to appeal to SCC refused, [2012] 447 NR 400; ***Canada Trustco Mortgage Co v Canada***, 2005 SCC 54, [2005] 2 SCR 601 at para 12; ***Toronto (City) v Municipal Property Assessment Corporation***, 2013 ONSC 6137, 234 ACWS (3d) 267 at para 30. at para 30).

[29] Sara Blake also notes that, in many cases, only one interpretation of a statutory provision will be reasonable at page 211:

> When the reasonableness standard of review is applied, conflicting interpretations of a question of law may be upheld by the courts if both are reasonable, though an interpretation may be held to be unreasonable if it is inconsistent with the prevailing interpretation. However, when the test of correctness is applied, it is not likely that different interpretations of the law will be upheld, because there can be only one correct interpretation, while there can be several reasonable interpretations. Given that most statutes are not ambiguous and do not permit more than one reasonable interpretation, there will not often be different interpretations that may both be upheld as reasonable.

[30] In a comprehensive review of the case law, one commentator has called on appellate courts to review administrative decisions in a way that ensures consistency in the interpretation of public statutes (L.J. Wihak at pages 198-199):

> Public statutes apply equally to all citizens and they should have universal, consistent application. Citizens are entitled to advanced knowledge, certainty, and clarity regarding their respective entitlements or obligations under these public statutes….
>
> Not only do judges have greater expertise in the law relative to administrative decision-makers, they also have a constitutional responsibility to ensure that each person in Canada is subject to the same law and legal principles, and that tribunals are acting legally. As such, "appellate courts require a broad scope of review with respect to matters of law" [citing *Housen v Nikolaisen,* 2002 SCC 33, [2002] 2 SCR 235 at para 9].

Conclusions

[31] Assuming reasonableness applies as the standard of review of administrative tribunals in the interpretation of their home statute or closely connected legislation, while an administrative decision maker is unconstrained by the principles of *stare decisis* and is free to accept any reasonable interpretation of the applicable legislation, the reasonableness standard does not shield directly conflicting decisions from review by an appellate court. In assessing the reasonableness of statutory interpretation by the administrative tribunal, the appellate court should have regard to previous precedent supporting a conflicting interpretation and consider whether both interpretations can reasonably stand together under principles of statutory interpretation and the rule of law.

[32] In this case, the ARB adopted an interpretation of the Bylaw which found the respondent liable for business tax for the lease of parking spaces to tenants in connection with the lease of commercial office space. That result is opposite to the approach and outcome in the BTC Decision, which this court found to be reasonable. The apparent conflict between the ARB decision under appeal and the BTC Decision does not create an independent basis for judicial intervention. However, the BTC Decision provides a direct contextual comparison against which to judge the intelligibility, transparency and justifiability of the ARB's decision.

[33] The chambers judge appropriately referred to and relied on the analysis in the BTC Decision to inform her review of the ARB's decision on the appeal. In light of that context, the range of reasonable outcomes was significantly narrowed. Indeed, considering the importance of coherence in the interpretation of the Bylaw and its purpose in imposing a tax, it would be difficult to accept two opposite interpretations of the provision as reasonable.

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[34] In the result, we find the chambers judge did not err in her consideration of the BTC Decision to the ARB decision under review.

ii. Did the fact that the chambers judge heard both applications for leave to appeal and the appeal itself, and some statements made by her at both hearings, give rise to reasonable apprehension of bias.

[35] The appeal to the court below required leave, which was granted by the same judge who eventually heard the appeal itself. The appellant submits that some of the judge's statements in the decision granting leave would lead "any reasonable person" to conclude that the chambers judge had "pre-decided" at least some critical issues. Of particular concern are the chambers judge's references, during the leave application, that the ARB had effectively ignored the BTC Decision to come to a different conclusion.

[36] We see no merit in this argument. That the BTC Decision of this court was effectively ignored by the ARB was the basis on which leave was sought. It is therefore not surprising that the chambers judge would refer to it and offer some preliminary thoughts as to the significance of that omission.

[37] Furthermore, if the appellant was truly concerned about the impartiality of the same judge hearing the appeal, that objection should have been taken at the beginning of that hearing, not for the first time on appeal. The appellant's conduct of remaining silent throughout, and thereby appearing content to proceed before the same judge who it now says was, or may have been, biased, offers some indication of the sincerity of this complaint. See also ***Lavesta Area Group Inc. v Alberta (Energy and Utilities Board)***, 2012 ABCA 84, 40 Admin LR (5th) 331; and ***R v Curragh Inc.*** [1997] 1 SCR 537, 1 44 DLR (4th) 614.

[38] Finally, upon a review of the record we think that if the chambers judge in granting leave went beyond what was necessary to address the ARB's neglect of this court's decision in BTC, we read those comments as her expression of frustration and bewilderment. She is not alone with those feelings.

[39] While we find no merit in this argument, it fortifies our concern that generally when a court grants leave to appeal, little more than the grounds upon which leave is being granted need be identified. More elaborate reasons are best saved for those cases where leave to appeal is refused, as that will be the final word and the parties have a right to understand the reasoning leading to that conclusion.

[40] That disposes of the appeal. There is as well a cross-appeal. We will turn to that now.

iii. Issue on Cross-Appeal - Whether the chambers judge erred in finding the Bylaw establishing the Calgary Assessment Review Board satisfied the requirement of institutional independence.

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[41] Although the matter was not raised before the ARB, the chambers judge granted leave on this issue as well, The cross-appellant argues that the legislative framework establishing the ARB is "minimalist" thereby raising questions whether the "guarantees" of independence such as security of tenure and remuneration are sufficient to create the perception of independence. The cross-appellant agrees that the common law requirements to establish independence are subject to legislative override, but maintains that must be done "expressly". In other words, where the legislation is silent or ambiguous, a court should find that the common law guarantees still apply. And, says the cross-appellant, in this case there was no express legislative intent to override the common law requirements of independence.

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[42] The same submissions were made on appeal to the chambers judge who found them to be without merit. We agree with her assessment.

[43] To better frame the issue, there is no suggestion here that a board member's tenure or remuneration were at risk should that member, or a panel of members, make a decision not pleasing to the City, or that it was ever so. Rather, the cross-appellant argues that there remains the perception. In our opinion, the Supreme Court's decision in ***Oceanport Hotel Ltd v British Columbia (General Manager, Liquor Control and Licencing Branch)***, 2001 SCC 52, [2001] 2 SCR 781, is dispositive of this argument. The issue in that case was whether members of the Liquor Appeal Board were sufficiently independent to render decisions that imposed penalties in response to violations of the *Liquor Control Act*. The specific concern related to the tenure of board members who were appointed "at pleasure". Ultimately the Supreme Court found that this was a clear, unambiguous expression of legislative intent and accordingly there was no basis upon which to import common law doctrines of independence. (para 27)

[44] In the case before us, the Provincial Legislature by ss. 454.1 and 454.2 of the *Municipal Government Act* delegated to the municipality the authority to enact bylaws which required the municipality to appoint persons to the ARB, to prescribe the term of office of each member, the manner in which vacancies are to be filled, and to prescribe remuneration and expenses for each member. The City of Calgary did so. It enacted ByLaw 25M2010 which provides that the General Chairman of the ARB and each member shall hold office for one year beginning on January 1 and ending on December 31 of the same year. (s. 6) The same Bylaw provides that remuneration and expenses payable to each member are to be determined by the City Clerk in consultation with the General Chairman. (ss. 9.1 and 9.2) As well, administrative controls are prescribed in both the regulations of the *Municipal Government Act* (310/2009) and s. 4 of the Bylaw.

[45] These provisions, which clearly express the legislature's intent regarding independence of the tribunal have ousted common law guarantees of independence. In the result, we find that ARB does not lack the necessary degree of independence required of a tribunal charged with taxation assessment.

[46] Judgment accordingly. The appeal and cross-appeal are dismissed.

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Appeal heard on May 8, 2014

Memorandum filed at Calgary, Alberta
this 27th day of February, 2015

Martin J.A.

Rowbotham J.A.

Veldhuis J.A.

Appearances:

G.L. Ludwig, Q.C.
J.B. Laycraft, Q.C.
for the Cross-Appellant/Respondent

M.J. Donaldson
P.G. Chiswell
for the Cross-Respondent/Appellant – The City of Calgary

P.J. Knoll, Q.C.
for the Cross-Respondent – The Assessment Review Board for the City of Calgary

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TAB +

NEXUS Pipeline Overview
EB-2015-0166
EB-2015-0175

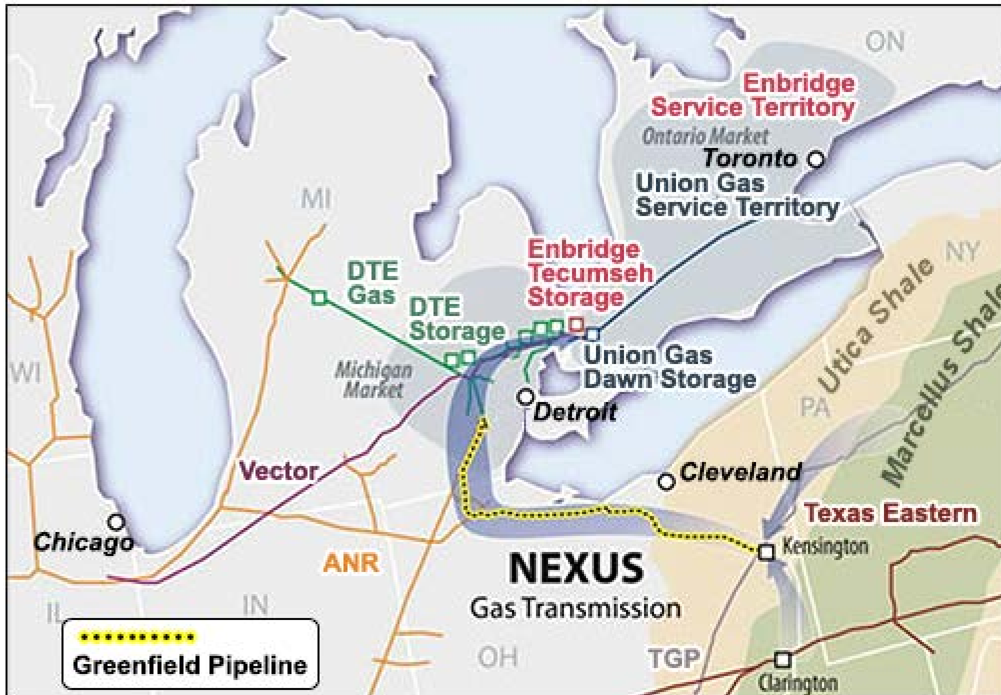
Chris Shorts and Jamie LeBlanc

November 13, 2015

The NEXUS Pipeline Project

ENBRIDGE uniongas A Spectra Energy Company

Bringing Marcellus & Utica gas to LDCs, power generators & industrial users in Ohio, Michigan, and Ontario



Project Scope:

- Spectra Energy and DTE Energy are lead developers
- Capacity: 1.5 Bcf/d
- Estimated CapEx: $2.019 B
- In-Service: November 1, 2017
- New meter & regulation stations, including:
  - Kensington Processing Plant
  - Tennessee Gas Pipeline
  - Texas Eastern Ohio Line
  - DTE Gas Transportation System at Willow Run, MI
  - LDC in Ohio

Customers:

- LDCs and Marcellus & Utica producers such as CNX, Noble and Chesapeake
- Multiple taps with various Ohio LDCs and end-users

Facilities:

- 400 km (250 miles), 36-inch greenfield pipeline
- 4 compressor stations
- 5 meter stations
- Will use existing Vector and DTE Gas facilities to deliver gas to Dawn

NEXUS and Rover Routes

ENBRIDGE
uniongas
A Spectra Energy Company

NEXUS Routes to Dawn

ENBRIDGE uniongas A Spectra Energy Company

Union – Nexus contract includes transport on the NEXUS greenfield pipeline from Kensington to Willow Run then on existing DTE facilities delivered to St Clair. The delivery to Dawn is then on Union existing St Clair to Dawn facilities

Enbridge – Nexus contract includes transport on Nexus greenfield pipeline from Kensington to Willow Run then on existing DTE facilities delivered to Vector at Milford. The delivery to Dawn is then on existing Vector facilities contracted separately with Enbridge to Dawn

Other NEXUS Shippers – On Nexus greenfield pipeline from Kensington to Willow Run then delivered to Dawn on existing DTE and Vector facilities contracted by NEXUS

Precedent Agreement Parameters

ENBRIDGE uniongas A Spectra Energy Company

Parameter	EGD	Union
Transportation Provider	NEXUS Gas Transmission	NEXUS Gas Transmission
Service	Firm Transportation	Firm Transportation
Primary Term	Nov. 1, 2017 – Oct. 31, 2032 (15 years)	Nov. 1, 2017 – Oct. 31, 2032 (15 years)
Volume	110,000 Dth/d [1]	150,000 Dth/d
Receipt Point	Kensington, Ohio	Kensington, Ohio
Delivery Point	Vector Pipeline, Milford Junction	Union St. Clair
Reservation Rate	$0.70 US/Dth [1, 2, 3]	$0.77 US/Dth [2, 3]
Fuel Ratio	2% to 3%	2% to 3%
Renewal Rights	Right of First Refusal	Right of First Refusal

Footnotes

1) Option for 150,000 Dth/d at a reservation rate of $0.685 US/Dth
2) Subject to capital cost tracker adjustment
3) For comparison purposes, to get gas to Dawn requires adding Enbridge Vector capacity at a cost of $.16 US/Dth for a total of $.86 US/Dth and for Union it requires adding Union C-1, St Clair to Dawn, of $.035 CDN ($.028 US/Dth) for a total of $.798 US/Dth

The NEXUS Timeline

ENBRIDGE uniongas A Spectra Energy Company

Past Milestones

November, 2012	• Union and EGD Bid into NEXUS Open Season
June, 2014	• EGD Executed Initial NEXUS Precedent Agreement
June, 2014	• Rover Project Announced
August, 2014	• Union Executed Initial NEXUS Precedent Agreement
December, 2014	• EGD Executed Restated NEXUS Precedent Agreement
January, 2015	• NEXUS Received FERC Pre-File Approval
May, 2015	• Union Executed Restated NEXUS PA & OEB Filing
June, 2015	• EGD Executed First Amendment to Restated NEXUS PA & OEB Filing
September, 2015	• Union and EGD Requested 90-day Extension of Regulatory Approval CP

Future Milestones

November, 2015	• Anticipated NEXUS FERC Filing
December 29, 2015	• Deadline for Union and EGD's Regulatory Approval CP
November, 2017	• NEXUS Pipeline In-Service

TAB ,

ONTARIO ENERGY BOARD

IN THE MATTER OF the *Ontario Energy Board Act*, *1998*, S.O. 1998, c. 15, Sched. B, as amended;

AND IN THE MATTER OF an Application by Enbridge Gas Distribution Inc. for an Order or Orders Pre-Approving the Cost Consequences associated with a Long-Term Natural Gas Transportation Contract.

ARGUMENT IN CHIEF OF ENBRIDGE GAS DISTRIBUTION

A. OVERVIEW

1. Enbridge Gas Distribution Inc. (Enbridge or the Company) seeks preapproval of the cost consequences of a 15 year gas transportation agreement with NEXUS Gas Transmission, LLC on the NEXUS Gas Transmission Project (the NEXUS pipeline). This preapproval is sought under the Ontario Energy Board's (Board, or OEB) Filing Guidelines for the Pre-Approval of Long-Term Natural Gas Supply and/or Upstream Transportation Contracts (the Guidelines).[1]

2. Capacity on the NEXUS pipeline will provide Enbridge with direct access to the abundant gas supplies in the Utica basin, with connectivity to the other supply basins such as Marcellus that make up the Appalachian basin. Contracting all the way to the supply basins will assure that Enbridge can obtain supplies of competitively-priced Appalachian basin gas and can deliver those supplies to the Dawn Hub.

3. The NEXUS capacity, which amounts to around 15% of Enbridge's annual system gas supply requirements, fits very well with Enbridge's gas supply planning principles. The NEXUS capacity will diversify Enbridge's supply upstream of the Dawn Hub and, along with previously committed capacity to transport Marcellus basin gas from Niagara to the Central Delivery Area (CDA), will provide for two separate sources of supply from different regions of the prolific Appalachian basin. A further benefit is that contracting for capacity from the Utica supply basin on NEXUS, which is a new transportation path, will enhance Enbridge's security of supply. The NEXUS capacity will benefit ratepayers, because Enbridge's gas supply will be incrementally more secure, diverse and reliable than would be the case without NEXUS capacity.

[1] The Guidelines are filed at Tab 1 of Exhibit K1.3 (the OEB Staff Compendium for the Union Panel).

4. In order for Enbridge to secure capacity on the NEXUS pipeline (or on any competing new pipeline such as Rover), it is necessary to enter into a long-term transportation contract. This provides the developer the necessary commitment to proceed with the development of significant new greenfield pipeline infrastructure. Enbridge has negotiated a favourable Precedent Agreement (PA) with NEXUS for a 15 year term. Enbridge's NEXUS PA is subject to OEB approval as to its cost consequences. If the requested pre-approval is received from the OEB, and other conditions precedent are satisfied, then Enbridge plans to enter into a gas transportation contract with NEXUS that will reflect the terms of the PA (the NEXUS contract).

5. The NEXUS contact is very different from other transportation contracts that Enbridge typically enters into. The NEXUS contract commits Enbridge to purchase significant capacity on new yet-to-be-built greenfield infrastructure that is upstream of the Dawn Hub. The NEXUS contract has a 15 year term, and a total cost (toll) of around $420 million (US). Enbridge has not entered into any similar contract to support a significant new pipeline project bringing natural gas to Ontario since the Alliance and Vector Pipelines in around 2000.

6. The Board's Guidelines allow for pre-approval of the cost consequences of long-term transportation contracts. The Board has recognized that gas distributors would be reluctant to enter into long term commitments for new infrastructure without assurances of cost recovery. Pre-approval allows gas distributors to support and enable new infrastructure projects that will enhance and diversify the supply of natural gas to Ontario.

7. In the February 11, 2009 Report of the Board on the draft Guidelines, the Board indicated that pre-approval applications "should be limited to those that support the development of new natural gas infrastructure".[2] This is confirmed in the Board's April 23, 2009 letter that published the final Guidelines, and stated that "[t]he Board believes that applications for pre-approval of the cost consequences of long-term contracts should be limited to those that support the development of <u>new</u> natural gas infrastructure."[3]

[2] Page 5, Report of the Board – Draft Filing Guidelines for the Pre-Approval of Long-Term Natural Gas Supply and/or Upstream Transportation Contracts, February 11, 2009, EB-2008-0280 (hereinafter referred to as Report of the Board on the draft Guidelines), found at Tab 2 of Exhibit K1.3.
[3] OEB letter dated April 23, 2009, EB-2008-0280, at page 3, found at Tab 1 of Exhibit. K1.3.

8. The NEXUS contract meets these expectations. There will be substantial new facilities (costing more than $2 billion) constructed by NEXUS. When complete, the NEXUS facilities will provide Enbridge with direct access to the producing areas in the Appalachian basin (primarily the Utica basin) from the Dawn Hub. Direct access does not presently exist in Enbridge's portfolio.

9. The Board's Report on the draft Guidelines contemplates that long-term contracts should support new infrastructure to access new gas supply sources in order to be eligible for pre-approval.[4] It should be noted that this requirement is not contained in the Guidelines themselves.

10. In any event, the NEXUS contract meets this expectation. The NEXUS contract will provide Enbridge with direct access to Utica basin gas supply, which is a new gas supply source currently in a very early stage of development.

11. In summary, Enbridge submits that it is appropriate for the Board to pre-approve the cost consequences of Enbridge's NEXUS contract. It is clear that the NEXUS contract creates significant benefits for Enbridge's ratepayers (particularly system gas customers). Enbridge's gas supply plan will be enhanced by the NEXUS contract, in terms of diversity, security of supply and reliability. The costs associated with the NEXUS contract are forecast to be competitive with other gas supply options, and the risks associated with the arrangement have been managed and mitigated. Pre-approval of the cost consequences of the NEXUS contract will allow Enbridge to make the significant long-term commitment that is required to ensure the benefits of the project will be realized by Enbridge's customers.

B. THE NEXUS PROJECT

12. NEXUS is a proposed pipeline that will provide natural gas markets in Ohio, Michigan, Chicago, and the Dawn Hub in Ontario with a direct link to the vast natural gas resource located within the Appalachian basin. NEXUS requires the construction of approximately 400 km of new greenfield pipeline and includes the efficient use of existing and expanded transportation capacity along the DTE Pipeline Company (DTE) gas transportation system in

[4] Page 4, Report of the Board on the draft Guidelines - found at Tab 2 of Exhibit K1.3.

eastern Michigan, and the Vector Pipeline system in southeastern and eastern Michigan, northern Indiana, eastern Illinois and western Ontario (Vector).[5]

13. The following map depicts the NEXUS pipeline.[6] The greenfield portion of the path from Kensington, Ohio to Willow Run, Michigan is shown in orange. Enbridge's NEXUS contract also includes transport on DTE from Willow Run, Michigan to Milford, Michigan (shown in green). From there, Enbridge will use its own existing Vector capacity to the Dawn Hub. The Vector capacity is not part of Enbridge's NEXUS contract, and Enbridge is not seeking pre-approval of the cost consequences of that part of its path to the Dawn Hub.[7]

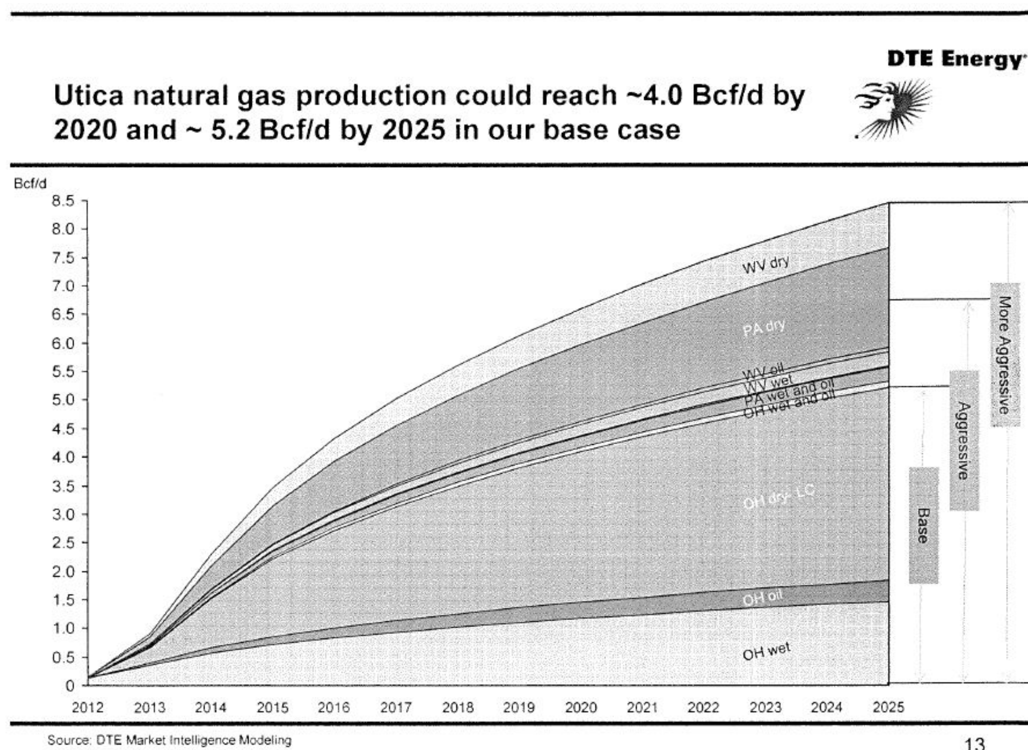
14. NEXUS provides significant opportunity to further enhance Enbridge's gas supply portfolio. The Appalachian basins - specifically, the Utica and Marcellus supply basins - are expected to account for over half the incremental North America gas production through 2035.[8] These basins have served as a primary catalyst for the changing dynamics within North America's natural gas marketplace. As stated in the expert report authored by Sussex Economic Advisors, LLC that has been filed in this case (the Sussex Study), the rise of the

[5] Exhibit A, Tab 3, Schedule 1 (hereinafter referred to as Enbridge's Pre-Filed Evidence), para. 2.
[6] NEXUS Overview Maps, Exhibit K1.1, slide 4.
[7] 1Tr.8-9 and 2Tr.105.
[8] EB-2014-0289 - Future Trends: Assessing Ontario Natural Gas Market Requirements Through 2020 presentation prepared by ICF International, November 25, 2014, page 4.

Marcellus and Utica shale basins as proximate and competitive sources of natural gas for the Ontario market presents new opportunities to source natural gas from these basins.

15. Although Enbridge will soon be accessing Marcellus supply through purchases at Niagara, NEXUS provides additional benefits through increased diversity of path and the ability to obtain natural gas directly from the Utica basin and the neighbouring regions of the Appalachian basin.[9] As explained in the Sussex Study, Enbridge will benefit from this new gas supply that is proximate (480 km distance to Kensington, versus 2,900 km to Empress) and cost competitive.[10]

16. Supply of Utica gas is new for Enbridge. At the time that Enbridge entered into initial discussions about the NEXUS project (around 2012), there was very little natural gas being produced from the Utica basin.[11] There were, however, projections of much greater supply. This can be seen in the presentations made by the NEXUS developers to interested parties, an example of which is included below.[12]



[9] Enbridge's Pre-Filed Evidence, paras. 3 and 85. See also 3Tr.5, 9, 10 and 48-49.
[10] Sussex Study, at page 34.
[11] See testimony of Union Gas (2Tr.7-8 and 82-84) and Enbridge (2Tr.108-109, 112 and 160).
[12] Taken from DTE Energy Presentation titled "Assessing well performance, resources potential and production from the Utica Shale", November 2, 2012, filed at page 58 of the Attachment to the response to TCPL interrogatory #7, at Exhibit I.T4.EGDI.TCPL.7.

17. The early presentations from the NEXUS developers make clear that the project has always targeted Utica supply. [13] The opportunity to have direct access to this new supply source (Utica basin gas) is what attracted Enbridge to NEXUS.[14] There is no current means for Enbridge to hold firm transportation contracts allowing direct access to supply of gas from either the Marcellus or Utica basin. This makes NEXUS a valuable new opportunity for Enbridge to meet its gas supply requirements.[15]

C. THE NEXUS PRECEDENT AGREEMENT

18. Enbridge participated in an open season for capacity on the NEXUS pipeline around November 2012 and was awarded long term firm transportation capacity on NEXUS. This led to negotiations with NEXUS for a PA setting out the terms of the arrangement.

19. Developers of new pipeline facilities typically require shippers to contract for a minimum term ranging from 15 to 20 years. Participation in the NEXUS project requires a minimum contract term of 15 years and is therefore at the lower end of this range. The last time Enbridge entered into similar contract terms for greenfield pipeline capacity was in 2000 for transportation capacity on Alliance Pipeline and Vector Pipeline.[16]

20. Enbridge's PA is a renegotiated version of what was originally agreed between the parties. In the summer of 2014, through the process of seeking management approval of the original PA, Enbridge identified a number of concerns and declined to confirm the original PA. This led to negotiations with NEXUS, and a restated PA for a smaller volume and a shorter path that makes use of Enbridge's existing Vector capacity. Through this process, Enbridge satisfied itself that the concerns that it had identified were all manageable, and that its ratepayers would be best served by having Enbridge secure NEXUS capacity.[17]

21. Enbridge's PA with NEXUS provides for delivery of 110,000 dekatherms (Dth) per day from Kensington, Ohio to Milford Junction, Michigan. The NEXUS toll is $0.70 US/Dth per day. Most of this toll ($0.65 US/Dth per day) is related to the greenfield portion of the NEXUS path and is subject to a symmetric capital cost adjustment capped at +/- 15%. The total

[13] 3Tr.13. See also pages 1 to 147 of the Attachment to the response to TCPL Interrogatory #7, at Exhibit I.T4.EGDI.TCPL.7.
[14] 2Tr.108-109.
[15] Enbridge's Pre-Filed Evidence, para. 26.
[16] Enbridge's Pre-Filed Evidence, para. 5.
[17] 2Tr.141-161. A description of the process that Enbridge undertook to renegotiate the PA is set out in response to FRPO interrogatory #4, at Exhibit I.T1.EGDI.FRPO.4.

annual toll associated with NEXUS is $28.1 million (US). Over 15 years, this amounts to $421.6 million (US). The in-service date for the NEXUS pipeline is anticipated to be November 1, 2017. The term of the NEXUS transportation agreement will be 15 years from the in-service date.[18]

22. Enbridge is one of the shippers underpinning NEXUS's decision to proceed with the project. Enbridge was able to negotiate favourable terms into the PA which protect Enbridge and its ratepayers from being responsible for pre-service project costs unless appropriate authorizations are received. These favourable terms include the right to terminate the agreement without harm if certain conditions precedent are not achieved to the satisfaction of Enbridge. One such condition precedent is the requirement that Enbridge obtain pre-approval from the OEB for the recovery of the transportation costs associated with the NEXUS transportation capacity.[19]

23. In addition to the conditions precedent, the PA includes other favourable terms. Enbridge can elect to increase its contracted volume to 150,000 Dth per day (subject to pipeline capacity being available). If the election is made prior to the NEXUS commencement date, Enbridge will receive the benefit of "Most Favored Nations" status which provides for Enbridge to receive more favourable service provisions if those have already been granted to other similarly contracted shippers. Enbridge has the option to make this election as late as 2020 to receive the preferred reservation rate granted to Union Gas.[20]

24. Enbridge's NEXUS PA, if confirmed, will help assure that the NEXUS project will proceed.[21] There are a significant number of new pipeline projects competing to transport Appalachian basin supplies to various markets across North America. The 2014 Natural Gas Market Review Final Report prepared for Board Staff examined the destination for Marcellus natural gas supply and noted "*the relatively small proportion of the Marcellus that is actually destined for the Ontario market*"[22]. If Enbridge does not actively participate now in new pipeline projects, supplies from the Appalachian basin will continue to be contracted to other

[18] Enbridge's Pre-Filed Evidence, para. 47. The PA is filed at Exhibit A, Tab 3, Schedule 1, Appendices D and E. As indicated in testimony, NEXUS has now confirmed November 1, 2017 as its bona fide estimate of the in-service date (see 2Tr.151).
[19] Enbridge's Pre-Filed Evidence, paras. 36, 37, 38 and 48.
[20] Enbridge's Pre-Filed Evidence, para. 8.
[21] 2Tr.118-119.
[22] EB-2014-0289 – 2014 Natural Gas Market Review Final Report by Navigant Consulting Inc., dated December 22, 2014, page 37.

markets across North America. This will increase the risk of Appalachian supply bypassing Ontario and potentially limit access to these supplies in the future.[23]

25. Further, even where new paths are created for the supply of gas from a production basin to the Dawn Hub, the only way for Enbridge to assure that the supply will arrive for the benefit of its ratepayers is to contract for capacity on the pipeline. Producers and other parties who contract on the path will sell their gas at the spot with the highest value, which may be somewhere other than the Dawn Hub. In that case, the production basin gas will not come to the Dawn Hub.[24]

D. BENEFITS OF THE NEXUS CONTRACT FOR ENBRIDGE'S RATEPAYERS

26. The principles behind the benefits of NEXUS are very similar to those explained in the leave to construct applications filed by Enbridge and Union Gas Limited for the GTA Project (EB-2012-0451), the Parkway West Project (EB-2012-0433), and the Brantford-Kirkwall/Parkway D Project (EB-2013-0074). The Board noted in its decision related to these applications that:

> Ontario gas consumers will obtain additional certainty through this project concerning their access to alternative supply sources. The project will provide access to more supply and to more sources of supply while retaining market access to existing WCSB supplies. That is a clear benefit to Ontario consumers, and is a positive element in relation to the economic viability of the project. Supply diversity enhances security and has the tendency to lower gas prices from what they would otherwise be if the market continued to rely on fewer sources of supply.[25]
>
> ….
>
> Even if the gas cost savings do not materialize, the project is justified on the grounds of enhanced security and diversity of gas supply, and the contribution that the project will make to enhance a competitive natural gas market in Ontario through increased liquidity at Dawn.[26]

27. Enbridge establishes its gas supply plan based on the principles of diversity, reliability, flexibility, and cost.[27] The details of these principles are as follows:

> • *Diversity* – Mitigates reliability and cost risks by procuring supplies from multiple procurement points and transporting supplies to market and/or storage through several different transportation paths;

[23] Enbridge's Pre-Filed Evidence, para. 4.
[24] 2Tr.125-127. See also Enbridge's Pre-Filed Evidence, para. 73.
[25] EB-2012-0433, EB-2013-0074, EB-2012-0451 Decision and Order dated January 30, 2014, page 29.
[26] EB-2012-0433, EB-2013-0074, EB-2012-0451 Decision and Order dated January 30, 2014, page 30.
[27] Enbridge's Pre-Filed Evidence, para. 14. See also 3Tr.39.

- *Reliability* – Enbridge is the “supplier of last resort” and as a result supplies are sourced from established liquid hubs and transported to the markets served by Enbridge via firm transportation contracts in order to mitigate delivery interruption;

- *Flexibility* – Manages shifting demand requirements through differentiated supply procurement patterns and provides operational flexibility through service attributes and contract parameters; and

- *Landed* Cost – Balances gas supply costs with the other principles and ensures low cost natural gas supply for customers.

28. The NEXUS contract fits well with these principles, and enhances Enbridge’s gas supply plan for the benefit of Enbridge’s ratepayers (primarily system gas customers). There are also other benefits associated with the NEXUS contract that benefit ratepayers. Key elements of the benefits of the NEXUS contract are set out in the following paragraphs.

29. NEXUS will diversify Enbridge’s gas supply portfolio through direct access to the Utica basin, and connectivity to the Marcellus basin. In testimony, Mr. LeBlanc explained the importance of diversity, indicating that “we try to pick a variety of sources and a variety of supply, so that ratepayers are protected from an undue influence or an undue exposure .. to any particular supply and transport”.[28] Mr. Stephens from Sussex expanded on this, stating that “when we think about the benefit of a new resource, it really is the diversity [of] that resource provides to the entire portfolio”.[29]

30. The Utica and Marcellus basins are expected to “account for over half of the incremental North America gas production through 2035”.[30] Enbridge already procures gas directly from the WCSB, and also procures gas from liquid hubs such as Dawn and Chicago. By diversifying the natural gas supply basins and supply hubs to which it has direct access, Enbridge enhances the overall reliability of its portfolio and mitigates the risk of being negatively impacted by operational, economic or regulatory developments in any one basin or supply hub.[31] This protects ratepayers from being unduly exposed to any particular production basin or supply hub.[32]

[28] 2Tr.117.
[29] 3Tr.81-82. See also 3Tr.93.
[30] EB-2014-0289, 2014 Natural Gas Market Review, Future Trends: Assessing Ontario Natural Gas Market Requirements Through 2020 presentation dated November 25, 2014 by ICF International, slide 4.
[31] Sussex Study, at page 35.
[32] 2Tr.137-138.

31. Through NEXUS, Enbridge will benefit from having two different paths to access Appalachian basin gas. The Company currently plans to procure gas supply from the Marcellus basin at Niagara, for transportation into the CDA. This will be done through purchases at that delivery point, and will not be underpinned by firm transportation held by Enbridge into the supply basin. NEXUS offers another option, which will lead to Appalachian basin natural gas being delivered directly from the Utica basin (at Kensington) to the Dawn Hub. In the result, the NEXUS contract will promote flexibility, reliability and security of supply.[33]

32. Direct access to supply of natural gas from the production basin is valuable to Enbridge and its ratepayers, because it allows the Company to mitigate price volatility. While some of the gas purchased at the Dawn Hub will be from the Appalachian basin, that gas will be priced according to the prevailing price at the Dawn Hub. When Enbridge is able to buy gas upstream of the Dawn Hub at a production basin such as Utica, this enables Enbridge to mitigate "price spikes" that occur at the Dawn Hub or Chicago from time to time when capacity is constrained. Ratepayers benefit from this strategy, as seen in the fact that when prices recently spiked at the Dawn Hub in the winter of 2014, the price of Enbridge's supplies of gas from Empress, AECO and CREC (in the WCSB) were not affected to the same degree.[34]

33. The reliability and security of supply enhancements from NEXUS are not only realized through the abundant supply forecasts for Utica and Marcellus. NEXUS will provide access to additional upstream receipt points such as Clarington, Ohio, which connects with other basins such as the Gulf Coast through Texas Eastern Transmission LP and northwestern Colorado and Wyoming through the Rockies Express Pipeline LLC. Access to alternative supply basins through these pipelines ensures security of supply for Enbridge and its customers.[35]

34. NEXUS increases the flexibility for future growth within Enbridge's gas supply portfolio. The opportunity to increase the contracted capacity from 110,000 Dth per day up to 150,000 Dth per day on or before November 1, 2020 provides Enbridge with the flexibility to observe how

[33] Enbridge's Pre-Filed Evidence, paras. 66-67.
[34] 2Tr.128-129.
[35] Enbridge's Pre-Filed Evidence, para. 68. See also Sussex Study, at pages 36-37 and 40. See also 2Tr.156.

the North American natural gas marketplace has evolved before determining if Enbridge's gas supply portfolio would benefit from incremental Utica and Marcellus supply or supply from other receipt points on NEXUS.[36]

35. Contracting for NEXUS capacity to deliver Appalachian basin natural gas to the Dawn Hub will increase liquidity at Dawn.[37] If the project does proceed, then there will be some new incremental supplies to the Dawn Hub – it is estimated that incremental capacity to the Dawn Hub will be around 0.3 petajoules (PJ) per day (300,000 gigajoules (GJ) per day) if both NEXUS and Rover proceed.[38] Importantly, though, NEXUS will also assure that substantial Vector capacity continues to be used for deliveries to the Dawn Hub. At present, with decontracting related to Alliance, there is a risk of lower deliveries from Chicago on Vector.[39]

36. A further liquidity advantage that results from NEXUS is that the number of shippers and counterparties at the Dawn Hub will increase.[40]

37. Continued liquidity at the Dawn Hub is important to Enbridge, because the Company forecasts growing reliance on supplies from the Dawn Hub.[41] Moreover, as Mr. Stephens of Sussex explained, additional liquidity at the Dawn Hub will assist small customers who purchase at Dawn, both through supply availability and price moderation.[42]

E. THE COST OF THE NEXUS SUPPLY IS COMPETITIVE

38. The landed cost of gas supply for Enbridge using the NEXUS pipeline is forecast to be competitive with other alternatives.[43] This can be seen in the chart in Enbridge's Pre-Filed

[36] Enbridge's Pre-Filed Evidence, para. 70.
[37] Enbridge's Pre-Filed Evidence, para. 71. See also Sussex Study, at pages 35-36 and 40. See also response to Board Staff Interrogatory #14 at Exhibit I.T2.EGDI.STAFF.14, and the other interrogatory responses cited in that answer.
[38] See response to APPrO Interrogatory #2 (Union) at Exhibit I.T1.UNION.APPrO.2, and 2Tr.33-34 (Union testimony) and 2Tr.149 and 186-187 (Enbridge testimony).
[39] See response to APPrO Interrogatory #2(a) at Exhibit I.T1.EGDI.APPrO.2, and 1Tr.52 (Union testimony) and 2Tr.188 (Enbridge testimony) and 3Tr.55-56 (Sussex testimony).
[40] Sussex Study, pages 35-36. See response to APPrO Interrogatory #5 (Union) for discussion of the attributes that contribute to higher liquidity (Exhibit B.T1.Union.APPrO.5) – the NEXUS project will provide enhancements in terms of all of these attributes.
[41] Enbridge's Pre-Filed Evidence, para. 72 and Exhibit A, Tab 3, Schedule 3, page 17, figure 10.
[42] 3Tr.94. See also Sussex Study, pages 40-41.
[43] The discussion of Enbridge's landed cost analysis is found in Enbridge's Pre-Filed Evidence, paras. 49 to 64.

Evidence, showing forecast landed cost as of May 2015.[44] The relative ranking of cost competitiveness of NEXUS did not change when the analysis was updated in August 2015.[45]

39. As explained in testimony, Enbridge views landed cost analysis as being important to assess the competitiveness of various gas supply options, but not as being precisely predictive of actual future prices.[46]

40. Where forecast landed costs of alternatives are in the same range, then Enbridge looks to other attributes of those alternatives to make gas supply portfolio choices that contribute to diversity, reliability and flexibility.[47] In the case of NEXUS, the forecast landed costs are competitive with other options. Combined with the substantial benefits of NEXUS supply to the overall robustness of Enbridge's gas supply plan, this makes NEXUS capacity a valuable addition to the Company's gas supply portfolio.

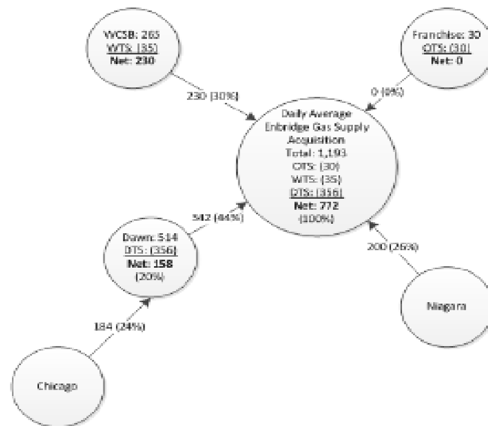
F. NEXUS CAPACITY FITS WELL IN ENBRIDGE'S GAS SUPPLY PORTFOLIO

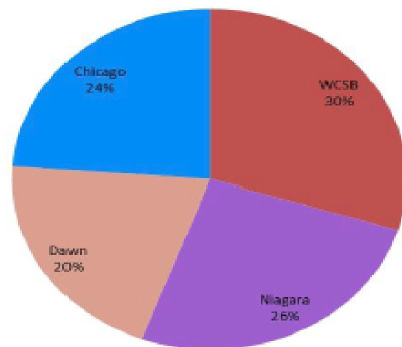
41. Enbridge's gas supply acquisition is underpinned by a variety of upstream transportation arrangements. These arrangements are differentiated by procurement point, transportation service provider, transportation path, contracted capacity, term and other service attributes.[48] The NEXUS capacity will provide further diversity to Enbridge's portfolio in all of these aspects and thereby also contribute to enhanced reliability and flexibility benefits, as described above.[49]

42. Set out on the next page is a chart illustrating Enbridge's planned gas supply portfolio as of 2018, with and without NEXUS capacity.[50]

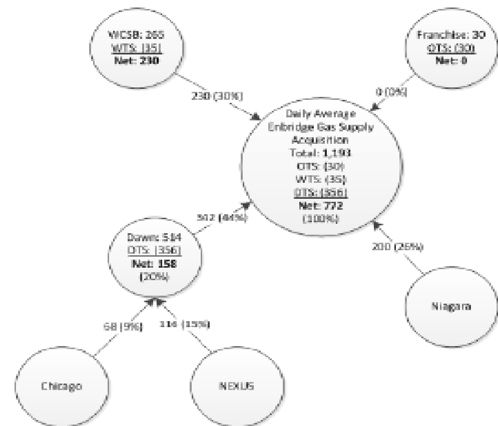
[44] Enbridge's Pre-Filed evidence, para. 61 (updated).
[45] Response to TCPL interrogatory #3, Exhibit I.T1.EGDI.TransCanada.3.
[46] 2Tr.110, 117 and 138. See also 3Tr.43.
[47] 2Tr.117.
[48] Enbridge's Pre-Filed Evidence, para. 76.
[49] The fit of the NEXUS capacity within Enbridge's gas supply plan is explained in response to Board Staff interrogatory #7 at Exhibit I.T1.EGDI.STAFF.7.
[50] Response to Staff interrogatory #7, Exhibit I.T1.EGDI.STAFF.7. Enbridge discussed this chart in testimony – see, for example, 2Tr.139-140 and 3Tr.39-41.

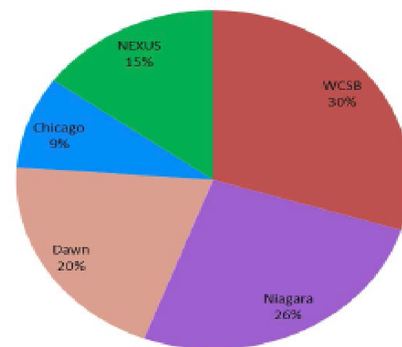
Daily Average Enbridge Gas Supply Acquisition Absent NEXUS (TJ/d) for November 1, 2017





Daily Average Enbridge Gas Supply Acquisition Including NEXUS (TJ/d) for November 1, 2017





43. Absent NEXUS, Enbridge's only natural gas supply from the Appalachian basin will be Marcellus basin gas procured at Niagara. This supply source is expected to make up approximately 26% of Enbridge's total system gas supply portfolio over the duration of the NEXUS contract.[51]

44. The acquisition of gas supply from NEXUS equates to approximately 15% of the system gas portfolio from 2018 to the end of the contract term and will be offset by an equivalent decrease in supplies procured from the Chicago Hub over the same period.[52]

45. This shift in procurement will diversify the supply being transported to the Dawn Hub along Vector. To facilitate this change, Enbridge expects to restructure its existing Vector capacity so that 110,000 Dth per day of that capacity will be used for volumes delivered to Milford, Michigan via NEXUS, and the remaining 65,000 Dth per day will flow between Joliet, Illinois

[51] Enbridge's Pre-Filed Evidence, para. 80.
[52] Enbridge's Pre-Filed Evidence, para. 82.

and Dawn, Ontario for a 3 year term that can be renewed for subsequent 3 year increments with 1 year notice.[53]

46. The addition of NEXUS to Enbridge's gas supply portfolio will increase the supply being procured from the Appalachian basin to approximately 41% of the total portfolio over the term of the NEXUS contract.[54] NEXUS provides the additional benefit of diversifying the access that Enbridge has to the Appalachian basin from both a supply and transportation path perspective. NEXUS supplies are expected be procured at the Utica basin and will comprise around one third of Enbridge's total Appalachian basin supply and will be transported to the Dawn Hub via NEXUS and Vector.[55] The remaining two thirds of the total Appalachian basin supply will be procured at Niagara and likely produced in the Marcellus basin.[56]

47. Enbridge does not intend to completely sever connectivity with WCSB supplies. Enbridge expects WCSB supply to remain an integral part of its supply portfolio for the foreseeable future. NEXUS will not impact the reliance on WCSB supplies which for illustrative purposes was held at approximately 22% of the total portfolio over the duration of the NEXUS contract. After 2020, commitments to the TransCanada Mainline Settlement Agreement will have been fulfilled at which point Enbridge may consider further changes to its gas supply portfolio that will impact its reliance on WCSB supplies. This could include exercising the option to increase NEXUS supply.[57]

48. Enbridge expects to flow the NEXUS contract at a 100% load factor.[58] As such, supply from NEXUS is expected to be baseload supply. Flexibility will come from planned purchases at the Dawn Hub and potentially seasonal supplies from other procurement points. Although the 15 year term for NEXUS will erode some of the transportation flexibility in Enbridge's gas supply portfolio, the direct access to supplies from the Appalachian basin (Utica basin) will improve diversity, reliability, supply flexibility, and cost effectiveness of Enbridge's gas supply plan.[59]

[53] Enbridge's Pre-Filed Evidence, para. 83. See also Exhibit JT2.4 and 2Tr.186-192.
[54] Response to Board Staff Interrogatory #7 at Exhibit I.T1.EGDI.STAFF.7.
[55] Enbridge's Pre-Filed Evidence, para. 85. See also 2Tr.141.
[56] Enbridge's Pre-Filed Evidence, para. 85.
[57] Enbridge's Pre-Filed Evidence, para. 86.
[58] This means that there are no expected unabsorbed demand charges (UDC).
[59] Enbridge's Pre-Filed Evidence, para. 88. See also 2Tr.154-155.

G. ENBRIDGE'S PRE-APPROVAL REQUEST

49. In this proceeding, Enbridge is requesting pre-approval of the cost consequences of the 15 year NEXUS contract, the terms of which are described in the NEXUS PA. Enbridge is not seeking pre-approval of associated gas costs, nor for the Vector capacity required to transport NEXUS gas from Milford Junction to the Dawn Hub.

50. If the requested pre-approval is received from the OEB, and other conditions precedent are satisfied, then Enbridge plans to enter into the NEXUS contract.[60] In that circumstance, ratepayers will receive the benefits associated with the arrangement.

51. If pre-approval is not granted, Enbridge will not proceed with the NEXUS contract. In that circumstance, many of the benefits that ratepayers would have enjoyed will be lost.

52. As discussed below, Enbridge's requirement for pre-approval is not an admission that the NEXUS contract is imprudent. Instead, it is a recognition that the contract is extraordinary, and there are risks of future cost disallowances if there is no pre-approval.[61] Enbridge's shareholder does not benefit from the procurement of gas for ratepayers as these costs are passed on without any mark-up or return.[62] Therefore, Enbridge will not take the risk of proceeding with the NEXUS contract without pre-approval.[63]

53. The annual approval of transportation costs in a rate proceeding only deals with costs for the one year in issue – that does not establish the same relief as what is sought here. Once Enbridge commits to the NEXUS contract, Enbridge is committed for fifteen years. That means that, absent pre-approval, there are multiple opportunities for parties to challenge the prudence of the arrangement, in each year when the Company's gas supply plan is being reviewed. Although Enbridge believes that any such review would confirm the reasonableness of the NEXUS arrangement that is not assured. In the context of a 15 year contract with a total cost of more than $420 million (US), even a small risk of disallowance is meaningful.

54. The fact that the Supreme Court of Canada has recently indicated that the OEB may use tests other than a no-hindsight prudence review to assess a utility's committed operating

[60] Enbridge's Pre-Filed Evidence, para. 7.
[61] 2Tr.113-114.
[62] Exhibit JT2.2. See also response to CME Interrogatory #3, Exhibit I.T3.EGDI.CME.3.
[63] 2Tr.107-108. See also response to CME interrogatory #3, Exhibit I.T3.EGDI.CME.3.

expenses[64] reinforces that there may be future risks to a utility when its gas cost arrangements are reviewed. While it is not clear how the Supreme Court's decision will impact future rate proceedings, it does introduce uncertainty.

H. THIS IS AN APPROPRIATE CASE FOR PREAPPROVAL

55. In the February 2009 Report of the Board regarding the draft Guidelines, the Board indicated that a pre-approval process is appropriate for long-term contracts that support the development of new natural gas infrastructure.[65] The Board offered the option to utilities to seek pre-approval of the cost consequences of a long-term contract(s) and indicated that the application should be made prior to contract execution, or after execution if there is a condition precedent requiring OEB approval.[66] The Board's Report and associated draft Guidelines set out the information that the utility should file in support of its pre-approval application. The draft Guidelines were confirmed by the Board in April 2009.

56. Enbridge does not believe that the fact of having applied for pre-approval should raise doubts about whether the NEXUS contract is reasonable and beneficial. The fact that a utility chooses to make use of the pre-approval option that the Board has established and implemented is in no way an admission that the contract in question is imprudent or unduly risky. It is instead a proper approach for a responsible utility to follow. Enbridge should not be penalized or questioned for seeking approval under Guidelines that the Board has approved, and with which "stakeholders generally agreed".[67]

57. In answer to concerns that may be raised about whether Enbridge's NEXUS contract should be eligible for pre-approval under the Guidelines, Enbridge submits that this is plainly the type of long-term transportation contract that the Board has indicated would be eligible.

58. The Board's Report issued in respect of the draft Guidelines makes clear that a pre-approval process is appropriate for long-term contracts that "support the development of new natural gas infrastructure"[68]. In the April 23, 2009 letter that published the final Guidelines, the Board stated that "[t]he Board believes that applications for pre-approval of the cost

[64] *Ontario (Energy Board) v. Ontario Power Generation,* 2015 SCC 44, paras. 103-105 (found at http://www.canlii.org/en/ca/scc/doc/2015/2015scc44/2015scc44.html).
[65] Report of the Board on the draft Guidelines - found at Tab 2 of Exhibit K1.3.
[66] Report of the Board on the draft Guidelines, page 4.
[67] Report of the Board on the draft Guidelines, page 2.
[68] Report of the Board on the draft Guidelines, page 4.

consequences of long-term contracts should be limited to those that support the development of new natural gas infrastructure."[69]

59. Enbridge's NEXUS contract clearly supports the development of new natural gas infrastructure in the form of a 400 km greenfield pipeline at a cost of more than $2 billion that will facilitate the delivery of Appalachian (primarily Utica basin) gas supplies to the Dawn Hub. The project benefits Ontario gas consumers, and Enbridge's NEXUS contract benefits its ratepayers.

60. The Board's Report issued in respect of the draft Guidelines appears to contemplate that long-term contracts should support new infrastructure to access to new gas supply sources in order to be eligible for pre-approval.[70] That requirement is not actually set out in the Guidelines themselves. The focus of the Guidelines is on new infrastructure.

61. Enbridge's NEXUS contract will facilitate access to new gas supply from the Utica basin. The Utica basin gas to be delivered by NEXUS was a very new source of supply at the time that Enbridge began negotiations for capacity on the NEXUS pipeline. In the time since then, during which period negotiations on the PA have proceeded and NEXUS has done pre-development work, gas production at the Utica basin has expanded. Even now, though, it remains a relatively new option for gas supply, and there is no significant current supply of Utica gas to Ontario. The Utica basin has the characteristics of a new supply area that were highlighted by Mr. Stephens of Sussex. That is, there is investment being made on new production and processing facilities and there is investment being made in new pipeline infrastructure.[71]

62. The Guidelines are clear that any pre-approval application is to be considered on a case-by-case basis.[72] This means that the outcome of any prior application ought not to be determinative of a future application. That is consistent with the general rule that an administrative tribunal is not bound by its previous decisions, and that where numerous

[69] OEB letter dated April 23, 2009, EB-2008-0280, at page 3, found at Tab 1 of Exhibit K1.3.
[70] Report of the Board on the draft Guidelines, page 4.
[71] 3Tr.91.
[72] OEB letter dated April 23, 2009, EB-2008-0280, at page 3, found at Tab 1 of Exhibit K1.3.

reasonable interpretations exist, the administrative tribunal may change its consensus or policy with respect to which one it will adopt.[73]

63. Enbridge therefore objects to any suggestion that the Board's decision in the EB-2011-0300/0333 proceeding[74] is somehow determinative of this case. In that prior case, the Board denied pre-approval applications from Enbridge and Union for long term contracts for capacity from Niagara that would transport Marcellus basin gas on the basis that no substantial new facilities were being constructed. The Board also questioned whether there was a "new gas supply". This case is different, because the NEXUS contract supports significant greenfield facilities being constructed and enables Enbridge and Union to obtain direct access to the developing Utica basin.

64. In any event, Enbridge submits that the Board ought not to apply a narrow approach to the applicability of the Guidelines in this case. The focus of the Guidelines should be on encouraging the development of new natural gas infrastructure that will improve and diversify gas supply to Ontario. That is an important benefit of long-term contracts, as the Board recognized in its report on the draft Guidelines.[75] Whether new infrastructure is the first or only connection from a previously untapped supply source to Ontario ought not to be a determining factor.

65. Taking a narrow view of the applicability of the Guidelines will render them largely meaningless. This will likely frustrate the development of new infrastructure that will provide capacity to Ontario. This is because developers of new infrastructure projects require long-term commitments from shippers before proceeding with the project. If the commitments are not made, then the project will not proceed. On the other hand, gas distributors who do not make a profit on gas supply will not likely be willing to take the risk associated with an extraordinary long-term contract for capacity on a new pipeline without assurance that the costs are recoverable from those ratepayers who will benefit.

66. For the reasons set out above, Enbridge submits that the Board should conclude that the NEXUS PA is eligible for pre-approval.

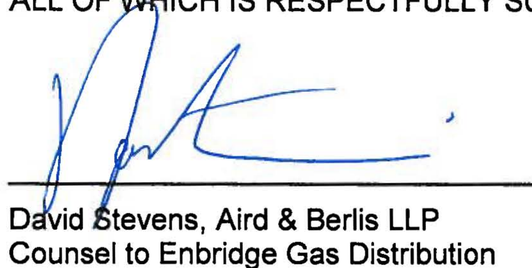
[73] *Altus Group Limited v Calgary (City)*, 2015 ABCA 86 (CanLII), at para 16 (found at http://www.canlii.org/en/ab/abca/doc/2015/2015abca86/2015abca86.html).
[74] The EB-2011-0300/0333 Decision is found at Tab 3 of Exhibit K1.3.
[75] Report of the Board on the draft Guidelines, page 3.

67. Moving beyond eligibility, Enbridge submits that the NEXUS contract is a beneficial arrangement for ratepayers, with manageable and mitigated risks.[76] By securing capacity on the NEXUS pipeline, Enbridge will obtain significant gas supply benefits for its customers. If Enbridge does not proceed with the NEXUS contract, then there is no current ability to obtain other transportation capacity directly from the Appalachian basin to the Dawn Hub to diversify Enbridge's gas supply.

68. As explained in Enbridge's evidence, and highlighted in these submissions, the NEXUS contract will improve Enbridge's gas supply plan, by enhancing diversity, reliability and security of supply. The NEXUS contract will ensure that Enbridge's ratepayers obtain the benefit of direct access to the closest and most prolific gas supply basin in North America. The NEXUS contract fits well within Enbridge's overall gas supply portfolio, and will provide Enbridge with two assured paths to access Appalachian gas supply from different regions of the basin in the coming years.

69. For all of these reasons, Enbridge requests that the Board pre-approve the cost consequences of the NEXUS gas transportation agreement.

ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 18th DAY OF NOVEMBER 2015



David Stevens, Aird & Berlis LLP
Counsel to Enbridge Gas Distribution

[76] The potential risks associated with the NEXUS contract, and the manner in which Enbridge has addressed and mitigated the risks, is set out in Enbridge's Pre-filed Evidence at pages 35 – 43.

TAB -

STAFF INTERROGATORY #7

INTERROGATORY

Ref: A/3/1 page 24 / para 61 / Table 2

In the May 2015 Landed Cost Analysis Summary table, listed are 3 options that are more financially attractive from a landed cost standpoint than the NEXUS Base Case - 15%. These are Dawn, Vector, and TransCanada from Niagara.

For each of the 3 options, please explain why they were rejected in favour of NEXUS.

RESPONSE

As indicated at Exhibit A, Tab 3, Schedule 1, page 6, Enbridge relies on four principles when establishing its gas supply plan. An estimate of landed costs based on an estimate of future market conditions is but one of these principles which must be balanced against the other principles. NEXUS provides benefits that cannot be achieved by procuring supply directly at Dawn or contracting on Vector and/or TransCanada for supply from Chicago and/or Niagara respectively.

NEXUS will enhance the diversity of Enbridge's gas supply portfolio and in turn will improve supply portfolio reliability and flexibility at comparable costs. To more fully understand the impact that each of the paths will have on Enbridge's gas supply portfolio, and in particular to the natural gas supply that is acquired by Enbridge on behalf of system supply customers, Enbridge has recast the Gas Supply Acquisition table provided at Exhibit A, Tab 3, Schedule 1, page 31, Table 3 as a schematic. This schematic, which is provided as Attachment 1 to this response, shows average daily supply with direct purchase supply netted out. It also illustrates the diversity of natural gas supplies that are acquired on behalf of system supply customers effective November 1, 2017. The annual supply information provided in Table 3 has been converted to a daily averages to differentiate between the acquisition of supply throughout the year (which is relatively consistent under normal weather conditions) vs. load balancing supply for demand requirements which is accomplished predominately through the use of storage injections and withdrawals. The natural gas supplies received on behalf of customers who have elected to procure their own natural gas supply through Ontario Transportation Service ("OTS"), Western Transportation Service ("WTS"), and Dawn Transportation Service ("DTS") arrangements have been netted out to better understand the diversity of supply procurement that Enbridge is responsible for on behalf of its system gas customers.

When considering the schematic, it is important to note that Enbridge's natural gas portfolio is relatively balanced. Each of the WCSB, Niagara, Dawn, and Chicago supply hubs contribute between 20%-30% of the total supply portfolio. When restricting this view to the specific paths that are referenced in this interrogatory, the range reduces to 20%-26% of the total supply portfolio. Making significant increases to supply purchases at Dawn, Chicago (via Vector), or Niagara (via TransCanada) would not provide any significant benefits to supply diversity for system gas customers. In fact, procuring supply at the three options which are currently more economic could have the opposite effect. For example, if the TransCanada through Niagara path were increased it would erode diversity since that path already constitutes the largest percentage of the three referenced options. On the other hand, NEXUS increases diversity of path by transporting Appalachian basin gas to Ontario on a new path. Enbridge agrees with the Board's assessment of the importance of supply diversity that was set out in the GTA Project decision, and is quoted in Exhibit A, Tab 3, Schedule 1, page 29 and 30.

A second schematic has also been included in Attachment 1 of this response and shows what the daily average supply acquisition will look like when the NEXUS path forms part of the Enbridge system gas supply portfolio.

With the addition of NEXUS to Enbridge's gas supply portfolio, the supply being transported to Dawn is significantly more diversified. This diversification leads to the benefits that are discussed in Enbridge's application.

Direct procurement at Dawn, procurement at Chicago for transport via Vector and procurement at Niagara for transport via TransCanada paths were also not selected because none of these paths provided the benefits of direct access to the Appalachian basin as discussed in the application beginning on page 26 of Exhibit A, Tab 3, Schedule 1.

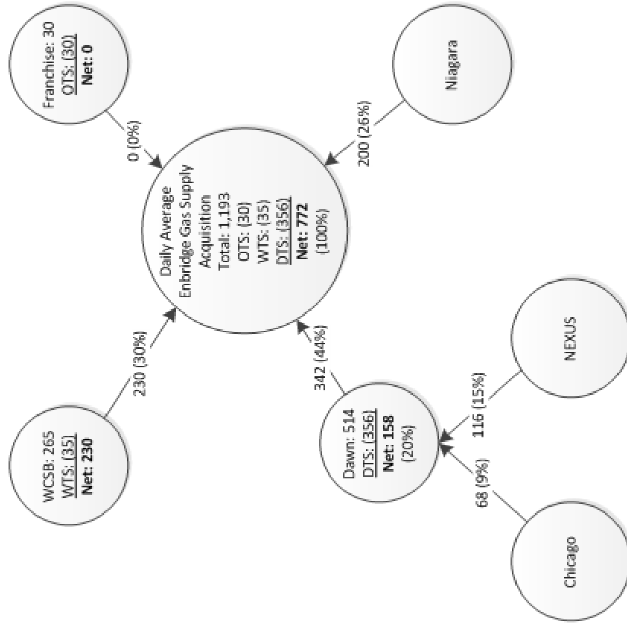
Additionally, it was not feasible to contract for further procurement at Niagara at the time the NEXUS opportunity was being considered. This is because there was insufficient available capacity to transport a similar volume of gas from that point. Although the path from Niagara via TransCanada could achieve direct access to the Appalachian basin through contracting for additional transportation capacity on pipelines in the United States that connect with TransCanada at Niagara or Chippawa. However, at the time when the NEXUS PA was being negotiated, TransCanada would not commit to construct any incremental transportation capacity from Niagara or Chippawa which made this option infeasible. This situation was not remedied until recently when the Mainline Settlement Agreement was reached. The National Energy Board approved the

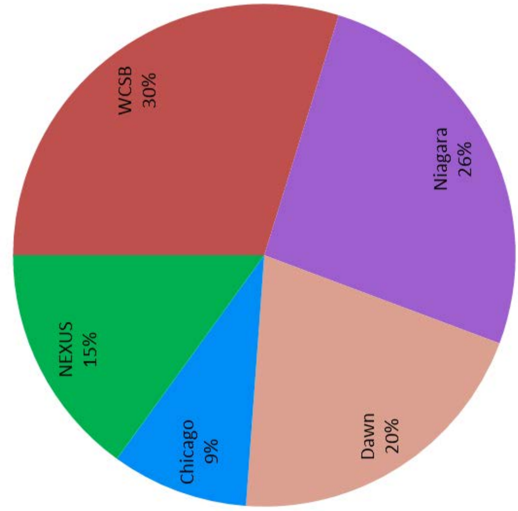
2015-2030 Toll and Tariff application[1] in November 2014, which included the Mainline Settlement Agreement.

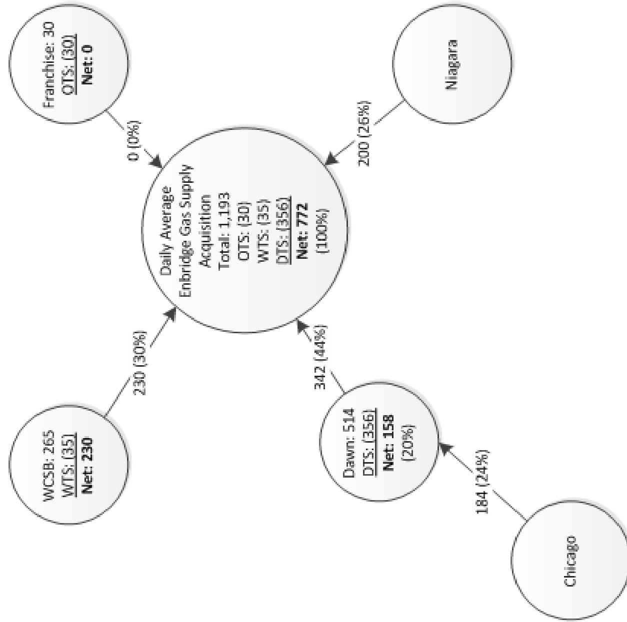
Further discussion of the limitations of procuring additional transportation or supply at or through Niagara/Chippawa is found in response to Board Staff Interrogatory #9 at Exhibit I.T1.EGDI.STAFF.9. See also the response to TransCanada Interrogatories #5 and 7 at Exhibit I.T2.EGDI.TransCanada.5 and Exhibit I.T4.EGDI.TransCanada.7.

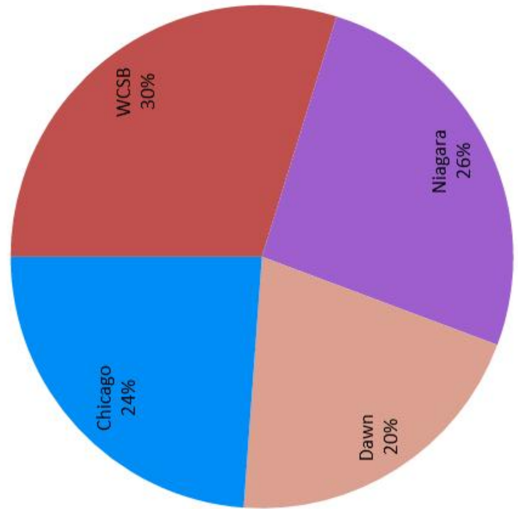
[1] National Energy Board letter re: TransCanada PipeLines Limited (TransCanada) Application for Approval of 2015 to 2030 Tolls (application) RH-001-2014 Decision with Reasons to Follow dated November 28, 2014.

Attachment 1









Witnesses: J. LeBlanc
A. Welburn

TAB %$

RON TOLMIE INTERROGATORY #5

INTERROGATORY

Reference: A/T3/S1/pg 2

Preamble: "There are a significant number of new pipeline projects competing"

a) There are also other technologies that are competing for the Ontario markets for both heating and power generation. If those technologies provide cheaper energy without emitting GHG why should we continue to use natural gas, especially shale gas?

RESPONSE

Enbridge expects that there will continue to be demand for natural gas throughout the term of the NEXUS contract and beyond. The Company has set out its forecast of demand for those years in response to Energy Probe Interrogatory #12 at Exhibit I.T3.EGDI.EnergyProbe.12. As set out in that response, there are some factors, including changes in technology, that could result in changes to Enbridge's forecast of demand. However, as set out in response to Energy Probe Interrogatory #2 at Exhibit I.T1.EGDI.EnergyProbe.2, Enbridge maintains a level of flexibility in its overall gas supply contract portfolio to allow it to respond to variations in customer demand over time. If demand for natural gas in Enbridge's service area declines over the 15 year term of the NEXUS commitment, Enbridge will be able to reduce overall portfolio capacity by not renewing and/or reducing other contracts in its supply portfolio which have shorter terms.

TAB 1%

TRANSCANADA INTERROGATORY #5

INTERROGATORY

Reference:

i) Application, Exhibit A, Tab 3, Schedule 1, Page 36 of 46, Paragraphs 93 - 94

Preamble:

In Reference i), Enbridge states that should demand exceed forecasts, "Enbridge has the option to procure gas seasonally at other supply points including Kensington, the Dawn Hub, Niagara, Chicago and the WCSB."

Request:

a) In the event that the Board denies Enbridge's application for NEXUS contract cost recovery, and assuming the NEXUS project is built regardless, how would Enbridge meet forecast demand no longer served by the applied-for NEXUS contract? Please provide any alternative supply plans and supporting documentation.

b) In the event that the NEXUS project does not proceed, how would Enbridge meet forecast demand no longer served by NEXUS? Please provide any alternative supply plans for this scenario and supporting documentation.

c) In either of the scenarios above (i.e. (1) the application in this proceeding is denied but NEXUS is constructed, and (2) NEXUS is not constructed), could incremental supply from Niagara / Chippawa be used to meet forecast supply requirements?

RESPONSE

a) In the event that pre-approval is not granted, Enbridge's immediate plans, while it considers other options, would be to continue to fill its Vector capacity through purchases at Chicago.

b) See response to a) above.

c) Enbridge does not believe that scenario merits serious consideration, for the following reasons.

Enbridge recently accessed the TransCanada website and could not find any capacity from Niagara/Chippawa posted as available. Enbridge is not aware of any capacity available on the TransCanada Mainline from Niagara/Chippawa. Further, when Enbridge sought to fill the capacity it already has from Niagara/Chippawa it discovered that most parties bringing gas to Niagara also have transportation on TransCanada taking gas away from Niagara. As a result Enbridge found few counterparties with which to transact to fill its capacity. So even if capacity did exist or were to be created from Niagara/Chippawa, Enbridge would be hesitant to commit further to this path at this time. Finally, Enbridge is not aware of any capacity being available on the US side of the border and understands that any substantial new capacity would require significant new or expanded pipeline facilities.

Discussion of the limitations of procuring additional transportation or supply at or through Niagara/Chippawa is also found in response to Board Staff Interrogatory #9 at Exhibit I.T1.EGDI.STAFF.9. Discussion of the difficulties that Enbridge has encountered in procuring gas supply at Niagara is found in response to BOMA Interrogatory #15 at Exhibit I.T1.EGDI.BOMA.15 and FRPO Interrogatory #5 at Exhibit I.T1.EGDI.FRPO.5.

Enbridge believes that it has sufficient supply arranged from Niagara/Chippawa. Enbridge has contracted for 200,000 GJ/day of capacity from Niagara/Chippawa and expects to meet roughly 26% of its system gas customers' supply needs from these points. Enbridge has contracted for capacity on NEXUS in order to diversify its portfolio and does not believe that additional supplies from Niagara/Chippawa is an appropriate choice for its gas supply portfolio. See response to Board Staff Interrogatory #7 at Exhibit I.T1.EGDI.STAFF.7 for a greater discussion on Enbridge's supply portfolio and the diversification benefits provided by the NEXUS contract.

TAB 1&

STAFF INTERROGATORY #9

INTERROGATORY

Ref: A/3/1 page 24 / para 61 / Table 2

(a) With regard to the option of “TransCanada from Niagara”, please discuss the Company’s view of the role of the Niagara and Chippewa supply points for the transportation of Appalachian gas into Enbridge’s franchise over the next 10 to 20 years.

(b) Is there any reason that the proposed NEXUS volumes could not instead be delivered into the franchise via the Niagara and Chippewa import points? Please include a discussion of why NEXUS represents a more attractive option than “TransCanada from Niagara.”

RESPONSE

(a) Enbridge has entered into a 15 year contract with TransCanada to transport 200,000 GJ/d of supply from Niagara/Chippawa receipt points to the Enbridge Parkway CDA effective November 1, 2015. The supply for this transportation capacity will be procured at the Niagara/Chippawa receipt points since Enbridge does not have any transportation capacity in its gas supply portfolio that is upstream of Niagara/ Chippawa. Enbridge cannot confirm with certainty that the supplies being received at Niagara/Chippawa are sourced from the Appalachian basin, but it is reasonable to assume this to be the case currently and into the foreseeable future given the proximity and availability of supply of this basin.

Niagara and Chippawa currently do not operate as a liquid supply point. Enbridge has discussed its near term supply arrangements at Niagara/Chippawa in BOMA Interrogatory #15 at Exhibit I.T1.EGDI.BOMA.15. Enbridge has discussed the challenges it faced making these arrangements in FRPO Interrogatory #5 at Exhibit I.T1.EGDI.FRPO.5. Enbridge is anticipating that multi-year supply contracts will be required to fill the TransCanada capacity from Niagara and Chippawa for at least the next several years due to a lack of liquidity at these points.

It is also important to note that contracting for incremental transportation capacity from the Appalachian basin to Niagara and Chippawa and then to the delivery area would require the coordinated construction of new transportation infrastructure in the United States and Canada. This coordinated construction project would require

sufficient market participants that have the ability make the volumetric and financial commitments required to support such a project. The reason a coordinated build is required is that there is not currently any significant available capacity to transport gas from the Appalachian basin to Niagara/Chippawa. Further, as explained in TransCanada Interrogatory #5 at Exhibit I.T2.EGDI.TransCanada.5, there is also no significant available capacity to transport gas away from Niagara/Chippawa to Dawn or the franchise areas.

(b) Please see response to part (a) above, and Board Staff Interrogatory #7 at Exhibit I.T1.EGDI.STAFF.7.