ONTARIO ENERGY BOARD

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, pursuant to section 36(1) of the *Ontario Energy Board Act, 1998*, for an order or orders approving or fixing just and reasonable rates and other charges for the sale, distribution, transmission and storage of gas as of January 1, 2016.

Final Submissions

Of

The Association of Power Producers of Ontario

January 15, 2016

A. Introduction

1. The Association of Power Producers of Ontario (**"APPrO"**) is a non-profit organization representing more than one hundred (100) companies involved in the generation of electricity in Ontario. APPrO members produce power from hydro, gas, nuclear, wind and solar energy, waste wood and other sources. APPrO's members and associated entities own and operate power generation capacity in the province and produce over 95% of the electricity made in Ontario. APPrO's membership includes generators, marketers, contractors, equipment suppliers, consultants, local distribution companies, fuel suppliers, service providers and financiers. APPrO's goal is to facilitate an economically and environmentally sustainable electricity sector in Ontario that supports the interests of electricity generators, ratepayers and the provincial economy.

2. Union Gas Limited ("**Union**") filed an application dated July 15, 2015 seeking pre-approval for a variety of changes to their tariff associated with changes in the reference price used for system sales customers.

3. In this application Union also proposed the introduction of a new Dawn based transportation service option for Union North T-Service[1] customers ("**North T-Service**"). The North T-Service will allow those direct purchase customers requesting this service to deliver their gas to Union at Dawn and have Union enter into the necessary long term transportation arrangements between Dawn and their respective delivery areas for subsequent redelivery to the customer.

4. Union also requested approval of a new deferral account that would collect the costs associated with arranging the necessary upstream transportation capacity, the revenue recovered from North T-Service customers, and any revenue associated with mitigating the costs of any underutilized capacity. Union proposes

[1] Note that the evidence sometimes refers to Union North East T-Service and sometimes as North T-Service. For simplicity, the latter terminology is used unless the wording is being quoted from evidence.

that the deferral account balances would be cleared annually to all T-Service[2] customers in Union North East, not just the North T-Service customers who have subscribed for the service.

5. APPrO was party to a Settlement Proposal dated November 30, 2015, whereby the Parties reached agreement on all issues except for:

   a) *Issue #3: Are the modifications to the existing rate 01, rate 10, rate 20, rate 25 and rate 100 rate schedules to include a new transportation service option for Union North East T-Service customers appropriate?*
   b) *Issue #7.5: Base Service North T-Service TransCanada Capacity Deferral Account*

B. Summary Position

6. For the reasons more fully described later in this submission, APPrO is opposed to Union's proposal to recover any costs associated with Union arranging upstream transportation capacity to facilitate the proposed North T-Service from all T-Service direct purchase customers. Any net unrecovered or unmitigated costs associated with Union arranging these transportation services, and collected in the Base Service North T-Service TransCanada Capacity Deferral Account ("**Deferral Account**"), should be solely collected from the North T-Service pool of customers that have subscribed for the service and not from all T-Service Customers.

7. Requiring those direct purchase customers that have chosen not to participate in this new service offering (i.e. all other T-Service customers), to bear the risk of paying for any unrecovered costs associated with the underutilized capacity that was acquired solely for those parties requesting the North T-Service is not supported by cost causation principles, and is discriminatory, unjust and punitive towards gas fired generators ("**GFG**") and other large volume customers.

[2] T-Service customers arrange all their own upstream transportation and balancing and provide gas to Union via TransCanada at Union's city gas station.

C. Background

8. Union introduced the North T-Service as an optional service for Union's direct purchase customers situated in Union's North East Zone. The new Union North East Zone is comprised of the area where Union takes deliveries from TransCanada's in its Northern Delivery Area ("**NDA**"), North Central Delivery Area ("**NCDA**"), and Eastern Delivery Area ("**EDA**").

9. Union indicated that it introduced the North T-Service offering in response to both changing gas supply dynamics and potential changes in the secondary gas transportation market as a result of capacity reductions in EDA due to TransCanada's proposed Energy East project.[3]

10. Union conducted several rounds of consultations with prospective customers before settling on the current proposal, despite strong opposition from the majority of its large volume customers and particularly Rate 100 customers. The first consultation was conducted with several groups during the latter half of April 2013.[4] Presentation material provided to customers in those meeting can be found in Exhibit.B.SEC.5 Attachment 1 pages 6-48.

11. The key terms of the initial service design presented to customers provided for:

    - *Customers in each delivery area to form a pool of committed participants (i.e. EDA Pool and NDA Pool), with each participant electing service up of to 50% of their firm T-service CD*
    - *Based on customer commitments, Union Gas would acquire long term firm TransCanada capacity and allocate Union Gas Dawn - Parkway capacity – expected to drive a new facilities to be built*
    - *An initial contract term of 3 years, with annual renewal thereafter and with distribution service renewal, the customer MUST renew the service until expiry of the TCPL capacity (15 years)*
        - *If distribution services cease (e.g. due to plant closure), **capacity would be reallocated, pro rata, to others in the pool,** and would be capped at 100% of remaining customers' firm T-service CD [Emphasis added]*

[3] Exhibit A Tab 3 page 1.
[4] Exhibit B.SEC.5 Attachment 1.

- *Any excess capacity, after re-allocation, would revert to Union Gas.*[5]

12. Based on the feedback received from customers in the initial meeting, Union subsequently made significant modifications to the proposed service and further met with customers in July 2013. The details shared with customers can be found at Exhibit B.SEC.5 Attachment 1 pages 55-63. A comparison of some of the key changes to this revised proposal include:

    a) a much weaker commitment by North T-Service customers to have long term responsibility for the capacity and financial commitments made on the their behalf. The minimum term was reduced from 3 years to 1 year, and Customers' ability to reduce their financial commitment to be responsible for their share of the capacity costs was changed from a major event such as a plant closure, to incurring a reduced demand of 5% or more;
    b) the max eligible quantity eligible for North T-Service was reduced from 50% of a customers' Firm T-Service Contract Demand ("**CD**") to: their CD, or their peak load day in the last 12 months, but subject to a max of 3,000 GJ/d;[6] and
    c) the recovery of costs associated with any underutilized capacity was changed from collecting such costs only from the pool of participating customers in the North T-Service (up to 100% of their T-Service CD with all excess costs being Union's responsibility) to all unrecovered costs being collected from both participating and non-participating North T-Service customers with no cost risk to Union. Non-participating customers would have responsibility for the costs of underutilized capacity which they did not request and did not use, without any ability to mitigate such costs.

    A number of large volume customers strongly opposed this new service design and Union made no further revisions in response to this opposition.

[5] Exhibit B.SEC.5 Attachment 1 page 6 slide #7.
[6] Exhibit A Tab 3 page 6.

D. Discussion

13. Union is offering two North T-Service offerings: (i) a Base Service,[7] and (ii) a Supplemental Service.[8] Under the Supplemental Service "*the customer assumes the rights and obligations of the costs on the path for the term.*"[9] APPrO does not take issue with the Supplemental Service. The following APPrO comments and concerns pertain to the proposed Base Service.

14. APPrO supports Union in periodically introducing new services from time to time in order to address customers' needs as they evolve. APPrO is not opposed in principle to Union offering a service that requires Union to arrange transportation between Dawn and the customer's delivery area, for those customers that are unable or unwilling to enter into their own transportation contracts, which may achieve certain commercial benefits over the various alternatives that are available to such customers in the marketplace. If the commercial benefits are not sufficiently tangible, customers will not subscribe for the service. The anticipated commercial benefits will therefore accrue directly and solely to those customers that subscribe for the North T-Service. If North T-Service customers who derive all the benefit from subscribing to the service do not see sufficient value in the service to accept the risks associated entering into it in the first instance, then it is completely inequitable and unjust to impose these risks and related costs on non-participating customers, who have assumed the costs and responsibilities of arranging and paying for their own transportation with no benefit whatsoever from the proposed North T-service.

15. While APPrO is not opposed in principle to Union offering the service, APPrO submits that the costs and benefits must be aligned and allocated to the customers that receive them. All of the service attributes must be designed in a

[7] Exhibit A Tab 3 page 6.
[8] Exhibit A Tab 3 page 11.
[9] *Ibid*.

fair and equitable manner that reasonably balances all customers' interests and equitably allocates responsibilities in a manner that reflects not merely the interests of Union and those customers interested in acquiring the service. APPrO submits that an equitable balance of interests and cost responsibilities Such a reasonable balance is not achieved in the proposed Union North T-Service offering and it should not, therefore, be approved by the Board.

16. The ultimate cost responsibility for any unrecovered costs associated with the upstream transportation arrangements has not been allocated in accordance with cost causation and good rate making principles. In order to provide the service, Union must make long term commitments on its own Dawn-Parkway system as well as TransCanada. While Union is making these long term financial commitments for capacity, the participating North T-Service customers, are not required to make a similar financial commitment. While the initial commitment by the customer to Union is for a 1 year term with automatic annual renewal,[10] Union also provides that if a customer's load declines by greater than 5%, then the customer can request that its financial commitment to Union be reduced by a corresponding amount at the next annual renewal.[11] A customer can initially enter into a North T-Service contract that requires Union to make a long term commitment for capacity, and if this customer's load declines by 5% or more, it can simply exercise its option to reduce its commitment to Union with no penalty or further cost responsibility for this capacity, to the detriment of other T-Service customers.

17. In the event that one or more customers exercise their option to reduce their financial commitment to Union, Union has agreed to try to mitigate any of the costs of excess capacity. There is no certainty that Union will recover revenue shortfalls from this mitigation effort, especially since for much of the year, Union

[10] Exhibit A Tab 3 page 7.
[11] Exhibit A Tab 3 page 8-9.

often has excess capacity related to its own system sales and Bundled T Service capacity as well as TransCanada's excess capacity into these areas.

18. APPrO believes that the design of the service exacerbates the inequity by requiring non-participating customers to be responsible for other customers' inefficient or changing transportation costs and is inequitable, discriminatory, unjust and inconsistent with the Board's obligations to set just and reasonable rates in accordance with s. 36 of the *Ontario Energy Board Act*.

E. Discriminatory Treatment

19. The North T-Service is a discretionary service that was primarily designed for small volume customers that are unable or unwilling to make the necessary commitments for long term upstream transportation commitments on their own. This is evidenced by the arbitrary eligibility limit of 3,000 GJ/d.[12] Union allowed all customers to participate proportionately at a level up to 50% of their T-Service CD.[13] In its initial proposal, but upon hearing the feedback from the concerns of small volume customers, Union changed the threshold to cap participation at 3,000 GJ/d. This had the effect of allowing all small customers with loads under 3,000 GJ/d to convert their entire load to North T-Service, whereas large customers like GFG (which generally that can have much greater loads up to and in excess of 100,000 GJ/d) have only a very small proportion of their load eligible for the service. For large volume customers like GFGs, it is very impractical and complex to split their transportation supply service between self-arranged transportation and Union's proposed North T-Service as a result of the artificial 3000 GJ/day cap on the service. Further, even if they were able to use the proposed service, it would unduly increase the administrative burden of large customers in order to manage two services and also increase net costs. While large volume customers like GFG are sophisticated; and may optimize their transportation arrangement and mitigate costs though assignments and other

[12] Exhibit A Tab 3 page 6.
[13] Exhibit B.SEC.5 page 19 slide 7.

commercial mechanisms. This becomes particularly complex with multiple service offerings. In addition, such large customers would lose the opportunity to mitigate their costs for the portion of their capacity that they acquired from Union and thereby increase their net costs of transportation capacity.

20. While the Union evidence[14] indicates that over 1/3 of eligible customers have subscribed for the service, a review of the more detailed information provided in response to APPrO.2 provides more information about the parties that have subscribed for the service and calls this conclusion into question. Table 1 of the response to APPrO.2a), indicates that, of the 47 eligible T-Service customers and the parties subscribing for the service :

- 17 actually subscribed for the service
- The total CD of the 47 customers is 227,847 GJ/s
- Not one of the 10 eligible Rate 100 (Union's High Volume, High Load Factor Customer Class) customers subscribed for the service
- All of the customers that subscribed for the service were from the Rate 20 Class (Union's Medium Volume Customer Class)
- The aggregate CD for the 17 customers who took the service was a total of 22,402 GJ/d, or an average of 1,317 GJ/d per customer. This represents less than 10% of the combined CD (227,847 GJ/d) of this large customer group.

21. The response to APPrO.2b) also further elucidates the nature of the customers that have subscribed for the service and their Firm Daily Quantity[15] ("**FDQ**") as a percentage of their CD. It indicates that:

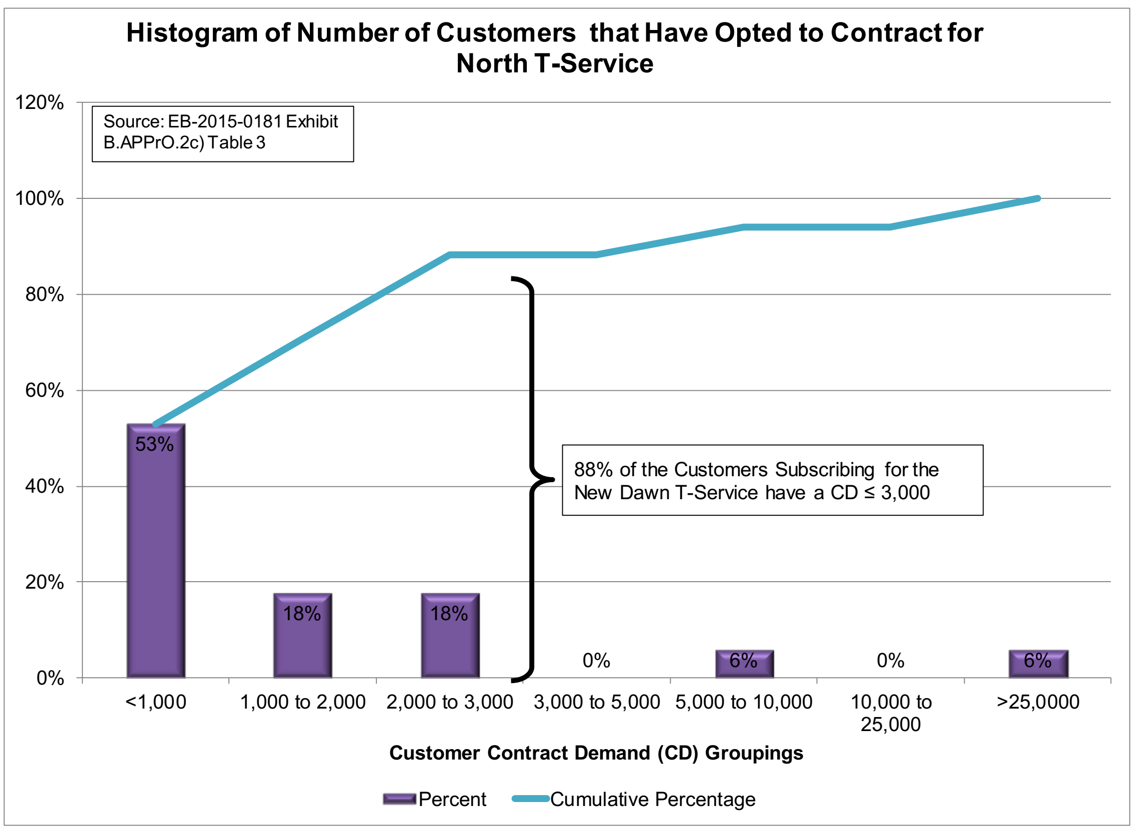
- All but 2 of the 17 customers that subscribed for the service have CDs less than the 3,000 GJ/d eligibility cap

[14] Exhibit A Tab 3 page 3.
[15] FDQ is the level of the customer's North T-Service volume.

- The 15 customers that have CDs below 3,000 GJ/d, all have a high FDQ/CD ratio, suggesting that it is likely that most of these customers' capacity requirements are met solely through using this service.

22. Moreover, the response to APPrO.2c) provides a more detailed histogram of the number of customers by size that have actually subscribed for the service. APPrO has simplified this information in graphic form in order to provide a better visualization of the nature of these customers. In summary,

- 53% or 9 of the subscribing customers have CDs of less 1,000 GJ/d
- 88% or 15 of the subscribing customers have CDs of less than 3,000 GJ/d
- Only 12% or 2 of the subscribing customers have CDs of greater than 3,000 GJ/d



23. While Union contends that all T-Service customers are eligible for the service, it is obvious that it is a service that has been primarily designed for and subscribed by

very small customers that may not have the expertise or ability to self-arrange transportation.

24. While Union has primarily targeted this service towards small volume customers, Union is proposing to recover any Deferral Account balance from all ‘eligible’ customers in proportion to their eligibility requirements. This suggests that, by its very nature, larger customers have much less practical ability to use this service, and customers with higher eligible volumes will pay a disproportionately greater share of any Deferral Account balances than smaller customers.

25. Since it is an unbundled service, T-Service customers like GFGs are required to arrange their own upstream transportation. There is no cost causality between the costs that Union may incur to arrange the North T-Service transportation on behalf of a few small customers wishing to buy gas at Dawn and the balance of the T-Service customers that arrange their own upstream transportation.

26. Moreover, while Union made changes to reflect the concerns of the small volume customers in the consultation phase, it was wholly unresponsive to the concerns of the large volume customers affected by this service.

27. In summary, APPrO submits that the evidence supports the conclusion that this service was primarily designed and re-designed for very small volume customers, almost exclusively subscribed for by very small volume customers, and the costs should therefore be borne by those same small customers. Large volume customers’ concerns have not been addressed, nor have the unsupported costs that will burden such large customers if cost causation principles are not imposed by the Board. This proposal, if accepted, will burden large volume customers who are not participating in the program with a significant share of the risks of paying for underutilized capacity that was acquired solely for the benefit of small volume customers. APPrO therefore submits that the proposed North T-Service program unduly discriminates against large volume customers and is inconsistent with just and reasonable rate making principles.

F. Other Concerns and Comments

28. Union indicates that the main drivers for this service are the changing North American supply dynamics and the need to address the potential for changes in the secondary market resulting from the TransCanada's proposed Energy East Pipeline Project. Union has not thoroughly canvassed these parameters and has provided only a very limited view of these issues, citing only considerations that support their proposal.

29. While it is true that more gas supplies are expected to become available at Dawn through imports through Niagara and Dawn, Union downplays several of the other non-Dawn supplies that are, and will be, available to customers who wish to contract for economically efficient supply. The evidence supports the facts that significant excess capacity will continue to exist on the TransCanada mainline from Western Canada to the Ontario border, which is capacity that should allow for a robust secondary market in the NDA and NCDA. As more fully described below, excess capacity will also be available in the EDA. In addition, changing shale gas dynamics are driving more gas availability at Waddington, the interconnection between TransCanada and Iroquois near Cornwall. Further, new pipeline infrastructure for shale gas is being developed to serve northeast markets by a variety of pipeline companies, including Union's parent company Spectra. In response to increasing shale gas access and supply, Iroquois has announced their South to North (SONO) project to reverse the physical flow and make US shale gas available at Waddington.[17] Union notes that this could provide up to 300,000 GJ/d of import capacity. Importing additional gas at this this location could further increase the secondary market supplies in the EDA.

30. Union has expressed concern over the impact of Energy East and the impact on the EDA as an additional reason for offering this North T-Service. TransCanada initially proposed to transfer some of its assets in the EDA to Energy East and

[17] Exhibit B.APPrO.1c).

build the Eastern Mainline Project with a reduced capacity level that reflected the firm service demands in the areas. Union's view was that this could reduce the secondary market that is relied on by some customers. Since initially offering this service Union has been instrumental in negotiating an agreement with TransCanada to first increase the amount of firm capacity into the EDA to meet upcoming firm market demands as well as to provide for an additional 50,000 GJ/d of uncontracted firm capacity that can be used to meet the needs of the secondary market.[18] This capacity alone is twice of what is required to meet the 22,402 GJ/d of capacity that was subscribed for the North T-Service. This additional capacity will also be available for customers to contract for directly based on TransCanada's existing capacity open season requirements or it may be used to access in the secondary market.

31. Allocating all the costs associated with the North T-Service customers to the pool of customers using the service is consistent with the Union's initial proposal to customers and also consistent with the treatment of transportation costs for system sales and Bundled T-Service.

G. Relief

32. In light of the foregoing, APPrO believes and requests that the Board limit the clearance of the Deferral Account amounts to only the pool of North T-Service customers. These customers are the only customers that want and directly benefit from the new service. This requested relief is consistent with Union's initial design of this service, but was subsequently changed. This is also entirely consistent with Union's treatment of transportation costs for system sales and Bundled T Service customers. If these customers, who are receiving the direct benefits of the service, do not see value in assuming the risks of the service, then it begs the question whether the service should be offered or approved at all.

[18] Exhibit B.APPrO.1b).