ONTARIO ENERGY BOARD

Union Gas Limited

Applications for pre-approval of change the reference price used in the Quarterly Rate Adjustment Mechanism process and to set rates and other charges for the sale, distribution, transmission and storage of gas effective January 1, 2016.

FINAL SUBMISSIONS

INDUSTRIAL GAS USERS ASSOCIATION (IGUA)

1. As noted in the Board's January 7, 2016 *Decision and Order* herein, one issue raised by Union's application remains unsettled; Union's proposed T-Service Transportation from Dawn Service for Union North T-Service customers (Dawn-T Service).

Summary of IGUA Position.

2. ***IGUA generally supports the proposed Dawn-T Service, and appreciates Union's attempts to address a market issue regarding long-term capacity contracting, as further described below.***

3. ***IGUA is concerned, however, with Union's proposal for allocation of the risks of future underutilization of TCPL capacity contracted in support of the proposed service. Union proposes to allocate all such risk to the***

customers eligible for the proposed service, whether or not those customers use the service. IGUA submits that such risks should be borne by:

a. ***Those customers who continue to find value in the service, to a reasonable extent; and***

b. ***Union's shareholder, to the extent that significant underutilization of the capacity develops such that the service is no longer economic for customers.***

4. ***IGUA also submits that Union's proposal for recovery of costs for development of the service from those customers who have committed to using the service, even in the event that the service does not proceed, should be rejected. IGUA believes that the risks associated with the development of new services which will ultimately, if successful, contribute to Union's profits should be to the account of Union's shareholder.***

The Dawn-T Service Proposal.

5. The Dawn-T Service is proposed to allow customers in Union's (new) North-East Delivery Area (NEDA) to deliver their gas to Union at Dawn, and have Union transport the delivered gas from Dawn to the customer's NEDA delivery point. The proposed Dawn-T Service is essentially the same as the transportation service which Union provides to its northern franchise area customers who deliver gas to Union at Empress, Alberta, save that under the Dawn-T Service the customer delivers their gas to Union at Dawn.

6. The pipeline capacity to be used in support of the Dawn-T Service is a combination of Union Dawn-Parkway capacity and TransCanada Pipelines Limited (TCPL) capacity from Parkway to the NEDA delivery points.

7. To be able to secure TCPL capacity in support of the Dawn-T Service, Union has to contract with TCPL for a 15 year period. Accordingly, Union has proposed that

Dawn-T Service customers support Union's commitment by similarly committing to the Dawn-T Service for a 15 year period.

8. The NEDA customers eligible for the Dawn-T Service fall into one of 3 Union rate classes; 10, 20 and 100. The following table indicates the take up of the service to date[1]:

Rate Class	# customers eligible (located in Union North East Zone)	# of customers who contracted	Firm Daily Quantity Contracted (GJ/d)
10	3	0	0
20	33	17	22,402
100	10	0	0
TOTAL	**46**	**17**	**22,402**

9. **IGUA supports Union's Dawn-T Service proposal, and commends Union for bringing the proposal forward.**

10. As the gas transportation market has recently evolved, TCPL is requiring long-term capacity commitments in order to expand its system. One example of that expansion is the path from Parkway to Union's NEDA. TCPL is requiring 15 year capacity commitments to expand that path. Union supported this commitment requirement through its participation in the October 2013 Settlement Agreement entered into by TCPL, Union, Enbridge Gas Distribution and Gaz Métro to stabilize TCPL toll increases, secure adequate TCPL revenues, and facilitate an ongoing shift from long-haul (from Empress) to short-haul (primarily, to date, from Dawn) gas supply and transportation arrangements to serve Ontario gas consumers.[2]

11. Large Ontario gas consumers, like IGUA's members, have great difficulty making 15 year gas transportation capacity commitments, and particularly so recently in

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[1] Exhibit B.APPrO.2, page 2, table 1.
[2] See Term Sheet filed in EB-2012-0451/0433/0074, as Exhibit K1.1, page 3, third last bullet; See also October 31, 2013 Settlement Agreement, Section 9.1, paragraph (b).

the face of rapidly changing economic, commercial and gas supply environments. Union has recognized this difficulty, and the proposed Dawn-T Service is one response which Union has developed to assist.

12. Following consultations with its NEDA contract gas customers, Union has ultimately proposed to provide Dawn-T Service customers with the ability to "hedge" their long-term commitments to the service by providing a customer option to decrease the amount of their capacity commitment by up to 3,000 Gj/day, in the event that the customer's contract demand (CD) and mean daily quantity (MDQ) decrease in any year by 5%, or more. In such circumstances, in the following year customers would be entitled to decrease their Dawn-T Services commitment in proportion to the decrease in their CD/MDQ decrease.

13. IGUA agrees with Union that contract gas customers located in Union's NEDA will benefit from being able to source gas at Dawn. Union's recent Dawn-Parkway expansions combined with Union's commitment to TCPL's expansion from Parkway to the NEDA will allow Union's NEDA customers such access.

14. Union will also benefit from these developments, since it will earn a return on its Dawn-Parkway investment in regulated transportation rates, and it will also profit from increased volumes flowing through its Dawn storage and transportation hub.

15. IGUA members believe that the proposed Dawn-T Service de-contracting adjustment mechanism proposed by Union (allowing for reduction in the customer's commitment in the event of falling CD/MDQ requirements) is appropriately designed and workable. IGUA appreciates Union's attempts to address the market's concern regarding the very long-term commitment required by TCPL to expand the path necessary to support NEDA customers being able to access supply at Dawn. Union's proposed Dawn-T Service has allowed a portion of Union's NEDA customer volumes[3] to be sourced at Dawn.

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[3] To date approximately 10%, see Exhibit B.APPrO.2, page 2, table 1.

Risk of Future Underutilization.

16. To protect itself, Union has proposed that any costs for TCPL capacity contracted in support of the provision of Dawn-T Service but underutilized in the future as a result of permitted de-contracting should be deferred and recovered from all NEDA customers who could have availed themselves of the service.

17. IGUA opposes this aspect of Union's proposal.

18. IGUA submits that the costs of providing a service should be recovered from those who use the service. This is how business generally operates in a properly competitive market.

19. In a properly competitive market a product or service either bears its own cost or is ultimately discontinued, and any resulting losses are at the risk of the offeror of the product or service. This is because with proper competition cross-subsidy from one group of customers to another would not be sustainable. The cross-subsidizing customers would eventually find a similar good or service elsewhere, not burdened by the cross-subsidy, and switch providers.

20. Union's NEDA delivery customers do not have competitive alternatives for gas delivery service. If Union burdens their rates with the costs of underutilized TCPL capacity in the future, they would have no choice but to bear that burden.

21. The Board should not allow that cross-subsidy. Part of the function of an economic regulator is to protect captive customers against such burdens.

22. **To the extent that there is future de-contracting of Dawn-T Service, the remaining service customers should bear the remaining costs of provision of the service.**

23. IGUA notes that Union has limited the flexibility of Dawn-T Service customers committing to the service to de-contract in future to 3,000 Gj/day per customer. This limit mitigates the potential costs of future excess capacity to be borne by the remaining customers of the service.

24. Keeping the costs of the TCPL capacity procured to provide the service within the service costs will ensure proper allocation of the costs as well as an appropriate price signal regarding the cost/value proposition of the service, thereby promoting economic efficiency.

25. However, to the extent that de-contracting of the service becomes so extreme as to render the cost of the service, properly allocated to the customers of the service, no longer economically attractive, the Board might have to revisit the appropriate allocation of those costs. At low levels of utilization, it could be argued that Union, rather than the remaining service recipients, should bear some or all of the costs of unutilized capacity. This potential result has been recently considered by the National Energy Board (NEB) in the context of the TCPL Mainline. This is the sort of risk that, it has been argued, Union is currently compensated for within the risk-premium included in Union's cost of capital. (See generally the NEB's *Reasons for Decision* in RH-003-2011, including at pages 37 through 46.)

26. IGUA is not suggesting that the Board must make a determination on this issue in this proceeding. What the Board should determine now is that Union's request to defer any costs of unutilized TCPL capacity contracted to support the service to all customers eligible for the Dawn-T Service be denied. Costs incurred to support the service should be included in the rates charged for the service.

27. IGUA does want to be clear that its position that the customers of the service should bear the risk of future underutilization is intended to be without prejudice to a position in the future that, at some point, the costs associated with that allocation of risk is no longer reasonable and should thus not be borne solely by ratepayers taking the service. The appropriate disposition of any such "excess" costs would be a matter best determined if and when such a circumstance arise, in the specific factual context at that time.

28. IGUA also recognizes that the position argued here would, if adopted by the Board, alter the financial terms of the commitment by those customers who have

subscribed for the Dawn-T Service to date, relative to the terms presented to those customers as a basis for their commitment. Accordingly, should the Board accept IGUA's argument and deny Union's request to defer costs associated with underutilized TCPL capacity for recovery from, *inter alia*, NEDA customers not taking the Dawn-T Service, the Board should also direct that Union must provide customers who have committed to the Dawn-T Service to date the option to be released from those commitments, in light of these new financial terms.

Risk of developing the service.

29. Union has proposed that should the Dawn-T Service not proceed, for any reason, that costs incurred by Union to develop the service would be paid by those customers who contracted for the service (17 NEDA Rate 20 customers to date), despite the fact that they never get to use the service.

30. As noted above, Union will benefit from this service. The Dawn-T Service will allow Union's NEDA contract transportation customers to shift volumes from Empress delivery to Dawn delivery. More volumes through Union's dawn facilities and Dawn-Parkway pipeline will enhance Union revenues and secure Union's transportation and storage businesses.

31. Union's request to essentially shift business development risks to the would-be customers of this service, should the service never materialize, should be rejected.

32. During its current rate plan period, Union should absorb any such costs within its approved revenue.[4]

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[4] IGUA recognizes that all customers, including the would-be Dawn-T service customers, could be impacted by such a result through the earnings sharing mechanism adopted as part of Union's current rate plan. IGUA accepts that result as an outcome of the settled and approved rate plan deal.

33. Union has already obtained executed documents from a number of its NEDA delivery customers in subscription for the service, and those documents provide for this allocation to would-be customers of the service of the risk of the service not proceeding.

34. This Board has determined on previous occasions that its jurisdiction to determine just and reasonable rates includes oversight of other terms related to the subject services[5], and that its jurisdiction to set rates and associated terms related to the subject services extends to ensuring that the a contract properly reflects and implements OEB approved rate schedules[6]. The Board has also determined that it has the ability to rectify charges under customer contracts should it find that such rectification is required in order to properly reflect an OEB approved tariff[7] (i.e. rates and associated terms and conditions). IGUA submits that the Board should determine in this instance that any terms allocating the risk of an ultimately undeveloped Dawn-T Service are not enforceable.

35. In any event, Union should be directed that in future solicitations related to this service, a provision fixing the risk of cancellation of the service on the would-be customers of the service should not be included.

ALL OF WHICH IS RESPECTFULLY SUBMITTED by:

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[5] EB-2012-0396, *Decision with Reasons*, February 7, 2013, page 7; E.B.R.O. 410-II, March 23, 1987 *Reasons for Decision*, section 4.58.
[6] EB-2014-0363, May 7, 2015 *Decision and Order*, page 3.
[7] Ibid, page 4.