Ontario

ONTARIO ENERGY BOARD

OEB STAFF SUBMISSION

UNION GAS LIMITED

LEAMINGTON EXPANSION PROJECT

EB-2016-0013

May 3, 2016

Background

Union Gas Limited (Union) filed an application with the Ontario Energy Board (the OEB) on January 14, 2016, in accordance with section 90 of the *Ontario Energy Board Act, 1998* (the Act), for leave to construct a natural gas pipeline and ancillary facilities to serve the growing greenhouse market in the Municipality of Leamington. The Leamington Expansion Project (the Project) consists of 6.7 km of NPS 12 natural gas pipeline, 250 metres of NPS 16 natural gas pipeline, 60 metres of NPS 8 natural gas pipeline and ancillary facilities.[1]

The Project will provide an additional 51,900 m^3/hour of firm capacity to greenhouse growers in the project area (which includes Leamington, Kingsville, Mersea Township and Gosfield South).[2] The Project also creates 17,500 m^3/hour of additional interruptible capacity and also allows currently contracted interruptible capacity to be re-sold as customers convert their existing interruptible service to firm service.[3]

OEB Staff Submission

The following submission addresses only the project need, project alternatives and the project economics (including Union's proposal to recover the costs of the project through either aid to construct payments and / or long-term contracting). OEB staff reserves its right to make further submissions on the land matters that arose in this proceeding after the AC Interference Study is filed. OEB staff will also make its submissions on the environmental assessment, First Nation and Métis consultation, and the conditions of approval in a subsequent submission as those issues may be impacted by the AC Interference Study.

<u>Need for the Project</u>

OEB staff submits that there is a need for the Project.

In its application, Union noted that there has been strong growth in the greenhouse market in the project area over the past number of years. The high pressure pipeline system in the area currently operates at capacity on a peak day. As a result, Union has been unable to provide new firm capacity, or convert existing interruptible service to firm service, in response to requests from greenhouse growers in the project area.[4]

[1] EB-2016-0013, Pre-Filed Evidence at p. 1.
[2] EB-2016-0013, Pre-Filed Evidence at p. 1.
[3] EB-2016-0013, Union Interrogatory Responses, OEB Staff 1(e).
[4] EB-2016-0013, Pre-Filed Evidence at p. 4.

Union held an expression of interest process for firm capacity related to the Project, which resulted in bids for firm capacity totaling 129,097 m^3/hour. The bids included both requests for new firm capacity and the conversion of existing interruptible service to firm service. The requested capacity exceeded the firm capacity available from the Project (51,900 m^3/hour), prompting Union to prorate the available capacity. Each customer that bid for capacity is currently being offered approximately 44% of their requested firm capacity. In total, 44 customers at 55 different sites accepted offers for the prorated capacity.[5] As of April 8, 2016, 52 long-term contracts and 3 Letters of Agreement have been signed.[6]

Union's application also included letters of support from the Corporation of the Municipality of Leamington and from the Ontario Greenhouse Vegetable Growers (OGVG). The letters stated that a natural gas service expansion is necessary to support the region's economic growth and development.[7]

OEB staff is satisfied that there is a current and future need for the expansion project in terms of providing natural gas service to the greenhouse growers in the region. OEB staff submits that there is demand for firm capacity related to the Project well in excess of the available firm capacity.

<u>Project Alternatives</u>

In its application, Union noted that no alternatives were considered as the Project is a continuation of the Leamington Phase I Project (EB-2012-0431).[8]

In the Leamington Phase I Project proceeding, the OEB approved the construction of 8.5 km of NPS 12 natural gas pipeline in the Municipality of Leamington. The need for that pipeline is the same as for the Project (i.e. providing requested incremental firm capacity to greenhouse growers in the region).[9]

OEB staff asked Union interrogatories regarding the upstream projects that would be required to allow Union to meet the total requested demand for incremental capacity (129,097 m^3/hour) related to the Project. OEB staff also asked whether any efficiencies could be gained by reinforcing the upstream system first and sizing the pipeline to meet all current requests for additional capacity.

[5] EB-2016-0013, Pre-Filed Evidence at p. 3.
[6] EB-2016-0013, Reply Evidence, Schedule 6 (Updated Response to OEB Staff 3).
[7] EB-2016-0013, Pre-Filed Evidence at Schedule 1.
[8] EB-2016-0013, Pre-Filed Evidence at p. 5.
[9] EB-2012-0431, Decision and Order, March 28, 2013.

In response, Union noted that it is reviewing an upstream expansion project in which Union would replace 41km of existing NPS 16 Panhandle Pipeline, between Dawn and the Dover Transmission Station, with NPS 36 pipeline. Union is targeting an in-service date of November 1, 2017 for the upstream expansion project. Union stated that there would be no efficiencies gained by completing the upstream pipeline reinforcement prior to completing the Project as the two projects solve different system constraints.[10]

OEB staff has no concerns with Union not considering other alternatives in this instance as the Project is a continuation of the Leamington Phase I Project and the requests for capacity exceed the firm capacity available from the Project .

OEB staff also submits that it is appropriate to move forward with the Project prior to completing the upstream reinforcement as there will be no efficiencies gained by waiting.

Project Costs and Economics

Union noted that the total estimated capital cost for the Project (including pipeline and stations) is $12.3 million.[11] Union also estimated $1.7 million in costs for the individual distribution facilities required to connect customers.[12]

OEB staff has no concerns with the estimated costs for the Project (including the costs of the individual distribution facilities).

In the Discounted Cash Flow (DCF) analysis that Union completed for this project, Union included the total $14 million in capital costs (i.e. project costs of $12.3 million and individual distribution facility costs of $1.7 million).[13] The DCF analysis completed provides a Profitability Index (P.I.) value of 1.11 and Net Present Value (NPV) of $1.5 million using a revenue term of 10 years. The DCF analysis does not include any aid to construct payments nor does it include any interruptible revenues. The DCF analysis highlights that the Project is economically feasible as the forecast revenues will more than fully recover the costs of the Project over a period of 10 years.[14]

Union proposed to recover from each customer their allocated portion of the pipeline expansion costs and the individual distribution facility costs through either an aid to construct payment and / or through a long-term contract.[15] Each customer would be

[10] EB-2016-0013, Union Interrogatory Responses, OEB Staff 1(a-d).
[11] EB-2016-0013, Pre-Filed Evidence at pp. 5-6.
[12] EB-2016-0013, Pre-Filed Evidence at p. 7.
[13] EB-2016-0013, Pre-Filed Evidence at p. 7.
[14] EB-2016-0013, Pre-Filed Evidence at p. 7 and Schedule 8; and EB-2016-0013, Union Interrogatory Responses, OEB Staff 1(e).
[15] EB-2016-0013, Pre-Filed Evidence at p. 3.

required to pay their entire portion of the pipeline costs (and their individual distribution facility costs) within a 10-year period.[16]

Union used customer-specific DCF analysis to determine whether an aid to construct payment is required from the customers that will take capacity from the Project. Each customer would be required to pay an amount over their contract term based on a minimum annual volume (MAV) and a contract duration (and in some cases an aid to construct payment) that results in a customer-specific P.I. of 1.0.[17]

Most customers have signed long-term contracts (with MAVs and contract durations) that generate sufficient revenues to pay their allocated costs associated with the Project within a period of 10 years. However, 3 customers would be required to make aid to construct payments as the revenues generated from their 10-year contracts do not generate sufficient revenues to cover their allocated costs within a 10-year period.[18]

OEB staff asked Union a number of questions regarding the DCF analysis completed on the Project and Union's proposed requirements for long-term contracting and / or aid to construct payments in cross-examination at the oral hearing.

In regard to the DCF analysis completed for the Project, OEB staff submits that certain assumptions used in the analysis are conservative and therefore result in a conservative estimate of the project-level P.I. OEB staff submits that the project-level P.I. of 1.11 is likely understated.

OEB staff submits that the exclusion of all interruptible revenues in the DCF analysis (which could be $970,000 per year assuming the sale of the total 17,500 m3/hour of interruptible capacity created by the Project[19]) is not appropriate. Union stated that it did not include interruptible revenues in the DCF analysis as there have been no requests for interruptible service from customers[20] and there will be future expansion projects constructed that will satisfy the incremental demand for firm service[21]. OEB staff submits that while there have been no requests for interruptible service, Union did not actually offer interruptible service to potential customers as part of the expression of interest process associated with the Project.[22] There is significant demand for firm

[16] There are no contracts of a duration greater than 10 years. EB-2016-0013, Undertaking Response J1.3.
[17] EB-2016-0013, Union Interrogatory Responses, OEB Staff 2(g).
[18] EB-2016-0013, Reply Evidence, Schedule 6 (Updated Response to OEB Staff 3).
[19] EB-2016-0013, Union Interrogatory Responses, OEB Staff 1(e) and OGVG 5(c).
[20] EB-2016-0013, Oral Hearing Transcripts at p. 40.
[21] EB-2016-0013, Oral Hearing Transcripts at pp. 37-38.
[22] EB-2016-0013, Oral Hearing Transcripts at pp. 115-116.

capacity in excess of the capacity provided by the Project.[23] Until such time that the incremental firm demand is met, it seems likely that some customers will access the available interruptible capacity related to the Project. OEB staff submits that some firm service customers may avail themselves of interruptible service as they were not awarded the entirety of their firm service requests. Overall, OEB staff submits that there will likely be some amount of interruptible capacity that will be sold. Therefore, excluding all revenues associated with the sale of interruptible capacity in the DCF analysis is not a realistic assumption.

OEB staff submits that the revenue term of 10 years used in the DCF analysis is also conservative. The OEB's Guidelines for Assessing and Reporting on Natural Gas System Expansion in Ontario (EBO 188 Guidelines) sets out specific parameters to be used in DCF analysis. The EBO 188 Guidelines provide guidance which suggests that it is appropriate to use a revenue horizon of 20 years for large volume customers.[24] If a 20-year revenue term was used, the P.I. for the project would increase.

OEB staff asked Union to provide updated DCF analyses for the project assuming a: (a) 10-year revenue term with 10 years of interruptible revenues of $970,000 / year; (b) 20-year revenue term with zero interruptible revenues; and (c) 20-year term with 20 years of interruptible revenues of $970,000 / year. The results were P.I.'s of 1.51 in case (a), 1.75 in case (b) and 2.40 in case (c).[25]

Overall, OEB staff submits that the exclusion of all interruptible revenues and the use of a 10-year revenue term in the DCF analysis result in a very conservative P.I. The P.I. of 1.11 associated with the Project is likely significantly understated.

OEB staff submits that it is not necessary to update the DCF analysis at this stage. It is clear that the Project is economically feasible (even with the conservative assumptions that were used in Union's calculation) and the Project should move forward. However, given that revenues incremental to the amount that was set out in the DCF analysis will likely materialize, OEB staff submits that certain changes should be made to Union's proposal to recover from each customer their allocated portion of the pipeline expansion costs and the individual distribution facility costs through either an aid to construct payment and / or through a long-term contract.

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[23] Customers requested 129,097 m^3/hour of firm capacity associated with the Leamington Expansion Project. The Project only provides 51,900 m^3/hour of firm capacity. EB-2016-0013, Pre-Filed Evidence at p. 3.
[24] EBO 188, Appendix B – Guidelines for Assessing and Reporting on Natural Gas System Expansion in Ontario, January 30, 1998, Section 2.2 (b).
[25] EB-2016-0013, Undertaking Response J1.1.

First, OEB staff would like to provide some historical context to Union's proposal and explain why it is necessary for the OEB to make a finding on this issue in the current proceeding.

Union stated that for expansion projects designed to serve large volume commercial customers it always requires each customer to pay an amount either through an aid to construct payment and / or long term contracting that results in a customer-specific P.I. of 1.0 (i.e. each customer will pay their entire allocated costs of the expansion project).[26]OEB staff was unaware that this has been Union's historical practice.

With the exception of Union's 2014 Rates proceeding (EB-2013-0365), OEB staff is unaware of any other proceeding where Union's proposal to recover from each customer their allocated portion of the pipeline expansion costs and the individual distribution facility costs through either an aid to construct payment and / or through a long-term contract has been explicitly brought before the OEB.

In the Leamington Phase 1 proceeding (EB-2012-0431), Union applied for leave to construct.[27] Originally, the DCF analysis undertaken by Union indicated that an aid to construct payment of approximately $2.1 million was required to bring the project P.I. to 1.0. However, in its reply argument, Union filed an updated DCF analysis (based on an increase to contracted capacity and a reduction to the capital costs) that indicated an aid to construct payment was no longer required to bring the project P.I. to 1.0.[28] In the OEB's decision dated March 28, 2013, there is no discussion of any requirements for long-term contracting and the OEB accepted Union's updated cost estimates and found that there would be no requirement for aid to construct payments from greenhouse growers.[29]

In Union's 2014 Rates proceeding, it was brought to the attention of the OEB that Union, following the approval of the leave to construct application, required customers to commit to MAVs for a fixed term and / or pay an aid to construct payment to cover the entirety of their allocated costs associated with the Leamington Phase 1 Project.[30]

The OEB approved Union's contracting proposal. In the August 21, 2014 Decision and Order, the OEB stated:

> Although the Board's decision did not require this contribution to be in the form of an upfront aid-to-construct payment from the greenhouse growers, it clearly

[26] EB-2016-0013, Oral Hearing Transcripts at pp. 44-46.
[27] EB-2012-0431, Application and Evidence, November 23, 2012.
[28] EB-2016-0013, Undertaking Response J1.2.
[29] EB-2012-0431, Decision and Order, March 28, 2013 at pp. 4-5.
[30] EB-2013-0365, Decision and Order, August 21, 2014 at p. 10.

> contemplated that Union would need to recover the $2.0 million shortfall in revenues.
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> Accordingly, it was appropriate for Union to require a contractual commitment or upfront payment from each greenhouse grower to ensure that the costs of the pipeline were borne by the customers that cause them to be incurred. In the absence of such a commitment, Union would be faced with the risk of collecting less revenue than was required to fund the project. The deficiency in revenues would then have to be recovered from other ratepayers.[31]

OEB staff submits that while the OEB approved Union's requirement that customers agree to contractual commitments or make aid to construct payments to ensure that the costs of the pipeline are paid by the customers that were to receive service from the Leamington Phase 1 Project, the findings were linked to a $2.0 million shortfall in revenues. As established previously, there was no shortfall in revenues related to the Leamington Phase 1 project and relatedly no aid to construct payments were required to bring the project-level P.I. to 1.0. There is also no revenue shortfall for the Project.

OEB staff submits that the current proceeding has been the only opportunity since Union's 2014 Rates proceeding for the OEB to make findings on the appropriateness of requiring customers to sign long-term contracts and / or make aid to construct payments that will result in each customer paying their entire allocated portion of the pipeline costs (including individual customer distribution facility costs) in a situation where the project-level P.I. is greater than 1.0. OEB staff also submits, as mentioned previously, that it unaware that this issue has, prior to Union's 2014 Rates proceedings, ever been addressed by the OEB.

Although Union's application for leave to construct the Project is filed under section 90 of the Act, OEB staff submits that it is appropriate to deal with the relevant rate matters in this proceeding. The OEB has all the necessary information to make comprehensive findings on these types of issues and the appropriateness of aid to construct payments for customers is very relevant to this proceeding. There is nothing that would prohibit the OEB from making findings on rate matters, typically dealt with under section 36 of the Act, in a leave to construct proceeding. Indeed if these matters are not addressed in the current proceeding it is not clear where they could be addressed.

In addition, OEB staff submits that the OEB has the necessary jurisdiction to make findings related to requirements for aid to construct payments (also known as capital contributions).

[31] EB-2013-0365, Decision and Order, August 21, 2014 at p. 14.

In its February 7, 2013 Decision with Reasons in the EB-2012-0396 proceeding, the OEB determined that a capital contribution is a rate.[32] Therefore, OEB staff submits that the OEB has the necessary jurisdiction to determine the appropriateness of aid to construct payments associated with the Project as capital contributions (or aid to construct payments) are a rate in accordance with the Act. OEB staff submits that no capital contribution (or aid to construct payments) should be required from customers other than pursuant to an OEB order.

OEB staff submits that for expansion projects where a group of customers can be clearly identified as the reason that Union is incurring costs to build a pipeline (and related facilities), it is appropriate that those customers be contractually obligated to pay the costs.

It is clear that the 55 customers that have been allocated firm capacity related to the Project are the reason that Union will incur costs in constructing the Project. Therefore, OEB staff submits that Union's proposal to require each customer to sign long-term contracts that result in the recovery of the customer's allocated costs of the Project (including their own individual customer distribution facility costs) is appropriate.

The customers that caused the pipeline expansion costs to arise and receive benefit from firm service associated with the Project should be required to pay the costs of the pipeline. The long-term contracts act to secure the revenues that underpin the DCF analysis and ensure that other customers are not exposed to any revenue shortfall.

With regard to the contract parameters established for customers taking firm service related to the Project, Union stated that no customers have contracted for quantities in excess of their actual requirements.[33] Therefore, OEB staff is satisfied that customers taking firm service related to the Project, with the exception of the customers required to make aid to construct payments, will pay only costs that are reflective of their actual requirements (as long as they do not reduce consumption below their obligated MAVs over the term of their contracts).

OEB staff notes that, based on Union's updated interrogatory responses, only 3 customers will be required to make aid to construct payments associated with the Project. In an undertaking response, Union stated that for these three customers to not require aid to construct payments their contract durations would need to be extended from 10 years to: (a) 12 years for one of the customers; (b) 13 years for another customer; and (c) 25 years for the third customer.[34]

[32] EB-2012-0396, Decision and Order, February 7, 2013 at p. 14.
[33] EB-2016-0013, Oral Hearing Transcripts at pp. 129-130.
[34] EB-2016-0013, Undertaking Response J1.6.

OEB staff submits that it is not appropriate for any customer to be required to make an aid to construct payment when the project-level P.I. of a project is greater than 1.0 as the project is considered economically feasible. OEB staff also submits that the EBO 188 Guidelines do not contemplate requirements for aid to construct payments from customers in situations where the P.I. of a project is greater than 1.0. OEB staff submits that Union's requirement for an aid to construct payment from customer's taking service associated with the Project is a departure from the OEB's direction set out in the EBO 188 Guidelines. OEB staff notes that the project-level P.I. has been very conservatively calculated at 1.11 for the Project in the absence of aid to construct payments, excluding interruptible revenues and using a 10-year revenue term.[35] Therefore, no aid to construct payments should be required from any customers taking service associated with the Project.

As an alternative, OEB staff submits that there is no reason that the initial contract duration for the three customers that Union required to make aid to construct payments cannot be extended beyond 10 years. Union seems to have limited contract durations to a 10-year period[36] because 10 years is the revenue horizon that it used in its DCF analysis.[37] As discussed previously, the DCF analysis completed by Union is very conservative and the EBO 188 Guidelines state that a 20-year revenue horizon is appropriate for large volume customers.[38] Whether Union collects all of the costs related to the Project within 10 years or the recovery occurs over a longer period of time, all of the customers that caused the pipeline expansion costs to arise, and receive benefit from firm service associated with the project, will be contractually required to pay for the cost of the pipeline. The principle that the customers that cause Union to incur costs in constructing an expansion pipeline is upheld regardless of the time period over which the amount is collected.

OEB staff also submits that all customers that are taking firm service related to the Project should be offered some flexibility in situations where there is a need to reduce consumption over the term of contract (for any reason) or cease operations altogether. In these situations, Union should be required to assist the customer in finding another party to re-contract for the capacity that is no longer required. Union seems to have agreed to this proposal in its interrogatory responses.[39]

[35] EB-2016-0013, Pre-Filed Evidence at p. 7 and Schedule 8; and EB-2016-0013, Union Interrogatory Responses, OEB Staff 1(e).
[36] EB-2016-0013, Undertaking Response J1.3.
[37] Union signed contracts with durations no longer than 10 years to ensure that the revenue it forecast are guaranteed to materialize over the 10-year revenue horizon due to the contractual obligations of the customers taking service related to the Project.
[38] EBO 188, Appendix B – Guidelines for Assessing and Reporting on Natural Gas System Expansion in Ontario, January 30, 1998, Section 2.2 (b).
[39] EB-2016-0013, Union Interrogatory Responses, OGVG 4(g).

In conjunction with assisting in finding another party to re-contract the capacity to or as an alternative, Union should also be required to extend contract durations, even for periods beyond 10 years, to allow the customer the opportunity to reduce their contractual MAV requirements if necessary. Contracts with durations longer than 10 years will still result in the full recovery of the customer's allocated costs of the Project but will benefit customers, if they need to materially curtail consumption, in terms of avoiding penalties associated with not meeting their MAV requirements. Therefore, OEB staff submits that Union should be required to allow for contract durations longer than 10 years if a customer makes a reasonable request to Union on the basis that its consumption requirements have evolved over the term of the contract and merit a longer term.

In addition, while Union's long-term contracting proposal is appropriate as it ensures recovery of the costs of the project from the customers that caused Union to incur those costs, the outcome of the proposal is that customers taking firm service associated with the Project inherit all of the risk of the Project. As a result of the contractual obligations, Union is guaranteed recovery of all of the costs of the Project directly from those customers that have signed long-term contracts for firm service.

As previously noted, OEB staff believes that there will likely be some interruptible revenues generated from the Project. Union agreed that it possible that some interruptible revenues will be generated.[40] However, there is no definitive evidence as to the amount of interruptible revenues that will be generated from the Project or the period of time over which those revenues will be generated.

OEB staff notes that interruptible revenues were not considered when establishing each customer's contract parameters. Therefore, as proposed, the customers taking firm service associated with the Project are paying all of the costs of the pipeline (with no offsetting reduction to their contract parameters associated with interruptible revenues). Therefore, these customers do not directly benefit from any interruptible revenues generated under Union's proposal. OEB staff does not believe that this is a reasonable outcome for the customers taking firm service associated with the Project as it is these customers that are taking all of the risk associated with the pipeline.

OEB staff submits that the OEB should order that 90% of the interruptible revenues generated from the Project during the period beginning on the in-service date (expected to be November 1, 2016) and ending December 31, 2018 should be recorded in a deferral account and disposed of to the customers that have signed long-term contracts for firm service associated with the Project.[41] OEB staff is of the view that the

[40] EB-2016-0013, Oral Hearing Transcripts at p. 116.
[41] If a customer transfers its contractual obligations (including the related financial obligations) to another customer within the proposed period, the customer that is transferred the contractual obligations should

interruptible revenues generated from the project are properly allocated to the benefit of the customers that are actually paying the costs of the pipeline expansion project and have inherited the associated risk. If the interruptible revenues would have been forecasted, the costs per unit of capacity for firm service customers would have been reduced accordingly.

The proposed 90:10 sharing would act to incentivize Union to market the interruptible capacity while reasonably compensating firm service customers. The proposed 90:10 allocation as between ratepayers and Union's shareholder is in accordance with the sharing mechanism that has been recently applied by the OEB to other optimization activities that Union undertakes on behalf of its ratepayers.[42] The sale of interruptible capacity associated with the Project parallels other optimization activities as it is a ratepayer asset (in this case entirely paid for by customers that have signed long-term contracts for firm service related to the Project) that is being optimized.

OEB staff proposes to limit the period of time over which the interruptible revenues should be allocated to customers taking firm service associated with the Project to the period beginning on the in-service date (expected to be November 1, 2016) and ending December 31, 2018. This time period corresponds with the end of Union's current IR plan term. OEB staff proposes that any forecast interruptible revenues should be included as part of Union's next rebasing application, which is scheduled for 2019.

OEB staff submits that the OEB should direct Union to establish a deferral account effective as of the in-service date of the Project to record the interruptible revenues to be shared with customers. OEB staff recognizes that identifying interruptible revenues that are generated directly from the Project (as opposed to the revenues generated from the local distribution system and the Leamington Phase 1 project) may be challenging. OEB staff submits that a proportional allocation of the interruptible revenues, calculated based on the available interruptible capacity created by the Project as a percentage of the overall available interruptible capacity across all of the assets serving these customers, could be used. OEB staff submits that the appropriate allocation of the interruptible revenues to be recorded in the account and the appropriate allocation amongst the customers taking firm service associated with the Project is best addressed at the time that Union files its next rates application. OEB staff submits that the OEB should order Union to file evidence on this issue as part of its next rates application.

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receive the disposition of the interruptible revenues from the date that it takes over the contractual obligation up to the end of the proposed period.

[42] For example, Union's Upstream Transportation Optimization Deferral Account (No. 179-131) has a 90:10 split in the benefit of ratepayers.

OEB staff submits that, going forward, Union should be required to provide evidence, in applications for leave to construct system expansion projects, regarding any aid to construct / long-term contracting requirements. These matters are properly within the jurisdiction of the OEB and the leave to construct proceeding is the appropriate time to deal with these issues as the OEB will have a comprehensive record upon which to make its determinations.

All of which is respectfully submitted.