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May 3, 2016

Ms. Kirsten Walli  
Board Secretary  
Ontario Energy Board  
P.O. Box 2319  
26<sup>th</sup> Floor  
2300 Yonge Street  
Toronto, ON  
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DELIVERED BY EMAIL

Dear Ms. Walli,

**RE: Board File No. EB-2016-0013 Union Gas Limited Application for Leave to Construct**

Please find enclosed the submissions of the Ontario Greenhouse Vegetable Growers in the above noted proceeding.

Yours very truly,



Michael R. Buonaguro

CC: All Parties

**Board File No. EB-2016-0013**

**Union Gas Limited Application for Leave to Construct**

**Submissions of the Ontario Greenhouse Vegetable Growers**

**May 3, 2015**

**INTRODUCTION AND SUMMARY**

These are the submissions of the Ontario Greenhouse Vegetable Growers (OGVG) with respect to the application by Union Gas Limited (Union) for Leave to Construct a natural gas pipeline in the Leamington area (the “Proposed Pipeline”), subject only to further submissions to be made when Union files an AC Interference Study.

In summary, OGVG makes the following submissions with respect to the Proposed Pipeline:

- a) OGVG supports the Leave to Construct Application and asks that the Board provide Union the requested relief, subject only to the results of the AC Interference Study and any requirements the Board may impose as a consequence of the findings of that study;
- b) OGVG asks that the Board require Union to track on an annual basis any revenue generated by the incremental interruptible service capacity created by the Proposed Pipeline and use that revenue to offset any minimum annual volume (MAV) related charges incurred by the customers contracting for firm capacity made available by the Proposed Pipeline;
- c) OGVG asks that Union be required to provide the option to certain customers to extend their contract terms beyond 10 years in order to obviate the need for those customers to provide an Aid to Construct payment;

- d) OGVG asks that the Board formally require Union to assist customers that need to release some or all of their contracted firm capacity with the task of finding new customers to contract for the released capacity;
- e) OGVG asks that the Board formally require Union to allow customers that reduce their gas consumption as a result of Demand Side Management (DSM) activities to recalculate their contract requirements to reflect their reduced gas requirements, including the ability to extend their contract beyond a 10 year term if necessary.

## **ECONOMICS OF THE PROJECT AND GENERAL SUPPORT**

As noted by Union in its application OGVG is supportive of the proposed pipeline and asks that the Board provide the requested Leave to Construct.

In OGVG's respectful submission the economics underpinning the Proposed Pipeline, even on the very conservative analysis proposed by Union, reveal an expansion of service in the Leamington area that will not only support itself from a revenue to costs perspective, but will in all likelihood provide an economic benefit to existing ratepayers.

Union's analysis of the project economics reveals a project Profitability Index (PI) of 1.1<sup>1</sup>, well above the minimum PI of .8 required by the Board's Policy as set out in E.B.O. 188, even though Union:

- a) did not forecast any revenue related to the added capacity of the project beyond a 10 year horizon, and
- b) did not forecast any revenue resulting from the interruptible service capacity added to the local distribution system as a result of the proposed pipeline.

As set out in Exhibit J 1.1 extending the revenue forecast out to 20 years pursuant to E.B.O. 188 and forecasting full utilization of the additional interruptible service capacity over that same period demonstrates that the potential PI for this project could be as high as 2.4.

OGVG recognizes that projecting revenue beyond the contract term of 10 years that Union has imposed and projecting revenue from interruptible service without Union having commenced the necessary expression of interest process<sup>2</sup> is not as "certain" as the analysis Union puts forward on the basis on contracted commitments for firm capacity.

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<sup>1</sup> Application page 7.

<sup>2</sup> This issue is discussed in more detail later on in the submission.

However the likely utilization of the proposed pipeline's capacity beyond 10 years and the likely use of the added interruptible service capacity for at least some period, combined with the fact that the expressed interest in firm capacity exceeded the newly available capacity by 248%<sup>3</sup> all lead to the conclusion that this project will both meet and exceed the Board's economic requirements.

Other than the discrete issue raised by HONI as to whether Union's proposed pipeline and HONI's proposed SECTr Transmission Line can be placed as proposed by each utility, an issue to be separately considered by the Board following the filing of an AC Interference Study by Union, OGVG is unaware of any other issues that would prevent the Board from granting Union Leave to Construct the Proposed Pipeline.

## CONTRACTING ISSUES

OGVG does wish to make submissions with respect to the contracting requirements imposed on new customers accessing the new capacity created by the Proposed Pipeline. In doing so OGVG notes that these contracting issues and the manner in which the Board resolves them should not impact on whether or not the Board grants the requested Leave to Construct. These contracting issues are raised by OGVG in this proceeding only because the Board has previously directed that any such issues should be raised and dealt within the context of the related Leave to Construct Application when OGVG raised similar issues in relation to the contracting practices employed by Union in relation to the Leamington Phase 1 Project:

**The Board notes that OGVG could have intervened in the leave to construct proceeding but did not do so. That proceeding would have been the correct forum for OGVG to challenge the assumptions and methodology used by Union in allocating project costs among greenhouse growers, if OGVG wished to do so.**

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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 contemplated that Union would need to recover the \$2.0 million shortfall in revenues.

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.

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<sup>3</sup> Application page 3.

The Board has therefore determined that it will not require Union to renegotiate the contracts with the greenhouse growers or alter the minimum annual volume commitments.

Several parties have submitted that the Board should approve general parameters concerning Union's practices in this type of situation. **The Board finds that such issues should be explored within the relevant leave to construct proceedings.** (Emphasis added)<sup>4</sup>

## **EXTRAORDINARY CONTRACTING REQUIREMENTS**

OGVG questions whether, once a project's economics are justified without the need for a contribution in aid of construction, it is necessary or appropriate to specifically allocate cost responsibility of the project to each of the potential new customers and require those customers to contract for service on the basis of terms and requirements beyond what is required from existing customers in the same rate classes.

Having said that, OGVG recognizes that Union has been dealing with customers seeking firm service made possible by the Proposed Pipeline in good faith. In conjunction with the fact that the amount of new firm capacity is far exceeded by the expressed demand for new firm capacity such that the likelihood of any material consequences being visited upon customers as a result of Union's contract requirements is relatively small, OGVG is not, in this proceeding, asking the Board to address the issue of whether Union's contract requirements are wholly inappropriate. In the circumstances of the Proposed Pipeline OGVG respectfully submits that the contracts required by Union should be accepted with minor adjustments as set out below.

## **ALLOCATION OF COST RESPONSIBILITY AND RESULTING CONTRACT REQUIREMENTS**

With respect to the Proposed Pipeline it is OGVG's understanding that Union forecasted revenue for the purposes of the required economic analysis strictly on the basis of the contract commitments it intends to extract from the customers that will access the newly added capacity.

In this instance, Union determined that it could add 51,900 m<sup>3</sup>/hour of new firm capacity to the local distribution system. Union then offered that firm capacity through an expression of interest process, where (ultimately) it offered 55 customers a percentage of the firm capacity they had originally requested.<sup>5</sup>

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<sup>4</sup> EB-2013-0365, Decision dated August 21, 2014, pages 13-14.

<sup>5</sup> Application page 3; OGVG notes that technically there are 44 customers obtaining service at 55 different sites, which results, it appears to OGVG, in 55 distinct contracts.

In order to secure their allocation of the new firm capacity, each customer was then required to contract with Union for that capacity, and as part of that contract either a) pay an up front aid to construct payment towards the cost of the proposed pipeline, or b) contract for a number years that will ensure enough distribution revenue from the customer to ensure a PI for the individual customer of at least 1.0.

The amount of the aid to construct or, alternatively, the necessary length of the contract depended on how much of the forecast cost of the proposed pipeline was notionally “allocated” each customer. The more of the cost of the proposed pipeline allocated to the customer the higher the required aid to construct or the longer the term of the contract.<sup>6</sup>

In this instance Union allocated the cost of the proposed pipeline to each customer based strictly on the percentage of the total new firm capacity each customer was going to receive. This is in contrast to the manner in which Union allocated costs associated with the Leamington Phase 1 pipeline (EB-2012-0431), wherein Union allocated costs based on an assumed cost per acreage of operation.<sup>7</sup>

OGVG acknowledges and appreciates that, in moving from an allocation of costs based on an assumed cost per acreage of operation to an allocation costs based on the allocation of firm capacity, Union has used a more rationale allocation methodology, alleviating one of the issues previously raised by OGVG.

However, OGVG notes that with respect to the Leamington Phase 1 pipeline Union not only allocated costs to customers taking on new firm capacity, Union also allocated costs to customers taking on new interruptible service, which reduced the cost responsibility allocated to firm customers.<sup>8</sup>

OGVG understands from Union that unlike the process preceding the Leamington Phase 1 project where Union extended an expression of interest for both Firm and Interruptible Service, with respect to the Proposed Pipeline Union only extended an expression of interest for Firm Service. Accordingly Union has not canvassed the interest in the new interruptible capacity created by the Proposed Pipeline, and assumes for the purposes of the economic analysis (as previously discussed) and for the purposes of allocating cost responsibility that the incremental interruptible capacity will not be used.<sup>9</sup>

As noted, the failure to forecast any interruptible service revenue serves to, potentially, understate the profitability of the Proposed Pipeline. In addition, OGVG submits, the failure to forecast any interruptible service revenue results in an over-allocation of costs to the customers obtaining firm service.

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<sup>6</sup> OGVG notes that while individual customers could artificially increase their minimum annual volumes in order to decrease the length of the contract that was necessary and avoid an Aid to Construct, Union has asserted that no customer has contracted for MAVs that exceed what that customer expects to actually consume; see OGVG.4 I).

<sup>7</sup> Application, page 2.

<sup>8</sup> Transcript Volume 1, pages 109-110.

<sup>9</sup> Transcript Volume 1, pages 110-111.

Union asserted that the proposed pipeline has the capacity to generate an incremental \$970,000 in interruptible service revenue annually.<sup>10</sup> In theory, OGVG submits, Union should be required to produce a realistic forecast of the interruptible service revenue it can generate using the proposed pipeline and allocate some cost responsibility to the customers accessing that new interruptible capacity. In this way the cost responsibility allocated to the customers accessing the new firm capacity would be reduced.

OGVG does, however, acknowledge the following:

- a) None of the 55 new firm customers appear to have contracted for MAVs that are in excess of their actual forecast annual volumes and only 3 of the new firm customers agreed to pay a CIAC;<sup>11</sup>
- b) Because of a), (almost all) new firm customers are only at risk of paying amounts in excess of their “normal” distribution charges in the event their consumption falls below their contracted for MAV in a particular year of their contract;
- c) Union’s primary concern (and legitimately so) has been to respond to requests for firm service as opposed to interruptible service;
- d) There is currently no evidence with respect to the actual demand for the new interruptible service capacity created by the proposed pipeline, other than to imply from the fact that the demand for firm capacity was so far in excess from Union’s current ability to meet that demand even with the proposed pipeline that there is likely a demand for the additional interruptible service capacity in the near term; and
- e) Union plans to add further firm capacity to the local area, which should reduce the demand for interruptible service sometime in the near future.<sup>12</sup>

With these factors in mind, OGVG respectfully submits that it is not necessary to require to Union to establish a forecast level of interruptible service revenue and specifically shift some level of cost responsibility for the proposed pipeline away from firm customers.

Instead, OGVG submits that it would be appropriate to, on an annual basis, track any interruptible revenue that is generated using the new capacity created by the Proposed Pipeline.

In the event that any of the 55 firm customers whose contracts underpin the economics of the project incur any charges as a result of falling below their contracted for MAV the revenue from interruptible service made available by the new pipeline in that year would be applied against the MAV charges.

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<sup>10</sup> OGVG.5 c).

<sup>11</sup> OGVG.4 l), Exhibit J1.6

<sup>12</sup> OGVG.1

To be clear, Union (and through Union its customers) would continue to retain all the revenue generated from the newly created interruptible service capacity as they would in the normal course. It would simply be the case that in recognition of the fact that the 55 firm customers contracted on the basis of 100% of the allocated costs of the Proposed Pipeline despite the fact that additional interruptible service capacity has also been created, those customers would have MAV related charges “forgiven” as long as there is interruptible service revenue available to match those charges. If there is no revenue from the use of the new interruptible service capacity, then there would be no “forgiveness” of any MAV charges. If the total MAV charges incurred by the 55 customers in a particular year exceeds the level of interruptible service revenue the “credit” would be allocated to the customers incurring MAV charges based on the proportionate allocation of the costs of the pipeline.

OGVG respectfully submits that this is a fair way to account for the fact that the 55 customers who have contracted with Union have taken on 100% of the risk associated with the revenue stream associated with the Proposed Pipeline, even though additional revenue can be generated using the Proposed Pipeline through interruptible service.

### **EXTENSION OF CONTRACT TERM BEYOND 10 YEARS**

OGVG notes that of the 55 customers that have contracted for the new firm capacity 3 of them had to agree to Aid to Construct payments because their estimated MAVs did not generate enough revenue in within the 10 year contract term being offered by Union to offset their allocated costs of the pipeline.<sup>13</sup>

Of those 3 customers, one could have avoided an Aid to Construct payment had they been able to contract for 12 years, and another could have avoided an Aid to Construct payment had they been able to contract for 13 years.

As noted earlier, OGVG questions whether any contract term or imposition of an Aid to Construct requirement is generally appropriate once the project is forecast to be economically viable, but for the purposes of this application is not asking the Board to make a determination on that issue.

However, OGVG does respectfully submit that when Union requires long term contracts in these circumstances it is inappropriate to arbitrarily cut off the contract length being offered at 10 years, particularly when the E.B.O. 188 guidelines contemplate a 20 year revenue horizon. In OGVG’s respectful submission the Board should require Union to offer to the two customers that could avoid an Aid to Construct with contract terms of 12 and 13 years respectively based on their forecast annual volumes and resulting MAV commitments the option of extending their contracts to 12 and 13 years as necessary.

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<sup>13</sup> Exhibit J1.6



With respect to the 3<sup>rd</sup> customer paying an Aid to Construct Union asserted that a contract term of 25 years would have been necessary to avoid the payment. OGVG is not aware of the circumstances that make this particular customer's contract situation such an extreme outlier compared to the other 54 customers; it may be a large disparity between the firm capacity contracted for in relation to the projected annual volumes, unusually large customer specific capital costs, or a combination of those two and/or other factors.

Ideally, given the fact that no other customer will need to make an Aid to Construct payment (assuming Union is required to offer contract term extensions to the other 2 customers as suggested), a specific Aid to Construct would not be required of this customer either, unless Union can specify the circumstances that have led to the calculated need in that apparently unique circumstance.

### **RE-ISSUING FIRM CAPACITY WITHIN THE CONTRACT TERM**

OGVG notes that Union has agreed to assist customers that no longer need some or all of their contracted for firm capacity to have another customer take on their contractual obligations in exchange for obtaining the capacity for themselves:

The customer is obligated to their contract. Should the customer wish to terminate or materially curtail their consumption, the customer would need to find another customer willing to take on the contractual/financial obligations. Union would attempt to contact any parties waiting for firm service to aid in re-contracting for the capacity. The contracting for that capacity would be similar to the contracting of the capacity in the first instance, with the required revenue to recover costs being reduced by the contribution made by the customer who terminated or curtailed its consumption.<sup>14</sup>

OGVG notes that given the length of some of the contracts the ability to essentially pass along the firm capacity to another willing customer in the event it is no longer required by the original customer is an important option to have. Accordingly OGVG asks that the Board acknowledge this ability as a necessary feature of such contracts, and confirm Union's obligation to assist customers in exercising this option if necessary.

### **ADJUSTING MINIMUM ANNUAL VOLUMES AS A RESULT OF DEMAND SIDE MANAGEMENT IMPACTS**

OGVG notes that Union has said that it would consider adjusting a customer's MAV requirements in response to changes to a customer's requirements resulting from DSM activity:

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<sup>14</sup> OGVG.4 g)

If a customer with a multiyear obligation approaches Union to adjust its contract terms going forward in order to reflect the impact of DSM activity Union will consider allowing the customer to adjust their contract terms. The multiyear obligation will still need to insure a recovery of the remaining project costs that the customer is responsible for and cannot extend beyond a 10 year term.<sup>15</sup>

In OGVG's respectful submission the Board should require Union (rather than have Union exercise its own discretion) to adjust contract terms to account for DSM activity so that customers are not punished with MAV charges that are caused by their efforts to reduce their consumption through DSM (particularly when that activity is initiated by Union and Union receives a shareholder incentive for doing so). OGVG notes that to the extent Union's distribution revenue goes down as a result of DSM activity, it is protected through the LRAM mechanism in any event such that continuing to collect both LRAM and MAV related charges as a result of decreasing MAVs would constitute double recovery.

Additionally OGVG respectfully submits that a 10 year contract term should not be artificially imposed, particularly, as previously discussed, given the Board's guidelines which contemplate a 20 year horizon for revenue projections. To do so could make the necessary adjustments impossible, creating a disincentive to the customer to pursue DSM or, as noted above, create a double recovery of lost revenue through both the LRAM mechanism and as an MAV related charge at the same time.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 3<sup>rd</sup> DAY OF MAY, 2016**

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<sup>15</sup> OGVG.4 i)