

ONTARIO ENERGY BOARD

IN THE MATTER OF the *Ontario Energy Board Act, 1998*, S.O. 1998, c.15, Schedule. B, and in particular, s. 90 thereof;

AND IN THE MATTER OF an Application by Union Gas Limited granting leave to construct a natural gas pipeline and ancillary facilities in the Municipality of Leamington, in the County of Essex.

**REPLY ARGUMENT OF
UNION GAS LIMITED**

A. Overview

1. This is Union Gas Limited's reply argument in EB-2016-0013. As directed by the Ontario Energy Board in Procedural Order No. 4, this argument relates solely to the non-land matter related issues associated with the Project.¹ This argument should be read in conjunction with Union's argument-in-chief.

2. Submissions in relation to the non-land matter related issues were received from two parties: Board Staff and the Ontario Greenhouse Vegetable Growers. Neither party opposes the Board granting Union leave to construct the Project. Both support the Project as in the public interest and responsive to customer demand in the growing greenhouse market.

3. Board Staff and OGVG nevertheless argue that direction should be given by the Board in relation to the contracts entered into by customers and the revenues, if any, arising from the sale of incremental interruptible capacity created by the Project. For the reasons that follow, Union agrees that some, but not all, of the direction they seek should be granted by the Board.

B. Response to Board Staff and OGVG

4. Board Staff and OGVG raise the following issues:

¹ Union anticipates filing the AC Interference Study contemplated by P.O. No. 4 later this week.

- (1) Whether certain customers should be relieved of the obligation to pay an aid to construct or be given the option to extend their contracts beyond the current 10 year term.
 - (2) Whether Union should be required by the Board to assist customers that may need to release some or all of their contracted firm capacity with the task of finding new customers for that capacity.
 - (3) Whether Union should be required to (a) track the sale, if any, of interruptible capacity created by the Project and (b) dispose of a portion (90%) of the revenues from such sales to customers that have entered into contracts for firm service or use that revenue to reduce the minimum annual volume contracted for by those customers.
5. Union's response to each of the issues raised by Board Staff and OGVG is set out below.
6. First, however, Union wishes to clarify a misunderstanding with respect to the evidence apparent from those parties' submissions.
7. In discussing the economics for the Project, both Board Staff and OGVG say that Union did not include any interruptible revenues in its DCF calculation. This is not quite accurate.
8. As explained by Union in response to Board Staff interrogatory 1(e), the Project:
 - creates 17,500 m³/h of additional interruptible capacity; that is, new interruptible capacity on the Proposed Facilities; and
 - allows currently contracted interruptible capacity to be re-sold as customers convert their interruptible service to firm service on the Project.
9. Board Staff and OGVG are correct in that Union did not include the potential for additional interruptible revenue in the economic analysis. In other words, the DCF does not include any forecast revenues associated with the 17,500 m³/h of additional interruptible capacity. Unlike Leamington Phase 1, customers did not contract for this capacity and Union believes that any future demand will be for firm capacity and be met through expansion in 2017.

10. The DCF does include revenues arising from the re-sale of converted interruptible capacity.

11. As detailed in Union's pre-filed evidence, there was significantly more demand for firm service than capacity available as a result of the expression of interest. Growers were therefore allocated 44% of the firm capacity which they requested.

12. During contract negotiations, many growers that had requested new firm service also asked for a "top up" to 100 % of their requested capacity. Union was able to meet these requests with interruptible capacity that had become available as a result of the conversions to firm capacity. In response to customer requests for a 'top up', Union was able to re-contract 11,691 m³/h of the existing interruptible capacity made available by those customers that converted to firm service on the Project. The sale of this interruptible capacity was included in both the Project and customer-specific economic analysis.

13. Overall, and consistent with past expansion projects, the economics associated with the Project remain based on the incremental revenue associated with the Project, being the difference between the revenues before and after the Project.

14. Union apologizes to the Board and parties for the evidentiary misunderstanding.

Issue #1: Whether to require aid or extend contract terms for certain customers

15. Board Staff submits that no customer should be required to pay an aid to construct and that the terms of certain customers' contracts should be extended beyond 10 years. OGVG makes a similar submission.

16. There are three customers captured by these submissions. As set out in Union's updated response to Board Staff interrogatory #3, three customers were required to pay an aid to construct in order to achieve a customer specific PI of 1.0 over a 10 year term. The respective aids were \$11,180, \$63,746 and \$118,820. To achieve a PI of 1.0 in the absence of those aids, the contract terms for those customers would have to be extended to 12, 13 and 25 years, respectively.

17. Union is prepared to extend the contract term for the first two customers. The contracts will be revised to 12 and 13 years in duration and no aid will be required. For the third customer, Union is prepared to extend its contract to 20 years, the maximum period specified in the Board's E.B.O. 188 Guidelines for large volume customers. A smaller aid to construct will be required from this customer.

18. In Union's submission, it is entirely appropriate that the third customer be required to pay an aid (which it has already agreed to do), notwithstanding the positive overall PI associated with the Project. As parties appear to accept, and the Board confirmed in EB-2013-0365, it is "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" (emphasis added).²

19. As Board Staff concedes, "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."³

20. Here, if the third customer does not pay an aid and its contract is not extended to 25 years, it will be treated differently than other customers and will not contribute its full share of the costs of the pipeline. This is unfair to the other customers, Union and other ratepayers.

21. As a final note on this issue, while Union is prepared to agree to Board Staff's request to extend the contracts of those customers that have agreed to pay an aid, Union does not agree with Staff's submission as it relates to the Board's decision in EB-2013-0365. In discounting that Decision, Staff argues that:

[W]hile the OEB approved Union's requirement that customers agree to contractual commitment 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.⁴

² Decision and Order, EB-2013-0365, p. 13

³ Board Staff submission, p. 8

⁴ Board Staff submission, p. 7

22. Respectfully, that is not proper reading of the Decision. It ignores the Board's discussion of the earlier leave to construct proceeding which culminated in an updated DCF and no revenue shortfall. As the Board summarized events:

Leamington Line Project

In November 2012 in EB-2012-0431 (the "leave to construct proceeding"), Union applied for leave to construct a pipeline in the Leamington area ("the Leamington Line Project") to meet growing demand from greenhouse growers. Union initially submitted that, consistent with the Board's policy established in E.B.O. 188, it needed an aid-to-construct capital contribution as the revenue and cost forecast for the initial ten year period resulted in a profitability index ("PI") lower than 1.0. Union submitted that it required an aid-to-construct of \$2.092 million to reach a PI of 1.0. However, later in that proceeding Union updated its discounted cash flow [footnote omitted] analysis to reflect changes in forecast project costs, the timing of attachments and a change in the proportion of requests for firm (as opposed to interruptible) service. As a result of the updated analysis, Union informed the Board that it no longer required a capital contribution from the greenhouse growers. The Board approved the application on that basis. (Emphasis added.)⁵

23. In any event, as set out above, the parties agree that those customers that caused the system to expand and which benefit from that expansion should be contractually obligated to pay for it.

Issue #2: Whether to assist customers that may need to release capacity

24. Board Staff and OGVG submit that Union should be directed to work with any customer that may need to release some or all of its contracted capacity related to the Project. This assistance could take the form of providing assistance in finding a new customer to take the former customer's capacity or permitting the former customer to extend the term of its contract beyond 10 years. OGVG specifically asks that assistance also be given where a customer is able to reduce its gas usage through DSM activity.

25. Union set out its position in response to OGVG interrogatories #4(g) and (i). There, Union indicated that:

⁵ Decision and Order, EB-2013-0365, pp. 9-10

g) 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.

i) 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.

26. In brief, Union is willing to work with customers, if necessary, to assign their contracts or to amend the term and volume of those contracts. This assistance would be provided on a “best efforts” basis. To be fair to Union and other ratepayers, assistance would have to be revenue neutral; that is, the customer’s share of the Project costs would still have to be recovered either from the new customer or the existing customer, over time. Union now agrees that this could extend beyond the initial 10 year term.

Issue #3: Whether to track and include incremental interruptible revenues

27. Board Staff and OGVG argue that Union should be required to track the sale of any part of the interruptible capacity created by the Project. Board Staff further argues that 90% of the revenues associated with such sales (for the period November 1, 2016 to December 31, 2018) should be credited to those 55 customers that have contracted for firm service on the Project. For its part, OGVG argues that, in the event any of the customers incur charges as a result of falling below their contractual contracted for minimum annual volume, the revenues from the sale of interruptible service would be applied against those charges.⁶

28. The premise of both parties’ submission is that, given the demand for firm service and the fact that Union was not able to meet all of that demand, it must be reasonable to assume that some incremental interruptible capacity will be sold. Union disagrees.

⁶ Board Staff submission, pp. 10-12; OGVG submission, pp. 7-8. In both cases, the revenues

29. As set out above, customers that asked to be “topped up” have already been sold interruptible capacity. That is the 11,691 m³/h of capacity referred to in paragraph 12. Those customers that asked for service have been given firm service and, to the extent, they asked for interruptible service, they have been provided with that as well.

30. Notwithstanding this position, Union is prepared to agree to the following: it will track the sale of interruptible revenues from November 1, 2016 to December 31, 2018. At the end of 2018, it will apply those revenues to the contracts held by its Leamington Phase 2 customers in order to reduce the term of those contracts on a going forward basis. This approach is preferable to the positions advocated by Board Staff and OGVG. Unlike their positions, Union’s approach treats the interruptible revenues like all other revenues associated with the Project. The revenues have the same impact on customers’ contracts as if they had been included at first instance in the economic analysis.

ALL OF WHICH IS RESPECTFULLY SUBMITTED



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