ONTARIO ENERGY BOARD

EB-2015-0179

IN THE MATTER OF the *Ontario Energy Board Act, 1998*, S.O. 1998, c.15 (Schedule B), and in particular S. 36 thereof;

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

AND IN THE MATTER OF an Application by Union Gas Limited for an Order or Orders for approval of Union's Distribution System Expansion Project proposals;

AND IN THE MATTER OF an Application by Union Gas Limited for an Order or Orders granting leave to construct natural gas pipelines and ancillary facilities required to serve the communities of Milverton, Prince Township and, the Chippewas of Kettle and Stony Point First Nation and Lambton Shores.

SUBMISSIONS OF THE CANADIAN PROPANE ASSOCIATION

McMILLAN LLP
181 Bay Street, Suite 4400
Toronto, Ontario, M5J 2T3

Mike Richmond

Tel: 416.865.7832
Fax 416.865.7048
mike.richmond@mcmillan.ca

Counsel for the Canadian Propane Association

TABLE OF CONTENTS

I. SUMMARY OF CPA'S SUBMISSIONS

1. The Delaware Project application is incomplete.

   (a) The Updated Application filed March 31, 2017 (the "**Application**") by Union Gas Limited ("**Union**") is incomplete in respect of the Delaware Nation of Moraviantown First Nation project (the "**Delaware Project**").

   (b) The Application provides that the Delaware Project will achieve a minimum PI of 1.0 only if $311,467 of Provincial grant funding is obtained, but that no such funding has been obtained. As a result, the Delaware Project does not achieve a PI of 1.0 and must be rejected.

   (c) Alternatively, the Application can be deferred until evidence of grant funding is in hand and can be placed on the record. Until that time, the Application is incomplete, and according to the Board's own filing requirements, can not be considered.

2. Union has not demonstrated a need for these Projects.

   (a) The only assertion of need is based exclusively on the proposition that there will be "significant energy savings". However, such savings assume that energy pricing, energy sources, energy technologies, energy usage, energy regulation and carbon pricing are static for the 40 year economic life of the projects.

   (b) Disruptive changes over the past 40 years suggest that it is irrational and unreasonable to assume that all of these factors will remain relatively stable for the next 40 years, and no evidence has been led to suggest they will. It is therefore is irrational and unreasonable to assume "significant energy savings" over the next 40 years based on things remaining as they are today.

   (c) No other basis has even been asserted by the applicant, let alone demonstrated, in support of the need for these projects.

   (d) If there is no rational and reasonable assertion of need for the proposed projects, then the Board must reject the Application.

3. The Application does not comply with the 2016 Generic Decision.

   (a) The Application is not compliant with the Board's decision in generic hearing EB-2016-0004 (the "**2016 Generic Decision**"), on a number of counts.

   (b) The Board determined in the 2016 Generic Decision that there should be a "rate stability period" of at least 10 years during which (i) the SES charged to expansion customers will not increase, and (ii) the utility will bear the risk of forecast errors. Union has proposed a Rate Stability Period for the four projects of

12, 15, 22 and 40 years, respectively, during which time the SES will not increase, but only 10 years for the utility to bear the forecast risks. The Board clearly intended for these two periods to be the same, but Union has proposed the utility risk exposure period be significantly shorter than the new customer rate protection period. The result is that between year 10 and years 12/15/22/40, existing customers will be asked to subsidize the any attachment forecast error shortfall. The Board was right to describe both of these periods as being the same in order to avoid such a cross-subsidy.

(c) The Board determined in the 2016 Generic Decision that there must be no cross-subsidy from existing customers. Union's Application does not preclude a cross-subsidy from existing customers, but in fact contemplates cross-subsidies as follows:

(i) as described above, any errors in the attachment forecasts for expansion projects will be reflected in the first rate rebasing after the 10 year mark, and therefore funded by way of cross-subsidy from existing customers from years 10 to 40.

(ii) furthermore, any capital cost estimate errors will not be charged to new expansion customers or assumed by the utility, but rather be reflected in the first rate rebasing, likely by 2019, which is well within the SES Term and within any 10 year "rate stability period" or risk assumption period, and therefore funded by way of cross-subsidy from existing customers;

(iii) finally, any errors in the forecasted volumes consumed by expansion customers (as distinguished from the forecasted number of consumer attachments) will not be charged to expansion customers or assumed by the utility, but rather be reflected in the first rate rebasing, likely by 2019, well within the SES Term and any 10 year "rate stability period" or risk assumption period, and therefore funded by way of cross-subsidy from existing customers.

As the Board explicitly ruled out cross-subsidies from existing customers in the 2016 Generic Decision, the current Union Application must be rejected because it contemplates no other way for the costs described above to be paid, other than by way of a *de facto* cross-subsidy from existing customers.

4. <u>The Application must be revised to comply with the 2016 Generic Decision</u>.

(a) Changes are required to the proposed payment structure described in the Application to make it compliant with the 2016 Generic Decision. Those changes should include the following:

(i) Continue charging SES for as long as is necessary until the amount actually collected (not the amount forecasted) makes the project self-funding (PI = 1.0) by year 40. The SES is essentially the same as a CIAC but collected over time instead of up front – it is a surcharge in lieu of a contribution. The Board should ensure that the surcharge in lieu of a contribution is actually collected from the expansion customers, just as such the collection of the CIAC would be ensured if it were all paid up front. The fact that the Board has allowed the CIAC to be paid over time instead of in advance does not mean that it is suddenly okay for it to not be paid at all and instead cross-subsidized by existing customers.

(ii) As mandated by the Board in the 2016 Generic Decision, make Union bear the forecast attachment risk throughout the entire Rate Stability Period, being the period during which the SES volumetric rate is fixed and not subject to adjustment. According to the Application, this period is 12/15/22/40 years.

(iii) Capital cost projection risk should be treated the same way as forecast attachment risk.

(1) Under a standard project, if the capital costs were originally underestimated (which is the same as saying that the CIAC was underestimated), the CIAC would be adjusted before the customer would be connected. Other customers would not subsidize the capital costs of an expansion project.

(2) The fact that the CIAC can now be financed over a period of time should only change <u>when</u> the capital contribution is paid, not <u>who</u> pays it. It does not suddenly mean that new expansion customers are not responsible for the full capital costs of the expansion, and that part of the capital costs should be subsidized by existing customers if Union failed to estimate the costs properly. Typically if the capital costs are underestimated, then the CIAC would need to be adjusted. In the present case, since the CIAC is being collected over time in the form of an SES, the SES (either the volumetric amount or the duration of collection) needs to be adjusted.

(3) As a result, while the SES volumetric rate must be fixed to comply with the Board's requirement for a Rate Stability Period, there should be no fixed SES Term. The SES should be collected until an amount equivalent to what would have been the CIAC has been actually been collected, and enough customers have actually attached to ensure PI=1.0 over 40 years.

(4) Prospective customers should be told that a surcharge of 23 ¢/m^3 will be charged until enough has been collected to ensure that the project will pay for itself within 40 years.

5. The Application should be revised to make it consistent with Union's original submission.

(a) Minimum project eligibility of 50 or more potential customers should be reinstituted from the original Application. This concept does not impact the eligibility of the four projects currently proposed, but the principle is an important one for future project applications and the Board should not, as a matter of precedent, set a precedent that appears to allow expansion projects with as few as a single potential customer to proceed under the principles set out in the 2016 Generic Decision.

(b) The methodology for interpreting the attachment survey data should revert to the methodology used and supported by Union in its original application (counting 100% of extremely likely and very likely customers, and 50% of likely customers), or some other scientifically accepted methodology. Union's attempt to suggest that all three of the terms "likely", "very likely" and "extremely likely" mean the same thing, and they all represent a 100% forecast probability, is pre fabrication. "Likely", by definition, means "not 100% certain". Yet Union has forecasted that "likely" customers are 100% certain to attach. This in turn has skewed financial elements of the Application, including the SES volumetric rate and SES Term needed to achieve PI of 1.0. The economic and financial materials included in the Application, including the determination of the SES volumetric rate and the SES Term, should be revised using Union's original methodology or another methodology that does interpret "likely" as meaning "100%".

6. The Application must be revised and resubmitted before the Board can approve it.

(a) The Board can not unilaterally impose the foregoing changes to the Application in order to make the Application compliant with the 2016 Generic Decision. The principles of regulatory law dictate that the Board can only consider the Application that is before it, and either accept that Application (with or without conditions) or reject that Application. It is not the role of the Board to revise the Application for the applicant. If the Application is not compliant, then the Board must reject it and invite the Applicant, if it wishes, to resubmit a revised Application that is compliant.

II. THE APPLICATION IS INCOMPLETE IN RESPECT OF THE DELAWARE PROJECT

7. The Application is made under Section 36 of the *Ontario Energy Board Act, 1998* (the "**Act**"), including Section 36(2), and seeks approval of a system expansion surcharge as part of a standalone rate for expansion customers. The Application is therefore, in part, a rate application.

8. Rate applications are subject to the Board's *Filing Requirements for Natural Gas Rate Applications* ("**Filing Requirements**").

9. Section 1.1 of the Filing Requirements requires that an application must be complete before the Board can consider it:

> "The regulatory process followed by the OEB ensures that all interested parties to the proceeding have an opportunity to see the entire record, participate meaningfully in the proceeding and understand the reasons for a decision. A complete and accurate evidentiary record is essential."[1] [*Emphasis added*.]

10. Union states that the Delaware Nation of Moraviantown First Nation project (the "**Delaware Project**") is contingent on receipt of Provincial grant funding or another means of direct Contribution-in-Aid of Construction ("**CIAC**") to meet a minimum PI of 1.0. The necessary funding is $311,467. Without such funding, the Delaware Project fails to meet a minimum PI of 1.0. [2]

11. No such funding has been received, promised or committed. As a result, the Delaware Project fails to meet a minimum PI of 1.0. In accordance with both EBO-188 and EB-2016-0004, based on the evidentiary record in this Application, the Delaware Project does not at this time satisfy the minimum criteria and must be rejected.

12. Union has asked the Board to approve the Delaware Project as though grants were in place and the PI was 1.0, but this is a fiction. The PI is not 1.0.

13. If and when grant funding is approved, and evidence of such grant funding can be submitted as part of the evidentiary record, then the Application can be submitted and considered. Until that time, however, the Application is premature:

    (a) The evidentiary record is either incomplete (there is no evidence of the grant funding which is relied upon to cause PI to be 1.0), in which case the Filing Requirements dictate that the Application can not be considered; or

---

[1] Ontario Energy Board, February 16, 2017. *Filing Requirements for Natural Gas Rate Applications*, Section 1.1.

[2] Union Application, Exhibit A, Tab 1, Page 13 of 15; Exhibit A, Tab 2, Section C, paragraphs 28 and 31

(b) The evidentiary record is complete, in which case the PI is not 1.0 and the Application must be rejected.

14. Although Union has asked the Board to imagine that the grant funding was in place, and to issue an approval conditional upon that fictional scenario becoming true, doing so would require the Board to complete a hearing and issue an approval without knowing all of the fact and without all of the evidence being on the record. A precedent should not be set that regulated entities can submit applications where central facts or materials are not known or not available, such that those facts and materials can not be seen, tested, challenged or verified by interested parties, and seek to have the Board conditionally approve the incomplete application, with the condition being that the Applicant must complete the record after the hearing is over. Any such process would be inconsistent with the Filing Requirements, and inconsistent with the principles of natural justice.

15. The practice of preventing Applications from being submitted piecemeal, and of not wasting the resources of the Board or intervenors by proceeding to hold a hearing on an incomplete application, is based on an important regulatory principle and one adopted by regulators across Canada.[3] It should not be abandoned simply because an applicant is in a rush and asserts it does not have time to wait for all of the facts and evidence before holding a hearing.

16. The Canadian Propane Association ("**CPA**") submits that the Board can not and should not consider an incomplete application. All of the facts must be known, and all of the evidence submitted, before an application can be considered. Intervenors must be able to consider and question those facts and evidence.

17. The Application for the Delaware Project should be deferred as it is incomplete. If the Application is not deferred, then the Application must be considered on the basis of the facts as they presently exist. The facts are that the there is no evidence of any grant funding, and therefore the Delaware Project fails the PI test set out in EBO-188 and EB-2016-0004 and must be rejected.

[3] See, for example, National Energy Board, *Understanding the Regulatory Process for Oil and Gas Exports*, August 11, 2016:

> "Once an application is submitted, the Board determines whether the application is complete. If it is found to be incomplete, the Applicant will be notified and may file a new application at any time. If the application is found to be complete, the Board will notify the Applicant and then make a final decision on the application. In the case of a licence application, the NEB Act mandates that a decision be made within six months of the notification of completeness."

III. THE APPLICANT HAS NOT DEMONSTRATED A NEED FOR THE PROJECTS

18. Union asserts that there is "demonstrated need for each of the proposed Community Expansion Projects". [4] This assertion made by Union relies on letters submitted by Union from prospective customers and communities ("**Support Letters**").[5] Each of the Support Letter-writers bases their request on a stated belief or understanding that there will the "substantial energy savings" that will purportedly result. However, none of them provide, or even appear to have ever seen, any evidence that such "substantial energy savings" will occur.

19. The economic life of the proposed projects being considered is, for the purposes of the Application, 40 years. In fact, it is impossible to know whether there will be substantial savings over that period.

    (a) Carbon pricing is volatile and unpredictable. Forty years ago, there was no such concept. Who knows what will happen over the next forty years? Major changes in carbon pricing would significantly and materially affect, and could completely reverse, any savings that might accrue by switching from electricity to gas. Changes to carbon pricing regimes could make gas far more expensive a heating option.

    (b) Energy sourcing is volatile and unpredictable. Forty years ago, the idea of affordable utility-scale energy facilities that relied on the wind and the sun as fuel was the stuff of science fiction. Shale gas was unheard of. Who knows what will happen over the next forty years? New energy sources could be discovered and commercialized that make natural gas obsolete and/or the most expensive heating option.

    (c) Regulation is volatile and unpredictable. Forty years ago, no one could have imagined that generating power from coal would be illegal. Who knows what will happen over the next forty years? Often considered a "transition fuel", the banning of natural gas could be on the horizon. Changes to regulatory regimes could make natural gas obsolete and/or the most expensive heating option.

20. CPA submits that it is simply not possible to know whether there will be substantial savings over the next 40 years by switching to natural gas. How could anyone claim to know that? If the past 40 years are any indication, the only certainty over the next 40 years appears to be that nothing will be the same.

21. Perhaps *if* electricity prices, propane prices and gas prices remain exactly where they are for the next 40 years, and *if* carbon pricing does not change for the next 40 years, and *if*

---

[4] Union Argument in Chief, paragraph 31

[5] Union Application, Exhibit A, Tab 2, Section A, B, D, Schedule 3

energy and heating technologies do not change for the next 40 years, and *if* no new energy source is discovered or harnessed in the next 40 years, then there *could* be substantial savings over the next 40 years. But it is irrational and unreasonable to assume that a sector which has seen such rapid and massive change for decades will suddenly become static and see no major changes for the next 40 years.

22. As such, the statements made in each of the Support Letters are irrational and unreasonable, and the Support Letters should therefore not be relied upon by the Board. They are based entirely on an assumption – one of "significant energy savings" over the life of the projects – for which there is no rational or reasonable basis. They are merely assertions that have no rational basis.

23. In the absence of the Support Letters, the Application does not demonstrate or assert any need for the projects. Union's attempt to demonstrate need is limited to Paragraphs 31 and 32 of its Argument in Chief, which refer solely to the "significant savings" assertion or to the Support Letters which in turn refer solely to the "substantial savings" assertion.

24. If the "significant savings" can not be demonstrated – and as explained above, CPA submits that they can not be – then there is no other "need" or public interest asserted by Union in the Application. In the absence of any demonstration of need or public interest, the Board must reject the Application.

IV. THE APPLICATION IS NOT COMPLIANT WITH EB-2016-0004

A. CPA's Understanding of the 2016 Generic Decision

1. What is the SES?

25. EBO-188 essentially provided that, for expansion projects, the costs of the projects should be funded entirely by revenues from the new expansion customers, and not by existing customers. Where standard rates charged to new customers would not be sufficient, new customers would have to pay an upfront contribution in aid of construction. [6]

26. For the current pool of expansion projects, the Board determined that "There is no need to modify the parameters or depart from the principles embodied in E.B.O. 188 to facilitate expansion projects", but accepted the utilities' advice that potential new customers were put off by the significant upfront costs. Accordingly, the Board found that "What is required is a method of overcoming the upfront investment hurdle."[7]

27. The SES is the proposed method of overcoming the upfront investment hurdle. The SES essentially replaces the CIAC. It allows new customers' CIAC to be "financed" over a number of years rather than paid all up front. It is essentially a "surcharge in lieu of a contribution" (a "**SILOC**").

2. What is the rate stability period?

28. In a normal expansion situation under EBO-188, the CIAC is determined and collected up front. Capital costs are known with certainty, the customer's attachment date is known, and collection of the CIAC is essentially guaranteed, because the payment is entirely up front.

29. With a surcharge in lieu of a contribution (SILOC), new risks are introduced that would not be present if it were paid up front. Firstly, because collection of the SILOC is deferred and customers are not actually signed up to connect until after the amount of the SILOC is set by the Board, there is a risk that the amount collected could be lower than expected. Similarly, because construction does not begin until after the SILOC is set by the Board, there is a similar risk that the amount collected could turn out to be lower than the actual capital costs incurred.

30. Although this could be addressed by simply adjusting the amount of the SILOC – just as one would adjust the amount of the CIAC if necessary – the Board determined in the 2016 Generic Decision that new customers should not be invited to convert on the premise of a certain standalone rate or surcharge rate per cubic metre, and then subjected

[6] EB-2016-0004, Decision with Reasons, page 3

[7] EB-2016-0004, Decision with Reasons, page 18

to a "bait and switch" scenario. The Board therefore insisted that there should be some minimum period of time during which the new customers' standalone rate or surcharge rate per cubic metre could not be altered – a "rate stability period".[8] The Board used a minimum 10 years as an example.

31. The Rate Stability Period is therefore the period during which new expansion customers are protected from SES increases.

32. In the current Application, although Union somewhat arbitrarily refers to the Rate Stability Period as being 10 years, they have also confirmed that new expansion customers will not see an SES increase for 12/15/22/40 years;[9] this is by definition the actual Rate Stability Period.

33. In the 2016 Generic Decision, the Board directs that the utility must bear the risk of forecast attachment errors for such Rate Stability Period.[10]

3. What about cross subsidies from existing ratepayers?

34. Under EBO-188, unless all expansion costs could be covered by revenues from new customers, the new customers would have to pay a CIAC. "This ensures that existing ratepayers do not subsidize the costs of new expansion customers."[11]

35. In the 2016 Generic Decision, the Board determined that:

> "The OEB does not consider it appropriate or necessary to subsidize projects that result in sufficient savings to customers to cover the costs of the projects."[12]
>
> "Proposals will need to be self-financing and therefore there will be no risk to existing ratepayers. This would also be fair to suppliers of other fuel as one fuel choice will not be subsidized, and to new entrants who do not have an existing customer base to subsidize expansions."[13]
>
> "…the OEB's determination to not permit subsidies from existing customers…"[14]

36. In its May 2, 2017 letter to the CPA in the current proceeding, the Board advised that:

> "The profitability of a project is only relevant if the avoidance of a cross subsidy from existing to new customers is an issue. The OEB ruled in the EB-2016-0004 Generic Proceeding on

---

[8] EB-2016-0004, Decision with Reasons, page 20

[9] EB-2015-0179, Union Clarification attached to Settlement Status Letter, June 6, 2017, page 4 of 5

[10] EB-2016-0004, Decision with Reasons, page 20

[11] EB-2016-0004, Decision with Reasons, page 7

[12] EB-2016-0004, Decision with Reasons, page 18

[13] EB-2016-0004, Decision with Reasons, page 19

[14] EB-2016-0004, Decision with Reasons, page 29

> Community Expansion Decision with Reasons that no subsidy will be permitted from existing customers to new customers;"

37. It is clear from the foregoing that the Board has repeatedly determined that there should be no cross subsidy from existing customers. At no time did has the Board ever suggest that such a cross subsidy should only be deferred for a period of time, or that there should or could be a cross subsidy from existing customers after a certain period of time. Had this been the case, then the Board would presumably have invited the CPA to participate in the debate as to when the "no cross subsidy" period should end. It did not, because the Board did not intend for the "no cross subsidy" period to end, either under EBO-188 or EB-2016-0004.

4. Resulting Mechanism in 2016 Generic Decision

38. CPA submits that the Board's intention in the 2016 Generic Decision was that:

(a) as in EBO-188, the costs of expansion projects should be borne by the new expansion customers, with any shortfall from rates paid by way of a CIAC;

(b) the CIAC can however be spread out over time in order to make it more appealing, by charging a standalone rate or a surcharge in lieu of the contribution;

(c) the standalone rate or surcharge established for this purpose should be calculated so as to cover the costs of the projects;

(d) if the calculation was wrong (due to the utility's forecast errors, for example), new expansion customers should be protected from having their standalone or SES rate adjusted for some minimum period (the Rate Stability Period);

(e) during this Rate Stability Period, since new customers are to be protected from an SES increase and existing customers are not permitted to subsidize expansion projects, the utility is left to bear the risk (which is reasonable since it was their forecasting error – this will incent utilities to secure accurate forecasts and set realistic SES values); and

(f) after the Rate Stability Period, the new customers should pick up any residual risk, since:

(i) the Rate Stability Period was a temporary exception to the rule that all costs are to be collected from new expansion customers – an exception that prevented expansion customer rates (surcharges) from being increased even if an increase is otherwise necessary in order to fund the project

(ii) once the exception expires, the base rule that expansion customers fund expansion projects applies once more; and

(iii) existing customers are not to cross subsidize expansion projects; there is no indication in either EBO-188 or the 2016 Generic Decision that existing customers should cross subsidize expansion projects after a certain period of time.

B. How do the SILOC, Rate Stability Period, and No Cross Subsidy requirement apply to an attachment forecast error, a volume forecast error, and a capital cost estimate error?

39. In a standard expansion project under EBO-188 project, there is no risk that the CIAC will not be collected. It is charged and collected up front. The project does not get built and customers are not connected if the customer or community does not pay. Existing customers do not end up subsidizing the CIAC.

40. If the number of potential new customers decreases before the CIAC is paid, then the CIAC increases.

41. If the projected capital costs increase before the CIAC is paid, then the CIAC increases.

42. If the potential new customers advise, before the CIAC is paid, that their volumes will be less than Union's estimate, then the CIAC increases.

43. There is also no risk that unexpected capital cost increases will go unfunded. These too are known up front, prior to customer connection, and adjustments to CIAC amount can be made to ensure that existing customers do not end up subsidizing the capital costs.

44. By way of illustrative example, take a project with the following characteristics:

(a) Expected capital cost is $100

(b) Expected revenues through rates is $80

(c) Required CIAC to make the project self-financing is $20

(d) Number of expected new customers is 2

(e) Projected CIAC per customer is $10 ($20 divided by 2 potential customers).

45. If only one of the two potential new customers advises that it wishes to connect, the required CIAC of $20 will be charged entirely to that one potential new customer. The customer pays a higher CIAC.

46. If the projected capital costs turn out to be $140, then the required CIAC becomes $60 and the CIAC increases to $30 for each potential new customer (or $60 if there is only one customer).

47. If the expected revenues through rates turns out to be $60, then the required CIAC becomes $40 and the CIAC increases to $20 for each potential new customer (or $60 if there is only one customer).

48. As explained above, the 2016 Generic Decision allows for the CIAC to be collected over a longer term as opposed to up front, resulting in a surcharge in lieu of contribution (SILOC). While the Board allowed new customers a longer period to pay, the Board did not allow new customers to transfer their payment obligations to existing customers. To the contrary, the Board was very clear that the principle that existing customers should not subsidize expansion projects is as central under the 2016 Generic Decision as it is under EBO-188.

49. Expansion projects must be self-funding, not just "projected to be self-funding":

> "Proposals will need to be self-financing and therefore there will be no risk to existing ratepayers."[15]

50. In an expansion project under EBO-188, new customers (and/or other funding parties like the municipality or provincial government) pay the CIAC, in its entirety. If they only provide partial payment, the remainder is not waived and transferred to existing customers. The new customers continue to be invoiced until they have paid the CIAC in full.

51. In an expansion project under the 2016 Generic Decision, new customers (and/or other funding parties like the municipality or provincial government) must similarly pay the SILOC, in its entirety. If they only provide partial payment, the remainder must not be waived and transferred to existing customers. The new customers must continue to be charged until they have paid the SILOC in full. This means that the SILOC should not be structured so as to end at a certain fixed date even if the full amount has not yet been collected. It should continue to be charged and paid until the required amount has been collected which ensures that the project PI will be 1.0 by year 40.

52. Once the project has been constructed, the actual capital costs are known. (Union confirms that the risk of material variance in capital costs relates primarily to up front Year 1 construction cost portion[16]). Just as these would impact the CIAC, so too should they impact the SILOC. If an increased SILOC is required in order to pay for increased capital costs, and the number of attached customers has not similarly increased, then either the SES volumetric rate or the SES Term must increase. The Board has already mandated that a Rate Stability Period be imposed, meaning that the SES volumetric rate can not be altered for that period. As a result, the SES volumetric rate is the figure that must be fixed, and the SES Term is the figure that must be flexible. The SES Term must

[15] EB-2016-0004, Decision with Reasons, page 19

[16] EB-2015-0179, Union Clarification attached to Settlement Status Letter, June 6, 2017, page 3 of 5

be extended as necessary (or shortened if applicable) in order to fully collect the required SILOC.

53. If existing customers bear the risk of capital cost overruns, as Union has proposed,[17] then this creates an incentive for Union to underestimate capital costs. An erroneously low capital cost estimate would support a lower SES volumetric rate for a shorter term, meaning new customers are more likely to sign up, all at the expense of existing customers, who subsidize the missing capital starting at the first rate rebasing. Instead, capital costs should be paid in full by new customers as though it were a CIAC, but one that is financed and repaid over the long term.

54. A fixed SES volumetric rate with a flexible SES Term means that the utility will eventually collect the full SILOC without making existing customers subsidize the project. But a fixed SES volumetric rate with a fixed SES Term means that new customers simply stop paying the SILOC at a certain point in time regardless of the amount collected. There is no relation between the actual costs and the actual SILOC revenues. Once the SES Term expires, new customers stop paying even if they have only partially paid, and the remainder is subsidized by existing customers. This is in direct opposition to the principles set out by the Board.

55. CPA submits that if the SES volumetric rate is to be fixed at 23¢/m^3, then the SES Term can not be fixed, but must be flexible enough to account for actual capital costs, actual attachments, and actual volumes.

56. Just because new customers are being given the rare and new benefit of being allowed to pay the CIAC over an extended period instead of all at once, that does not mean they should be allowed to transfer any shortfall to existing customers – something they would never be allowed to do in a standard expansion project under EBO-188; something the utilities sought the Board's permission to do in EB-2016-0004, and something to which the Board very clearly said "NO" in the 2016 Generic Decision.

57. Note that while the concept of a Rate Stability Period as described by the Board requires that the SES volumetric rate be fixed for that period, nothing in the 2016 Generic Decision requires that the SES Term be fixed. The concept of a fixed expiry date for SILOC collection is a creation entirely of the utilities' making. It is not a required component of a Rate Stability Period. It is in effect a back door method of transferring risk to and securing a subsidy from existing customers after a certain period of time, something which the Board has already rejected. The Board must therefore reject this concept of a fixed SES Term.

[17] -2015-0179, Union Clarification attached to Settlement Status Letter, June 6, 2017, page 3 of 5

58. In any event, in order to ensure that existing customers to do not subsidize expansion projects, the costs and shortfalls associated with an expansion project should all be prohibited from being included in a rate rebasing application.

    (a) For attachment shortfalls, this is addressed by imputing to Union the greater of actual or forecasted revenues (rates and SILOC) from the expansion project.

    (b) For volume shortfalls (i.e. where Union has accurately predicted the number of new customers but overestimated the volumes consumed by such customers), this is also addressed by imputing to Union the greater of actual or forecasted revenues (rates and SILOC) from the expansion project.

    (c) For capital cost estimate shortfalls, this is addressed by imputing the lower of actual or estimated capital costs, and then recouping any shortfalls after the Rate Stability Period by continuing to charge the SES until the required SILOC is fully collected.

V. THE APPLICATION MUST BE REVISED TO MAKE IT COMPLIANT WITH EB-2016-0004

59. As explained in Section IV above, CPA submits that the Application as currently proposed is not compliant with the framework established by the Board in the 2016 Generic Decision. It should therefore not be accepted or approved by the Board without a number of changes or clarifications.

60. The Application should be revised to clearly confirm that the Rate Stability Period is the period during which:

(a) the SES volumetric rate charged to new expansion customers may not be changed; and

(b) certain forecast risks are to be assumed exclusively by the utility;

consistent with the manner in which the Board described the Rate Stability Period in the 2016 Generic Decision.[18]

61. The Application should be revised to clarify whether the Rate Stability Period proposed by Union is 10/10/10/10 years (as indicated at paragraph 10 of Union's Argument-in-chief) or 12/15/22/40 years (as indicated at paragraphs 11 and 16 of Union's Argument-in-chief).

62. The Application should be revised to eliminate the fixed SES Term. The SES should be charged until the SILOC has been collected in full such that the project will be fully self funded by year 40. Nowhere in the 2016 Generic Decision does the Board call for a fixed and inflexible SES Term, because a fixed SES volumetric rate charged only for a fixed SES Term regardless of the volumes sold and amounts collected invariably means that the amount actually collected will not be the amount required to make the project self-funded at a PI of 1.0. Any shortfall would fall to existing ratepayers and constitute a *de facto* subsidy of the expansion project by existing ratepayers, which has been expressly prohibited by the Board. The fixed SES volumetric rate must continue to be charged and collected until the applicable revenue requirement is achieved.

63. The Application already provides that the risk of shortfalls in attachment forecasts is borne by the utility for the Risk Stability Period, because new customers are protected by from SES rate increases during the period and existing customers are protected from subsidizing expansion projects. The Application should be revised to similarly provide that the risk of shortfalls in volume forecasts is also borne by the utility for the Risk Stability Period, for the same reasons. Union's current Application would have existing customers bear this volume forecast risk as of the first rate rebasing, which violates the

[18] EB-2016-0004, Decision with Reasons, page 20

Board's decision against existing customers subsidizing these projects. The Application should be also revised to similarly provide that the risk of capital cost estimate shortfalls is also borne by the utility for the Risk Stability Period, for the same reasons. Union's current Application would have existing customers bear this risk as of the first rate rebasing, which violates the Board's decision against existing customers subsidizing these projects.

VI. THE APPLICATION SHOULD BE REVISED TO MAKE CERTAIN ELEMENTS CONSISTENT WITH UNION'S ORIGINAL SUBMISSION

64. Table 1 of the Application[19] should be revised to revert to Union's original requirement, as set out in the original Phase I Application, that projects must have a minimum of 50 potential customers in order to be eligible for consideration. Union has removed this requirement, without providing any explanation whatseoever. The risks associated with an expansion project to serve a small handful of customers, where each single unit of attachment forecast error can change the economics by significant amounts (for example, a project with 5 potential customers that only succeeds in attracting 3 of them will be exposed to a 40% economic risk), are too great to expose to the risk-based exception model proposed by Union. Since the framework approved in this Application may be relied upon by applicants for future projects, it is important to get the principles right, even if they are moot for the present projects.

65. The Application should be revised to revert to Union's original methodology for the interpretation of attachment survey data, or another methodology that is supported in any way by scientific methods.

(a) In the original Application in 2015, Union forecasted attachments by adding 100% of "extremely likely", 100% of "very likely", and 50% of "likely" respondents. [20]

(b) In the updated Application in 2017, Union forecasts attachments by adding 100% of "extremely likely", 100% of "very likely", and 100% of "likely" respondents.[21] No explanation whatsoever is given for this change.

(c) CPA submits that a forecast of 100% attachment should be reserved for those who say they will "certainly" connect; 100% is an appropriate numeric representation of "certainly". But 100% is not an appropriate numeric representation of extremely likely, very likely, or likely. If someone says they are "likely" to connect, that by definition means they are not 100% certain to connect.

---

[19] Union Application, Exhibit A, Tab 1, Page 3 of 5, Table 1

[20] EB-2015-0179, Exhibit C.Staff.6, response (a).

[21] EB-2015-0179, Exhibit C.Staff.6, response (a).

(d) In certain scientific communities:

(i) "Extremely likely" means greater than 95%;

(ii) "Very likely" means greater than 90%;

(iii) "Likely" means greater than 66%.[22]

(e) In no scientific usage do all three of the terms "likely", "very likely" and "extremely likely" represent the identical forecast probability. Certainly in no scientific usage do all three of these represent a 100% forecast probability.

(f) By changing its data interpretation methodology, the result is a purely fabricated increase in attachment forecasts which is not attributable at all to an increase in the likelihood of respondents to connect. By fabricating an increase in forecast attachments, the SES volumetric rate and SES Term are artificially reduced. Pursuant to Union's application, this revenue shortfall would accrue to existing customers after 10 years. There was no reason for Union to alter its data interpretation methodology, other than to artificially skew the forecasts.

(g) A more reasonable data analysis would attribute a 95% attachment forecast to those who responded "extremely likely", a 90% attachment forecast to those who responded "very likely", and a 66% attachment forecast to those who responded "likely".

(h) In the alternative, the Board should require Union to revert to its original methodology, which counted 100% of "extremely likely" respondents, 100% of "very likely" respondents, and 50% of "likely" respondents.

(i) Altering or reverting to the original methodology will materially change the forecast attachment results. This in turn will alter the natural PI of each project, and alter the SES volumetric rate and SES Term needed in order to achieve a PI of 1.0, as well as the Rate Stability Period. The Board should order Union to resubmit Schedule 6 of each part of the Application, and any other schedules, tables and figures that are impacted by a change in the forecasted attachments, so that the Board can reconsider the Application in light of the accurate SES volumetric rate and SES Term.

(j) The CPA respects the Board's direction to not question or challenge the Union surveys; their methodology, their reliability, or their results. The CPA accordingly accepts the survey results as submitted by Union. However, the CPA feels

[22] See for example, the United Nations International Panel on Climate Change, Climate Change 2007: The Physical Science Basis - Technical Summary. Contribution of Working Group I to the Fourth Assessment Report of the International Panel on Climate Change. Cambridge University Press.

compelled to draw the Board's attention to the fact, as revealed by Board Staff's IR question 6, that Union has taken those survey results then submitted fabricated attachment forecasts that are not at all reflective of the actual results of Union's own surveys. The CPA simply urges the Board to rely on the actual data submitted by Union, and not Union's fabricated interpretation of that data which violates all principles of logic, science and language by reading the words "likely", "very likely" and "extremely likely" as all meaning "100% certain".

VII. THE APPLICATION MUST BE REVISED AND RESUBMITTED BEFORE THE BOARD CAN APPROVE IT

66. Each of the revisions described above is necessary in order to render the Application compliant with the 2016 Generic Decision. While it would be most efficient for the Board to include these changes in a qualified or conditional Order granting the requested approvals subject to such changes, doing so would violate the principles of procedural fairness.

67. Procedural fairness requires that parties "possess sufficient information to enable them … effectively to prepare their own case and to answer the case (if any) they have to meet".[23] It is a violation of procedural fairness for a tribunal to make a decision on a basis not anticipated and which the parties did not have an opportunity to address.[24]

68. Approving the Applications while ordering revisions to them, without giving parties (other than CPA, which does not need to respond to its own recommendations, and other than Union, which will have an opportunity to respond to CPA's recommendations) the chance to comment on such revised Applications, would be unjust to those parties. The other intervenors in this proceeding will have had the opportunity to make submissions on the Application as filed by Union, but not on a revised Application as recommended by CPA and prescribed by the Board, which they could not have contemplated and which they will not have had the opportunity to consider or comment on.

69. Furthermore, the requested revisions will materially alter the economics of the Application, and in particular the detailed financial information set in Schedule 6 for each of the projects – including the SES volumetric amount and the Rate Stability Period. Union should have the opportunity to revise Schedule 6 as it considers appropriate, and all of the intervenors, including CPA and Board Staff, should have the opportunity to consider, test and comment on the updated financial proposals.

70. As a result, while the CPA urges the Board to require the revisions enumerated in Section V above (because absent such revisions, the Application does not satisfy the requirements set out in the 2016 Generic Decision), we submit that the proper way to do that in accordance with procedural fairness is to deny the Application as filed, highlight the changes that the Board would like to see, and invite Union to revise and resubmit it expeditiously.

---

[23] *Patel v. Canada*, 2015 FC 900, para. 16

[24] *Re:Sound v Fitness Industry Counsel of Canada*, 2014 FCA 48, para. 77

VIII. CONCLUSION

71. Elements of the Application as submitted are either incomplete, fail to prove the need for the proposed projects, and/or are not compliant with the Board's requirements as set out in the 2016 Generic Decision. Other elements of the Application as submitted include fabricated economics based on severe and deliberate misrepresentations of hard data.

72. CPA respectfully requests that the Board deny the Applications as presently filed, highlight for Union where the Applications are deficient or require changes or further consideration by Union, and invite Union to reapply. Presumably any such revised application, if properly improved, could be considered by intervenors and the Board on an expedited timetable.

IX. COSTS

73. The CPA hereby requests that the Board order payment of our reasonably incurred costs in connection with its participation in this proceeding. It is submitted that the CPA has participated responsibly in all aspects of the process in a manner designed to assist the Board as efficiently as possible.

All of which is respectfully submitted.

McMillan LLP
Per: Mike Richmond
Counsel for the Canadian Propane Association