

ONTARIO ENERGY BOARD

IN THE MATTER OF an application by Enbridge Gas Distribution Inc. for: an order or orders granting leave to construct a natural gas pipeline and ancillary facilities in the Town of Milton, City of Markham, Town of Richmond Hill, City of Brampton, City of Toronto, City of Vaughan and the Region of Halton, the Region of Peel and the Region of York; and an order or orders approving the methodology to establish a rate for transportation services for TransCanada Pipelines Limited;

AND IN THE MATTER OF an application by Union Gas Limited for: an Order or Orders for pre-approval of recovery of the cost consequences of all facilities associated with the development of the proposed Parkway West site; an Order or Orders granting leave to construct natural gas pipelines and ancillary facilities in the Town of Milton; an Order or Orders for pre-approval of recovery of the cost consequences of all facilities associated with the development of the proposed Brantford-Kirkwall/Parkway D Compressor Station project; an Order or Orders for pre-approval of the cost consequences of two long term short haul transportation contracts; and an Order or Orders granting leave to construct natural gas pipelines and ancillary facilities in the City of Cambridge and City of Hamilton.

**UNION GAS LIMITED (Union)/GAZ METRO LIMITED PARTNERSHIP (Gaz Metro)
MOTION re APPLICABILITY OF STAR**

**Submissions of
INDUSTRIAL GAS USERS ASSOCIATION (IGUA)**

1. In Procedural Order No. 5 the Board has indicated its intention to consider the portion of the Union/Gaz Metro motion (brought by way of Notice dated June 12, 2013) seeking a declaration regarding the applicability of the Board's *Storage and Transmission Access Rule* (STAR) to Segment A of Enbridge Gas Distribution Inc.'s (EGD) proposed pipeline facilities.

2. The general interests of IGUA's constituents – large industrial gas consumers – in these proceedings is the achievement of transparent and properly competitive gas supply, storage and transportation markets, and of economic gas distribution services. To this end, IGUA generally supports the development of a competitive eastern Canadian gas supply, storage and transportation market, and the expansion and reinforcement of gas distribution infrastructure to reliably and economically serve Ontario (and other Eastern Canadian) gas consumers.
3. IGUA submits that STAR applies to Segment A.
4. IGUA understands EGD's current proposal to be that it would build and own Segment A, and that Segment A would be used for 2 functions;
 - a. EGD would use Segment A to receive gas from TCPL and deliver that gas into EGD's high pressure distribution system, for distribution through its system to end users. In so doing, EGD would diversify gas supply options for its customers and would enhance its ability to safely, reliably and economically manage its gas distribution system.
 - b. TCPL would use any capacity on Segment A not used by EGD for TCPL's own purposes. TCPL is in the business of providing gas transportation services, as the term is used in STAR. TCPL would thus use its capacity on Segment A to provide gas transportation services.
5. EGD has admitted that Segment A would be used to provide gas transportation services, as that term is used in STAR. Segment A would thus provide new transportation capacity, and as such the owner of Segment A – EGD – is obligated under STAR to offer such new capacity by way of an open season.¹
6. In contrast, the exclusive access to such new transportation capacity that EGD has purported to grant to TCPL is inimical to the spirit and intent of STAR, and to the transparent, competitive and economically rational development of natural gas infrastructure in Ontario, with implications to gas consumers in Ontario and beyond.

¹ STAR section 2.1.2

7. While EGD has acknowledged that Segment A would be used to provide gas transportation services, EGD has also asserted that the arrangements between EGD and TCPL regarding segment A can be characterized as akin to "joint ownership". IGUA submits that private contractual arrangements, and the characterization of such arrangements by the parties thereto, should not be permitted to thwart or bypass the OEB's jurisdiction pursuant to section 44 of the *Ontario Energy Board Act, 1998* as exercised through STAR.
8. EGD appears to be further asserting that TCPL will be obligated by open access protocols dictated by the National Energy Board (NEB), and thus the spirit and intent of STAR will ultimately be satisfied, even if STAR is not applied.
9. As of the time of this submission, the NEB's mandated open access protocols have not been subject to proper testing and review on the record before this Board. Any assertion that such protocols would apply to TCPL in a manner that would ultimately satisfy the spirit and intent of STAR is not currently properly made out on the record herein.
10. In any event, EGD has not sought exemption from STAR in respect of Segment A, and unless and until EGD does so STAR applies to Segment A.
11. IGUA submits that the spirit and intent of STAR, and thus its application, is particularly important in circumstances such as those before the Board in the instant applications. Union and Gaz Metro have evidenced the need for capacity to transport gas from Parkway to Maple in order to ensure sufficient transportation capacity and optimal diversity of supply to serve their gas customers. Segment A provides the first leg of a geographically and economically appropriate path for such gas transportation capacity.
12. At the heart of the matters before the Board in these applications is the development of competitive natural gas supply and storage markets to the benefit of gas consumers in Ontario (and beyond). Absent a compelling case for exemption (which compelling case has not to date been advanced by EGD), it is

particularly important in this context that STAR be applied in accord with its purpose, spirit and intent. For the market to function, the open access provisions of STAR must be engaged. Only then will the optimal sizing of Segment A, and the proper assessment by Union, Gaz Metro, and others (through market forces) of alternatives or additions to the proposed Segment A transportation capacity be determinable.

13. The purpose of the open season requirements of STAR is to provide a transparent mechanism for determination of market demand and optimal competitive response to such demand. Whether Segment A should be bigger, or whether it is in the public interest that Union and/or Gaz Metro build parallel transmission infrastructure, is best considered once the processes required by STAR have been properly conducted.
14. IGUA notes TCPL's recently filed evidence herein, and in particular the evidence that TCPL has recently launched an open season in respect of, *inter alia*, capacity on Segment A. IGUA also notes that TCPL's open season pricing reflects TCPL's corporate interest in preserving revenues in light of continued shifts of TCPL shippers (including Union, EGD and Gaz Metro) from long-haul to short-haul transportation services. Such pricing serves the interests of TCPL, and not those of Ontario and other Eastern Canadian gas consumers.
15. While the OEB does not have jurisdiction over TCPL and its open season, it does have jurisdiction over EGD, and gas transportation capacity proposed to be built by EGD. IGUA submits that the Board should exercise that jurisdiction, and agrees with Union and Gaz Metro that the Board should find that STAR applies to Segment A, and that EGD is thus required to conduct an open season in respect of Segment A.
16. Evidence of the result of that open season, and EGD's intentions for Segment A in light thereof, will be relevant to consideration of EGD's request for leave to construct Segment A. Such evidence will be particularly relevant to determination

of whether EGD's current proposal for the size of Segment A (i.e. 36" vs. 42") is appropriate.

17. At first instance, TCPL's apparent interest in constraining the size of Segment A to 36", and Union/Gaz Metro's apparent interests in expanding the size of Segment A to 42", indicates a competitive dynamic that this Board should carefully consider prior to granting the approvals sought by EGD herein. Such consideration would be well informed by the results of the open season mandated by STAR.
18. Pending completion of the requisite open season, the presentation by EGD of evidence of the results of such open season, and testing and consideration of that evidence in these proceedings, the record in respect of EGD's proposals is incomplete, and final determination in respect of EGD's application for leave to construct cannot be made by the Board.
19. IGUA will further consider, and may have further comment to offer in oral submissions, the impact of this conclusion on the balance of the current procedural schedule in these matters.
20. Should EGD properly advance a compelling case for exemption of Segment A from STAR, IGUA will consider the evidence in support of such a case and re-examine its positions as outlined above in light of that evidence.

ALL OF WHICH IS RESPECTFULLY SUBMITTED:
Gowling Lafleur Henderson LLP, per:



Ian A. Mondrow
Counsel to IGUA

July 9, 2013

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