

June 21, 2013

Kirsten Walli
Board Secretary
Ontario Energy Board
P.O. Box 2319
2300 Yonge Street, 27th Floor
Toronto, ON M4P 1E4

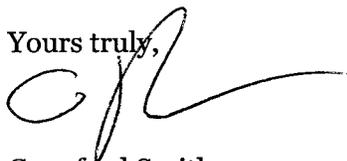
Dear Ms. Walli:

**Re: Union Gas Limited re Parkway West Project
(EB-2012-0451, EB-2012-0333, EB-2013-0074)
Urgent Motion by Union Gas Limited and Gaz Métro**

We are counsel to Union Gas Limited in the above-noted matter.

Attached please find a notice of motion brought by Union and Gaz Métro in the above-noted matter. As reflected in the motion, the moving parties ask that the Board establish a procedure by which the motion can be heard and disposed of on an urgent basis. The moving parties will file their motion record at the beginning of next week.

Yours truly,



Crawford Smith

Enclosure

cc: Myriam Seers
Mark Kitchen/Karen Hockin
Éric Dunberry
Marie-Christine Hovin
All Intervenors (EB-2012-0451, EB-2012-0333, EB-2013-0074)

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.

NOTICE OF MOTION

Union Gas Limited (“Union”) and Gaz Métro will make a motion to the Ontario Energy Board (the “Board”) on a date to be fixed by the Board at 9:30 a.m. or as soon after that time as the motion can be heard at the offices of the Board, 2300 Yonge Street, Toronto, Ontario.

PROPOSED METHOD OF HEARING: The motion is to be heard orally.

THE MOTION IS FOR

1. A declaration that the Board's Storage and Transportation Access Rule ("STAR") applies to Segment A of Enbridge Gas Distribution Inc.'s ("Enbridge") GTA Project, as defined in Enbridge's application for leave to construct in EB-2012-0451.
2. An order declaring the Memorandum of Understanding between Enbridge and TransCanada dated January 28, 2013, as amended, fails to comply with STAR and is unenforceable and of no effect.
3. An order requiring that Enbridge hold an open season in respect of the new capacity on Segment A of the GTA Project, in accordance with STAR, as soon as commercially possible, and in any event no later than June 30, 2013.
4. An order staying the GTA Project until such time as Enbridge has initiated an open season pursuant to STAR in respect of the new capacity on Segment A of the GTA Project.
5. An order that this motion be heard and disposed of on an expedited basis.
6. Such further relief as the Board may deem just.

THE GROUNDS FOR THE MOTION ARE

Overview

1. In order to ensure diversity and security of supply in their gas supply portfolios and to deliver gas costs savings estimated at between \$103 and \$138 million annually to their customers, Union and Gaz Métro require access to expanded pipeline capacity between Union's Parkway Station and TransCanada's Maple Compressor Station. Although Union and Gaz Métro secured access to that path from TransCanada in an open season in 2012, Enbridge and TransCanada are currently constraining their access to the path in three ways.
2. First, Enbridge and TransCanada have agreed to restrict for themselves access to the pipeline Enbridge is building between the proposed Bram West Interconnect and Enbridge's Albion Road Station ("Segment A"). Second, Enbridge and TransCanada have agreed to reduce the diameter of the Segment A pipeline from NPS 42 to NPS 36 although a diameter of NPS 36

is insufficient to accommodate Union and Gaz Métro's incremental short-haul volumes. Third, TransCanada has cancelled construction of an expansion pipeline linking the Albion Road Station to the Maple Compressor Station, and has announced that any construction will be for existing volumes only, and not for the incremental short-haul volumes.

3. Union and Gaz Métro entered into TransCanada's open season in 2012 in reliance on TransCanada's representations that the expansion pipeline between Parkway and Maple would be in service by November 1, 2014. TransCanada later delayed the in-service date to November 1, 2015. TransCanada has now suspended construction of the expansion indefinitely and it is highly unlikely that it will ever proceed. Each day of delay costs customers between approximately \$275,000 and \$375,000 in gas cost savings.

4. In April 2013, TransCanada further announced that, as a result of its planned crude oil pipeline conversion, natural gas pipeline capacity to eastern markets would be short of current firm transportation demands. TransCanada will remove sections of its Mainline from natural gas service starting with the Northern Ontario Line in 2015 and followed by the Eastern Triangle in 2016 (between North Bay and eastern Ontario).

5. Union, either alone or in a joint venture with Gaz Métro, is committed to building the Albion-Maple pipeline that TransCanada no longer intends to build. However, in order to ensure increased diversity and security of supply and to achieve gas cost savings for their customers, Union and Gaz Métro need access to Segment A, which Enbridge has denied to them in breach of STAR and its undertakings to the Board.

6. For all of the above reasons, expansion of the pathway from Parkway to Maple and open access to Segment A is necessary and in the public interest.

Diversity, Security of Supply and Gas Cost Savings are Dependent on Access to Parkway-Maple Path

7. Union and Gaz Métro require expansion of the pipeline capacity between Parkway and Maple to carry incremental short-haul volumes of 110,000 GJ/day and 258,000 GJ/day, respectively, which are already contracted to be transported between the Dawn Hub and Parkway.

8. This expansion will allow Union and Gaz Métro's customers in Northern and Eastern Ontario and in Quebec to realize approximately \$103 to \$138 million annually in gas cost savings resulting from increased access to the liquid Dawn Hub. The gas cost savings will be achieved by shifting the source of gas delivered to those customers from long-haul supply sourced from the Western Canadian Supply Basin ("WCSB") and transported on TransCanada's Mainline to short-haul supply sourced from the Dawn Hub, which is located closer to Eastern markets.

9. Shifting from long-haul supply sourced from the WCSB to short-haul supply sourced from the Dawn Hub provides further gas supply benefits in the form of diversity and security of supply. The amount of gas supply available from the WCSB to move east from Empress is currently in decline and is expected to continue to decline into the future. This reduction in supply is a risk for Union and Gaz Métro's customers in Northern and Eastern Ontario and in Quebec, respectively. Union and Gaz Métro are responding to this supply risk by proactively contracting transportation to access new supply options in their supply portfolios with natural gas sourced from other production basins.

10. Quebec's Régie de l'énergie has already approved Gaz Métro's shift from WCSB-sourced gas to Dawn Hub-sourced gas. The Régie based its decision, in part, on the fact that security of supply is a real and immediate concern facing Gaz Métro.

11. In order to support an efficient marketplace for energy, it is critical that natural gas be able to flow unimpeded to meet market demands. Restricting flow into, within and out of Ontario undermines the development of an efficient marketplace to the detriment of all energy consumers. The expansion of the Parkway to Maple corridor is necessary to provide Ontario and Quebec industry, power generators, businesses and residents with increased access to the diverse and affordable natural gas supply of the Dawn Hub. The depth and liquidity of the Dawn Hub depends on the ability to move natural gas supplies to and from that trading point.

Parkway-Maple Expansion Intended to Accommodate Incremental Volumes

12. In 2012 Union studied the possibility of building a pipeline that would link Parkway and Maple. It held an open season in April/May 2012 in respect of new capacity on that pipeline.

13. Soon after Union initiated the open season, TransCanada proposed to build for incremental short-haul volumes from Parkway to Maple, and held a parallel open season in May 2012. Union and Gaz Métro agreed with TransCanada's proposal to build the pipeline expansion, and bid into TransCanada's open season for their incremental short-haul volumes of 110,000 GJ/day and 258,000 GJ/day, respectively. They did so in reliance on TransCanada's agreement to have the line in service by November 1, 2014.

14. The first component of the TransCanada Parkway to Maple expansion was to be Segment A, a planned pipeline from the Bram West Interconnect (in the vicinity of Union's planned Parkway West Station) to the Albion Road Station. Segment A will be owned and operated by Enbridge.

15. The proposed expansion along the Parkway to Maple corridor, as agreed during the May 2012 TransCanada open season, would have accommodated Union and Gaz Métro's incremental short-haul volumes and allowed them to ensure diversity and security of supply and deliver substantial gas cost savings to their customers.

Incremental Volumes Denied Access to Parkway-Maple Expansion

16. Union and Gaz Métro's ability to deliver gas cost savings to their customers has now been thwarted as a result of the actions of Enbridge and TransCanada. First, unknown to Union and Gaz Métro, Enbridge and TransCanada have agreed to restrict to themselves access to Segment A, which will link Bram West to Albion. Second, Enbridge and TransCanada have agreed to restrict the size of the Segment A pipeline such that it will not accommodate Union and Gaz Métro's incremental short-haul volumes. Third, TransCanada has suspended indefinitely any build for Union and Gaz Métro's incremental short-haul volumes on the second portion of the path, linking Albion to Maple.

Enbridge and TransCanada Have Restricted Access to Segment A

17. On January 28, 2013, Enbridge and TransCanada entered into a Memorandum of Understanding in respect of Segment A. The MOU was amended on April 26, 2013 and again on May 21, 2013.

18. Pursuant to the MOU, all capacity on Segment A beyond the capacity needed to serve Enbridge's distribution franchise shall be for the sole and exclusive use of TransCanada. Schedule D to the MOU sets out the terms of the Transportation by Others ("TBO") agreement between the parties. It provides that:

Enbridge's allocated capacity on the Enbridge Pipeline would be equal to 800,000GJ/d, and TransCanada shall be entitled to the balance of the capacity on the Enbridge Pipeline, including any increase in such capacity.

19. Pursuant to section 2.7 of the MOU, TransCanada retains exclusive right over Segment A's excess capacity for a period of ten years following any termination of the MOU.

20. In exchange for granting TransCanada exclusivity over transportation capacity on Segment A, Enbridge secured, among other things, TransCanada's agreement to cooperate with and not to oppose or seek to delay Enbridge and Union's efforts to obtain leave from the Board to construct the GTA Project and the Parkway West project.

21. Although it knows that Union and Gaz Métro need access to Segment A to deliver substantial gas cost savings to their customers and require diversity and security of supply, Enbridge has confirmed that it does not intend to hold an open season in respect of excess capacity on Segment A. In fact, it is prohibited from doing so under the terms of its MOU with TransCanada.

22. Enbridge made public the MOU for the first time on June 7, 2013, in response to an interrogatory from Canadian Manufacturers & Exporters in this proceeding. Until they reviewed the MOU, Union and Gaz Métro were not aware that they would be denied access to Segment A. Since Segment A is a transmission pipeline, they expected and relied on the fact that open access would be provided to them by way of a binding open season, as required by STAR.

Enbridge and TransCanada Have Agreed to Limit the Size of the Segment A Pipeline

23. In addition to entering into an MOU restricting access to Segment A to themselves, Enbridge and TransCanada agreed to limit the size of the Segment A pipeline. In February 2012, Enbridge amended its application for leave to construct to increase the size of the Segment A to

NPS 42 from NPS 36. As set out in Recital E to the Amendment to their MOU, dated April 26, 2013, Enbridge and TransCanada then agreed to reduce the size of Segment A to NPS 36.

24. Enbridge has admitted that there is nothing preventing it from constructing an NPS 42 pipeline on Segment A. Despite this, TransCanada and Enbridge agreed to reduce the size to NPS 36 without consulting Union or Gaz Métro, the other potential users of the Parkway to Maple corridor, as to the appropriate size of the pipeline to meet future incremental demands.

25. While an NPS 36 pipeline will provide sufficient capacity to meet existing demands on TransCanada's system, it is insufficient to accommodate Union and Gas Métro incremental short-haul demands of 110,000 GJ/day and 258,000 GJ/day, respectively and ignores the potential use of that path by other shippers which STAR's requirement for an open season would otherwise reveal.

TransCanada Has Suspended Indefinitely any Build for Incremental Capacities on the Albion-Maple Pipeline

26. In addition to the above, TransCanada has now suspended indefinitely any build for Union and Gaz Métro's incremental short-haul volumes on the Albion to Maple path, contrary to the commitments it made during the 2012 open season.

27. In April 2013, TransCanada announced its unilateral decision to suspend construction of the Albion-Maple expansion. It had earlier decided to delay the project's in-service date by more than a year, to November 1, 2015. It is now highly unlikely that a build by TransCanada will ever take place.

28. To the extent that TransCanada does build from Albion to Maple, it is planning to do so only in respect of existing volumes. It does not intend to build to accommodate the incremental short-haul volumes required by Union and Gaz Métro.

29. In addition, as described above, TransCanada's planned crude oil pipeline conversion will negatively impact natural gas pipeline capacity to eastern markets beginning as early as 2015. This new capacity constraint will be on top of the existing constraint between Parkway and Maple.

Union Is Committed to Building from Albion to Maple

30. In order to deliver gas costs savings and to provide diversity and security of supply, Union is committed to building the Albion-Maple pipeline, as it had proposed to do before TransCanada launched a parallel open season in May 2012. Union proposes to build the Albion-Maple pipeline either on its own or in a joint venture with Gaz Métro.

31. Shortly after receiving notice that TransCanada no longer intended to build the Albion-Maple expansion, Union and Gaz Métro jointly initiated an environmental assessment for the project, which is expected to be completed within six months. If required, this environmental assessment will support an application to the Board for leave to construct the line.

32. If approvals are granted according to the expected schedule, the Albion-Maple pipeline is expected to be in service by November 1, 2015, and in any event by no later than November 1, 2016.

Segment A Is Not STAR Compliant

33. As Enbridge has admitted, Segment A is a transmission pipeline that will provide gas transportation services other than gas distribution services. Segment A is therefore subject to the requirements of STAR, including that new capacity be offered through an open season.

34. At section 2.1.2 STAR provides that:

Firm transportation service that becomes available as a result of a facility expansion (i.e., new capacity) shall be offered through an open season. Existing capacity that is available or will become available for long-term firm transportation service shall be offered through an open season.

35. In its 2010 application for STAR compliance, Enbridge undertook to conduct open seasons in accordance with the Board's prescribed rules. In violation of its undertaking to the Board, Enbridge is breaching STAR by refusing to hold an open season in respect of the new capacity on Segment A and by contractually obliging itself to TransCanada not to offer open access to Segment A. Enbridge and TransCanada are engaging in the very behaviour STAR was designed to prevent.

36. The MOU is not STAR compliant. It is therefore unenforceable and of no effect.

Union and Gaz Métro Require Access to Segment A

37. In order to complete the link between Parkway and Maple, provide increased diversity and security of supply and deliver gas costs savings to Ontario and Quebec customers, Union and Gaz Métro require access to Segment A. There is no legitimate impediment to Enbridge providing access to Segment A to Union and Gaz Métro.

38. If Union were to build a pipeline from Parkway to Maple, the portion from Bram West to Albion would run parallel to Segment A, on the same right of way along the 407 highway corridor. In Union's respectful view, it would make little sense, and would be an inefficient use of infrastructure, for the Province of Ontario to have two large-diameter, high-pressure pipelines built within the same corridor in close proximity to one another.

39. Indeed, the most efficient use of infrastructure would be to have one pipeline linking Bram West to Albion that meets the needs of all customers. That objective would best be achieved by permitting Union, Gaz Métro and any other shipper open access to Segment A, in accordance with STAR.

Urgency of the Motion

40. In order to preserve the possibility of an in-service date of November 1, 2015, Union and Gaz Métro respectfully request that the Board establish a process for this motion to be heard and disposed of on an urgent basis.

Rule References

41. Rules 1.1.1, 1.2.1, 1.5.1 and 2.1.2 of the Board's *Storage and Transportation Access Rules*.

42. Rules 2.02 and 8 of the Board's *Rules of Practice and Procedure*.

43. Such further and other grounds as the lawyers may advise.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the motion:

1. The pre-filed evidence in EB-2012-0451 and EB-2013-0074.
2. The answers to interrogatories in EB-2012-0451 and EB-2013-0074.
3. The transcripts from the Technical Conference held June 12 and 13, 2013 in EB-2012-0451/EB-2012-0333/EB-2013-0074.
4. The answers to undertakings given at the Technical Conference.
5. Such further evidence as the lawyers may advise and the Board may permit.

June 21, 2013

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