



ONTARIO ENERGY BOARD

FILE NO.: EB 2012-0451
EB-2012-0433
EB-2013-0074

VOLUME: Motion Hearing

DATE: July 11, 2013

BEFORE: Cynthia Chaplin Presiding Member

Marika Hare Member

Peter Noonan Member

EB-2013-0074
EB-2012-0433
EB-2012-0451

THE ONTARIO ENERGY BOARD

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, S.O. 1998, c.15, Schedule B, and in particular, S.90.(1) thereof;

AND IN THE MATTER OF the Ontario Energy Board Act, 1998, S.O. 1998, c.15, Schedule B, and in particular, S.91 thereof;

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;

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 in the Town of Milton.

Hearing held at 2300 Yonge Street,
25th Floor, Toronto, Ontario,
on Thursday, July 11th, 2013,
commencing at 9:36 a.m.

MOTION HEARING

BEFORE:

CYNTHIA CHAPLIN	Presiding Member and Vice Chair
MARIKA HARE	Member
PETER NOONAN	Member

A P P E A R A N C E S

MICHAEL MILLAR	Board Counsel
JOSH WASYLYK	Board Staff
ZORA CRNOJACKI	
KHALIL VIRANEY	
FRED CASS	Enbridge Gas Distribution Inc.
SCOTT STOLL	
CRAWFORD SMITH	Union Gas
MIRIAM SEARS	
MARK KITCHEN	
ERIC DUNBERRY	Gaz Métro
DAVE RHEAUME	
AUDREY BAZINET	
TOM BRETT	Building Owners and Managers Association (BOMA)
JULIE GIRVAN	Consumers Council of Canada (CCC)
IAN MONDROW	Industrial Gas Users' Association (IGUA)
ROGER HIGGIN	Energy Probe Research Foundation
MARK RUBENSTEIN	School Energy Coalition (SEC)
MURRAY ROSS	TransCanada Pipelines Ltd. (TCPL)
GORDON CAMERON	

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NO UNDERTAKINGS WERE FILED IN THIS PROCEEDING.

1 Thursday, July 11, 2013

2 --- On commencing at 9:36 a.m.

3 MS. CHAPLIN: Please be seated.

4 Good morning, everyone. The Board is sitting today in
5 the matter of three applications, one application by
6 Enbridge Gas Distribution, EB-2012-0451, and two
7 applications by Union Gas Limited, EB-2012-0433 and EB-
8 2013-0074.

9 We were sitting today to hear submissions related to a
10 motion brought by Union Gas and Gaz Métro Limited
11 Partnership. However, we received correspondence late
12 yesterday, first from Enbridge and then from Union and Gaz
13 Métro, indicating that they were withdrawing the motion.
14 So we will, I guess, be hearing on a number of matters
15 consequential to that. But before we start, I will take
16 appearances, please.

17 **APPEARANCES:**

18 MR. CASS: Good morning, Madam Chair. From the
19 witness panel seats, Fred Cass and Scott Stoll for Enbridge
20 Gas Distribution.

21 MS. CHAPLIN: Thank you, Mr. Cass.

22 MR. SMITH: Crawford Smith and my colleague, Miriam
23 Sears, on behalf of Union, and with me from Union Gas is
24 Mark Kitchen.

25 MS. CHAPLIN: Thank you.

26 Can you turn on your microphone, please?

27 MR. DUNBERRY: Good morning. My name is Eric
28 Dunberry, from the law firm of Norton Rose Fulbright,

1 acting on behalf of Gaz Métro. I'm accompanied this
2 morning by my client, Mr. Dave Rheaume, to my left.

3 MS. CHAPLIN: Thank you.

4 MR. BRETT: Good morning, Madam Chair, Panel. My name
5 is Tom Brett. I am acting on behalf of BOMA here.

6 MS. CHAPLIN: Thank you.

7 MR. MONDROW: Good morning, Madam Chair, Panel
8 members. Ian Mondrow for the Industrial Gas Users
9 Association, or IGUA.

10 MS. CHAPLIN: Thank you.

11 MR. CAMERON: Good morning. Gordon Cameron for
12 TransCanada Pipelines, and with me from TransCanada is Mr.
13 Murray Ross.

14 MS. CHAPLIN: Thank you, Mr. Cameron.

15 MS. GIRVAN: Julie Girvan on behalf of the Consumers
16 Council of Canada.

17 MS. CHAPLIN: Thank you.

18 MR. DUNBERRY: I apologize. I forgot to introduce
19 another of our client representatives, Mrs. Audrey Bazinet,
20 who is sitting just in the back. I apologize for that.

21 MS. CHAPLIN: That is quite all right.

22 DR. HIGGIN: Good morning, Madam Chair, Panel. It is
23 Roger Higgin for Energy Probe.

24 MS. CHAPLIN: Thank you, Dr. Higgin.

25 MR. RUBENSTEIN: Good morning. Mark Rubenstein for
26 the School Energy Coalition.

27 MS. CHAPLIN: Thank you.

28 MR. MILLAR: Good morning, Madam Chair, members of the

1 Panel. Michael Millar, counsel for Board Staff. I'm
2 joined by Josh Wasylyk and, behind me, Ms. Zora Crnojacki
3 and Mr. Khalil Viraney.

4 MS. CHAPLIN: Thank you, Mr. Millar.

5 Mr. Smith, are we going to hear from you first?

6 **SUBMISSIONS BY MR. SMITH:**

7 MR. SMITH: I believe so, Madam Chair. Thank you very
8 much.

9 As the Board will be aware, there was yesterday two
10 pieces of correspondence we had. Union and Gaz Métro filed
11 a motion seeking certain relief in relation to the GTA
12 project, obviously brought with some reluctance, but
13 brought ultimately.

14 There was correspondence yesterday from Enbridge,
15 which we had had the benefit of reviewing, and have elected
16 to withdraw our motion. We understand that Enbridge has
17 agreed that STAR applies. They will be conducting an open
18 season by July 25th. That open season will comply with
19 STAR.

20 And we also understand, from correspondence attached
21 to the Enbridge letter, that the memorandum of
22 understanding between Enbridge and TCPL, at least from
23 Enbridge's perspective, has been terminated.

24 As a result of that, we are left in the position where
25 we frankly have the relief we had been seeking. We're not
26 proceeding with the motion. We respectfully withdraw it
27 and are left, I think, in the position of having to decide
28 how to move forward.

1 Union's position, the Board has a hearing date of
2 August 12th. We would very much like to stick to that
3 schedule.

4 We anticipate hearing from some parties that there may
5 be either additional evidence or requests made in respect
6 of that evidence. I would like to make two observations in
7 relation to that.

8 The first is an adjournment or a delay at this time,
9 based upon what might be filed, I think would be premature.
10 If there is evidence that is needed from Enbridge or
11 others, or interrogatory requests made in respect of that,
12 the merits of those requests having regard to the evidence
13 can be addressed at that time.

14 If the Board is not inclined to take that view, my
15 submission should be that very tight time frames should be
16 kept. As the Board will be aware from earlier submissions
17 that were made, I believe, at the time of Issues Day, there
18 is a strong case on the public record for these projects to
19 proceed expeditiously and we very much want to move forward
20 with the projects, having regard to that public interest.

21 There have been many discussions, you will have seen
22 from the record, at the very highest levels with all of the
23 utilities, and there is alignment, I believe, between all
24 of the eastern LDCs. There is reasonable disagreement, it
25 would appear, with TransCanada, but we need to move forward
26 and very much want to move forward.

27 The final observation I would make with respect to the
28 schedule is in relation to Union's Parkway West facility.

1 There were a number of interrogatories asked with respect
2 to the interrelationship of the various projects.

3 There is definitely an interrelationship between the
4 GTA project and the Brantford-Kirkwall project, but as
5 reflected in Board Staff Interrogatory 8 or Union's answer
6 to Board Staff Interrogatory No. 8, Parkway West stands
7 alone, and the need for Parkway West -- and, in particular,
8 LCU coverage -- are independent of the incremental demands
9 reflected in the other projects.

10 And regardless of what happens today with Segment A,
11 the GTA project or evidence, I very much encourage the
12 Board to proceed with Parkway West and to have the schedule
13 in relation to that project, at a minimum, kept as is.

14 Thank you. And perhaps I would ask Mr. Dunberry to
15 add anything to those submissions.

16 **SUBMISSIONS BY MR. DUNBERRY:**

17 MR. DUNBERRY: Thank you. Very brief comments, Madam
18 Chair.

19 I would simply endorse and agree with everything my
20 colleague has just mentioned. We are perfectly aligned
21 with those representations. As well, we are perfectly
22 aligned with the notion that this matter has to proceed
23 expeditiously.

24 There are issues of security and diversity of supplies
25 and important gas cost savings associated with this project
26 and these projects presented by Union and Enbridge. And as
27 the record already shows, Gaz Métro is directly impacted by
28 these projects for a number of reasons I won't repeat this

1 morning.

2 But, in short, we also submit respectfully that the
3 matter should proceed as expeditiously as possible and the
4 current schedule should be respected, to the extent
5 possible. And we would certainly deploy on our part all
6 possible efforts to make sure that it does satisfy the
7 needs of everyone in reacting quickly to every Board demand
8 on this.

9 So, yes, we agree with those representations and we
10 invite the Board to proceed with the schedule as it
11 currently stands.

12 Thank you.

13 MS. CHAPLIN: Thank you.

14 Mr. Smith, so from Union's perspective, does it
15 require any amendments, additional evidence --

16 MR. SMITH: No.

17 MS. CHAPLIN: -- refinements to its applications?

18 MR. SMITH: No. Two observations in response to that.
19 The first is there is no further evidence required from
20 Union.

21 Union's concern was to have access to Segment A and it
22 will have access to Segment A.

23 The other comment I would make is that the indication,
24 as reflected in the record, of incremental demand is
25 consistent with what Union had indicated earlier, which is
26 that a 42-inch pipe is required. We understand Enbridge
27 has agreed to that, and reflected in footnote 1 of
28 Enbridge's letter is a summary of at least known

1 anticipated demands, which are significant both in 2015 and
2 growing through 2016.

3 So that is one reason why we think the 42-inch line
4 makes sense and why we should be pushing forward now. And
5 we understand Enbridge can make out the case for a 42-inch
6 pipe under the Board's EB-0188 test, and they will be doing
7 that.

8 MS. CHAPLIN: Okay. And I recall from some of Union's
9 correspondence or the correspondence from Union and Gaz Met
10 an intention for either Union or Union and Gaz Met to build
11 from Albion to Maple; is that -- does that --

12 MR. SMITH: And that's --

13 MS. CHAPLIN: Regardless, that doesn't matter for
14 purposes of these applications?

15 MR. SMITH: That's correct. I mean, that is
16 proceeding. Union and Gaz Met are currently in the process
17 of putting together a leave-to-construct application to
18 complete the Parkway-to-Maple expansion, which would be
19 from Albion to Maple.

20 And, you know, Union has said -- the record reflects
21 this. It has said for a long time that that needs to
22 happen. It had certainly been its preference that
23 TransCanada build that, and obviously that is why Union bid
24 into the new capacity open season back in May of 2012.

25 It doesn't look like that is going to happen,
26 certainly not on terms that are acceptable to Union and Gaz
27 Met, and that is why Union's proceeding along the path that
28 it is, and I anticipate we will be filing at some point.

1 Now, I don't want there to be any confusion, however,
2 that that application is related or a necessary
3 consideration for these applications. That is not agreed.

4 MS. CHAPLIN: Okay. Thank you.

5 Mr. Cass, I think maybe it is appropriate to hear from
6 Enbridge now as to what its intentions are, in light of
7 last night's letter.

8 **SUBMISSIONS BY MR. CASS:**

9 MR. CASS: Yes. Thank you, Madam Chair.

10 First I should begin by indicating that Enbridge is in
11 complete support with the proposition that you have heard
12 from both Union Gas and Gaz Metro that every effort should
13 be put forward to maintain the existing schedule.

14 I won't go on at length about this, because I know
15 that the Board is very much aware of it. However,
16 Enbridge's project, as the Board knows, is driven by very
17 important distribution needs and benefits that can be
18 realized for distribution customers. There is a time line
19 associated with achieving those benefits and meeting the
20 needs.

21 This is the time line that makes the schedule of the
22 case now in front of us very important. As a result,
23 Enbridge is very much in support of the notion that
24 everything possible be done to maintain the schedule as it
25 is.

26 Perhaps I might just add an additional point, which is
27 in relation to the proposal for a 42-inch pipeline that Mr.
28 Smith referred to. Just so that there is no doubt about

1 it, Enbridge will be making a case going forward for a 42-
2 inch pipeline. There is no need on Enbridge's part to know
3 the outcome of an open season to do that. Enbridge will be
4 making that case for a 42-inch pipeline going forward in
5 this case.

6 So for those reasons, Enbridge is fully in support of
7 what you have heard.

8 I just want to add one other comment. You did ask
9 about -- you asked Mr. Smith about whether there will be
10 any additions to the record, essentially, from Union. In
11 Enbridge's case, as the Board is aware, things have
12 developed very rapidly, and presumably even more rapidly
13 for other parties.

14 The letter that terminated the MOU with TransCanada
15 sent by Enbridge went out yesterday. Enbridge is assessing
16 the extent to which an update to its evidence is needed.

17 The Board would be aware that the application has
18 encompassed the possibility of a 36-inch or a 42-inch
19 pipeline.

20 Enbridge believes that much of the evidence is on the
21 record. However, there is a need to assess the extent to
22 which some update is needed and for Enbridge to file that
23 as quickly as possible.

24 What I would say in relation to that is that there
25 should be no conclusion from that that today we would
26 attempt to change the schedule. It would be my submission
27 that the implications of any further evidence from Enbridge
28 be addressed at that time.

1 In particular, my point to the Board, my submission to
2 the Board, would be that the schedule as it now sits has
3 dates reserved for upcoming activities. To the extent that
4 there is an update from Enbridge, which we hope will not be
5 extensive -- but, again, the assessment needs to be done --
6 if in the worst-case scenario there is some need to make
7 adjustments, my submission is keeping the dates that we
8 have now gives the maximum opportunity to make adjustments
9 with the dates that everyone already has in their
10 calendars.

11 If we were to try to start changing those dates today
12 without the appropriate information, in my submission, that
13 would very much jeopardize the important timing that I
14 started out by referring to in these submissions.

15 So in short, if as a result of an evidentiary filing
16 there is a need to address the implications of that, in
17 terms of the schedule, my submission, that should happen
18 then. We should keep the dates we have now, because they
19 could become very important in the event that they're -- in
20 the worst-case scenario there is some need to make an
21 adjustment. Those dates that people now have in their
22 calendars could potentially be used for activities
23 different from what is in the current schedule, but at
24 least everyone would have the dates.

25 Again, that is in the worst-case scenario, and that is
26 my submission to the Board as to how to go forward from
27 today. Any issue about timing or the schedule can and
28 should be addressed when further evidence, to the extent

1 that there is further evidence, is properly put in front of
2 the Board.

3 MS. CHAPLIN: When is Enbridge proposing to file that?
4 If they're going to file evidence, when are they going to
5 file it by?

6 MR. CASS: Yes, we have been discussing that
7 extensively, Madam Chair, as you can imagine, in the time
8 we have had available to us. I am not sure that we have
9 landed on a precise date. If you would allow me to get
10 back on that perhaps a little later in the morning, just to
11 be sure that I have a clear idea from Enbridge about what
12 that date would be?

13 MS. CHAPLIN: I think the Board would need some sort
14 of commitment. If we're going to hold dates for hearings
15 and there is a prospect of additional evidence being filed,
16 I think we need to -- all the parties need to understand
17 what exactly Enbridge has in mind.

18 MR. CASS: We do appreciate that, Madam Chair. We
19 have been discussing extensively what might be needed and
20 what the date might be, and, yes, we would get back to you
21 as quickly as we can this morning, if we just had an
22 opportunity for a little more discussion. Thank you.

23 MS. CHAPLIN: Okay. All right. We would like -- the
24 Panel would now like to hear submissions from the parties
25 as to views that they have on the turn of events and what
26 it might mean for scheduling.

27 Is there anyone who would like to go first? Dr.
28 Higgin?

1 **SUBMISSIONS BY DR. HIGGIN:**

2 DR. HIGGIN: Thank you. Good morning. It is Roger
3 Higgin for Energy Probe.

4 Having heard the submissions from counsel, we agree
5 directionally with what they're proposing, but we would
6 just set out a few concerns that we have with respect to
7 that.

8 If you read some of our submissions, you would be
9 aware that we're quite concerned about confirmation of the
10 upstream capacity prior to the pipeline. And some of that
11 was contingent on the MOU with TCPL. That would be
12 capacity from Niagara to Kirkwall or Parkway, and then from
13 Parkway to the commencement of the pipeline, either the one
14 as filed or the original application, which started at
15 Parkway. So we're concerned with that.

16 So what we would like to suggest is that, in its
17 evidence, we would like to see Enbridge confirm the
18 upstream pathway, as well as the parameters for Segment A
19 in its evidence, including the capacity, potential shippers
20 and, very importantly, as we said in our thing, the rate
21 design that would be required in a concept level for the
22 Segment A. As you know, there has not been a rate design
23 proposed for Segment A.

24 So those would be our main submissions, and then we
25 believe, because not all parties are here, you should
26 perhaps grant an opportunity for those parties to write in
27 any views that they may have supplementary to what has been
28 delivered to you today.

1 So finally, on receipt of the EGD evidence, we're open
2 to then look at and consider whether the schedule should be
3 amended once we see that evidence, and also, finally, to
4 note that if there is thought of proceeding with the EB-
5 2012-0433 application -- that is, the LCU at Parkway West -
6 - then there needs to be some clarification about the
7 location of the unit under the -- whether it would be at
8 the existing site or whether it would be moved to the new
9 site.

10 That is one thing that we need to consider, but
11 otherwise we would be able -- support proceeding, if we
12 can, with -0433. I think the LCU is required, and many
13 parties would support that.

14 So those are my submissions. Thank you very much.

15 MS. CHAPLIN: Thank you, Dr. Higgin.

16 Mr. Rubenstein?

17 **SUBMISSIONS BY MR. RUBENSTEIN:**

18 MR. RUBENSTEIN: Good morning, Panel. Just to start
19 off by saying this is a significant change to the
20 application, at least the GTA application, and I know my
21 friends from the LDCs want to move forward with this, and
22 we understand that. I think it needs to be recognized that
23 there has been a significant change that we're really only
24 learning about last night and into today.

25 I think that where my friend might say -- Mr. Cass has
26 said that he doesn't know or what -- to the extent of new
27 evidence. We do know that they're going to need to file
28 new evidence, since the Segment A itself, instead of moving

1 from Bram West to Albion, will now move from Parkway to
2 Albion.

3 There is no evidence on the record about the cost
4 allocation and the rate design of that Segment A. What is
5 on the record is based on the agreement that had been put
6 in place by the MOU between TCPL and Enbridge. So there is
7 a significant amount of questions that we had asked that
8 were based on that.

9 So while maybe today isn't the day to set new dates, I
10 think the assumption will be that the filing of new
11 evidence will cause there to be the need for another round
12 of discovery, either a technical conference,
13 interrogatories. I don't know.

14 And we're not opposed to that process being expedited
15 from the normal course to try to get back -- as much back
16 on schedule as possible, but I think a delay is inevitable,
17 and it is inevitable because of developments in this
18 application.

19 There are three applications that, as the Board had
20 recognized, are related by combining them into this
21 proceeding, and I would say that they should be heard
22 together, but on top of that it is almost a \$1 billion in
23 capital spending that has been proposed. And I think the
24 Board -- if it means a delay of a week or two or three
25 weeks, I don't think that will cause dramatic effects, and
26 it would allow all of the parties to have a better
27 understanding of what is being proposed, and the Board will
28 have a better understanding with, you know, evidence that

1 is more fully developed.

2 On top of that, it also makes the oral hearing process
3 a lot easier, instead of -- because if we don't see another
4 interrogatory process, essentially the hearing will turn
5 into a discovery process. We'll be asking for countless
6 undertakings and there will be no chance to sort of respond
7 to that sort of evidence in the oral hearing. So we think
8 those are important.

9 MS. CHAPLIN: Thank you.

10 Mr. Brett?

11 **SUBMISSIONS BY MR. BRETT:**

12 MR. BRETT: Thank you, Madam Chair.

13 First of all, as everyone has said, the ground rules
14 have changed dramatically. I first saw this evidence this
15 morning, and I have only had a chance to read quickly the
16 two letters.

17 First of all, I believe we need to hear from Enbridge
18 as to which date before -- of filing evidence. We should
19 have an opportunity, I think, to make a comment after that
20 date on the impact on the schedule.

21 My concern is -- and I think -- my concern is that the
22 -- as I pointed out in the latter part of my written
23 remarks, which you probably have -- you may have had
24 occasion to read, I am concerned that we get substantial
25 new evidence dumped on the proceeding on the eve of the
26 settlement conference, and I don't think that is right.

27 So my suspicion is that we would need to postpone
28 modestly the settlement conference and the commencement of

1 the hearing. I think that is the likely outcome.

2 Secondly, I think that Mr. Higgin -- Dr. Higgin
3 mentioned that people that are not here have a chance to
4 make some written submissions on what we've seen on these
5 changes. I think all intervenors -- everybody should have
6 a couple of extra days to read this and digest it and make
7 further written comments.

8 What I am giving you now, and what we're all giving
9 you now, are sort of preliminary reactions more than
10 anything else.

11 Thirdly, Dr. Higgin talked about the need to define,
12 in any event, where the gas is going to come from. What is
13 the upstream route going to be to get the gas to Enbridge,
14 given the state of -- apparent state of dysfunction, if you
15 like, between TransCanada and the eastern LDCs?

16 I don't say that in a pejorative sense. I think they
17 have made efforts to try and reach a settlement, but the
18 NEB decision has compounded the complexity of that quite a
19 lot.

20 So I think -- and the reason for that, I think, is
21 pretty obvious. I mean, if you don't have -- if you don't
22 have that gas being delivered either through TransCanada's
23 facilities from Parkway to Bram West and at which -- at
24 this point, of course, Enbridge does not have a
25 transportation contract to transmit the incremental -- the
26 800,000 gJs.

27 And absent a commitment by Enbridge, then, to build a
28 separate pipeline, their own pipeline, to Parkway -- and

1 bear in mind if they do that, that results in two lines
2 running over the same route -- you don't have the necessary
3 backdrop to Enbridge's proposal.

4 Enbridge has stated, in a response to BOMA No. 29,
5 that without Segment A, the savings to be derived from
6 Segment B are hugely diminished. I think that is apparent
7 from a close examination of the interrelationship of those
8 two things.

9 So all to say that we -- I think that Enbridge -- I
10 think the Board should ask Enbridge in filing its evidence
11 to, among other things, address this upstream issue, if you
12 like.

13 I think those are our submissions, Madam Chair.

14 MS. CHAPLIN: Thank you, Mr. Brett.

15 Mr. Mondrow, do you --

16 **SUBMISSIONS BY MR. MONDROW:**

17 MR. MONDROW: Thank you, Madam Chair.

18 IGUA's constituents' interests in the context of
19 today's discussion is in timely infrastructure development.
20 And we have sympathy for the position of the distributors
21 that the applications should proceed as uninterrupted as
22 possible.

23 Our general view is that the applicants should have
24 the ability to prosecute their own applications as they see
25 fit, subject of course to the Board's oversight of its
26 process, and, importantly -- and I think this is what my
27 intervenor colleagues are addressing -- fairness to those
28 legitimately interested in the applications and their

1 outcomes.

2 In respect of the issues that have manifested this
3 morning, in our submissions filed on July 9th in respect of
4 Union and Gaz Métro's motion, we took the position that the
5 open season outcome was relevant to the decision that the
6 Board has to make, including the decision in respect of the
7 appropriate size of the pipe.

8 While we only have Enbridge's letter at this point,
9 Enbridge seems in its letter, to me at least, to indicate
10 that that is not the case, that it can establish the case
11 for the 42-inch pipeline regardless of the open season
12 outcome.

13 And in our view, that will be an issue that Enbridge
14 will need to demonstrate to the Board's satisfaction. It
15 may do so in its additional evidence that Mr. Cass has
16 alluded to. And it may be the case that the record already
17 contains evidence, disparately distributed, in respect of
18 that issue, and that will be for Enbridge to demonstrate,
19 as will the additional implications of the developments
20 facing the Board this morning, and, in particular, as Dr.
21 Higgin noted, the upstream and downstream interfaces
22 between Segment A and the rest of the system in eastern
23 Canada.

24 It seems to me that there is likely some considerable
25 evidence on the record already in respect of those topics.
26 Enbridge's additional evidence will have to consolidate
27 that, provide additional information, and that of course
28 will have to be digested by the parties. But this morning

1 we see no basis upon which to alter the schedule.

2 I do note Mr. Cass's comments in respect of holding
3 dates, which I took to mean that while no schedule change
4 is made out or obviously necessary for today, once filed,
5 it may be appropriate to, if you will pardon the pun,
6 repurpose some of those dates.

7 So, for example, we have settlement conference dates
8 coming up. It may be appropriate that a technical
9 conference be slotted into those dates to ensure that the
10 record in respect of these developments is complete.

11 We then have hearing dates, and it may be appropriate
12 to repurpose those dates for a settlement conference, if
13 that has to be pushed out.

14 We do agree with the distributors, though, that it is
15 premature to change the schedule today. We would like to
16 see the evidence, which Enbridge has indicated will be
17 filed as expeditiously as possible, and having seen that
18 evidence, and to the extent to which it relies on what is
19 already on the record versus new information, the Board and
20 the parties -- or with the submissions of the parties,
21 hopefully, we'll be in a position to better digest the
22 schedule implications and make adjustments as warranted.

23 Thank you.

24 MS. CHAPLIN: Thank you.

25 Mr. Cameron?

26 **SUBMISSIONS BY MR. CAMERON:**

27 MR. CAMERON: Thank you.

28 TransCanada got these letters at the same time you did

1 and everybody else did, and so we are learning about this
2 at the same pace you are. And TransCanada's considering
3 both its legal and its commercial options. TransCanada did
4 in fact respond to the letter you have seen from Enbridge
5 dated July 5th, though that didn't make it into the record
6 before you.

7 It's TransCanada's position that it takes two parties
8 to enter a contract. It takes two parties to terminate a
9 contract. Right now that memorandum of understanding is
10 valid and in full force, and one of TransCanada's legal
11 options is to require Enbridge to perform in accordance
12 with the MOU.

13 There are commercial solutions too that TransCanada
14 wants to pursue. That is, to proceed on terms that gives
15 everybody the access to pipeline transportation capacity
16 that they want, while not endangering TransCanada's ability
17 to recover its revenue requirement; as you saw in our
18 evidence, the concern that TransCanada has now.

19 Another thing in play is that yesterday the three LDCs
20 filed a complaint with the National Energy Board about all
21 of this. We don't know what the National Energy Board is
22 going to do with that. As I say, we got it at the same
23 time other people did.

24 It is TransCanada's position that we need room to
25 breathe. We have just had all of this thrown at us. And
26 we want to have commercial discussions with the LDCs to see
27 if there is a commercial solution to this.

28 It is likely that we're going to have to file revised

1 evidence. Our evidence pertained to the MOU and how
2 TransCanada got where it was, and now that has -- at least
3 on Enbridge's view, all of that has changed.

4 Now, in terms of whether we change the schedule now, I
5 would say two things. One, I saw written submissions from
6 APPrO and IGUA, who are probably not here today, because
7 then they saw the motion -- sorry, APPrO and CME; correct?
8 Thank you. And they were suggesting -- I believe APPrO
9 suggested a 60-day breathing space, and CME something
10 similar.

11 In terms of whether we change the schedule today, I
12 would just say this, that I think parties benefit from
13 knowing what is going to be happening. If we are going to
14 be having a hearing in October instead of August, then we
15 should -- the sooner we know that, the better.

16 And so there is some benefit to you deciding now and
17 not waiting to see what evidence Enbridge and TransCanada
18 file in consequence of the dispute over the MOU.

19 And so on that point I would agree with Mr. Brett that
20 this was -- it was Union who brought the motion to
21 indefinitely stay Enbridge's facilities application, and it
22 was Enbridge who decided to attempt to terminate the MOU.

23 These are their actions. They can't, I don't think,
24 fairly ask this Board and the intervenors to just carry on
25 as if nothing has happened.

26 So, as I say, whether you make the decision now or
27 when the evidence is filed, TransCanada needs some
28 breathing room to react to all of this.

1 Thank you.

2 MS. CHAPLIN: Thank you.

3 Ms. Girvan?

4 **SUBMISSIONS BY MS. GIRVAN:**

5 MS. GIRVAN: Thank you. Just a few brief comments.

6 We know that new evidence will be filed, and that is a
7 given, and I think it is important to find out from
8 Enbridge today, if they can, when that is going to be
9 filed, and I think we could potentially set a schedule
10 then.

11 I also agree that TransCanada -- it would be useful,
12 probably useful, to have them file evidence, as well, to
13 the extent that they can provide context. So the time line
14 should allow for sufficient discovery.

15 There are -- I was going to say there are several
16 people not here today, including Mr. DeRose and Mr. Janigan
17 as well, and I think that they should be given an
18 opportunity to comment on the schedule or potential
19 schedules.

20 And then the one question that I did have potentially
21 for Union is they said that there wasn't a dependency
22 between Segment A and the Albion-to-Maple leave to
23 construct, and I question that. It seems to me that they
24 are linked, and I am not sure how we deal with that.

25 So those are my comments. Thank you.

26 MS. CHAPLIN: Thank you.

27 Mr. Millar?

28 **SUBMISSIONS BY MR. MILLAR:**

1 MR. MILLAR: Thank you, Madam Chair. I have very
2 little to add.

3 As a number of the parties have stated, and indeed the
4 Panel alluded to, until we know what and when Enbridge will
5 file in terms of updated evidence, it is very difficult to
6 know how that will impact the schedule.

7 So Mr. Cass has indicated that they will make their
8 very best efforts, hopefully today, to provide us with at
9 least a date for the filing of evidence.

10 Now, the date itself will obviously be helpful, but
11 until we know what is actually in that evidentiary update
12 it is very difficult to know what additional procedural
13 steps may be required.

14 So I think our suggestion at this point would be,
15 unfortunately, to take a bit of a wait-and-see approach to
16 see what and when is filed. It is possible we will be able
17 to keep the dates as they exist, but as some of the parties
18 say, if it is a major new filing, maybe that is not
19 possible.

20 At the same time, it is prudent, I think, to at least
21 hold those dates for now. We don't have better dates to
22 replace them with, so I'd suggest they be kept for now, and
23 then when we have a better understanding of what Enbridge
24 will file we will be in a better position to judge what has
25 to happen with the schedule.

26 Those are my submissions.

27 MS. CHAPLIN: All right. Thank you.

28 Mr. Cass, does Enbridge have anything more to say at

1 this point on these questions?

2 MR. CASS: Sorry, Madam Chair.

3 MR. SMITH: I have a brief reply, if I may be --

4 MS. CHAPLIN: Would you like to fill the time, Mr.
5 Smith?

6 MR. SMITH: You know...

7 [Laughter.]

8 MS. CHAPLIN: Go ahead.

9 **SUBMISSIONS BY MR. SMITH:**

10 MR. SMITH: Sort of my natural instinct.

11 Just by way of a brief reply -- obviously, I won't
12 repeat the comments I made -- I would like to respond just
13 to a couple of points.

14 With respect to Parkway West, there was a question
15 raised with respect to whether or not the LCU compressor
16 would be placed at the new Parkway site or the existing
17 site. The evidence on the record is that there isn't
18 sufficient room.

19 So the LCU compressor will be there. It is not a
20 question of updating any evidence, and that, in my
21 submission, is a further reason why the application can
22 continue on its own.

23 I do agree with the parties who indicated that the
24 schedule should be kept, and to the extent necessary, dates
25 could be repurposed, and I agree with Mr. Mondrow with
26 respect to the repurposing of the date for the settlement
27 conference to a technical conference, if necessary.

28 And of course the Board will be fully aware that

1 settlement conference -- during settlement conferences
2 there is often a free and open exchange of information, and
3 that is one of the reasons why settlement conferences are
4 beneficial even if they don't achieve resolution.

5 The next comment I would make is simply in response to
6 TCPL's comment, Mr. Cameron's comment, with respect to this
7 being a motion by Union. Quite correctly, it was a motion
8 and is a motion by Union and Gaz Métro, but I must say that
9 it is disappointing to Union to find itself, having not
10 been the cause of any of this and having done its level
11 best to communicate with everybody, that its applications
12 may be delayed.

13 There are significant advantages to Union's eastern
14 and northern customers, and all of its distribution
15 customers, frankly, as a result of these applications. It
16 did its level best to talk to parties.

17 Unfortunately, the MOU has appeared to have been a bit
18 of a distraction, but from Union's perspective it
19 absolutely feels like it has done what the Board wanted it
20 to do, and wants to proceed.

21 MS. CHAPLIN: And, Mr. Smith, does Union have any
22 response to the comment or question raised by CCC?

23 MR. SMITH: Well, Union had indicated in its
24 application that it wanted to 2016 to construct the
25 facilities, as opposed to a Board Order for 2015, and it
26 was precisely to address the issue of timing and when the
27 leave-to-construct application could realistically be
28 brought.

1 So I say that we have addressed that issue and it is
2 one of the reasons why I don't think further evidence needs
3 to be filed.

4 We anticipated this eventuality, discussed it at the
5 time of the technical conference when it was apparent that
6 TCPL was not going to be building Parkway-to-Maple as
7 contemplated in the May 2012 new capacity open season.

8 And if I might be indulged one final comment, a number
9 of parties suggested that a further opportunity should be
10 given to those who are not here. In my submission, the
11 Board should not permit them that opportunity.

12 Everybody had today as a date to be here and to be
13 ready to argue substantively the motion. The Board's
14 Procedural Order itself contemplated both a threshold issue
15 and next steps.

16 To the extent parties wanted to comment on next steps,
17 they were given advance warning by the Board that that
18 would be an issue today, and having elected not to turn up,
19 I don't think they should be relieved of the consequences
20 of that decision.

21 MS. CHAPLIN: Thank you.

22 Mr. Cass?

23 **SUBMISSIONS BY MR. CASS:**

24 MR. CASS: Thank you, Madam Chair, and my apologies
25 for the delay a few moments ago. In light of what Mr.
26 Smith has said, I have only a few things to say.

27 I do just want to make the general observation that
28 having heard from quite a number of parties here today,

1 there is no dispute that I've heard about Enbridge's basic
2 proposition with respect to the distribution needs and
3 benefits of its proposed project and the timing associated
4 with that.

5 In order to deliver the benefits in 2015, there is a
6 timing issue, and the submissions I've heard today really
7 just relate to the best way to get there.

8 Even those who had a different opinion about what to
9 do with the dates certainly accepted that expediting as
10 much as possible is an appropriate way to get there.

11 And I do make the observation, although I hesitate to
12 quote numbers, dollar numbers from the record off the top
13 of my head, the financial consequences of losing those
14 benefits in 2015 far outweigh much of what we're talking
15 about here, even the costs of upsizing to 42 inches. Those
16 financial benefits for 2015 are of such a substantial size,
17 and again I heard no dispute with that.

18 The one point I have heard is this notion of breathing
19 space, and that is what causes me concern and causes me to
20 re-emphasize this point about timing --

21 MS. CHAPLIN: Sorry, Mr. Cass.

22 MR. CASS: Yes?

23 MS. CHAPLIN: Mr. Cass, Enbridge is changing its
24 application. Do you have a date at which you propose to
25 file evidence, or do you have a date at which you can tell
26 us what that date for new evidence will be? I think what
27 will help us best move forward.

28 MR. CASS: I can tell you in 15 minutes, Madam Chair.

1 I was going to come to that, but yes, if we could be given
2 a 15-minute break, I can tell you the date.

3 MS. CHAPLIN: Certainly.

4 MR. CASS: The only other point I wanted to make,
5 Madam Chair, was, in relation to what is clearly accepted
6 as the benefits and timing of this project, the notion of
7 an open-ended breathing space, in my submission, is just
8 quite out of line with what would be appropriate.

9 In my submission, it would be the contrary. To the
10 extent that things can be advanced, they're more likely to
11 be advanced if there is a time line and if there are dates
12 to get on with the proceeding.

13 An open-ended breathing space, in my respectful
14 submission, is not going to advance anything and it is
15 going to be contrary to the timing that I have been trying
16 to stress this morning.

17 That was my primary submission in reply to what we've
18 heard. Again, if we could have 15 minutes, Madam Chair, I
19 will be back to you with the date for Enbridge's updated
20 evidence.

21 MS. CHAPLIN: Thank you. So we will rise now and
22 reconvene at 10:40 on that clock. That gives you 20
23 minutes.

24 --- Recess taken at 10:19 a.m.

25 --- Upon resuming at 10:40 a.m.

26 MS. CHAPLIN: Please be seated.

27 Mr. Cass?

28 MR. CASS: Yes, Madam Chair. Thank you.

1 In response to your question, Enbridge would aim for,
2 at the latest, to file by a week from Monday, which, if I
3 have the date correctly, would be July the 22nd.

4 MS. CHAPLIN: Okay. Thank you. And we understand
5 from Enbridge's letter that you intend to conduct an open
6 season beginning no later than July 25th. So when would
7 that be concluded?

8 MR. CASS: There is a minimum of 30 days, Madam Chair.

9 MS. CHAPLIN: All right. Thank you.

10 And Mr. Cameron, what are TCPL's intentions, in terms
11 of -- I understand that you're -- TCPL's interested in
12 filing revised evidence. What date would you propose to
13 file that?

14 MR. CAMERON: If I spoke with that level of certainty,
15 I shouldn't have, because what I was trying to say is we
16 are trying to figure out what just happened to us and what
17 we would do.

18 But just because our existing evidence is premised on
19 the memorandum of understanding, it just struck me as
20 logical that we're going to have to say something else now
21 and also comment on whatever it is Enbridge files in its
22 new evidence.

23 And so, I mean, I would envision that Enbridge would
24 file its evidence on the 22nd. We would have some modest
25 period to review it and ask information requests, and when
26 we get the responses, file updated evidence. I don't think
27 it has to be the normal week or two week-long gaps between
28 those periods because, according to Mr. Cass, it will be a

1 relatively modest increment to the record.

2 But if we allowed for that, say four days to ask
3 information, request four days for Enbridge to respond, and
4 four days for TransCanada to file its evidence, we could
5 work in those time frames, I believe.

6 MS. CHAPLIN: Okay. All right. So on that basis, the
7 Board today is not going to make any definitive decisions
8 as to the schedule. But we are supportive of the
9 submissions that we heard to the effect of trying to use
10 the dates that have already been set aside, but perhaps for
11 other purposes.

12 So given Enbridge's commitment to file evidence by
13 July 22nd, as I say, we're not making a firm decision at
14 this point, but we would put parties on notice that, for
15 example, the period that was set aside for the settlement
16 conference may well be suitable for a technical conference,
17 and likewise, the beginning of the oral hearing may well be
18 suitable for the settlement conference purposes.

19 We will have to also turn our minds to how we address
20 TCPL's request to perhaps provide responding evidence to
21 the update from Enbridge, but at this point we're not
22 minded to take further submissions from the parties that
23 were not here today, because we do agree that it was set
24 down in the Procedural Order that today was to deal with
25 consequential steps.

26 So we will not be seeking their submissions at this
27 point. When we receive the evidence from Enbridge, we will
28 decide at that point whether we go ahead and make

1 scheduling decisions or whether we seek further
2 submissions, but would be on an expedited basis.

3 One moment, please.

4 [Board Panel members consult.]

5 MS. CHAPLIN: Right. Ms. Hare brings to my attention
6 that, on the schedule, the deadline for interrogatories on
7 TCPL's evidence is tomorrow. So given what we have heard
8 today from TCPL, that basically that evidence may no longer
9 be relevant, I guess I will leave it in parties' hands as
10 to whether or not there is value in posing those
11 interrogatories or not. I don't think there is much more
12 we can say about that.

13 MR. SMITH: Madam Chair, if I just -- I may give TCPL
14 notice of this, in the spirit of keeping the dates and
15 TCPL's position being unknown. Our intention would be --
16 to the extent we have questions, would be to ask the
17 questions, and obviously how those questions and the
18 answers get used will depend on what subsequently unfolds,
19 but obviously we will do what the schedule contemplates.

20 MS. CHAPLIN: Anything else on that? Mr. Brett?

21 MR. BRETT: Just a quick thing. I take your point
22 about the TCPL evidence, but I think it would still be
23 helpful to have -- allow intervenors to ask questions on
24 that first tranche of evidence by tomorrow, but in the
25 knowledge that, you know, more is coming, and TransCanada
26 may -- they'll have a chance to ask other questions when
27 new evidence comes, but there is some stuff in there that I
28 think --

1 MS. CHAPLIN: Well, perhaps parties could review their
2 proposed -- their intended interrogatories in light of
3 recent events and ensure that they are crafted accordingly.

4 Just one minor procedural matter. There was an
5 outstanding request from Union for certain interrogatory
6 answers to remain confidential. My understanding is that
7 as a result of various correspondence that request is
8 effectively withdrawn?

9 MR. SMITH: That's correct.

10 MS. CHAPLIN: Okay. And Union will be filing new
11 versions which are no longer marked confidential?

12 MR. SMITH: I believe they were filed last evening.

13 MS. CHAPLIN: Great. Well, there was a lot going on
14 last evening.

15 [Laughter.]

16 MS. CHAPLIN: Anything further from anyone?

17 MR. CAMERON: May I add a comment to respond to Mr.
18 Smith? Yes, TransCanada will adhere to the schedule and
19 answer information requests that are put to us. It is our
20 position that the memorandum of understanding is still in
21 full force and effect, so we will answer it in that regard.

22 But as Mr. Brett says, if we file other evidence, we
23 would accept that we are going to have to answer
24 information requests on that, as well.

25 MS. CHAPLIN: Thank you.

26 Mr. Rubenstein, did you -- okay. Great. All right.
27 Thank you. Mr. Millar, anything? Thank you. I believe
28 we're done. Thank you very much.

