



ONTARIO ENERGY BOARD

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

VOLUME: 1

DATE: September 12, 2013

BEFORE: Cynthia Chaplin Presiding Member and Vice-Chair
Marika Hare Member
Peter Noonan Member

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

THE 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 preapproval 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.

Hearing held at 2300 Yonge Street,
25th Floor, Toronto, Ontario,
on Thursday, September 12th, 2013,
commencing at 9:06 a.m.

VOLUME 1

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

[APPEARANCES NOT TAKEN]

MICHAEL MILLAR	Board Counsel
JOSH WASYLYK KHALIL VIRANEY	Board Staff
FRED CASS	Enbridge Gas Distribution Ltd.
CRAWFORD SMITH	Union Gas
ELISABETH DeMARCO	Association of Power Producers of Ontario (APPrO)
VINCE DeROSE	Canadian Manufacturers & Exporters (CME)
ROGER HIGGIN	Energy Probe Research Foundation
DWAYNE QUINN	Federation of Rental-housing Providers of Ontario (FRPO)
IAN MONDROW	Industrial Gas Users' Association (IGUA)
MARK RUBENSTEIN	School Energy Coalition (SEC)
GORDON CAMERON	TransCanada Pipelines Ltd.

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Description

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NO EXHIBITS WERE FILED IN THIS PROCEEDING

U N D E R T A K I N G S

Description

Page No.

NO UNDERTAKINGS WERE FILED IN THIS PROCEEDING

1 Thursday, September 12, 2013

2 --- On commencing at 9:06 a.m.

3 MS. CHAPLIN: Please be seated.

4 Good morning, everyone. We are sitting today for
5 three applications: EB-2012-0451, EB-2012-0433, and EB-
6 2013-0074.

7 There were a number of developments late yesterday,
8 and we gave the parties an opportunity to meet this morning
9 to see whether or not an agreed way forward could be found,
10 and the Panel understands that there is a proposal which
11 the parties would like to make, so, Mr. Cass? Mr. Smith?

12 **SUBMISSIONS BY MR. SMITH:**

13 MR. SMITH: Thank you, members of the Board.

14 You will have received, obviously, my letter from
15 yesterday, as well as Mr. Cameron's letter. There have
16 been some minor developments in the proceeding, as you will
17 have observed.

18 [Laughter]

19 I obviously say that in jest, but, I mean, this will
20 become more apparent later, but it is Union's ultimate
21 position that, while there have been significant
22 developments, ultimately we have come full circle in that,
23 the result of which is we are effectively at Union's pre-
24 filed position, in that Parkway to Maple is going to be de-
25 constrained for November 2015 in-service date, and the new
26 capacity, open-season volumes will be reinstated.

27 Now, obviously parties want to understand that and
28 understand the terms sheet, and we completely respect that

1 desire. Obviously we have an informational advantage
2 because the deal was reached late and provided to parties
3 as soon as possible.

4 So we've had a discussion. And what we have agreed on
5 is that we will adjourn today, subject, obviously, to the
6 Board's direction. We will make witnesses available for a
7 technical conference tomorrow morning. We've invited
8 people to provide their questions as soon as possible so
9 that we can be in the best position possible to provide
10 full answers, and we would resume on Monday.

11 We would -- you will have seen from my letter a
12 request that the terms -- or the minutes of settlement be
13 kept confidential, and we've made a request for that, that
14 the minutes of settlement are binding, but they are still
15 subject to being reduced to a formal settlement agreement,
16 and as I'm sure the Board can appreciate, from the LDCs'
17 perspective and TransCanada's, that final drafting exercise
18 would in the normal commercial course be done privately,
19 and we would respectfully request that the minutes of
20 settlement be kept confidential.

21 With that in mind, we'd ask that the technical
22 conference be in camera. It may be that not all questions
23 are necessarily confidential, but rather than have to go in
24 and out of camera, it may be better to just have a blanket
25 declaration that it be in camera. And anyway, that's what
26 we would propose.

27 MS. CHAPLIN: And with respect to that request, is it
28 the expectation that once the final settlement has been

1 drafted then all materials would no longer need to be
2 confidential?

3 MR. SMITH: I expect so. The settlement agreement
4 itself is going to be filed with the National Energy Board
5 for approval. So I would expect that at that time a
6 decision would have to be made whether it would be
7 confidential or not. I would assume not.

8 But I don't want the Board to misapprehend. I don't
9 expect that that settlement agreement will be finalized in
10 the next day or even few days. So I don't expect that we
11 would be in a position to waive the confidentiality in the
12 near future. It may be subsequently that that could
13 happen, but I don't think that it will happen in time for
14 these proceedings.

15 MS. CHAPLIN: So is there some sort of tentative
16 schedule the parties are working towards, in terms of
17 filing a settlement with the NEB?

18 MR. SMITH: I should let Mr. Cameron discuss that.

19 **SUBMISSIONS BY MR. CAMERON:**

20 MR. CAMERON: Thank you. Things are fluid, if I can
21 put it that way. TransCanada will need approval of the
22 toll and tariff changes that are proposed in the settlement
23 agreement. And that could come about through various
24 different ways of putting the matter before the National
25 Energy Board.

26 The net effect would be that all of the terms that are
27 going to change with respect to TransCanada's tolls and
28 tariffs would be a fully public proceeding.

1 We are aiming in a perhaps optimistic way to have this
2 done in early October. Now, when after that we get an
3 application together to the National Energy Board depends
4 on what it is we're going to the National Energy Board for.
5 It could be what I'll call a full-blown tolls and tariffs
6 application that embodies the terms of the settlement
7 agreement, or it could be approval of -- in principle of
8 the settlement agreement.

9 So we just haven't reached a final decision on how
10 this is going to come together. And that's probably one of
11 the things that will be discussed among the parties over
12 the next few weeks as we try to take the broad principles
13 of the terms sheet and turn that into a definitive and
14 detailed, comprehensive, agreement.

15 MS. CHAPLIN: Okay. Well, I'll explain my concern.
16 If the Board were to accept the terms sheet as confidential
17 for the time being, on the expectation that the settlement
18 agreement was not going to be confidential, and if we were
19 to proceed with an in camera technical conference, and if
20 we then presumably proceed with the hearing -- and again, I
21 would think some substantial components of it will be
22 referring to the settlement and, therefore, presumably also
23 in camera -- I guess I'm just concerned, reaching the end
24 of a hearing with very substantial parts of it being held
25 in confidence. It's an extremely awkward position for the
26 Board, and not a desirable outcome.

27 So I think we would want some fairly firm sense of
28 when we would know that the bulk of that record could be

1 put back on the public record before we would agree to
2 proceed on a confidential basis.

3 So maybe the parties can't help us with that
4 immediately, but I think we would need to know that --

5 MR. CAMERON: If I can just observe that one of the
6 advantages of having the technical conference in camera
7 tomorrow is that that should allow the bulk of these
8 proceedings to be open, and then when the joint panel is
9 called as the last panel of the proceeding, we'd hope that
10 almost all of the in camera material could be deferred to
11 that particular panel.

12 So I understand your worst-case scenario of having a
13 large part of this proceeding in camera. I don't picture
14 that happening. If we have the technical conference in
15 camera so that people can understand the agreement, then I
16 think you can have the bulk of your hearing in an open
17 proceeding, and then have some part of the joint panel
18 hived off as the limited, closed portion of the hearing.

19 MR. SMITH: I agree with that.

20 MS. CHAPLIN: Okay. All right. Well, we'll consider
21 that. But again I would emphasize that it would be our
22 expectation that at some point that those transcripts will
23 be able to be put on the public record in an unredacted
24 fashion.

25 **SUBMISSIONS BY MR. RUBENSTEIN:**

26 MR. RUBENSTEIN: Sorry, if I may add something. Maybe
27 I could be corrected. My understanding from the
28 discussions we had at the pre-hearing conference about how

1 questions were going to be divided between the specific
2 Union/Enbridge panels and the NEB panels would be that the
3 NEB panel would provide -- was going to provide sort of
4 overview context of the applications and what's happening
5 at NEB, but things like numbers, specifics would have to be
6 asked of the specific Union or Enbridge panels.

7 And so it's not clear to me that you could hive off,
8 as Mr. Cameron is stating, all the issues to the NEB panel,
9 because if there are specific number issues -- and I don't
10 know that there may or there may not be after tomorrow's
11 technical conference, if it's approved -- those questions
12 would have to be asked to those panels, and that would
13 presumably have to be done in camera.

14 **CONTINUED SUBMISSIONS BY MR. SMITH:**

15 MR. SMITH: Madam Chair, I would just indicate I don't
16 know the answer to Mr. -- whether Mr. Rubenstein is correct
17 or incorrect in the final analysis.

18 I think this just makes Mr. Cameron's point. We
19 should have the technical conference in camera. We'll see
20 where that takes us. And hopefully the need to spend a lot
21 of time in camera with Union's first and second panel will
22 be avoided.

23 But I can't say right now yes or no, but I do agree
24 with Mr. Cameron's point, that we should see where we go
25 with the technical conference.

26 And in answer to your question, I mean, from Union's
27 perspective, we understand the Board's concern. I mean,
28 our expectation would be that all or substantially all of

1 the file would ultimately become public. I mean, that's --
2 we want that to happen because we want the matter to
3 proceed, obviously, at the NEB and to be approved.

4 So that is our expectation ultimately. My only point
5 earlier was I'm just not sure at, you know, what day that's
6 going to happen.

7 MS. CHAPLIN: Okay. Are there any parties that object
8 to the technical conference being held in camera, and for
9 the term sheet to be held in confidence, at least for the
10 time being? Mr. Mondrow?

11 **SUBMISSIONS BY MR. MONDROW:**

12 MR. MONDROW: Thank you, Madam Chair. I was about to
13 speak before you added the phrase "at least for the time
14 being." So at least for the time being, we have no
15 objection.

16 But it's premature for me to agree to the proposed
17 confidential treatment beyond the technical conference,
18 subject, of course, to making submissions on why that
19 should not be the case and having the Board rule on it.

20 MS. CHAPLIN: So we may need to address this issue
21 again on Monday morning? Is that what you're suggesting?

22 MR. MONDROW: I'm not sure, Madam Chair. I'm at a bit
23 of a disadvantage in that I was in transit yesterday
24 evening and I'm reading it as you're speaking. So I'm just
25 not prepared to -- I know. I know, I really should have
26 been quicker.

27 [Laughter]

28 MR. CASS: That didn't sound very good.

1 MR. MONDROW: And listening mostly to you, of course,
2 which means I haven't paid much attention to the document.

3 [Laughter]

4 MR. MONDROW: I just don't want to take silence to
5 necessarily be construed as acquiescence, but I think it's
6 appropriate to proceed as counsel for the applicants has
7 proposed.

8 But certainly from our perspective, it would be
9 without prejudice to the ability to at least bring before
10 you an argument about confidentiality if we deem it
11 appropriate at the time.

12 MR. CAMERON: TransCanada has no problem with that.

13 MS. CHAPLIN: Okay. Dr. Higgin?

14 **SUBMISSIONS BY DR. HIGGIN:**

15 DR. HIGGIN: Roger Higgin for Energy Probe. Just to
16 note, Madam Chair, that Enbridge filed a September 11, 2013
17 update to its evidence. You're aware of that?

18 MS. CHAPLIN: Yes.

19 DR. HIGGIN: And there are linkages to the settlement,
20 but basically, I was just going to say it would be -- we
21 would have questions about that update, which is not in
22 confidence, and we would not really want to have to ask
23 those questions again before you in a hearing. So that's
24 an issue that I raise.

25 So the only suggestion I have is that -- whether we
26 could hive off any questions on that update at the
27 technical conference, and they would then be on the record.

28 MS. CHAPLIN: We have no particular objection to that.

1 I guess we would leave it to the parties to see what the
2 most efficient way of handling tomorrow is. We'll leave it
3 as --

4 MR. CASS: I think we can work that out tomorrow,
5 Madam Chair. Yes.

6 MS. CHAPLIN: Sorry, just to clarify, even though it's
7 in camera, it's going to be transcribed?

8 MR. CASS: Yes.

9 MS. CHAPLIN: Yes. Thank you.

10 MR. CASS: Madam Chair, I just had one relatively very
11 minor contribution to add to what's been said already.

12 This doesn't directly affect the Board Panel, but I
13 think the Board Panel should be aware that, in order to
14 facilitate the technical conference tomorrow and the
15 progress of the hearing, Union and Enbridge will be meeting
16 with parties in confidence later this morning to address
17 the term sheet that has been provided, and as I said, to
18 facilitate the technical conference and the progress of the
19 hearing.

20 MS. CHAPLIN: Okay. Thank you. And so when we start
21 on Monday, is the expectation we are still continuing with
22 the existing order of panels? We're going to start with
23 Union?

24 MR. SMITH: Yes, Madam Chair.

25 **SUBMISSIONS BY MR. DEROSE:**

26 MR. DeROSE: Madam Chair, sorry, just to be clear, the
27 parties have agreed at this stage and are asking for an
28 indulgence for the next two days to have the technical

1 conference.

2 As you can appreciate, even those of us that weren't
3 in transit got the agreement about 4:00 o'clock yesterday.
4 So we are all digesting it. We are trying to take the next
5 day and a half to come to terms with it, get instructions.

6 But the parties have not come to a unanimous agreement
7 that this will address any issues of procedural fairness,
8 and that on Monday, no matter what, we're starting with the
9 Union panel.

10 There is a possibility that one, some, or all of the
11 parties may ask for a further adjournment. But I think --
12 so that's just sort of a heads-up that it could happen.

13 But until we have the technical conference, we just
14 aren't in a position to tell you where we are.

15 MS. CHAPLIN: Okay.

16 MR. DeROSE: So the plan at the moment is to start on
17 Monday, subject to what happens over the next day and a
18 half, and obviously subject to any submissions that we make
19 to the Panel.

20 MS. CHAPLIN: All right. And I guess in the first
21 instance, we would expect the parties to at least have an
22 initial discussion about those sort of concerns as part of
23 tomorrow's proceeding. And if there's an agreed -- if the
24 parties have an agreed way forward, we'd always prefer to
25 consider that. And if not, we will decide if that's
26 necessary too.

27 **SUBMISSIONS BY MS. DEMARCO:**

28 MS. DeMARCO: Madam Chair, just one further matter.

1 It's our understanding that, and hope, that everything
2 proceeds according to the plan as laid out by the
3 companies.

4 However, it's our implicit understanding that all of
5 this is without prejudice to any assessment or analysis of
6 procedural fairness going forward, once we get into the
7 documentation.

8 MS. CHAPLIN: Yes. Yes, Mr. Quinn?

9 **SUBMISSIONS BY MR. QUINN:**

10 MR. QUINN: Yes, thank you. I just wanted to not
11 reiterate some of what my fellow intervenors have spoken
12 to. We're all at different levels of understanding of the
13 agreement.

14 We're encouraged that the utilities and TransCanada
15 have come in here to help reduce the complexity of the
16 regulatory outcomes between here and the National Energy
17 Board. It will be very significant for us tomorrow to have
18 as much understanding as we can off the record, and put
19 ourselves in a position of understanding Ontario-based
20 implications, so that we can again decide our position
21 relative to the infrastructure proceedings here in Ontario.

22 With that said, I do agree that we need to make sure
23 that things that are going to occur here are not
24 constrained by what's going on at the NEB, and we would
25 encourage the utilities to help us understand what they can
26 commit to, not in camera but on the record, before the end
27 of the proceeding.

28 And I think, as you laid out to them before, that will

1 be very important to us in terms of being able to submit
2 our final arguments.

3 MS. CHAPLIN: Yes. Our understanding is that this
4 afternoon -- or today's discussion is off the record and
5 informal amongst the parties. Tomorrow's technical
6 conference is part of the record, but confidential for the
7 time being.

8 Any ambiguity? Okay with that?

9 We are adjourned. Thank you very much.

10 --- Whereupon the hearing adjourned at 9:24 a.m.

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