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### **BY EMAIL and RESS**

November 15, 2013

Ontario Energy Board  
2300 Yonge Street  
27<sup>th</sup> Floor  
Toronto, Ontario  
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### **Attn: Kirsten Walli, Board Secretary**

Dear Ms. Walli:

### **Re: EB-2012-0433/EB-2012-0451/EB-2013-0074 – SEC Final Argument**

We are counsel to the School Energy Coalition (“SEC”). Pursuant to Procedural Order No.13, please find SEC’s Final Argument in this matter.

Yours very truly,  
**Jay Shepherd P.C.**

*Original signed by*

Mark Rubenstein

cc: Applicants and Intervenors (by email)

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**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.

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**FINAL ARGUMENT OF THE  
SCHOOL ENERGY COALITION**

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**November 15, 2013**

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## **1 GENERAL COMMENTS**

### **1.1 Overview**

**1.1.1** Union Gas Limited (“Union”) and Enbridge Gas Distribution (“Enbridge”) have applied to the Ontario Energy Board (“OEB” or the “Board”) for leave to construct a number of proposed natural gas facilities, pursuant to sections 90 and 91 of the *Ontario Energy Board Act, 1998* (“*OEB Act*). The proposed facilities include:

- (i) Enbridge’s GTA Project (EB-2012-0451)** which primarily consist of, i) a 27 km NPS 42" pipeline between its Parkway West Station and the Albion Road Station (“Segment A”), and ii) a NPS 36" XPS pipeline running from its Keele/CNR Station to just the proposed tie-in just north of Shepherd Ave. It would also include a proposed Buttonville Station and expansion of its Jonesville Station (“Segment B”).
- (ii) Union’s Parkway West Project (EB-2012-0433)** which primarily consist of the installation of a loss of critical unit compressor, upgrade of existing infrastructure, and an additional connection with Enbridge.
- (iii) Union’s Brantford-Kirkwall/Parkway D Project (EB-2013-0074)** which primarily consists of a NPS 48” pipeline between its Brantford Valve Site and Kirkwall Transfer Station, and a new compressor station at its new Parkway West site.

**1.1.2** Union is also seeking an order pursuant to section 36 of the *OEB Act* for recovery of the cost consequences of its proposed facilities, and certain transportation contracts with TCPL.

**1.1.1** This is the Final Argument of the School Energy Coalition (“SEC”).

## **1.2 Public Interest Test**

**1.2.1** Applications pursuant to sections 90 and 91 of the *OEB Act* require that for leave to construct to be granted, “the Board must be of the opinion that the construction, expansion or reinforcement of the proposed work is in the public interest”.<sup>1</sup>

**1.2.2** Determining the public interest is a broad inquiry that depends on the circumstances of the specific application and may encompass many aspects. The Board generally looks at issues of: need, economic feasibility, environmental effects, cost and rate impacts, and routing and landowner matters, among others. The Board is also guided by the statutory objectives for gas pursuant to section 2 of the *OEB Act*. In leave to construct applications, those objectives include most importantly, the protection the interests of consumers with respect to prices and the reliability and quality of gas service, and facilitation of the rational expansion of transmission and distribution systems.<sup>2</sup>

## **1.3 Summary**

**1.3.1** SEC generally supports all three applications and submits that with the imposition of certain conditions for leave to construct, they are in the public interest. SEC also supports Union’s request for pre-approval of the cost recovery of their facilities, but not for two long-term TCPL contracts.

**1.3.2** The proposed facilities would provide for necessary reinforcement of Enbridge’s distribution system in the GTA, increased reliability protection at Parkway, as well as allow for needed market access for gas procured from sources other than Empress to reach customers downstream of Parkway.

**1.3.3** SEC does have concerns that the market access benefits are not as certain as the Union and Enbridge claim. The interactions among the Applicants, and TransCanada Pipeline Limited (“TCPL”) and Gaz Metro Limited Partnership (“Gaz Metro”) have taken a number of different turns during this proceeding culminating in the filing of a comprehensive Settlement Agreement that will completely change the Mainline tolling framework until at least 2030.

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<sup>1</sup> *Ontario Energy Board Act, 1998* (“*OEB Act*”), s. 96

<sup>2</sup> *OEB Act*, s.2

- 1.3.4** The Board must ensure in a different proceeding, that the cost consequence of any National Energy Board (“NEB”) approved version of the Settlement Agreement is thoroughly reviewed.

## **2 PARKWAY WEST (EB-2012-0433)**

### **2.1 Overview**

- 2.1.1** Union has applied for leave to construct, and pre-approval of the cost consequences, of facilities near its current Parkway compression station. These proposed facilities include the installation of a loss of critical unit (“LCU”) compressor for the volumes that flow through Parkway, upgrades to existing infrastructure, and an additional connection to Enbridge so that it can connect with the proposed Segment A pipeline.

### **2.2 Need and Timing (Issues A1, A2, A5)**

- 2.2.1** After reviewing the evidence, SEC is in a position to concur with Union that there is a need for the proposed Parkway West facilities, most importantly the LCU. With increased demand flowing through Parkway from Dawn (and Kirkwall) over the past few years and expected to continue into the future, the importance of maintaining reliable supply at Parkway to its various receipt points is critical.<sup>3</sup>

- 2.2.2** While there is currently LCU coverage at various points on the Dawn-Parkway System, there is not any at Parkway itself.<sup>4</sup> Union’s evidence is that the impact of a compressor failure at Parkway in 2014/15 would cause a loss of service to 150,000 to 225,000 Enbridge CDA customers alone. SEC agrees that the potential for such a significant service outage requires LCU coverage. Installation of LCU coverage at Parkway is constant with past Board practice and proper system design. SEC also agrees that proposed timing (in-service date) is appropriate.

### **2.3 Rate Impact/Costs (Issue A3)**

- 2.3.1** SEC submits that the rate impacts of the proposed Parkway West Project are reasonable. Most in-franchise customers will see a rate reduction (overall reduction of \$882,000), with M1

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<sup>3</sup> Undertaking Response J3.1

<sup>4</sup> There is currently LCU coverage at Dawn, Bright and Lobo.

customers getting a \$1 million reduction, whereas the cost increase to M2 customers is quite small at \$125,000.<sup>5</sup> The cost of the project is primarily being paid by ex-franchise customers including Enbridge, TCPL and Gaz Metro, who each now support the project.<sup>6</sup>

**2.3.2** SEC's concern with respect to the cost of the Parkway West Project is the apparent misallocation of the costs for the development of the Parkway West site that is being utilized by both this project and the Brantford-Kirkwall/Parkway D Project.

**2.3.3** Currently 100% of the \$103 million land development costs are allocated to the Parkway West Project. A portion of that should be allocated to the Brantford-Kirkwall/Parkway D Project. Union has taken the position that the entire Parkway West land site is required regardless of whether the construction of its proposed Parkway D compressor is approved. SEC disagrees.

**2.3.4** If Parkway D is not approved, then the entire plot of land does not have to be developed. At the very least part of the cost should not be recoverable from ratepayers, because a part of the site would not be used or useful. More importantly, if Parkway D is approved, then part of the land will be utilized for that project, and that part should properly be allocated to that project. While the rate impact may be "virtually nothing" as claimed by Union, proper cost allocation between projects should be followed regardless.<sup>7</sup> SEC submits that \$51.5 million of the capital costs for the Parkway West Project (half of the site development cost) should be reallocated to the Brantford-Kirkwall/Parkway D Project.<sup>8</sup>

## **2.4 Alternatives (Issue A4)**

**2.4.1** SEC agrees with Union that there is no reasonable physical or services-based alternative to the proposed LCU project. The evidence is clear that either because of the cost, or because of the lack of reliable alternative services that may be arranged with TCPL (or others), there is no reasonable alternative that is in the best interest of ratepayers.

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<sup>5</sup> Union Schedule 12-2 (Updated 2013-08-023)

<sup>6</sup> Pursuant to section 8.1 of the Settlement Agreement TCPL is bound by the Settlement Agreement to support the project.

<sup>7</sup> Tr. 4, p.67

<sup>8</sup> For the detailed annual revenue requirement and rate calculations of allocating half of site development costs to Brantford-Kirkwall/Parkway D (EB-2013-0074) see Undertaking J4.7 Schedule 12-1 and 12.2

## **2.5 Pre-approval of Cost Recovery (Issue B5)**

**2.5.1** After the witness panel addressing Issue B5 was completed, the Board in EB-2013-0202 approved Union's 2014-18 IRM application. In doing so, the concerns that were raised during the oral hearing about pre-approval of cost recovery have been resolved to SEC's satisfaction. The IRM agreement specifically envisions that for major capital projects that meet specific criteria, the leave to construct application would act as a type of cost of service for that project. Union's Parkway West Project meets the Y-factor requirements under the approved IRM framework, and is specifically contemplated within the agreement.<sup>9</sup>

## **3 GTA PROJECT (EB-2012-0451)**

### **3.1 Overview**

**3.1.1** Enbridge's proposed GTA Project is made up of two separate segments. Segment A consists of installation of a 27km NPS 42" pipeline between the Parkway West Station and the Albion Road Station ("Albion"). Enbridge's proposed Parkway West Station is to be located at Union's proposed Parkway West site. It will consist of the necessary gate station, and will tie-in to both Union's transmission system and its own system to provide a backup.

**3.1.2** Segment B will consist of installation of i) a NPS 36" XPS pipeline running from its Keele/CNR Station to its proposed Buttonville Station and then tie into an existing NPS 36" pipeline and, ii) an expansion of its Jonesville station.

**3.1.3** SEC submits that Enbridge has met the test for leave to construct the proposed GTA Project, but there are still concerns with the transmission component of Segment A (see section 4) and the planning process for Segment B.

### **3.2 Need, Alternatives and Timing (Issues A1, A4, A5)**

**3.2.1** While there is no single rationale provided in the evidence that alone would require the construction of the proposed facilities, taken as a whole SEC agrees with Enbridge that it has demonstrated that there is a need for the projects for distribution purposes, and that the timing is appropriate. SEC does, though, have concerns with the planning process that led up to the

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<sup>9</sup> EB-2012-0202, Section 6.6 of the Settlement Agreement

decision to bring forward this application.

- 3.2.2 Growth.** Enbridge has provided credible evidence that increased customer additions and peak demand growth in the GTA require additional capacity to meet minimum required inlet pressures as early as winter 2015/16. There is expected customer growth (customer additions) over the next decade, especially that of “peakier” load sensitive additions. Segment A is required to flow the additional required volumes of gas, up to 800 TJ/day to Albion, which can then flow across Enbridge’s GTA system to Segment B. Segment B is required to maintain adequate inlet pressures at Station B, which supplies the Portland Energy Centre (“PEC”) and the growing downtown core.
- 3.2.3** Both the Green Energy Coalition (“GEC”) and Environmental Defence (“ED”) provided expert evidence on how increased conservation programs can alleviate the need for the proposed facilities by reducing demand. Enbridge’s response to that evidence was that Demand Side Management (“DSM”) programs cannot offset the need for the proposed Segment B facilities because current programs are not focused on peak load but on overall consumption. The change required to create new programs to focus on peak load would require a total overhaul of Enbridge’s DSM approach and would not be cost-effective.<sup>10</sup>
- 3.2.4** SEC recognizes that the current Board natural gas DSM approach has been focused on overall consumption, not peak load, and that it is not practical at this stage to require Enbridge to design and develop new programs to meet the required in-service date of winter 2015/2016.
- 3.2.5** The issue that concerns SEC is that Enbridge has been aware of the inlet pressure issue caused by expected growth since at least 2002. Yet, at no point did it undertake a concerted effort to determine if DSM could be a potential solution to the issue. It was only until it was at the planning stages for the proposed facilities that it determined that its current suite of DSM programs would not be an adequate way to avoid this new construction of new infrastructure. If Enbridge had made a proper and timely commitment to integrated planning, it could have begun to develop DSM programs that focus on peak load reduction. Instead, they made no attempt to determine if that was feasible.

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<sup>10</sup> Tr.7, p.4,6.

**3.2.6** As Mr. Cherniak said at the oral hearing:<sup>11</sup>

But the important thing is that you not break, or the company not break these issues into separate islands that don't communicate with one another. And it looks like the company has taking the position that: Well, we'll just wait on the pressure issue at station B until it's time to get approval to start digging, to build some looping on the Don Valley Parkway.

And had they brought that issue to the DSM people and started a targeted program. I think the other witnesses will have a very strong opinion that they could have kept down the loads on that line considerably and avoided any need for expanding the Don Valley Parkway, without scrambling in any way to do it.

That also would have given them more flexibility in terms of reducing pressures on the lines, to the extent that that is something that is important and that they want to do it.

**3.2.7** SEC submits that Enbridge (and Union) must be required to have proper integrated resource planning. What finally caused some US utilities to seriously consider DSM in the context of considering the need for facilities expansion was a push by their regulators to do so.<sup>12</sup> While it would not be prudent for the Board to reject this proposed project at this juncture, it should in our view send a strong message to Enbridge that its current approach to system expansion will not be tolerated in the future.

**3.2.8** *Entry Point Diversification and Reliability.* Enbridge has provided evidence that its current distribution system is vulnerable because of its significant reliance on the supply entering at its Parkway Gate Station.<sup>13</sup> Enbridge's concern is that the remaining entry points (Victoria Square, Lisgar and Markham Gate Stations) which feed into its XPS system do not have the combined capacity to replace Parkway in the case of a supply distribution.<sup>14</sup> Such an outage, while admittedly remote, would have very significant consequences, leaving over 270,000 customers including PEC, without service. SEC recognizes that entry point diversification is important to maintaining a reliable distribution system, and thus is a factor in considering this project. However, this issue on its own would not warrant the construction of the proposed Parkway West Station and the Segment A pipeline at this time.

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<sup>11</sup> Tr.6, p.110-111

<sup>12</sup> Tr.6, p.112-13

<sup>13</sup> Parkway Gate Station accounts for 58% on a Design Day (see EB-2012-0433, Ex.A/3/1/p.7)

<sup>14</sup> EB-2012-0433, Ex.A/3/3

**3.2.9 Operational Flexibility.** Enbridge has also provided evidence that the GTA Project, specifically Segment B, will increase its operational flexibility as it provides the ability to shift supply more easily between the east and the west. Currently, the only XPS pipeline used to shift supply between the east and west of the GTA is a NPS 26” pipeline which is frequently at capacity. SEC recognizes that this added flexibility benefits customers.

**3.2.10 Safety.** Enbridge has relied on safety and reliability concerns regarding the current operating pressure of the Don Valley Line and parallel NPS 26” line, as evidence supporting the construction of Segment B. Both of those lines operate at above 30% Specific Minimum Yield Strength (“SMYS”) which is the point at which a leak may become a rupture that could lead to a catastrophic event.<sup>15</sup>

**3.2.11** SEC’s concern is that Enbridge has not conducted a probability study or any other assessment to determine the likelihood that such a catastrophic event will occur.<sup>16</sup> While to some extent it is undoubtedly true that “one incident is too many, given the location of these lines”, that is not an adequate response, since Enbridge cannot eliminate every single risk.<sup>17</sup> The Board should ensure that the incremental cost is commensurate with the risk reduction. Enbridge has not done that, and admitted during the hearing that it does not normally do a quantitative analysis to measure the likelihood of such a significant adverse event occurring:<sup>18</sup>

MR. ELSON: So there's some qualitative analysis but no quantitative analysis; is that right? In your integrity management program?

MR. THALASSINOS: We have a combination of quantitative and qualitative analysis.

MR. ELSON: But you wouldn't have comparisons such as I discussed of the likelihood of service losses, the likelihood of accidents, the severity of the consequences and the costs of addressing those various risks? It wouldn't reach that level of detail; is that right?

MR. THALASSINOS: Not all that level of detail. Correct. [emphasis added]

**3.2.12** The importance of conducting a proper analysis that looks at the likelihood of the risk and the

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<sup>15</sup> Tr.6, p.66-67

<sup>16</sup> Tr.6, p.23-24

<sup>17</sup> Tr.7, p.166

<sup>18</sup> Tr.6, p.24

severity of the consequences is important when you consider that both Enbridge and Union have a significant amount of their pipeline system above 30% SMYS.<sup>19</sup> Since Enbridge is not seeking to replace all its pipelines above 30% SMYS, there should be an analytical framework that it applies when it determines if and when it is appropriate to construct facilities to bring the pressure below this threshold.

### **3.3 Rate Impact/Costs/Feasibility (Issues A2, A3)**

**3.3.1** Enbridge has forecast the cost of the GTA Project at \$686.5 million. The project has passed the first stage of the required economic feasibility analysis in both E.B.O. 188 (distribution expansion) and the *Filing Guidelines on the Economic Tests for Transmission Pipeline Expansion*, which incorporates E.B.O. 134.<sup>20</sup> Both analyses show a Profitability Index (PI) of over 1.00 which would indicate that the project is economically feasible.

**3.3.2** Even though a project may be economically feasible under one configuration, does not mean that it is the *most* prudent configuration. While a 42” pipeline for Segment A may pass the test for economic feasibility, it might be appropriate for the Board to give leave to construct a 36” pipeline, or in the alternative, only allow recovery of the revenue requirement associated with a 36” pipeline.

**3.3.3** Enbridge has based its proposed need for a 42” pipeline on the transmission component of Segment A (for more see section 4). If the Board does not agree that the transmission component is reasonable or likely, then Enbridge does not need a 42” pipeline for distribution purposes, and ratepayers should not have to bear those costs in rates. A 36” pipeline is *more* economically feasible than a 42” pipeline if there is no need for the transmission component.

**3.3.4** While the costs of the project are significant, and the rate impacts considerable, even if you remove the proposed transmission benefits that may accrue to ratepayers, the component of the GTA Project being built for distribution purposes is still appropriate when considering the needs as set out in the evidence.

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<sup>19</sup> Tr.4, p.23 ,Undertaking Response J4.3 (Union), Tr.Vol.5, p.109-110 (Enbridge)

<sup>20</sup> EB-2012-0092, *Filing Guidelines on the Economic Tests for Transmission Pipeline Expansion*

### **3.4 *Appropriate Conditions (Issues D6)***

**3.4.1** SEC submits that in addition to the usual conditions that would be attached to a leave to construct order of this type, the Board should make it a condition of this approval and construction of Union's Parkway West Project (EB-2012-0433) also be approved. Without Union's Parkway West facilities, Enbridge's proposed Parkway West Gate Station as designed. Further, for the reasons in which Union submits it requires LCU, it would not be prudent to increase the flows through Parkway to Segment without compressor backup.

**3.4.2** Further, SEC submits that a number of additional conditions should be added with respect to the transportation component of Segment A (see section 4.73).

## **4 MARKET ACCESS PROJECTS (EB-2012-0074 and EB-2012-0451)**

### **4.1 *Overview***

**4.1.1** Union has applied for leave to construct (and certain other relief) an expansion of its Dawn to Parkway transmission system, specifically the construction of i) an NPS 48" pipeline between its Brantford Valve Site and the Kirkwall Transfer Station ("Brantford-Kirkwall Loop"), and ii) a new compressor station ("Parkway D") at the new Parkway West site.

**4.1.2** As discussed in section 3, Enbridge has applied for construction of its Segment A facilities from Parkway West to Albion. Although primarily for distribution purposes, its proposed 42" pipeline is also to provide transmission capacity that would ultimately flow from Albion downstream to TCPL's Mainline near Maple.

**4.1.3** While SEC supports increased market access for Ontario to new emerging natural gas basins in the northeastern United States, it is concerned that the gas savings that are the major premise of these two projects ("Market Access Projects") may not actually materialize as a result of the settlement entered into by Union, Enbridge, TCPL and Gaz Metro in the middle of this proceeding. For leave to construct for the Market Access Projects to be in the public interest, SEC submits that the Board should include specific conditions which will provide the necessary level of comfort that the risks and costs will be allocated appropriately, and distribution ratepayers are protected from changing circumstances. .

## **4.2 Settlement Agreement**

**4.2.1** On September 10<sup>th</sup> 2013, Enbridge, Union, Gaz Metro and TCPL entered into a Settlement Term Sheet (“Term Sheet”) which was finalized and incorporated into a Settlement Agreement filed with the Board on October 31<sup>st</sup> 2013. The Settlement Agreement resolves the litigation between the four utilities at the OEB, NEB and before the courts, and is the basis of an application TCPL plans to file before the NEB for among other things:

- (i)* Revised fixed TCPL tolls for 2015-2017, and an extension till 2020, including the elimination of the Toll Stabilization of the Account (“TSA”);
- (ii)* Methodology on toll calculation after 2020, including segmentation of the Mainline and allocation of the Long Term Adjustment Account (“LTAA”);
- (iii)* TCPL’s support for the applications before the Board in this proceeding;
- (iv)* Certain minimum long haul contracting requirements; and
- (v)* Requirement that TCPL build its King’s North pipeline between Enbridge’s Albion Station and TCPL’s Maple Station.

**4.2.2** This Settlement Agreement is sweeping, and would wholly re-write the NEB’s Mainline Restructuring Decision.<sup>21</sup> While it is clear the utilities have spent considerable time and effort in coming to such a comprehensive settlement, after significant litigation in multiple forums, that does not mean the settlement is in the best interest of ratepayers. None of the parties speak for ratepayers, and while Enbridge and Union are customers of TCPL’s Mainline, historically the tolls for transportation have been a pass-through to their customers.

**4.2.3** This proceeding is not the forum to determine the reasonableness of the tolls set out in the Settlement Agreement. However, if it is ultimately approved by the NEB, the Board in a subsequent proceeding must in our view undertake a thorough review to determine if the cost consequences are just and reasonable for Ontario ratepayers.

**4.2.4** In Union’s 2013 Cost of Service proceeding (EB-2011-0210), the Board commented on the lack of cooperation and consultation between Enbridge, Union and TCPL and how it was concerned that it would have adverse consequences for Ontario ratepayers.<sup>22</sup> The lack of

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<sup>21</sup> RH-003-2011, *In the Matter of TransCanada Pipelines Limited, NOVA Gas Transmission Ltd., and Foothill Ltd. Business and Services Restructuring Proposal and Mainline Final Tolls for 2012 and 2013*

<sup>22</sup> EB-2011-0210, *Decision and Order*, dated October 25, 2012 at p.126

cooperation was evident during the lead up to the oral hearing, which saw opposing evidence and motions filed.

**4.2.5** Enbridge and Union rely on the Term Sheet and subsequent Settlement Agreement as evidence that they have now cooperated and that the project leads to a rational expansion of their respective systems. SEC submits that the Settlement Agreement goes significantly further than what was contemplated by Board in its comments in Union's 2013 proceeding. It fundamentally changes the current TCPL tolling framework, and binds each party to much more than just supporting certain capital projects proposed by each other.

**4.2.6** It cannot be taken for granted that the NEB will approve the Settlement Agreement, at least in its current form. Many customers of TCPL's system are not a party to the agreement and may ultimately be harmed by the agreement, even if some Ontario consumers benefit.

### **4.3 *Need and Timing (Issues A1, A5)***

**4.3.1** Union has argued that because of the changing supply choices by market participants in Ontario, Quebec and the US Northeast, there is increased demand for transportation capacity on its Dawn-Parkway system. This incremental demand requires a corresponding incremental need for pipeline capacity, which is achieved by completing the loop between Brantford and Kirkwall. Further, the increased flows to Parkway require incremental compression capacity, which would be created by the construction of Compressor D.

**4.3.2** SEC does agree with much of the evidence of Union, Enbridge and ICF International about the changing dynamics of the North American natural gas supply. The last few years has seen a very significant shift in natural gas production from the Western Canadian Sedimentary Basin (WSCB) to increased unconventional supplies located much closer to Ontario from shale formations in the northeastern United States. The emergence of shale gas from formations such as Marcellus and Utica provide the ability for Ontario natural gas distributors to access supply from a closer and potentially cheaper source, which could be to the benefit of ratepayers.

**4.3.3** This has had a significant effect on the overall market for natural gas. Shippers are increasingly choosing to source supply from these closer supply basins at the expense of the

WSCB. This has had a dramatic effect on the volumes on the TCPL's Mainline, causing tolls to increase which in turns reduces shipper's willingness to contract long haul. This eventually led to the sweeping NEB decision in March ("Mainline Restructuring Decision") which among other things fixed TCPL's Mainline tolls for a 5 year period.<sup>23</sup> Regardless of the Mainline Restructuring Decision, there has been a significant increase in demand for short haul transportation service on Union's Dawn-Parkway system and TCPL's Eastern Ontario Triangle ("EOT").

**4.3.4** SEC agrees with Union that the evidence demonstrates that there is an increase in demand for incremental transportation along the Dawn -Parkway system and into TCPL's EOT. In the recent open season on Segment A, Enbridge received bids for 930 TJ/d from a number of bidders.<sup>24</sup> Union has also seen Enbridge, Gaz Metro, and Vermont Gas execute new contracts for significant new capacity beginning in 2014 and 2015.<sup>25</sup>

**4.3.5** Union's and Enbridge's customers should be allowed to access these new sources of gas supply. The current problem is that there is a bottleneck on TCPL's line between Parkway to Maple, which prevents Enbridge and Union from contracting short haul supply to their delivery areas in eastern and northern Ontario. Enbridge's Segment A is intended to be part of the solution to resolving that bottleneck by providing increased transmission capacity from Parkway to Albion. The Settlement Agreement provides that TCPL would then build a pipeline that would begin at Albion and connect to its Mainline system just upstream of Maple (the "King's North Project").<sup>26</sup>

**4.3.6** Even if the Board believes that the proposed projects in this proceeding are in the public interest, it should in our submission only provide leave to construct on condition that the NEB approves: i) the Settlement Agreement, and ii) the King's North Project, as far as it can be considered a separate approval. This is because the Settlement Agreement provides the basis for the construction of the downstream facilities of Albion which as Union's own evidence states, is necessary for the new capacity that would require the construction of Brantford-

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<sup>23</sup> RH-003-2011, *In the Matter of TransCanada Pipelines Limited, NOVA Gas Transmission Ltd., and Foothill Ltd. Business and Services Restructuring Proposal and Mainline Final Tolls for 2012 and 2013*

<sup>24</sup> Ex.I.A4.UGL.APPrO.11

<sup>25</sup> EB-2013-0074, Ex.7, p.9

<sup>26</sup> TransCanada Pipelines Limited Mainline Settlement Agreement ("Settlement Agreement"), filed October 31 2013, article 11.1(h)

Kirkwall/Parkway D.<sup>27</sup> Additionally, the transportation component of Enbridge's Segment A, i.e. incremental capacity created by using a 42" instead of a 36" pipeline, also relies on the same downstream facilities being built by TCPL.<sup>28</sup> Without TCPL's King's North Project there is no need for the Brantford-Kirkwall pipeline or the transportation capacity over and above what Enbridge requires for distribution purposes on Segment A.

**4.3.7** SEC has no concerns with the proposed timing of these projects, but believes that since there are NEB approvals required for the downstream facilities, there is a good chance the gas that flows for transmission purposes will be delayed. SEC submits the Board should ensure by way of conditions on the leaves to construct, that Enbridge and Union are closely monitoring regulatory any construction delays for all the related projects, and that the Market Access Projects are not in-service until gas for transmission purposes is able to flow.

#### **4.4 Gas Savings and Economic Feasibility (Issues A2, A3)**

**4.4.1 Gas Savings.** Much of Union's and Enbridge's justification for these Market Access Projects is based on the expected gas savings. SEC is concerned that because of the many moving pieces, it is hard for intervenors and the Board to have a strong level of comfort that they will lead to economically feasible projects.

**4.4.2** When the Applications were first filed, Union projected the annual gas savings to be \$28.2 million for Union North and \$18.1 million for Union South customers.<sup>29</sup> After the NEB finalized TCPL Compliance Tolls resulting from the Mainline Restructuring Decision, Union revised the annual gas savings costs to just \$15.4 million for Union North customers<sup>30</sup>. The amounts were further reduced upon filing of the Term Sheet and Settlement Agreement to between \$9.6 million or \$12.9 million.<sup>31</sup>

**4.4.3** For a number of reasons those gas savings figures will continue to be uncertain:

*(i) Settlement Agreement.* The basis for the newly revised gas savings are a Settlement

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<sup>27</sup> Undertaking K8.1 (Project Interdependency Table), Ex.I.A1.UGL.Staff.7, Ex.I.A1.UGL.Staff.8

<sup>28</sup> Undertaking K8.1 (Project Interdependency Table)

<sup>29</sup> EB-2013-0074, Ex.11/p.29, 30

<sup>30</sup> Brantford- Kirkwall/Parkway D Compressor Addendum, dated August 23 2013 at p. 1,3.

<sup>31</sup> Union evidence update, dated November 7 2013 at p.2

Agreement that has not been approved by the NEB, and may be hotly contested. Even if the Settlement Agreement is largely accepted, small changes may have significant impact on the gas saving calculations.

- (ii) *Energy East.* The Settlement Agreement specifically excludes the effect of TCPL's planned Energy East project.<sup>32</sup> That project involves converting portions of TCPL's Mainline from natural gas to oil. Part of that will require a portion of the Mainline in the EOT, from North Bay to Iroquois (the "North Bay Shortcut"), to be converted. Unlike the rest of the Mainline conversion, when those assets are taken out of service and converted for oil transportation, there will be a 200 Tj/day shortfall in capacity which will require new assets to be built or some equivalent capacity to be procured.<sup>33</sup> What is not clear at this point is whether the reduction in the rate base of the EOT, the net book value of the converted portion of the North Bay Shortcut, will be equal or greater than the cost of the replacement assets. If it is not, then there will be even lower gas savings. With Energy East planned to go in-service in 2017, only 2 years after the proposed in-service date of the Market Access Projects, the tolls set out in the Settlement Agreement may be significantly altered shortly after they would be implemented.
- (iii) *Allocation of the Impacts of Conversion from Long Haul to Short Haul.* One of the issues that is left undecided by the Settlement Agreement is how the revenue deficiency of the TPCL system caused by customers having the right to shift from long haul to short haul will be allocated through the toll surcharge (this was referred to as the bridging mechanism during the hearing).<sup>34</sup> There are significant differences in the projected gas savings depending on whether the deficiency is allocated to just EOT shippers, or to those on the entire TCPL system. Union has provided estimates on the impact of the allocation of the revenue deficiency from the conversion. If it is allocated to just shippers on EOT the gas savings as of November 1, 2016 would be reduced from \$15.4 million to \$12.9 million.<sup>35</sup> If the revenue deficiency is allocated to all shippers on the TCPL system the \$15.4 million is reduced to \$11.5 million until

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<sup>32</sup> Settlement Agreement, article.4.2(b). Tr.9, p.117

<sup>33</sup> Tr.9, 114-118

<sup>34</sup> Settlement Agreement, article 12.4

<sup>35</sup> Undertaking J4.5 at p.2

2020.<sup>36</sup>

(iv) *Natural Gas Supply Costs.* The gas savings costs are premised on the long haul versus short haul transportation cost differential between Empress (AECO) and Dawn, netted against the cost difference of the commodity. This is important because consumers pay not just transportation costs, but also the cost of the commodity itself.

First, predicting the spread going forward is a very difficult. Union, Enbridge, Gaz Metro, and TCPL have provided different projected price differentials going forward.<sup>37</sup> Second, there is little evidence in this proceeding as to what effects changes in the transportation tolls will have on commodity costs. The Settlement Agreement is premised on maintaining the differential, but in doing so the absolute costs of both long haul and short haul rise. Empress and Dawn are not the only two natural gas hubs to which some shippers have reasonable access to. Some shippers may now be more likely to utilize a different source such as the northeast United States utilities who have contracts on the Mainline and Dawn-Parkway System. This may have the effect of changing the overall cost of the commodity at Dawn and/or Empress. Mr. Henning at ICF stated at the hearing that he did not believe that there would be a change in the commodity cost, but ICF has not done any modeling to confirm this.<sup>38</sup>

**4.4.4 Economic Feasibility Test.** While Enbridge's GTA Project passes Stage 1 of the E.B.O. 134 economic feasibility test, incorporated into the *Filing Guidelines on the Economic Tests for Transmission Pipeline Expansion*, Union's Brantford-Kirkwall/Parkway D Project may not.<sup>39</sup> Stage 1 consists of a discounted cash flow ("DCF") analysis that incorporates all incremental cash inflows and outflows that result from the proposed Brantford-Kirkwall/Parkway D Project.<sup>40</sup> The Profitability Index ("PI"), a measure of the net present value ("NPV") of the

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<sup>36</sup> Union evidence updated dated November 7 2013 at p.2

<sup>37</sup> Union has estimated an Empress-Dawn price differential of \$0.92/GJ (EB-2013-0074, Ex.11/4). Enbridge has forecast a price differential of \$0.49/GJ (EB-2012-0451 Ex.A/3/9/Attachment 1, p.3). Gaz Metro has estimated a price differential of \$0.73/GJ (M.SCGM.TCPL.1). TCPL has provided a calculation based on a price differential of \$1.50/GJ (TCPL Supplementary Evidence, 8)

<sup>38</sup> Tr.3, p.37-38. SEC notes that Undertaking JT3.5 while addressing the differential between Dawn and Empress in light of the Term Sheet does not directly address this question.

<sup>39</sup> EB-2012-0451, Ex.E/1/1

<sup>40</sup> EB-2012-0092, *Filing Guidelines on the Economic Tests for Transmission Pipeline Expansion*, p.2

cash inflows divided by the cash outflows, is only 1.02.

**4.4.5** When the application was first filed it had a PI of 1.46<sup>41</sup>, it was then lowered to 1.23<sup>42</sup> when updated to account for TCPL's Compliance Tolls, and now after the filing of the Settlement Agreement is 1.02.<sup>43</sup> While a project with a PI that is equal or greater than 1.0 is considered economic based on current approved rates, a PI of 1.02 is teetering on the edge of being profitable. One small change in the assumptions, capital costs, or gas savings, will result in the project being unprofitable, potentially significantly. For example, as stated in Section 2.3, SEC believes that at the very least, the capital costs are understated by \$51 million, which represents the proper allocation of the Parkway West site land development costs.

**4.4.6** If a PI is below 1.0, then under Stage 2, the Board must undertake a cost/benefit analysis to quantify the proposed benefits and costs that accrue to Union ratepayers as a result of the proposed project.<sup>44</sup> The NPV of the quantified benefits is added to the NPV from Stage 1 and discounted by the social discount rate to calculate the net benefits that directly result from the project. Union did not undertake a Stage 2 analysis because it claims that if there was no gas savings costs, the proposed facilities would not serve only Union's ex-franchise customers.

**4.4.7** Stage 3 requires the Board to consider other benefits that are not considered in Stage 2, including non-quantifiable considerations.<sup>45</sup> SEC agrees with Union that there are benefits of enhanced diversity, security of supply, and increased market access, but the Board should not give any weight to the claims of increased employment and tax revenue.<sup>46</sup> While they will occur, they are not benefits that this Board should consider in determining if a natural gas transmission system expansion is in the public interest.

**4.4.8** SEC submits that Union has demonstrated that the project is economic feasible, even if the PI turns out to be *slightly* below 1.00, based on the Stage 3 benefits. Although as stated earlier, the economics of this project are tied to the Settlement Agreement. If the Settlement Agreement is not approved in full, the Board may need to reconsider any approvals given in

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<sup>41</sup> EB-2013-0074, Schedule 9-3A/p.1

<sup>42</sup> Undertaking J4.4, Attachment 1/ p.1

<sup>43</sup> Union evidence updated dated November 7, 2013 at p.3

<sup>44</sup> EB-2012-0092, *Filing Guidelines on the Economic Tests for Transmission Pipeline Expansion*, p.2

<sup>45</sup> *Ibid*

<sup>46</sup> EB-2013-0074, Ex. 9, p.7-8

this proceeding.

#### **4.5 *Segment A Transportation Rate Methodology (Issues D6)***

**4.5.1** Enbridge has applied for approval of the rate methodology for its proposed Rate 332 transportation service on Segment A of its GTA Project. It has proposed that based on a 42” pipeline as applied for, transportation customers will be allocated 60% of the revenue requirement through Rate 332, and distribution customers through normal distribution rates will be allocated 40% of Segment A. The amount is based on the proportion of capacity reserved for transportation versus distribution customers.

**4.5.2** SEC submits that this approach is appropriate, as it follows regular cost allocation principles.

**4.5.3** As discussed further in section 4.7.3, SEC does have a concern with the allocation of the costs if the required downstream facilities are delayed, or not approved.

#### **4.6 *Pre-approval of Cost Recovery and Long-Term Contract s (Issues C5, C6)***

**4.6.1 *Cost Recovery.*** For similar reasons as set out with respect to the Parkway West Project,, SEC submits that the Board should grant pre-approval of cost recovery of Union’s Brantford-Kirkwall/Parkway D Project (EB-2013-0074), subject to the appropriate conditions (see section 4.7.2).

**4.6.2 *Long-Term Contracts.*** Union also seeks pre-approval of two anticipated TCPL long term short haul transportation contracts. SEC submits the Board should not grant such pre-approval.

**4.6.3** Union regularly enters into long-term transportation contracts with TCPL, and has never received pre-approval for the cost consequences before, including for binding open season bids.<sup>47</sup> There is nothing extraordinary about these proposed facilities that would warrant the Board pre-approving recovery. Further, at this point no Precedent Agreements have been signed, and most troubling, the tolls are not even known yet, since the Settlement Agreement hasn’t been approved.<sup>48</sup>

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<sup>47</sup> Tr.2, p.138

<sup>48</sup> Tr.4, p.30-31

MS. CHAPLIN: But do we know the tolls?

MR. ISHERWOOD: In the evidence, we actually filed the tolls based on TCPL's projected tolls, and it's since gone now to the compliance tolls. And it may still evolve back to the settlement tolls, you know, ideally.<sup>49</sup>

**4.6.4** The Board should in SEC's view not write what would amount to a blank cheque for recovery of these significant long-term contracts before the NEB has even ruled on the appropriateness of the proposed tolls that are set out in the Settlement Agreement.

#### **4.7 *Appropriate Conditions (Issues C7, D6)***

**4.7.1** In addition to the standard conditions the Board includes when giving leave to construct a natural gas facility, SEC submits the Board should place the following conditions on the Market Access Projects.

**4.7.2** With respect to the Brantford-Kirkwall/Parkway D Project:

**(i) *GTA Project Dependency.*** The Board should only grant leave to construct Brantford-Kirkwall/Parkway D Project if the GTA Project is granted leave in full. If the transmission component of the GTA Project is denied leave, then only Parkway D should be granted leave to construct.<sup>50</sup>

The Brantford-Kirkwall pipeline is only required if the downstream facilities are built, which includes the GTA Project Segment A transmission component. Parkway D growth compressor is needed even if just the distribution component Segment A is built.<sup>51</sup>

**(ii) *Settlement Agreement and TCPL's King's North Project.*** The Brantford-Kirkwall pipeline portion of the project should only be granted leave to construct if the Settlement Agreement is approved by the NEB with no material changes, and the King's North Project is granted leave to construct by the NEB.<sup>52</sup>

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<sup>49</sup> Tr.4, p.28

<sup>50</sup> Tr.2, p.150.

<sup>51</sup> I.A1.UGL.Staff 7, and I.A1.UGL.Staff.8, Tr.2, p.143-45.

<sup>52</sup> Similar to s.90 of the OEB Act, the NEB has authority pursuant to section 58 of the *National Energy Board Act* to grant leave for the construction of a pipeline longer than 40km within its jurisdiction.

As discussed earlier, the primary justification for the Brantford-Kirkwall pipeline is the gas savings that will flow to Enbridge and Union (as well as Gaz Metro) customers downstream of Albion. The Settlement Agreement provides the basis for TCPL to build the necessary facilities from Albion to Maple – TCPL’s King’s North Project. Without that link there is no need for the Brantford-Kirkwall pipeline. Further, a change in the Settlement Agreement may affect not only whether King’s North Project will be built, but the gas savings calculations that are a component in determining the economics of the proposed facilities.

SEC recognizes that it is possible that the NEB approves the Settlement Agreement, but still vary the terms if it, The Settlement Agreement recognizes this possibility and details how the parties’ obligations between themselves will be affected if that happens.<sup>53</sup> While they may have a process to determine how to resolve such an issue, the Board should not rely on that for the purposes of these applications.

SEC submits that the Board should require Union and Enbridge to file before this Board any NEB approved Settlement Agreement, including evidence respecting the impact of any changes.

If there are any variances between the approved Settlement Agreement and what has been filed with this Board on October 31<sup>st</sup> 2013, parties can make submissions in a compressed timeline about the materiality of those variances, including whether they change the basis for the approvals granted.

*(iii) Approval and Construction Delays.* The Board should only consider the Brantford-Kirkwall/Parkway D in-service and placed into rates once all the necessary and dependent projects begin to flow gas. Even if the regulatory approvals are all given, there could very well be delays that Union should be required to take into account in constructing its Brantford-Kirkwall/Parkway D Project. It is very likely that with facilities the size and complexity of the GTA Project and King’s North Project, and the necessary regulatory approvals required, there could be delays.

While the proposed in-service date of all the proposed facilities is November 2015,

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<sup>53</sup> Settlements Agreement, article 7

one or more of them could be delayed. Union ratepayers should not have to pay for facilities that when initially completed would not be used for their proposed purposes. As an example, the King's North Project may be delayed, since TCPL has indicated that it will be filing an application at NEB for approval in July 2014, with an expected decision by March 2015. That would leave only 7 or 8 months for full construction.<sup>54</sup> In that example, the Brantford-Kirkwall pipeline, at least initially, would not flow gas to consumers downstream of Albion (via Segment A) as is its intended purpose.

**4.7.3** With respect to Enbridge's Segment A:

- (i) ***Settlement Agreement and TCPL's King's North Project.*** The Board should not grant leave to construct a 42" (as compared to a 36") Segment A pipeline unless the Settlement Agreement is approved by the NEB, and the King's North Project is granted leave to construct by the NEB.

Enbridge's proposed Segment A includes a transportation component which is the basis for the 42" pipeline instead of a 36" pipe which would be sufficient for distribution purposes. The cost of a 36" pipe is \$632 million compared to the \$686.85 million for a 42".<sup>55</sup>

As discussed earlier, the basis for the transportation component of Segment A is the gas savings that will flow to Enbridge and Union (as well as Gaz Metro) customers downstream of Albion. The Settlement Agreement provides the basis for TCPL to build the necessary facilities from Albion to Maple – TCPL's King's North Project. Without that link there is no need for the transportation component of the Segment A pipeline.

If Enbridge believes it is unworkable for the Board to grant conditional leave for a certain sized pipe, then the Board should allow it to build a 42" pipe, but stipulate that it can only recover from distribution ratepayers the cost of a 36" pipe if the conditions are not met.

As discussed in greater detail above (see section 6.7.2.(ii)), if the Settlement

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<sup>54</sup> Undertaking J9.5

<sup>55</sup> Undertaking J6.9, p2 and Undertaking J6.14

Agreement is not approved in full, or is amended, the Board should require Union and Enbridge to return to the Board to determine if the changes are material to any approval the Board ends up giving in this proceeding.

*(ii) Brantford-Kirkwall/Parkway D Dependency.* The Board should not grant leave to construct a 42" (as compared to a 36") Segment A pipeline unless the Brantford-Kirkwall/Parkway D Project is also approved in full. If the project is denied leave, the Board should only grant leave to construct a 36" Segment A pipeline. The Brantford-Kirkwall/Parkway D Project is necessary for there to be any utilization of the transportation component of Segment A.

*(iii) Approval and Construction Delays.* The Board should only consider the transportation component of Segment A in-service when transportation customers begin to be charged for service (Rate 332). If Segment A is completed but not flowing gas for transportation purposes, distribution ratepayers should not have to pay for the unused transportation capacity – the revenue requirement attributed to the incremental cost of a 42" instead of a 36" pipe (\$54.8 million)<sup>56</sup>. For similar reasons as set out earlier (section 4.7.2(ii)), it is quite possible that there will be a delay in the regulatory approvals and/or construction of TCPL's King's North Project and Union's Brantford-Kirkwall/Parkway D Project that would impact when they go into service. Even if that delay is for a few months, Enbridge's distribution ratepayers should not have to pay for the incremental cost of the transmission component of Segment A.

To be clear, SEC is not proposing at this time that Enbridge ultimately bear the cost of the unutilized transportation component of Segment A. It may be appropriate for the Board to impute revenue, but then allow that amount to be put into a deferral account, to be allocated to transmission customers during some later period when that capacity becomes utilized. The incremental size and cost of Segment A are not for distribution purposes, and so should not in any circumstances be borne by distribution customers.

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<sup>56</sup> Undertaking J6.14

## **5 SUMMARY**

- 5.1.1 Summary.** SEC submits that the proposed projects are in the public interest, but only if the Board places certain necessary conditions, so that the risks are fairly allocated between ratepayers and the utilities.
- 5.1.2** Further, the Board should ensure that, while it is not in this proceeding determining the reasonableness of the Settlement Agreement, if it is ultimately approved by the NEB, in a future proceeding the cost consequences of that Settlement will be thoroughly reviewed.
- 5.1.3 Costs.** SEC hereby requests that the Board order payment of its reasonably incurred costs in connection with its participation in this proceeding. It is submitted that the School Energy Coalition has participated responsibly in all aspects of the process, in a manner designed to assist the Board as efficiently as possible.

**All of which is respectfully submitted on this 15<sup>th</sup> day of November, 2013**

*Original signed by*

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Mark Rubenstein  
Counsel to the School Energy Coalition