



# Ontario Energy Board Commission de l'énergie de l'Ontario

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## DECISION AND ORDER ON MOTION

EB-2015-0277

**MR. RON TOLMIE**

**Motion to Review and Vary – Union Gas Limited and Enbridge Gas Distribution Inc. applications for pre-approval of the cost consequences of long-term natural gas transportation contracts with NEXUS Gas Transmission**

**BEFORE: Christine Long**  
Presiding Member

**Susan Frank**  
Member

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October 30, 2015

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## 1 INTRODUCTION AND PROCEDURAL SUMMARY

The EB-2015-0166 / EB-2015-0175 proceeding concerns applications filed by Union Gas Limited (Union) and Enbridge Gas Distribution Inc. (Enbridge) for pre-approval of the cost consequences of their respective long-term transportation contracts with NEXUS Gas Transmission commencing November 1, 2017 (NEXUS Proceeding).

In Procedural Order No. 1, Mr. Tolmie was granted intervenor status in the NEXUS Proceeding. Procedural Order No. 1 also set out a preliminary issues list which was derived from the OEB's Filing Guidelines for Pre-Approval of Long-Term Natural Gas Supply and/or Upstream Transportation Contracts dated April 23, 2009.

Procedural Order No. 1 established a timeline for the discovery process. It also required intervenors to advise the OEB if they intended to file any evidence in the NEXUS Proceeding.

On September 17, 2015, Mr. Tolmie declared his intent to file evidence. On September 22, 2015, Mr. Tolmie filed a description of his proposed evidence. In the description, Mr. Tolmie stated that he would submit "reports from the NEB, OEB, IESO and other government agencies, peer reviewed papers from established science journals, data from Statistics Canada, etc., that should not require the testimony of expert witnesses."

In Procedural Order No. 2, the OEB ordered Mr. Tolmie not to submit the evidence he had described, as the OEB determined that the proposed evidence was outside the scope of the NEXUS proceeding. The OEB explained that "Mr. Tolmie's issues relate largely to broader questions of the future of electricity supply and demand in Ontario and hence are policy matters beyond the OEB's mandate in the context of the particular applications before it in this proceeding."

On September 29, 2015, Mr. Tolmie filed a letter requesting an "appeal" of the OEB's refusal to admit his proposed evidence. Although Mr. Tolmie labeled his request as an "appeal", the OEB's only means of reviewing and amending a decision is through a motion to review under Rule 40 of the OEB's Rules of Practice and Procedure. As such, the OEB decided to treat Mr. Tolmie's letter as a Motion to Review (the Motion).

The OEB adopted Union, Enbridge and the intervenors in the NEXUS Proceeding as parties to the Motion proceeding. The OEB invited all parties to make submissions on the Motion. The OEB received submissions from Mr. Tolmie, OEB staff, Union and Enbridge.

The OEB's findings on Mr. Tolmie's Motion are set out in the following section.

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## 2 OEB FINDINGS

A Motion to Review and Vary must raise a question as to the correctness of a decision in order to justify the need to review. Mr. Tolmie in his letters of September 29, 2015 and October 8, 2015 and in his reply argument, dated October 20, 2015, did not identify the grounds for his motion. Specifically, Mr. Tolmie did not, pursuant to Rule 42, raise a question as to the correctness of the order or decision on any of the following grounds:

- I. error in fact;
- II. change in circumstances;
- III. new facts that have arisen;
- IV. facts that were not previously placed in evidence in the proceeding and could not have been discovered by reasonable diligence at the time.

Mr. Tolmie reiterated arguments that the OEB had already indicated were not relevant to this case rather than establishing the necessary grounds for his Motion.

The issues that are to be considered in the NEXUS Proceeding were established by Procedural Order No. 1 issued in that proceeding. The four issues included on the preliminary issues list are:

1. Has the applicant adequately demonstrated the need, costs and benefits of the proposed project?
2. Has the applicant adequately demonstrated contract diversity in regard to how the contract fits into the applicant's overall transportation and natural gas supply portfolio in terms of contract length, volume and services?
3. Has the applicant provided an adequate assessment of all risks associated with the proposed project as well as provided plans on how these risks are to be minimized and allocated between ratepayers, parties to the contract and/or the applicant's shareholders?
4. Has the applicant provided an adequate assessment of other relevant considerations associated with the proposed project (for example, other conditions, rights or obligations among the parties to the contract and the applicant's parent company and/or affiliates, retail competition impacts, and

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potential impacts on existing transportation pipeline facilities in the market in terms of Ontario customers)?

The OEB notes that Mr. Tolmie proposes to file reports, peer-reviewed articles and other materials that provide a general energy outlook, and more specifically address the issue of alternative energy sources. The OEB still finds, as it did in the NEXUS proceeding, that this proposed evidence would not address issues that are in scope for this proceeding.

Also, Mr. Tolmie does not plan to make the authors of the reports available as witnesses. As such, there would be no opportunity for parties to ask questions with regard to the filed materials. Ordinarily, the OEB only accepts evidence (expert or otherwise) where there is a witness available to directly answer questions on the evidence. As the utilities will have no opportunity to test the validity of any reports by questioning their authors, the reports cannot be considered stand-alone evidence.

OEB staff, in its submission, suggested that Issue 3, the assessment of risk, was raised by Mr. Tolmie in his September 29, 2015 letter with respect to United States regulatory risk to the NEXUS project. As such, OEB staff argued that certain materials related to this risk could be relevant to the NEXUS Proceeding. However, in his reply argument, Mr. Tolmie indicated that he raised the concern of United States regulatory risk during his questions at the Technical Conference held on September 9, 2015. Mr. Tolmie indicated that he believed that was the correct time to ask questions on that topic.

The OEB agrees with Mr. Tolmie that the Technical Conference was the appropriate time to ask questions on United States regulatory risk. The exchange between Mr. Tolmie and Enbridge at the Technical Conference on this issue is attached as Schedule A, and it appears that the questions posed by Mr. Tolmie in respect of United States regulatory risk have been answered.

Mr. Tolmie is a registered intervenor in the NEXUS proceeding. While the OEB has determined that the evidence he seeks to file in the NEXUS proceeding will not be admissible, the OEB panel hearing the merits of that case will make any further decisions related to Mr. Tolmie's participation in the NEXUS proceeding.

For all of the above reasons, Mr. Tolmie's motion is dismissed.

### **3 ORDER**

#### **THE BOARD ORDERS THAT:**

1. The motion is dismissed.

**DATED** at Toronto October 30, 2015

#### **ONTARIO ENERGY BOARD**

*Original signed by*

Kirsten Walli  
Board Secretary

**SCHEDULE A**  
**DECISION AND ORDER ON MOTION**  
**MR. RON TOLMIE**  
**EB-2015-0277**  
**OCTOBER 30, 2015**

**NEXUS Proceeding – Technical Conference - Transcript Excerpt**

**EB-2015-0166 / EB-2015-0175**

**Transcript Volume 2**

**September 9, 2015**

**Pages 113 – 117**

MR. TOLMIE: My next question is: Can you, in fact, meet that demand? Two weeks ago the U.S. released its broad objectives for reducing methane from production of fossil fuels, and that's the primary problem with natural gas, of course, that it has high GHG emission because of the methane that it has lost in the pipeline or lost in the ground itself. So if, in fact, the U.S. does implement regulations that limit methane emissions to the 212 level less 45 percent, which is -- or 40 to 50 is their number -- would that mean you would not be able to meet your customers' requirements (a) and, more importantly, (b) would the U.S. permit exports of that amount of natural gas at a time when they are hard-pressed to meet the existing demands for natural gas?

MR. LEBLANC: I'm not certain that they're struggling to meet their need for natural gas.

MR. TOLMIE: Look ahead now. There's virtually no regulations on the industry right now. They can pretty well do as they please.

MR. LEBLANC: Right.

MR. TOLMIE: But once the government insists that they must comply with reductions, large reductions, in fact, in emissions,

at the same time that they're switching over from coal to natural gas as a major energy source for their power plants, how do you get A to meet B?

MR. LEBLANC: I don't know the exact goals or the numbers to which you speak, but I do see a number of forecasts of production of natural gas and demand from various sources, and I've not seen a forecast that globally says that they don't believe they can meet the demand.

Now, what they factored into those analyses, I think we're kind of getting outside of the realm of this particular item, but I don't foresee that kind of constraint on supply to fill the Nexus pipe for the term that we've -- we're proposing to sign on for.

MR. TOLMIE: In your responses on that question, you've looked at the potential of the Nexus and Utica -- not Nexus, but the Marcellus and Utica basins to provide future requirements. And I think, you know, there is a suggestion that there is enough gas there to last for 600 years, but that's assuming that the only constraint is the supply. But if, in fact, there is a constraint that says the limitation is the amount of greenhouse gas that is going to be produced, then perhaps that number is not 600. It may be much, much smaller.

MR. LEBLANC: I think any government making -- placing limitations on greenhouse gas has to balance between sort of the realities of the economy and the goals of reducing greenhouse gas.

And I don't -- I'm not an expert in this area in any way



shape, or form, but I don't think that this is an overnight type of thing, and I believe there will be gas sufficient to fill our capacity on the Nexus pipe for the term that we're signed up for.

I don't have --

MR. TOLMIE: You have a belief but no numbers?

MR. LEBLANC: -- a broader explanation, I guess, at this point.

MR. TOLMIE: Well, let's bring it home to Ontario here.

Ontario has also recently updated their expectations, and they would like to see a reduction in greenhouse gases of 30 percent by 3035 -- sorry, 37 percent by 3035 (sic), which is not very far off the time frame that you are looking at again, and they're looking at 80 percent by 2050, which is -- since it's not easy to replace things like the gas or kerosene that is used by airplanes, it really means we have to terminate the use of things like fossil fuels for heating our home. It is not just gas, but we can't use coal, and we can't use oil, or whatever. So here in Ontario you have the same basic problem that the limitation is not going to be adequate supply, but adequate capacity of the world to absorb the drawbacks of using this particular fuel.

Have you done any calculations to show how that limitation would define what you would be handling in this pipeline or delivering to your customer?

MR. LEBLANC: I would only -- I guess I would answer that in this way. This -- the capacity on this pipeline represents

about 10 percent of the overall use of our customer base. And so -- and we do have some contracts -- some other contracts at 15 years out of Niagara, to be fair.

So it is not just this. We have a couple of areas which probably represent 30 percent or so of our entire demand. So we're locked into transportation contracts for 15 years for about 30 percent of our demand. Other contracts fall off at different intervals, as short as three years from now.

So I guess I would come back around to the same answer that I gave a couple of times already is that our plan is designed in a way to allow us to respond to pretty significant changes in demand from our customers. So we believe, even with this contract approved, we have the tools in our supply plan available to us to respond to even fairly dramatic reductions in natural gas use.