



**EB-2011-0210**

**IN THE MATTER OF** the *Ontario Energy Board Act, 1998*,  
S.O. 1998, c. 15, (Schedule B);

**AND IN THE MATTER OF** an Application by Union Gas  
Limited, pursuant to section 36(1) of the Ontario Energy  
Board Act, 1998, for an order or orders approving or fixing  
just and reasonable rates and other charges for the sale,  
distribution, transmission and storage of gas as of January 1,  
2013.

**BEFORE:** Marika Hare  
Presiding Member

Paul Sommerville  
Member

Karen Taylor  
Member

**DECISION AND ORDER**  
**ON TRANSCANDA PIPELINES LIMITED MOTION FOR FULL RESPONSES TO**  
**INTERROGATORIES AND THE UNION GAS LIMITED REQUEST FOR**  
**CONFIDENTIAL TREATMENT OF CERTAIN FILINGS**  
**June 15, 2012**

Union Gas Limited (“Union”) filed a cost of service application on November 10, 2011 with the Ontario Energy Board (the “Board”) under section 36 of the Ontario Energy Board Act, 1998, S.O. c.15, Schedule B, as amended. The application is for an order or orders approving or fixing just and reasonable rates and other charges for the sale, distribution, transmission and storage of natural gas, effective January 1, 2013.

In Procedural Order No. 3, the Board established May 4, 2012 as the deadline for Union to respond to written interrogatories. Union filed its written responses on May 4, 2012.

TransCanada PipeLines Limited (“TCPL”) filed a Notice of Motion on May 17, 2012. The Motion requested the following:

- 1) An Order requiring Union to provide proper answers to the Interrogatories identified in Appendix “A” to the Notice of Motion, or such other information as the Board considers appropriate.
- 2) An Order requiring Union to file with the Board unredacted copies of pages in Interrogatory Responses that were filed in redacted form as part of Union’s Interrogatory Responses to TCPL, so that the Board can assess the reasonableness of the claims for confidentiality and make such order as it considers appropriate in that regard.

The second request included in TCPL’s motion related to the treatment of confidential materials. The Board in Procedural Order No. 6, issued on May 18, 2012, decided that it will not hear this request as part of the TCPL Motion (as there were also other exhibits, not mentioned in TCPL’s Motion, which were filed under confidential cover). The Board in Procedural Order 6 established a separate process for reviewing Union’s confidential claims.

The Board has address the TCPL motion (the “Motion”) and Union’s request for confidential treatment of certain documents separately below.

### **The TCPL Motion**

The Board heard the Motion filed by TCPL in writing. Procedural Order No. 6 made provision for all parties to the proceeding to file submissions on the merits of TCPL’s motion and for TCPL to file reply submissions. This process was completed on June 8, 2012.

The interrogatories for which TCPL has requested “proper answers” from Union are as follows:

- a) Exhibit J.B-1-7-21 (b);
- b) Exhibit J.B-1-7-5 (d) and (g);
- c) Exhibit J.B-1-7-6 (c);
- d) Exhibit J.B-1-7-8 (b);
- e) Exhibit J.B-1-7-8 (c) and (d);
- f) Exhibit J.B-1-7-8 (e)<sup>1</sup>;
- g) Exhibit J.B-1-7-1 (a);
- h) Exhibit J.B-1-7-13 (a);
- i) Exhibit J.B-1-7-14 (f);
- j) Exhibit J.B-4-7-1 (a);
- k) Exhibit J.B-4-7-1 (b)(v); and
- l) Exhibit J.G-1-7-11.

TCPL, the Building Owners and Managers Association, Greater Toronto (“BOMA”) and Union filed submissions related to TCPL’s motion. The information sought by TCPL relates primarily to Union’s Parkway West project which provides for loss of critical unit protection at Parkway.<sup>2</sup>

With respect to the non-Parkway West interrogatories (items j, k, and l above), Union indicated that it is prepared to provide answers to TCPL’s questions in Exhibit J.B-4-7-1(a) and Exhibit J.B-4-7-1 (b)(v) and that the question in Exhibit J.G-1-7-11 had been answered. TCPL accepted Union’s position on items j and k above but not on their response to Exhibit J.G-1-7-11. Exhibit J.G-1-7-11 requests Union to provide information on the current and potential Dawn-Union to Dawn-TransCanada capacity. TCPL indicated that Union’s position that the answer is contingent on a forecast of 2012/13 supplies and demands at Dawn is not a sufficient answer.

With respect to the Parkway West project questions, TCPL’s position is that the information they are seeking is necessary for the Board to evaluate the reasonableness of Union’s proposed capital expenditures.

Union submitted that the information requested by TCPL is not relevant to Union’s application as most of the questions relate to the Parkway West project which is not

---

<sup>1</sup> TCPL requested that the Board require Union to file presentations made to Enbridge Gas where the Parkway West Project was discussed. Also TCPL requested the filing of unredacted versions of Attachment 1 and Attachment 2. This is addressed under the Confidentiality section below.

<sup>2</sup> Items a through i above relate to the Parkway West project.

slated to come into rate base until 2014 and will have no impact on 2013 rates. Union's position was that providing such further information could have no bearing on deciding the issues before Board in this application.

BOMA's submissions largely supported TCPL's request for Union to provide answers to the TCPL Parkway West interrogatories.

### *Board findings*

The Board grants the Motion and requires Union to provide interrogatory responses as requested.

The Board agrees with TCPL with respect to providing a more detailed answer to the question posed in Exhibit J.G-1-7-11. The Board finds that the information sought on the 2012/13 available Dawn-to-Dawn TCPL capacity would be of assistance.

On the Parkway West questions, in the Board's view a review of the forecast capital spending plan for the applicant is a conventional aspect of the cost of service rebasing process. The Board recognizes that the specific projects that are the focus of the interrogatories at issue are not expected to close to rate base within the test year, and that the Board is not conducting a prudence review of the projects. However the Board has commonly reviewed capital spending forecasts as part of a Cost of Service review, and will do so in this case.

The Board notes that the Applicant initially proposed that such plans would be reviewed within this case, and indeed has responded to numerous other interrogatories respecting capital projects which may not close to rate base within the test year. In the Board's view, this line of inquiry is supported by the Issues List.

The Board also notes that the Applicant has highlighted the projects that are the focus of the interrogatories at issue within the application and otherwise. The Board considers it to be important that the Board be fully informed with respect to significant developments that may arise during the incentive period when it is determining the cost of service rebasing application.

Such applications arise once every six years. It is important that the Board's decisions at rebasing are as fully informed as possible especially when significant developments

that may arise during the incentive period have been so effectively highlighted by the applicant itself.

The Board also considers that the projects contemplated may have important implications for the Company's operations during the incentive period, and for its customers. In considering the rebasing application the Board would be remiss if it did not ensure that it had as clear a picture as possible of the significant developments likely to arise within the incentive period.

### **Confidentiality**

Union sought confidential treatment for the following documents: benchmarking studies referred to in Exhibit J.O-4-1-11(a); the third party services contract referred to in Exhibit J.H-12-2-1(d); and the redactions in the documents filed by Union in Attachments 1 and 2 in Exhibit J.B-1-7-8.

The Board received submissions regarding these requests from Board staff, Canadian Manufacturers & Exporters ("CME"), and TransCanada Pipelines Limited ("TransCanada"), as well as from Union.

In considering requests for confidentiality, the Board is guided by its Practice Direction on Confidential Filings (the "Practice Direction"). The Board's general policy is that all documents in a proceeding should be open to inspection by any person. Only where the party seeking confidential status satisfies the Board that confidential treatment is warranted will documents be kept off of the public record.

### **Redactions to Attachments 1 and 2 of Exhibit J.B-1-7-8**

Attachments 1 and 2 of Exhibit J.B-1-7-8 are power point presentations. Union proposes to redact several bullet points embedded in those presentations. The information in those bullets is mostly information provided to Union by Enbridge Gas Distribution Inc. ("Enbridge").

Union argues that the redacted bullets are commercial information that has been considered confidential by Enbridge, and was provided to Union under a confidentiality agreement. Board staff supported Union's request for confidential treatment.

TransCanada submits that none of the redactions meet the tests as set out in the Practice Direction. It submits that none of the redacted information could reasonably be expected to harm Enbridge or Union's competitive position.

CME argued that the information provided by Enbridge relates to activities regulated by the Board, and that it could see no reason why the information should be treated in confidence.

### *Board findings*

The Board finds that the information that Union proposes to redact is not confidential, and that the full and un-redacted presentations should form part of the public record.

The redacted bullets cannot reasonably be expected to cause any prejudice to Enbridge's or Union's competitive position. Generally the bullets discuss matters of gas supply and possible future system needs for Enbridge. There are no specific plans or timelines. The information is presented in a very general fashion, and it would be difficult to discern any concrete plans, nor does it appear to reveal any sensitive commercial information. The Board does not see any compelling reason to keep this information off of the public record.

### **The Benchmarking Studies**

Union seeks to keep confidential certain information from three benchmarking studies, which were conducted by the American Gas Association ("AGA"), the Canadian Gas Association ("CGA"), and Public Service Electric and Gas ("PSEG"). Union has redacted only the names of the participants of the studies (other than Union itself); in other words, Union's position in the studies is not redacted, although the positions of other parties are redacted. Union has signed agreements with the AGA, CGA and PSEG stating that it would take reasonable steps to safeguard the information relating to the benchmarking study participants.

CME observes that the participants in the AGA and PSEG studies are identified only by letter or number. Only the CGA study identifies the participants and their respective rankings by name, but CME assumes that these are all publicly regulated utilities, and that the information from the study is therefore publicly available from the relevant regulators.

*Board findings*

The Board agrees with Union that the specific rankings of the studies' participants (other than Union) should be kept off of the public record, and will allow these redactions.

However, the Board will require that the list of the participants to the studies be made public where it is included in the study. In assessing the relevance of a benchmarking study, it is important that the "comparators" be known. As only the identity of the participants will be publicly available, and not their respective rankings (other than Union), concerns respecting participants' willingness to participate in future studies should be alleviated.

**The Third Party Service Contract**

Union's billing system is hosted by a third party service provider that charges a single monthly fee for each billed account. In response to an interrogatory from London Property Management Association, Union filed a copy of the contract with this provider. As the contract is subject to a confidentiality agreement, Union seeks confidential treatment for this contract.

CME argued that the treatment of the third party service contract should be consistent with previous Board treatment of this contract. Union agrees, and submits that the agreement should again be treated as confidential.

*Board findings*

The Board agrees with Union that the third party service contract can remain confidential. The Board notes that the evidence in this case contains an overview of the costs associated with the third party service contract. The Board directs Union to file a detailed breakdown of those costs.

**THE BOARD ORDERS THAT:**

1. Union shall file with the Board and deliver to intervenors an additional detailed response to TCPL's question in Exhibit J.G-1-7-11 and answers to TCPL's Parkway West on or before June 25, 2012.

All filings to the Board must quote the file number, **EB-2011-0210**, be made through the Board's web portal at <https://www.errr.ontarioenergyboard.ca>, and consist of two paper copies and one electronic copy in searchable / unrestricted PDF format. Filings must clearly state the sender's name, postal address and telephone number, fax number and e-mail address. Parties must use the document naming conventions and document submission standards outlined in the RESS Document Guideline found at <http://www.ontarioenergyboard.ca/OEB/Industry>. If the web portal is not available parties may email their documents to the address below. Those who do not have internet access are required to submit all filings on a CD in PDF format, along with two paper copies. Those who do not have computer access are required to file 7 paper copies.

All communications should be directed to the attention of the Board Secretary at the address below, and be received no later than 4:45 p.m. on the required date.

### **ADDRESS**

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

E-mail: [boardsec@ontarioenergyboard.ca](mailto:boardsec@ontarioenergyboard.ca)  
Tel: 1-888-632-6273 (Toll free)  
Fax: 416-440-7656

**DATED** at Toronto June 15, 2012

**ONTARIO ENERGY BOARD**

*Original signed by*

Kirsten Walli  
Board Secretary