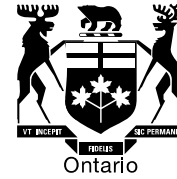


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**BY E-MAIL**

April 13, 2009

Kirsten Walli  
Board Secretary  
P.O. Box 2319  
27th. Floor  
2300 Yonge Street  
Toronto ON M4P 1E4

**Re: Union Gas Application for Leave to sell 11.7 km Natural Gas Pipeline to a  
limited partnership being created between Spectra Energy Corp and DTE  
Pipeline Company  
Board File No. EB-2008-0411**

Please find attached the Board Staff's Interrogatories with respect to the above proceeding.

Yours truly,

*Original signed by*

Nabih Mikhail  
Project Advisor, Facilities

Attachments

**Union Gas Limited**  
**Leave to Sell 11.7 kilometers Natural Gas Pipeline**

**1.0 Jurisdiction**

**Issue 1.1** If the proposed sale is approved, should the St. Clair Line be under the jurisdiction of the Ontario Energy Board (“OEB”) or the National Energy Board (“NEB”)?

**Board Staff Question 1 :**

Ref. a) Prefiled Evidence/Sec 1/page 3 of 9/Parag. 13

Preamble:

In Ref. a) [Prefiled Evidence/Sec 1/ Parag. 13/page 3 of 9 ], Union Gas stated that:

13. *In this application, Union is requesting that it be granted leave to sell the St. Clair Line, Union’s assets at the St. Clair Valve Site and related measurement and control equipment located within Union’s St. Clair Line Station to Dawn Gateway LP in the future, after the Dawn Gateway JV has completed all other steps necessary to put Dawn Gateway Line into service, including obtaining all required regulatory approvals and completing construction of the new Bickford to Dawn Line.*

Questions:

- (i) Please indicate whether it is Union Gas’ intent to sell the St. Clair Line, if the jurisdiction of the Dawn Gateway Line<sup>1</sup> is ultimately determined to be under the provincial jurisdiction of the Ontario Energy Board (“OEB”), except for the portion (873 meters of NPS 24 pipeline from the St. Clair Valve Site to the International Boundary) which is currently under the National Energy Board (“NEB”) Jurisdiction.

**Board Staff Question 2 :**

Ref. a) Prefiled Evidence/Sec 1/Page 2 of 9/Parag. 9

Preamble:

- (1) As the Dawn Gateway Line would cross the international border, Union expects that the portion of the Dawn Gateway Line that would be located

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<sup>1</sup> Dawn Gateway Line includes the Belle River Line, St. Clair River Crossing, St. Clair Line and the new proposed Bickford to Dawn Line.

in Ontario would be regulated by the NEB, similar to the pipelines owned by the TCPL and Vector which interconnect with Union's Dawn Compressor Station.

- (2) If under the OEB's jurisdiction it is assumed that the proposed Dawn Gateway Line and the proposed Dawn Gateway LP would have to comply with any OEB approved provisions under the STAR (Storage and Transportation Access Rule).

Questions:

- (i) If under the NEB's jurisdiction, please explain how the proposed Dawn Gateway LP, would ensure non-discriminatory access to all transportation services (including firm transportation services and interruptible transportation services) for all customers on the proposed Dawn Gateway Line (which includes the Belle River Line, St. Clair River Crossing, St. Clair Line and the Bickford to Dawn Line)?
- (ii) If under the NEB's jurisdiction, please explain how the proposed Dawn Gateway LP, would ensure that Union does not receive preferential treatment with regards to transportation services on the Dawn Gateway Line?
- (iii) If under the NEB's jurisdiction, please explain how the proposed Dawn Gateway LP, would ensure a transparent transportation market (i.e., what would be the expected reporting requirements for the proposed Dawn Gateway Line [which includes the Belle River Line, St. Clair River Crossing, St. Clair Line and the Bickford to Dawn Line])?
- (iv) Would these reporting requirements be consistent with the type of reporting required by the Federal Energy Regulatory Commission ("FERC") for interstate pipelines (FERC Regulations, §284.13)? Please explain.

**Issue 1.2: If the proposed Dawn Gateway Line is ultimately completed, should it be under the jurisdiction of the OEB or the NEB?**

**Board Staff Question 3 :**

- Ref. a) Prefiled Evidence/Sec 1/Parag. 9/page 2 of 9  
b) Board's Decision with Reasons, September 1, 1988 approving Union Gas Limited's application for leave to construct the St. Clair Pipeline (E.B.L.O. 226)/ Section 3.8 - JURISDICTION/pages 102-106/Union submission/paragraphs 3.8.18

Preamble:

- (1) In Ref. a)[ Prefiled Evidence/Sec 1/page 2 of 9/Parag. 9], Union Gas stated that:

*9. As the Dawn Gateway Line would cross the international border it is expected that the portion of the Dawn Gateway Line that would be located in Ontario would be regulated by the NEB, similar to pipelines owned by TCPL and Vector which interconnect with Union's Dawn Compressor Station.*

- (2) In Ref. b)[ Board's Decision with Reasons, September 1, 1988 approving Union Gas Limited's application for leave to construct the St. Clair Pipeline (E.B.L.O. 226)/ Section 3.8 - JURISDICTION/pages 102-106/Union submission/paragraphs 3.8.18], the Board's Decision stated that:

3.8.18

*[Counsel for Union] observed that the NEB, under its statute, exerts authority with respect to the import and export of gas to and from Canada, and it also has the authority, under Parts VI and VI.I of the NEB Act, to regulate the flow of gas in and out of provinces. Union's point was that Parliamentary jurisdiction extends only to regulating the movement of gas in and out of Canada, and in and out of the provinces, not to regulating local distribution companies.*

Questions:

- (i) Please provide the criteria which Union Gas is relying on in its prefiled evidence [see Ref. a), as well as the actual quote in Preamble (1)] to state that the project once completed would be under the NEB jurisdiction;
- (ii) As the St. Clair Line currently connects directly to Michigan through the St. Clair River Crossing, and the proposed sale will lead to no physical changes to this connection, why would the St. Clair Line shift from OEB jurisdiction to

NEB jurisdiction after the proposed sale? Is a change in ownership determinative?

## **2.0 Impact on Union's Transmission and Distribution Systems and Union's Customers**

**Issue 2.1 What impact would the proposed change in the ownership and operating control of the St. Clair Line have on the integrity, reliability, and operational flexibility of Union's transmission and distribution systems?**

### **Board Staff Question 4 :**

- Ref:
- a) Prefiled Evidence/Sec 4/page 8 of 9/Parag. 41
  - b) Board's Decision with Reasons, September 1, 1988 approving Union Gas Limited's application for leave to construct the St. Clair Pipeline (E.B.L.O. 226)/ Section 3.8-JURISDICTION/pages 118-129/Board Findings/paragraph 3.8.70
  - c) Board's Decision with Reasons, September 1, 1988 approving Union Gas Limited's application for leave to construct the St. Clair Pipeline (E.B.L.O. 226)/ Section 3.8-JURISDICTION/pages 103-104/Union's Submission/paragraph 3.8.14

### Preamble:

- (1) In Ref. a) [Prefiled Evidence/Sec 4/page 8 of 9/Parag. 41], Union Gas stated that:

*41. In the past, Union has used the St. Clair Line as an emergency back stop to supply its Sarnia Industrial Line in the event of a supply failure from the TCPL/GLTL Line. However, that emergency capacity was replaced in 2005 when the Vector Line interconnected at the Courtright Station. In addition, the Sarnia Industrial Line would also have the ability to receive gas from the new Dawn Gateway Line at the St. Clair Line Station.*

Union Gas is indicating that since 2005, reliance on St. Clair Line's for backstop emergency function to its Sarnia Industrial Line was essentially replaced by the Vector Line.

- (2) In Ref. b) [Board's Decision with Reasons, September 1, 1988 approving Union Gas Limited's application for leave to construct the St. Clair Pipeline (E.B.L.O. 226)/ Section 3.8-JURISDICTION/pages 118-129/Board Findings/paragraph 3.8.70], the Board's Findings included the following:

*3.8.70 As part of a local distribution system,  
(whose many lines serve several functions*

*simultaneously: arterial, transmission and distribution), the St. Clair-Bickford Line traverses municipal areas for which Union possesses distribution franchises. The Board finds this as a fact, of which information it is seized as the approving authority for the terms and conditions of gas franchises in Ontario.*

The Board Findings characterized the St. Clair Line as part of a local distribution system serving several functions simultaneously: arterial, transmission and distribution.

- (3) In Ref. c) [Board's Decision with Reasons, September 1, 1988 approving Union Gas Limited's application for leave to construct the St. Clair Pipeline (E.B.L.O. 226)/ Section 3.8-JURISDICTION/pages 103-104/Union's Submission/paragraph 3.8.14], Union Gas' counsel stated that:

*3.8.14 He emphasized that the proposed pipeline will be an integral part of Union's system which already extends as far as the Sarnia Industrial Line, a distance of 3.1 km from the St. Clair River.*

Questions:

- (i) Please explain whether Union Gas agrees that the purpose of the St. Clair line is greater than the emergency backstop capability as stated in Ref. a) and Preamble (1)?
- (ii) What is Union Gas' view in regard to the Board Findings in Ref. b) where it characterized the St. Clair Line as "part of a local distribution system serving , several functions simultaneously: arterial, transmission and distribution"?
- (iii) In regard to Ref. c) and Preamble (3), please explain what had changed from the time Union's counsel emphasized that the St. Clair Line is an integral part of Union's system, to the situation now where Union Gas is implying that selling the St. Clair Line will not affect the rest of its system.

**Issue 2.2      How would the proposed sale of the St. Clair Line impact Union's ability to connect future customers that are in proximity to the St. Clair Line?**

**Board Staff Question 5 :**

Ref:    a)    Board's Decision with Reasons, September 1, 1988 approving Union Gas Limited's application for leave to construct the St. Clair Pipeline (E.B.L.O. 226)/ Section 3.8-JURISDICTION/pages 118-129/Board Findings/paragraphs 3.8.70

Preamble:

(1)        In Ref. a) [Board's Decision with Reasons, September 1, 1988 approving Union Gas Limited's application for leave to construct the St. Clair Pipeline (E.B.L.O. 226)/ Section 3.8-JURISDICTION/pages 118-129/Board Findings/paragraph 3.8.70], the Board's Findings included the following:

*3.8.70 As part of a local distribution system, (whose many lines serve several functions simultaneously: arterial, transmission and distribution), the St. Clair-Bickford Line traverses municipal areas for which Union possesses distribution franchises. The Board finds this as a fact, of which information it is seized as the approving authority for the terms and conditions of gas franchises in Ontario.*

Questions:

- (i)        If the St. Clair line is sold and the ownership is transferred as outlined in the Application, please explain how Union Gas will meet its obligation as the franchise holder for the many municipal areas traversed by the St. Clair-Bickford Line.
- (ii)       If the St. Clair Line is sold and the ownership is transferred as outlined in the Application, What would be the process for connecting new residential and industrial customers in the noted areas in Ref. (a).

**Board Staff Question 6 :**

Ref.    a)        Prefiled Evidence/Sec 2/Parag. 29 /Pages 5-6 of 9  
          b)        Prefiled Evidence/Sec 3/Parag. 33 /Page 6 of 9

Preamble:

(1)        Paragraph 29 of the prefiled evidence [Ref. a)] indicates that according to Union Gas' understanding, Dawn Gateway JV will try to implement a reduction of the transportation costs on the Michigan portion of the Dawn Gateway Line partly by applying to its regulator for a lower fuel charge.

Union Gas indicated that this change is expected to improve the economics associated with the Belle River Mills to Dawn path.

Questions:

- (i) Are there any barriers for Union Gas to proceed as a partner with GTE Pipeline Company in the Joint Venture to develop the Dawn Gateway Pipeline, as proposed in this application? If there are, please explain.
- (ii) Assuming that the scenario in Question (i) above is implementable, please confirm that this would result in identical benefits to customers to those benefits described in the prefiled evidence in Ref. b) where in paragraph 33 it stated in part that:

*“The proposed Dawn Gateway Line would have the capacity to transport approximately 385,000 GJ/d of gas between DTE’s Belle River Mills Gas Storage Area and Dawn on a firm basis, and its capacity would be expandable to meet future needs.”*



**Issue 2.3 How would the proposed sale impact Union's ability to provide services to its existing customers, and what would be the impact on its rates? How should the proceeds of the proposed sale be treated for future rate making purposes?**

**Board Staff Question 7 :**

- Ref:
- a) Application/P. 2/Parag. 9
  - b) Prefiled Evidence/Sec 3/page 7 of 9/Parag. 37
  - c) Prefiled Evidence/Sec 4/page 7 of 9/Parag. 39
  - d) Union Application for the Heritage Pool EB-2008-0405

Preamble:

- (1) If and when the Dawn Gateway Line goes into service, Union Gas indicated that it will have the ability to offer customers a much greater capacity of firm transportation service from Michigan to Dawn. The proposed Dawn Gateway Line<sup>2</sup> will have sufficient capacity to transport approximately 385,000 GJ/d from the US into Ontario.
- (2) DTE and Spectra held a non-binding open season to determine the level of market interest in the Dawn Gateway Line. Union has been advised that DTE and Spectra have determined based on the bids received that there is sufficient interest in the proposed service to justify proceeding with the Dawn Gateway Line.
- (3) In the prefiled evidence, section 4, paragraph 39, Union Gas stated that:  
  
*"The sale of the St. Clair Line would have no negative impact on Union's security of supply and no negative impact on Union's design day capabilities. There would be no stranded Union facilities as a result of the proposed transaction. Union does not foresee any impact on Union's future expansion opportunities, including the development of the proposed Heritage storage pool. In the event that the Dawn Gateway Line proceeds, Union would have to complete modifications to the St. Clair Line Station, Bickford Compressor Station and Dawn Compressor Station to accommodate the project, but the costs would be solely paid by Dawn Gateway JV."*

Questions:

- (i) Please provide a detailed description of the transportation services that Dawn Gateway L.P. intends to provide on the proposed Dawn Gateway Line.
- (ii) Would these transportation services be rate-regulated? Please explain.

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<sup>2</sup> Dawn Gateway Line includes the Belle River Line, St. Clair River Crossing, St. Clair Line and the new proposed Bickford to Dawn Line.

- (iii) Would these transportation services be priced at market-based prices? Please explain.
- (iv) Please explain if the transportation services would be stand alone services and/or would these transportation services be bundled with storage services such as from the proposed Heritage Pool?
- (v) Would Union Gas plan to utilize the Dawn Gateway Line for transportation services to transport system gas supply to meet any of its in-franchise customer needs? If so, what would the expected rate impact be on Union Gas' customers?
- (vi) In EB-2008-0405 Union indicates that a line from the Heritage Pool will be constructed to the St. Clair Line Station. What impact will the sale of the St. Clair Line and the future operation of the Dawn Gateway Line have on storage operations?
- (vii) In EB-2008-0405 Union indicates that a line from the Heritage Pool will be constructed to the St. Clair Line Station. Would there be any other storage pools in planned development (in addition to the Heritage Pool) that are in proximity to the Dawn Gateway Line? Please explain.

**Board Staff Question 8 :**

- Ref:
- a) Application/P. 2/Parag. 8
  - b) Union Gas Limited's "Incentive Regulation" regime, Proceeding EB-2009-0101

Preamble:

- (1) In the Application, page 2, Paragraph 8, Union Gas stated in part that:  
*"The proposed sale will have no impact on Union's ability to serve its distribution customers, and it will not result in any increase in Union's regulated rates."*
- (2) Union Gas is under an "Incentive Regulation" regime, see Ref. b), whereby earnings in excess of 200 basis points are shared with the customer. In that proceeding Union has filed its earnings sharing results for 2008.
- (3) Under a scenario that assumes the proposed sale of the St. Clair Line had taken place on January 1, 2008, Board staff wish to explore the impact that the St. Clair line sale would have had on Union Gas' 2008 earnings to be shared with ratepayers.

Question:

- (i) Please restate the earnings amount to be shared by eliminating the actual 2008 sales and revenues and costs associated with the St. Clair Pipeline or in other words what would have the earnings in 2008 been, absent the St. Clair Pipeline.

### **3.0 Land Matters**

**Issue 3.1      How would a change in ownership and regulatory oversight impact the landowners' interests including any land use restrictions, rights under existing agreements, abandonment obligations, and availability of costs awards related to regulatory proceedings?**

#### **Board Staff Question 9 :**

Question:

- (i) Please describe any potential impacts on landowners resulting from the expected change in ownership of the St. Clair Line related to land use restrictions, land rights under existing agreements, pipeline abandonment and liabilities and/or costs to the landowners along the St. Clair Line.

#### 4.0 First Nation Consultations

**Issue 4.1: Have all Aboriginal Peoples whose existing or asserted Aboriginal or treaty rights may be affected by the proposed sale been identified, have appropriate consultations been conducted with these groups, and if necessary, have appropriate accommodations been made with these groups?**

**Board Staff Question 10 :**

Ref: a) Prefiled Evidence/Sec 7/page 9 of 9/Parag. 47

Preamble:

- (1) According to section 7, paragraph 47 of Union Gas' prefiled evidence, it is stated that:
- "47. As part of the proposed sale Union would seek to assign the land rights that Union obtained for the construction and operation of the St. Clair Line (e.g. easements, licences and crossing agreements) to Dawn Gateway LP. In some cases, the related land rights are only assignable with the consent of the landowner (e.g. the agreements with Hydro One, Ontario Power Generation and Canadian National Railway) and Union and Dawn Gateway LP will seek consent from those landowners. All other affected landowners would be contacted to make them aware of the change in ownership."*
- (2) Union Gas did not mention whether or not it identified potentially affected Aboriginal Groups and that initial consultations with these Aboriginal Groups have commenced or are planned to commence and continue.

Questions:

Please provide a status update on consultations with Aboriginal Groups communities with regard to the following points:

- a) Identify all of the Aboriginal Groups that have been or will be contacted in respect of this application.
- b) Indicate:
- (i) how the Aboriginal Groups were identified or will be identified;
  - (ii) when contact was first initiated or planned to be initiated;
  - (iii) the individuals within the Aboriginal Group who were contacted or planned to be contacted, and their position in or representative role for the Aboriginal Group; and

- (iv) a listing, including the dates, of any phone calls, meetings and other means that may have been used to provide information about the project and hear any interests or concerns of Aboriginal Groups with respect to the project.
- c) Provide relevant information gathered from or about the Aboriginal Groups as to their existing or asserted Aboriginal or treaty rights, or any filed and outstanding claims or litigation concerning their treaty rights or treaty land entitlement or aboriginal title or rights, which may potentially be impacted by the project.
- d) Provide any relevant written documentation regarding consultations, such as notes or minutes that may have been taken at meetings or from phone calls, or letters received from, or sent to, Aboriginal Groups.
- e) Identify any specific issues or concerns that have been raised by Aboriginal Groups in respect of the proposed sale and, where applicable, how those issues or concerns will be mitigated or accommodated.
- f) Explain whether any of the concerns raised by Aboriginal Groups with respect to the applied-for proposed sale have been discussed with any government department or agencies, and if so, identify when contacts were made and who was contacted.
- g) If any of the Aboriginal Groups who were contacted either support the application or have no objection to the proposed sale proceeding, identify those groups and provide any available written documentation of their position. Also, indicate if their positions are final or preliminary or conditional in nature.
- h) If any of the Aboriginal Groups who were contacted are opposed to the application, identify those groups and provide any available written documentation of their position. Also, indicate if their positions are final or preliminary or conditional in nature.
- i) Provide details of any known Crown involvement in consultations with Aboriginal Groups in respect of the applied-for proposed sale.

## 5.0 Appropriate Test

**Issue 5.1: Will the proposed transaction have an adverse effect on balance relative to the status quo in relation to the Board's statutory objectives?**

**Board Staff Question 11 :**

Ref. a) The *Ontario Energy Board Act 1998*, S.O.1998, c.15, (Schedule B) /Section 2/ Board Objectives, gas

Preamble:

Section 2 of the *Ontario Energy Board Act 1998*, covers the Board objectives, gas and states that:

*2. The Board, in carrying out its responsibilities under this or any other Act in relation to gas, shall be guided by the following objectives:*

*1. To facilitate competition in the sale of gas to users.*

*2. To protect the interests of consumers with respect to prices and the reliability and quality of gas service.*

*3. To facilitate rational expansion of transmission and distribution systems.*

*4. To facilitate rational development and safe operation of gas storage.*

*5. To promote energy conservation and energy efficiency in a manner consistent with the policies of the Government of Ontario.*

*5.1 To facilitate the maintenance of a financially viable gas industry for the transmission, distribution and storage of gas.*

*6. To promote communication within the gas industry and the education of consumers. 1998, c. 15, Sched. B, s. 2; 2002, c. 23, s. 4 (2); 2003, c. 3, s. 3; 2004, c. 23, Sched. B, s. 2.*

Questions:

- (i) Please indicate how the proposed sale will facilitate competition in the sale of gas to users.
- (ii) Please indicate how the proposed sale will protect the interests of consumers with respect to prices and the reliability and quality of gas service.

- (iii) Please indicate how the proposed sale will facilitate rational expansion of transmission and distribution systems.
- (iv) Please indicate how the proposed sale will facilitate rational development and safe operation of gas storage.
- (v) Please indicate how the proposed sale will promote energy conservation and energy efficiency in a manner consistent with the policies of the Government of Ontario of facilitating the maintenance of a financially viable gas industry for the transmission, distribution and storage of gas.
- (vi) Please indicate how the proposed sale will promote communication within the gas industry and the education of consumers. 1998, c. 15, Sched. B, s. 2; 2002, c. 23, s. 4 (2); 2003, c. 3, s. 3; 2004, c. 23, Sched. B, s. 2.

**Issue 5.2: What is the appropriate test to be applied by the Board in this application?**

**Board Staff Question 12 :**

Questions

- (i) In applying any test should the Board consider the impacts on Union's in – franchise customers only?
- (ii) If the answer to (i) above is negative, should the test be consideration of impacts on ex-franchise customers including transportation to the extent that it is critical for access to storage?
- (iii) Should that test also include, in addition to economic considerations, operational flexibility and security of supply?