



By Electronic Filing and By E-mail

July 9, 2009

Kirsten Walli  
Board Secretary  
Ontario Energy Board  
2300 Yonge Street  
27<sup>th</sup> floor  
Toronto ON M4P 1E4

Dear Ms Walli,

**Union Gas Limited ("Union")**  
**Dawn Gateway Limited Partnership ("Dawn Gateway LP")**  
**Board File No.: EB-2008-0411**  
**Our File No.: 339583-000036**

As counsel for Canadian Manufacturers & Exporters ("CME") in this proceeding, we are writing with respect to the service of Notices on the Attorney General of Canada and the Attorney General of Ontario required by section 109 of the *Courts of Justice Act* in circumstances where the constitutional applicability of an Act of the Parliament of Canada or the Legislature is in question.

The Jurisdictional issues in this proceeding raise such questions. Factual and legal matters pertaining to such questions are addressed in the evidence adduced by Union, the cross-examination of witnesses thereon, and in the undertaking responses. Union's Argument-in-Chief contains submissions on such questions.

In an e-mail to counsel for Union earlier today, we asked whether the Notices required by section 109 of the *Courts of Justice Act* had been served on the Attorneys General for Canada and Ontario. Counsel for Union replied that such Notices had not been served. Union's failure to serve these Notices is apparently based on a conclusion that service of the Notices is unnecessary.

We do not understand the rationale for such a conclusion when the Board, in its Issues Decision and Order dated April 6, 2009, rejected the positions of Union and Dawn Gateway LP, expressed in their letters to the Board of March 26 and March 27, 2009 respectively, that the jurisdictional questions should be removed from the List of Issues to be determined in these proceedings. In rejecting this position, the Board stated:

"... the Board is convinced that these issues have relevance to the current proceedings."

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Accordingly, appropriate Notices should be served on the Attorneys General for Canada and Ontario under section 109 of the *Courts of Justice Act* because service of such Notices is mandatory.

In order to minimize the scheduling effect of the service of these Notices, we suggest that the Board issue, as expeditiously as possible, a Procedural Order directing Union to forthwith serve the requisite Notices. We suggest that the Procedural Order establish a reasonable deadline date for the Attorneys General to submit Written Argument in these proceedings, if so advised, and a subsequent date for Union and Intervenors to reply to such submissions, if so advised.

The issuance of the further Procedural Order requested herein is not intended to extend the time for Intervenors to file their Written Arguments. We are currently planning to file CME's Written Argument in connection with this matter by the July 17, 2009 deadline date. We reserve the right to submit Reply Argument to any submissions either of the Attorneys General might make.

Would you please bring this letter to the attention of the Board Members hearing this case and contact me if there are any questions pertaining to its contents.

Yours very truly,

A handwritten signature in black ink, appearing to read 'P. Thompson', with a long horizontal flourish extending to the right.

Peter C.P. Thompson, Q.C.

PCT\slc

c. Intervenors EB-2008-0411

Paul Clipsham (CME)

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