



uniongas

A Spectra Energy Company

August 24th, 2009

By RESS & Courier

Ms. Kirsten Walli, Board Secretary
Ontario Energy Board
27th Floor, 2300 Yonge Street,
Toronto, Ontario.
M4P 1E4

Dear Ms. Walli:

**Re: Union Gas Limited ("Union")
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
EB-2008-0411**

Please find attached Reply Submissions of Union Gas Limited with respect to the potential new issue in this matter.

Sincerely,

Mary Jane Patrick
Administrative Analyst, Regulatory Projects
Encl.
:mjp

cc. Nabih Mikhail, Project Advisor, Facilities
Lillian Ing, Case Administrator
All Intervenors EB-2008-0411

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 43(1) of the Act, for an Order
or Orders granting leave to sell 11.7 kilometers of natural
gas pipeline between the St. Clair Valve Site and Bickford
Compressor Site in the Township of St. Clair, all in the
Province of Ontario.

REPLY SUBMISSIONS OF UNION GAS LIMITED
RE: Proposed Additional Issue

BLAKE, CASSELS & GRAYDON LLP
Box 25, Commerce Court West
Toronto, Ontario M5L 1A9

Sharon S. Wong
Lawyer for the Applicant
Union Gas Limited

REPLY SUBMISSIONS OF UNION GAS LIMITED

1. These submissions, filed on behalf of Union Gas Limited (“Union”) are in Reply to the submissions of Canadian Manufacturers & Exporters (“CME”) dated August 17, 2009 on the issue of whether the Board should consider establishing a form of lighter regulatory treatment for the Dawn Gateway Line.

2. CME indicated that it was unclear as to the scope of the potential new issue and submitted two possible interpretations. CME first interpretation of the Board’s Order re-phrased the issue proposed by the Board as follows:

"In the event provincial jurisdiction prevails, should the Board adopt a lighter form of regulatory treatment for the JV's ownership and operation of the St. Clair Line and its extension to Dawn to accommodate the sale of point-to-point FT services from Belle River to Dawn under negotiated long term fixed price contracts so that the owners of the JV have an opportunity to earn returns sufficient to justify taking on the additional risks associated with operating under such a regime? If so, then what process should be followed to establish the regulatory regime that should be applied?"

3. This re-casting of the issue should be rejected for at least two reasons.

4. First, CME’s submission is based on the assumption that the OEB intends to make a binding determination in this proceeding as to whether Federal or Provincial jurisdiction should apply to that portion of the Dawn Gateway Pipeline that is located in Ontario. Although CME keeps saying that the OEB has already ruled that it is going to do so, the reality is that the OEB has not made any such ruling. In fact, the OEB order of April 6, 2009 relating to the Issues List clearly stated that any shift in jurisdiction would be the subject of an NEB proceeding. Union has previously made its submissions as to why it is not appropriate for the OEB to determine whether provincial jurisdiction will apply to the Dawn Gateway Pipeline as described in the evidence.

5. The second reason why CME’s re-casting of the issue should be rejected is because it is in effect based on the false premise that the OEB has the jurisdiction to order Dawn

Gateway LP and Dawn Gateway LLC to complete the purchase of the St. Clair Line. The OEB does not even have the jurisdiction to order the Dawn Gateway JV (the “JV”) to purchase the St. Clair Line on the terms which the JV is proposing, much less on the radically different terms that CME is suggesting that the Board impose on the JV.

6. It is trite law that the powers of the OEB must be found in its enabling legislation, and that the OEB may perform only those tasks assigned to it and in performing those tasks they have only those powers granted to it expressly or impliedly (*ATCO Gas & Pipelines Ltd. v. Alberta (Energy & Utilities Board)*, [2006] 1 S.C.R. 140 at para. 38).

7. Pursuant to s. 43(1) of the *Ontario Energy Board Act, 1999*, the OEB’s jurisdiction is limited to granting permission for the sale of the St. Clair Line to occur. Nothing in the Act gives the OEB authority to issue an order that requires Union to complete the sale, and certainly there is no authority to order a third party to purchase the line. Moreover, s. 43(6) limits the OEB’s authority to granting or refusing leave, and there is no authority to impose the terms of the sale as CME suggests.

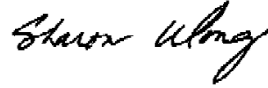
8. CME’s second, alternative description of the proposed issue was also based on the assumption that the OEB could order the JV to purchase the St. Clair Line based on a particular form of OEB lighthanded regulation, only under this alternative the form of the regulation would be determined in this proceeding:

On the other hand, if the question the Board has framed in paragraph [29] of the Notice Decision contemplates a presentation, in this proceeding, of a particular form of lighthanded regulation for the JV’s ownership and operation of the St. Clair Line and its extension to Dawn, then that question, in our view, is beyond the scope of this proceeding and should be dealt with after the JV has had an opportunity to consider and respond to the Decision the Board renders in this case.

9. Union submits that the Board should reject any suggestion that it has the jurisdiction to issue an order requiring the JV to purchase the St. Clair Line on any terms, regardless of whether those terms are stipulated in this proceeding or in a subsequent proceeding.

ALL OF WHICH IS RESPECTFULLY SUBMITTED

August 24, 2009

A handwritten signature in black ink, appearing to read "Sharon Wong", written in a cursive style.

Sharon S. Wong
Lawyer for Union Gas Limited