



By electronic filing and by e-mail

January 29, 2010

Kirsten Walli
Board Secretary
Ontario Energy Board
2300 Yonge Street
27th 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

We are writing pursuant to paragraph 1 of Procedural Order No. 6 to provide comments on behalf of Canadian Manufacturers & Exporters ("CME") on Union's Reply Submissions.

Transaction Date

We submit that Union's use of March 1, 2010 Transaction Date is inappropriate and unfair for the reasons described in our letter of January 4, 2010, which we will not repeat.

Interest

Union's Reply Submissions imply that we rely on the Board's creation of a deferral account for the recording of the ratepayer's share of compensation to justify the claim for interest. This is incorrect.

The creation of a deferral account is not the rationale for the interest claim. Rather, it is the method the Board adopted for determining compensation that is the principled basis for the claim. The Board has determined that ratepayers are to be compensated for the St. Clair Line subsidy burden they have paid since January 1, 2003. These past subsidy burden payments should attract pre-judgment interest in the same way that the prior payment of any other out-of-pocket expenses attract pre-judgment interest. Interest should be included in the compensation calculation because pre-judgment interest is a proper component of such calculations.

The interest rates to be used can either be the pre-judgment interest rates for the period January 1, 2003 to date, published under the *Courts of Justice Act*, or the Board determined rates applicable to Deferral Accounts. We suggest using the Board's rates to determine interest because these rates are readily available and well known to participants in Board proceedings.

We reiterate that if Union was seeking compensation from ratepayers for amounts that its owner had actually paid in prior periods to subsidize ratepayers, then there is little doubt that Union would seek pre-judgment interest on the amounts of the actual over-payments. There is no reason

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why these claims should be excluded from consideration when determining the total compensation amount.

St. Clair Crossing

The exclusion of St. Clair Crossing costs from the subsidy burden calculation is inappropriate and unfair for the reasons described in our letter of January 4, 2010, which we will not repeat.

Other Considerations – Cost of Rebuilding Replacement Line

On page 2 of the January 19, 2010 confidential letter that we couriered to the Board and to those who executed the Confidentiality Undertaking in this proceeding, we provide our rationale for the contention that the estimate of \$11.4M, contained in Union's Reply Submissions, does not represent St. Clair Line replacement costs. We continue to rely on those submissions. On the basis thereof, we urge the Board to find that Union's estimate of the most economic alternative to the purchase of the St. Clair Line at \$11.4M and the gain at \$6.2M is inappropriate and unreasonable.

By way of elaboration, we reiterate that there is a threshold concern related to the inability of intervenors to test all elements of the changed costs that Union has provided in its confidential calculation. These changed costs operate to reduce, by slightly more than 13%, the construction and other costs per kilometre estimates that Union provided during the hearing for the construction of the Bickford to Dawn pipeline. We note that these revised cost per kilometre estimates do not reflect any land-related or other costs involved in constructing a direct line from the easterly terminus of the St. Clair Crossing to Dawn over property in which neither Union or Dawn Gateway LP currently has any rights or interests.

Moreover, we suggest that, even if one accepts, for the sake of argument, that the "all in" costs per kilometre of constructing a direct line from St. Clair to Dawn are materially lower than the initially estimated costs of constructing a 17 km pipeline from Bickford to Dawn, there is another item that needs to be factored into the calculations of the economics of the direct line concept. The additional item that needs to be brought into consideration of the direct line option by Union's owner is the consequential write-off of the \$5.2M Net Book Value ("NBV") of the no longer useful St. Clair Line.

Dawn Gateway LP's options are to obtain, through a combination of acquisition of the 11.7 km St. Clair Line from Union and the construction of 17 km of new pipeline, a 28.7 km line from the easterly terminus of the St. Clair Crossing to Dawn, or to build a shorter direct line with an accompanying write-off for Union of the NBV of the St. Clair Line. In these circumstances, the appropriate approach to follow when determining hypothetical St. Clair Line replacement costs related to the construction of a direct line from St. Clair to Dawn is the proportional approach described in our January 19, 2010 confidential letter.

A 40.8% portion of the hypothetically direct pipeline route from the easterly terminus of the St. Clair Crossing to Dawn would have a value of some \$16M and not the \$11.4M that Union describes in its Reply Submissions. After taking account of the \$5.2M NBV, the correct calculation of the gain is \$11.8M and not the \$6.2M to which Union refers in its Reply Submissions. The gain allocable to ratepayers, ranging between \$6.577M and \$8.1M, to which Union refers in its Reply Submissions, is materially less than 100% and ranges between about 55% and 69% of the total gain of \$11.8M.

Implications for 2009 Earnings Sharing

When we prepared our initial submissions dated January 4, 2010, it was unclear as to how Union was proposing to treat the cumulative gain for the purposes of 2009 Earnings Sharing. In its Reply Submissions, Union clarifies that its intent is to treat the entire portion of the gain that is allocated to ratepayers as a reduction to regulated earnings for the purposes of determining earnings sharing.

In his initial submissions dated January 7, 2010, Mr. Quinn correctly pointed out that the determination of the compensation amount payable to ratepayers is intended to be final so as to provide certainty. In the context of this concept of certainty, we submit that none of the amount payable to ratepayers is to be effectively clawed back by Union by reducing its regulated earnings by the amount of the gain allocated to ratepayers for the purposes of earnings sharing.

In the context of the clarification of Union's plans provided in its Reply Submissions, we agree with Mr. Quinn. To provide certainty with respect to the gain to be allocated to ratepayers, we urge the Board to reject Union's proposition that the amount of the gain allocated to ratepayers can be treated as a reduction to regulated earnings for the purposes of earnings sharing.

Conclusion and Costs

We hope that, in conjunction with the submissions contained on page 2 of our confidential letter of January 19, 2010, these further submissions will be of some assistance to the Board when it determines the portion of the gain to be allocated to ratepayers.

We respectfully request that CME be awarded its reasonably incurred costs for participating in this the second phase of Union's Application.

Yours very truly,



Peter C.P. Thompson, Q.C.

PCT\slc

c. Chris Ripley (Union)
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Interested Parties EB-2008-0411
Paul Clipsham (CME)

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