

**Board Staff Interrogatories**  
**Dawn Gateway Pipeline Limited Partnership**  
**Application for Leave to Construct and Regulatory Framework**

1. Is the Applicant prepared to adopt the evidentiary record in EB-2008-0411 in this proceeding? If the Applicant objects to the entire record being adopted in this proceeding, are there portions of the record in the earlier proceeding that it is prepared to adopt in this proceeding?

**Issue 1. Is the regulatory framework proposed in the Application appropriate?**

2. Prefiled Evidence/Sec 3/page 6 of 29/Parag. 16

Paragraph 16 states that subsequent to a non-binding open season in September / October 2008, five shippers entered into binding Precedent Agreements to subscribe for a total of 280,000 Dthd (295,459 GJ/d, 7,932 103m3/d) of firm transportation service on the Dawn Gateway Pipeline (subject to regulatory approval).

Please file unredacted copies of the above five binding Precedent Agreements in this proceeding.

3. Prefiled Evidence/Sec 3/page 7 of 29/Parag. 17

Paragraph 17 states that the Precedent Agreements provided for the execution of multi-year transportation contracts at a fixed price for the entire term of their respective transportation contracts.

If the Ontario Energy Board ("OEB") grants the alternative regulatory regime requested in this application, will Dawn Gateway LP file with the OEB the five binding Precedent Agreements (including the terms of service and actual tolls; not the maximum rate of \$1.00 USD per Dth per day), consistent with the National Energy Board's ("NEB") requirements, to ensure transparency for all market participants?

4. If not, how will Dawn Gateway LP assure the Board and market participants that it will not discriminate in terms of price and/or terms of service?

5. What information will Dawn Gateway LP provide to market participants and the Board so that market participants and the Board are able to determine that: a) the terms of service for transportation services are just and reasonable, and b) the tolls for transportation services are just and reasonable?
6. In EB-2008-0411, Union's interrogatory #7, (v) on page 2 of 2, Union Gas Limited ("Union") stated *"that it expects to contract for both transportation on Dawn Gateway and Michigan storage with MichCon to support its unregulated storage operations. It is not anticipated that Union will contract capacity on Dawn Gateway to support regulated services to any of Union's customers"*.
  - a) Please explain how the transportation contract for Dawn Gateway Line capacity and the expected storage contracts with Michigan Consolidated Gas Company ("MichCon") will support Union's unregulated storage operations.
  - b) Is Union contracting for transportation services on the Dawn Gateway Line for ex-franchise shippers? Please explain.
  - c) Is Union contracting for competitive storage services with MichCon for ex-franchise shippers? Please explain.

7. Prefiled Evidence/Section 2/page 3 of 29/Parag. 10  
Prefiled Evidence/Section 2/page 4 of 29/Parags. 12-14

Please explain how Dawn Gateway LP would ensure that Union Gas Limited ("Union"), DTE, Spectra and MichCon do not receive preferential treatment with regards to transportation services on the Dawn Gateway Line?

8. Prefiled Evidence/Sec 4/page 12 of 29/Parag. 34

Paragraph 34 states that under the open season methodology, all shippers were afforded an equal opportunity to bid on available capacity at prices they believed to be fair.

Dawn Gateway LP, Union, and MichCon may have access to non-public transportation and storage information that may enhance their position in the transportation and storage markets.

- a) Please outline any specific policies and/or practices that Dawn Gateway LP, Union and MichCon have put in place to prevent the potential abuse of non-public information.

- b) Do you have policies and/or practices in place to prevent the situation where the same personnel are both submitting open season bids for Dawn Gateway Line transportation capacity and evaluating these bids?
- c) Do you have policies and/or practices in place to prevent the situation where the personnel that is submitting open season bids for Dawn Gateway Line transportation capacity, also have access to other shippers' bids?
- d) Do you have policies and/or practices in place to prevent the situation where the same personnel is both developing the transportation services (with the associated market price) and are directly negotiating with Dawn Gateway LP for transportation services on the Dawn Gateway Line?

9. Prefiled Evidence Sec. 4 paragraphs 37

Paragraph 37 states that the Dawn Gateway Pipeline is similar in size and operating characteristics to many NEB pipelines regulated as Group 2 companies. Please provide evidence to support this claim.

Please explain how the complaints process would be expected to operate and under what legislative authority the Board would determine any issues/complaints brought before it?

10. Prefiled Evidence Sec. 4 paragraph 26

Paragraph 26 refers to Group 2 companies who operate pipelines that do not transport commodities for many third parties.

- a) Please provide some context to the word "many".
- b) What is the average number of shippers on other Group 2 company pipelines?
- c) Does Dawn-Gateway have a threshold of third parties beyond which would trigger some other – presumably greater – form of regulatory oversight?
- d) It appears that the NEB makes a specific determination of the companies that will be Group 1 regulated (Section 4 – Schedule 1 p. 2). All other companies then are considered as Group 2. In the absence of a Group 1 listing by the OEB please describe how the Board would decide on eligibility for Group 2 type regulation. What criteria is Dawn Gateway LP

requesting that the Board apply in determining whether a company should be considered for Group 2 type regulatory oversight?

11. Prefiled Evidence/Sec 4/Page 11 of 29/Parag. 28

Paragraph 28 states that Dawn Gateway LP is seeking OEB approval of a regulatory framework that is equivalent to the NEB's Group 2 regulation.

If regulation comparable to NEB Group 2 regulation is approved by the OEB, what criteria should the OEB apply to determine whether and what conditional reporting requirements may be appropriate?

12. Prefiled Evidence/Sec 4/page 11 of 29/Parag. 29

In paragraph 29, Dawn Gateway LP indicates that there are only two transportation services - firm and interruptible.

- a) Is Dawn Gateway LP developing additional transportation services?
- b) Would Dawn Gateway LP consider developing a similar transportation service as Union's F24-T? Please explain.

**Issue 2. Should the Ontario Energy Board's Storage and Transmission Access Rule apply to the Ontario portion of the Dawn Gateway Pipeline?**

13. Ref. Prefiled Evidence Section 4, Page 12 , Paragraph 32

Paragraph 32 states that further, under the proposed alternative regulatory framework the Storage and Transportation Access Rule ("STAR") will not apply. This level of monitoring and reporting is consistent with that required of NEB Group 2 companies.

- a. Will Dawn Gateway LP apply to the Board for an exemption from the STAR? Please explain.
- b. Are there specific provisions in the STAR that Dawn Gateway LP is seeking an exemption from? Please explain.
- c. How will Dawn Gateway LP ensure that the following objectives are met:
  - a) ensuring open and non-discriminatory access to transportation services for shippers and storage providers, b) providing customer protection within

the competitive storage market, and c) supporting transparent transportation and storage markets? Please explain.

- d. How will Dawn Gateway LP assure the Board and market participants that it will not withhold or restrict services which could potentially impact the market prices for transportation services on the Dawn Gateway Line?
14. In EB-2008-0411, Union agreed to *“a condition of approval that would prohibit Union from requiring its storage customers to contract for service on the Dawn Gateway Line as a condition of receiving storage services from Dawn”*.<sup>1</sup> Such a condition prevents Union from tying its transportation services to its competitive storage services.
- a. Would Dawn Gateway LP also agree to a similar condition that would prohibit any of the entities related to Dawn Gateway LP that are indicated on Schedule 1 of Section 2 from tying their transportation services to their competitive storage services.
  - b. If Dawn Gateway LP and its related entities would not agree to such a “condition”, please explain how those entities would be prevented, or if they would be prevented, from tying their transportation and competitive storage services.
15. Ref. Prefiled Evidence Section 4, Page 12 , Paragraph 32
- One of the provisions of the STAR limits the access of non-public transportation and storage information (s 3.1.3). Union, MichCon and Dawn Gateway LP may have access to non-public information regarding storage and transportation operating conditions of shippers and storage companies. How will Dawn Gateway LP, Union, and MichCon limit the access of non-public transportation and storage information that may enhance their position in the transportation and storage markets? Please outline any specific policies and/or practices that Dawn Gateway LP, Union and MichCon have put in place to prevent the potential abuse of non-public information.
16. Ref. Prefiled Evidence Section 4, Page 12, Paragraph 32
- The other pipelines in and around the Dawn Hub such as Vector Pipeline and TransCanada must comply with reporting requirements similar to the Board’s STAR (e.g., Index of Customers and Operationally-Available Transportation Capacity).

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<sup>1</sup> Union’s Argument in Chief, July 6, 2009, p 8, para 20

What are the implications, if any, to market participants if Dawn Gateway LP is exempt from reporting requirements similar to those in effect in the relevant geographic market<sup>2</sup>? Please explain.

17. Ref: Prefiled Evidence/Sec 4/Page 12 of 29/Parag. 32

The other pipelines in and around the Dawn Hub such as Vector Pipeline and TransCanada must comply with requirements similar to the Board's STAR (e.g., these pipelines have standard terms of service and standard contracts for transportation services).

What are the implications, if any, to market participants if Dawn Gateway LP is exempt from requirements similar to those in effect in the relevant geographic market<sup>3</sup>? Please explain.

18. Ref: Prefiled Evidence/Sec 4/Page 12 of 29/Parag. 32

- a. Is Dawn Gateway LP aware that the Federal Energy Regulatory Commission ("FERC") has issued a Notice of Proposed Rulemaking ("NOPR")<sup>4</sup> to revise its price disclosure requirements for intrastate pipeline providers (providing interstate services) in order to increase market transparency?
- b. What are the implications, if any, to market participants of Dawn Gateway LP's proposed exemption from reporting requirements similar to those in effect in the relevant geographic market<sup>5</sup>? Please explain.

19. Ref: Section 4, Pages 9-13

The evidence indicates that Dawn Gateway LP is requesting approval of a regulatory framework that is equivalent to the NEB's Group 2 regulation. Specifically, Dawn Gateway LP is requesting that the Board regulate its tariff and tolls on a complaint basis and allow Dawn Gateway LP to charge negotiated rates. The evidence further states that Dawn Gateway LP will work directly with shippers to resolve any future disputes that may arise with shippers. In the event that Dawn Gateway LP is unable to resolve a dispute to the satisfaction of an

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<sup>2</sup> Relevant market as defined in the NGEIR Decision, p 38.

<sup>3</sup> Ibid

<sup>4</sup> Contract Reporting Requirements of Intrastate Natural Gas Companies, 128 FERC ¶61,029 dated July 16, 2009.

<sup>5</sup> Relevant market as defined in the NGEIR Decision, p 38.

existing or prospective shipper, that shipper will have the right to file a written complaint directly with the Board.

- c. Is there a dispute resolution mechanism whereby market participants can register their disputes or complaints with Dawn Gateway LP? If so, is this mechanism clearly stated in the General Terms and Conditions?
- d. Have market participants participated in the development of this dispute resolution mechanism?
- e. Has Dawn Gateway LP provided the process for filing a written complaint with the Ontario Energy Board in their General Terms and Conditions?

20. Ref: Prefiled Evidence Section 4, Paragraphs 22 - 37  
Prefiled Evidence Section 2, Schedule 1

- a. Please provide a better copy of the chart at Schedule 1 of Section 2 that clearly shows the relationships between the various entities in the ownership structure of Dawn Gateway LP. The copy filed with the Board is too light and some of the lines are not clearly visible.
- b. Please indicate which companies listed under the ownership structure in Section 2 – Schedule 1 own and operate pipeline systems.
- c. Are any of these companies currently regulated as a Group 2 company under the NEB?
- d. Please file a listing of the Group 2 companies currently under NEB jurisdiction.

21. Prefiled Evidence Section 4, Paragraph 34

Paragraph 34 states that shippers on the Dawn Gateway pipeline are sophisticated market participants who do not require the usual protection afforded by traditional cost of service regulation.

- a. What criteria will Dawn Gateway apply to determine the level of sophistication required of potential shippers?
- b. Please provide a listing of any corporate, financial and/or experience required of prospective shippers in order to enter into contracts with Dawn Gateway LP.

**Issue 3. How are the provisions of the Ontario Energy Board's Affiliate Relationship Code satisfied by Dawn Gateway LP and its affiliates in the proposed regulatory framework?**

22. Ref: Prefiled Evidence Section 2, Paragraphs. 12-14

- a. Which company or entity – Union, Spectra, DTE, MichCon and/or Dawn Gateway LP – is developing, marketing, and contracting the transportation services on the Dawn Gateway Line?
- b. What protocols are in place or will be in place to ensure that the management team of Dawn Gateway LP does not have access to confidential or pricing information of contracts between shippers and Union that could provide a competitive or monetary advantage to Dawn Gateway LP or Union?

23. Ref: Prefiled Evidence, Section 2, Paragraphs. 12-14

Please provide all service agreements between Dawn Gateway LP, Union, Spectra, DTE, MichCon and any other entity indicated on Schedule 1 of Section 2. The service agreements should include the following:

- a. the type, quantity and quality of service;
- b. pricing mechanisms or transfer prices;
- c. cost allocation mechanisms;
- d. information disclosure and confidentiality arrangements;
- e. the apportionment of risks (including risks related to under or over provision of service); and
- f. dispute resolution process for any disagreement arising over the terms or implementation of the Services Agreement(s).

24. Ref: Prefiled Evidence Section 2, Page 5, Paragraphs 12-13

The evidence indicates that Dawn Gateway LP has a general partner called Dawn Gateway Partner Inc. ("Dawn Gateway GP"), whose limited partners are Spectra Energy Midstream Holdings, an affiliate of Spectra, and DTE Vector



Canada Inc., an affiliate of DTE. As the general partner of Dawn Gateway LP, Dawn Gateway GP holds a 0.01% partnership interest in Dawn Gateway LP, and it manages the business of Dawn Gateway LP.

Please explain in detail the role of Dawn Gateway GP in managing the business of Dawn Gateway LP.

25. Ref: Prefiled Evidence, Section 2, Page 3, paragraph 10

The evidence indicates that Dawn Gateway is comprised of two new regulated entities: Dawn Gateway LP, a limited partnership pursuant to the law of the Province of Ontario and Dawn Gateway Pipeline, LLC, a U.S. limited liability company. Each of Dawn Gateway LP and Dawn Gateway Pipeline LLC are ultimately owned by Spectra Energy Corp and DTE Energy Corporation.

- a. Despite the 50/50 joint ownership structure, does Spectra or DTE have any rights, options or control that the other does not?
- b. If so, please explain and provide documents to clarify.

26. Ref: Prefiled Evidence, Section 2

- a. Please clarify whether the Affiliate Relationship Code applies to Dawn Gateway LP or any of the entities indicated on Schedule 1 of Section 2 as being an affiliate(s) of Union Gas.
- b. If the applicant's position is that the ARC does not apply, please provide reasons for the position taken.
- c. Would the applicant support the Board applying the Affiliate Relationship Code to Union Gas Limited for its dealings with Dawn Gateway LP or any of the entities indicated on Schedule 1 of Section 2?

27. Ref: Prefiled Evidence, Section 2

- a. Please identify the resources that Dawn Gateway LP or Dawn Gateway GP will share with Union Gas Limited once operational. Please include a breakdown on the types of resources shared, e.g. staff (number of employees), IT, office space, management, operations, engineering etc.
- b. Please provide the resources of Union that Dawn Gateway LP has used or will use during the set up process of Dawn Gateway.

- c. Please provide a list of all senior management including their designations that will be shared between Union and Dawn Gateway LP or Dawn Gateway GP.
- d. How does Dawn Gateway LP propose to document the resources shared or obtained from Union Gas Limited?
- e. How does Dawn Gateway LP propose to keep track of the time spent by Union Gas staff on activities related to Dawn Gateway?

**Issue 4. Is the Applicant a capable prospective pipeline operator in terms of technical and financial capabilities to develop and operate the proposed pipeline facilities?**

28. Ref. Prefiled Evidence Section 1, Paragraph 7, page 2

The pre-filed evidence stated that Dawn Gateway LP will contract with Union to oversee the construction of the pipeline.

- a. Will the operation of the pipeline be also contracted to Union? Please provide a form of Service Agreement that sets the terms for construction oversight and operation of the pipeline by Union.
- b. If the form of agreement is not available, please discuss the general terms and conditions of such an agreement.
- c. Please explain if there is any flexibility to pipe pre-order should the approval be granted after February 26, 2010.
- d. How will a delay in approval affect the schedule of construction?

29. Ref. Prefiled Evidence, Section 6, Paragraphs 51-62, page 17

The Applicant requested the approval by February 2, 2010 to be able to commit to the required pipe to meet the proposed 2010 construction schedule.

30. How many employees does Dawn Gateway LP have and what are their qualifications for operating a pipeline?

31. Who will be responsible for maintaining the Dawn-Gateway pipeline? Under who's employ will those maintaining the pipeline be?
32. How will the Dawn Gateway pipeline be operated after it is put in service? Will the Dawn Gateway pipeline be controlled from Union's Dawn Operations Centre?

**Issue 5. Is there a need for the proposed pipeline?**

33. Ref. Prefiled Evidence Section 3 paragraph 15

Paragraph 15 refers to the Dawn Gateway Pipeline as a new transportation service that would allow downstream customers in Ontario and Quebec access to emerging supplies in the U.S.

- a. Is it Dawn Gateways position that there is insufficient capacity on existing pipeline systems to provide this transportation service?
- b. Please identify all existing pipeline systems which currently connect Michigan pipelines to Dawn including ownership, size, length and capacity. Please also describe the type of regulation that each pipeline is under (i.e. cost of service or Group 2 under the NEB) as well as the reporting requirements in relation to shippers, volumes and contract pricing.

34. Ref. Prefiled Evidence Section 3 paragraph 16

Paragraph 16 states that non-contracted capacity will be made available to shippers through future open seasons or through direct negotiations. Please provide an update on next open bid process or direct negotiations with potential shippers for non-contracted capacity.

35. Ref. Prefiled Evidence Section 3 paragraph 17

Paragraph 17 states that the proposed service is conditional on timely approval of all applications necessary to complete the entire pipeline path.

- a. Please provide a list of all the necessary applications to complete the entire pipeline path. Please provide the status of each application.

- b. What is the expected date that shippers will commence service on the Dawn Gateway Pipeline?

36. Ref: Prefiled Evidence Section 3

If the Dawn Gateway pipeline is not built, how would it impact the regulated customers of Union Gas Limited?

**Issue 6. What are the environmental impacts associated with construction of the proposed pipeline and are they acceptable?**

37. Ref. Prefiled Evidence Section 7, Paragraph 83, page 24

The original archeological assessment of the Bickford dawn pipeline route completed in the early 1990's indicated the need for further investigations and archeological assessment. Please provide an update of the assessment initiated by Dawn Gateway in the fall of 2009 and outline the work to be completed in the spring of 2010.

Indicate how this assessment will comply with the Ministry of Culture requirements. Will the applicant agree to file with the Board archeological reports resulting from this assessment as soon as these are available?

**Issue 7. Are there any outstanding landowner matters for the proposed pipeline routing and construction?**

38. Ref. Prefiled Evidence Section 8, Paragraphs 90-91, page 27

Please provide an update and prospect on status of negotiations with the directly affected landowners.

39. Ref. Prefiled Evidence Section 8, Paragraph 93, page 28

The pre-filed evidence indicates that the applicant is willing to enter into a revised Letter of Understanding with the affected landowners.

Please describe the amendments to the LoU that was previously signed by Union and the landowners and discuss the anticipated timeline for the execution of the new LoU.

40. Ref. Prefiled Evidence Section 8, Paragraph 94, page 28

The pre-filed evidence indicated that negotiations for “a comprehensive settlement with the landowners along the project route” were underway and that the applicant hoped to reach the settlement by January 31, 2010.

Please discuss the status of the settlement and if it has not been reached indicate the anticipated timeline. What are the potential consequences for the construction onset if a complete settlement is not reached at all or is delayed?

41. Ref. Prefiled Evidence Section 8, Paragraph 91

Paragraph 91 indicates that Union will assign the permanent easements for the entire proposed route for the Bickford Dawn Pipeline to Dawn Gateway LP. Paragraphs 92 and 93 indicate that the easements were obtained as part of the EBLO 244 proceeding in 1993 and that the landowners have received full compensation. Please indicate whether these compensation amounts were recovered from Union’s rate payers. If so how is Dawn Gateway compensating Union Gas for these easement costs?

As part of the EBLO 244 proceeding, Union Gas would have spent considerable time, effort and money in engineering, legal and administrative costs in developing its plans for construction of the Bickford line.

- a. Were the costs to develop the Bickford line recovered from Union’s ratepayers?
  - b. If so, how is Dawn Gateway compensating Union Gas for these development costs?
42. Please review and provide any concerns and/or comments on the draft conditions of approval (if leave to construct is granted) as set out below:

## **Dawn Gateway Pipeline Limited Partnership**

**EB-2009-0422**

### **Application for Leave to Construct Proposed Conditions of Approval Leave to Construct**

#### **1 General Requirements**

- 1.1 Dawn Gateway Limited Partnership ("Dawn Gateway LP") shall construct the facilities and restore the land in accordance with its application and the evidence filed in EB-2009-0422 except as modified by this Order and these Conditions of Approval.
- 1.2 Unless otherwise ordered by the Board, authorization for Leave to Construct shall terminate December 31, 2010, unless construction has commenced prior to that date.
- 1.3 Except as modified by this Order, Dawn Gateway LP shall implement all the recommendations of the Environmental Report filed in the pre-filed evidence, and all the recommendations and directives identified by the Ontario Pipeline Coordinating Committee ("OPCC") review.
- 1.4 Dawn Gateway LP shall advise the Board's designated representative of any proposed material change in construction or restoration procedures and, except in an emergency, Dawn Gateway LP shall not make such change without prior approval of the Board or its designated representative. In the event of an emergency, the Board shall be informed immediately after the fact.

#### **2 Project and Communications Requirements**

- 2.1 The Board's designated representative for the purpose of these Conditions of Approval shall be the Manager, Natural Gas Applications.
- 2.2 Dawn Gateway LP shall designate a person as project engineer and shall provide the name of the individual to the Board's designated representative. The project engineer will be responsible for the fulfillment of the Conditions of Approval on the construction site. Dawn Gateway LP shall provide a copy of the Order and Conditions of Approval to the project engineer, within seven days of the Board's Order being issued.

- 2.3 Dawn Gateway LP shall give the Board's designated representative and the Chair of the OPCC ten days written notice in advance of the commencement of the construction.
- 2.4 Dawn Gateway LP shall furnish the Board's designated representative with all reasonable assistance for ascertaining whether the work is being or has been performed in accordance with the Board's Order.
- 2.5 Dawn Gateway LP shall file with the Board's designated representative notice of the date on which the installed pipelines were tested, within one month after the final test date.
- 2.6 Dawn Gateway LP shall furnish the Board's designated representative with five copies of written confirmation of the completion of construction. A copy of the confirmation shall be provided to the Chair of the OPCC.

### **3 Monitoring and Reporting Requirements**

- 3.1 Both during and after construction, Dawn Gateway LP shall monitor the impacts of construction, and shall file four copies of both an interim and a final monitoring report with the Board. The interim monitoring report shall be filed within six months of the in-service date, and the final monitoring report shall be filed within fifteen months of the in-service date. Dawn Gateway LP shall attach a log of all complaints that have been received to the interim and final monitoring reports. The log shall record the times of all complaints received, the substance of each complaint, the actions taken in response, and the reasons underlying such actions.
- 3.2 The interim monitoring report shall confirm Dawn Gateway LP's adherence to Condition 1.1 and shall include a description of the impacts noted during construction and the actions taken or to be taken to prevent or mitigate the long-term effects of the impacts of construction. This report shall describe any outstanding concerns identified during construction.
- 3.3 The final monitoring report shall describe the condition of any rehabilitated land and the effectiveness of any mitigation measures undertaken. The results of the monitoring programs and analysis shall be included and recommendations made as appropriate. Any deficiency in compliance with any of the Conditions of Approval shall be explained.

#### **4 Easement Agreements**

- 4.1 Dawn Gateway LP shall offer the form of agreement approved by the Board to each landowner, as may be required, along the route of the proposed work.

#### **5 Other Approvals and Agreements**

- 5.1 Dawn Gateway LP shall obtain all other approvals, permits, licences, and certificates required to construct, operate and maintain the proposed project, shall provide a list thereof, and shall provide copies of all such written approvals, permits, licences, and certificates upon the Board's request.