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VIA E-Mail and RESS

Ontario Energy Board
P.O. Box 2319, 26th Floor
2300 Yonge Street
Toronto, Ontario
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Attention: Ms. Kirsten Walli, Board Secretary

Sharon Wong

Dir: 416-863-4178

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Reference: 75996/2

Dear Ms. Walli:

**Re: EB-2009-0422: Dawn Gateway Pipeline Limited Partnership ("DGLP")
DGLP Comments on Staff Sur-Reply**

Dawn Gateway requests an opportunity to comment on Board Staff's Sur-Reply in order to clarify the difference between "fixed tolls" and "range rates" and how they relate to the actual prices paid by shippers as there seems to be some misunderstanding about the meaning of the terms. We are also including some brief comments in respect of CME's letter which was filed earlier today, shortly before delivery of these submissions.

Tolls and rates are the same thing. The NEB tends to use the term "toll", whereas the OEB tends to use the term "rate". Both terms simply indicate the amount charged for a service.

A "fixed toll" or a "fixed rate" is a specific amount that can be charged for a service. Discounting from the fixed rate is often allowed. Most pipeline transportation tolls and rates are fixed at a specific dollar amount per unit of service, for example \$2/GJ, and these fixed rates are published in rate schedules or toll schedules as part of a pipeline's tariff.

However, not all tolls are fixed at a specific amount. In some cases, pipeline companies have been authorized to charge "range rates". With a range rate a pipeline company is authorized to charge any price within the specified range. For example, in this case there was evidence that the OEB has authorized Union to charge a range rate for its C1 Interruptible and Short Term (less than 1 year) Firm Transportation service of up to a maximum of \$75/GJ. This means that Union has been authorized by the OEB to charge shippers any price up to a maximum of \$75/GJ for this service. (A copy of Union's C1 Rate Schedule was provided to the Board on Day 2 of the hearing, Transcript p. 8, but no exhibit number was assigned).

Under Union's C1 Rate Schedule the rate / toll is variable for Interruptible and Short Term Firm Transportation (any price up to \$75/GJ). However, when a shipper enters into a contract with Union for that service, the shipper negotiates a fixed price based on the market conditions at the time of the contract.

The price negotiated by different shippers will vary from time to time based on market volatility (see the excerpt from Union's 2007 Rate Case regarding the reasons for increasing the C1 range rate which was provided to the Board with the C1 rate schedule, p. 8 of the Day 2 Transcript). However, each shipper will have a fixed price in its own contract. Union is not required by the Storage and Transportation Access Rule (STAR) or any OEB order to post the prices paid by shippers under Union's C1 range rate. The Board knows that there have been no complaints from shippers regarding prices paid under the C1 range rate. It has worked well, and the market works well.

Vector is an example of a Group 2 Pipeline that has a range rate. The Vector Statement of Tolls (filed as part of Exhibit K1.13) states:

Firm Transportation Service Tolls For A Term Less Than 10 Years

All tolls for firm Transportation service for a term of less than 10 years shall be negotiated between Shipper and Transporter. The maximum negotiated toll for such service is capped at 300% of the stated Maximum 15 Year firm Transportation service Toll.

There is a similar provision in Vector's Statement of Tolls for negotiated prices within an approved range for Vector's interruptible transportation service:

INTERRUPTIBLE TRANSPORTATION SERVICE

All tolls for Interruptible Service shall be negotiated between Shipper and Transporter. The maximum negotiated toll for such service is capped at 300% of the stated Maximum 15 Year firm Transportation service Toll.

When Staff brought up the question of posting prices during argument, the applicant made inquiries and was advised by Vector that the NEB does not require Vector to file its negotiated prices.

Similarly, Westcoast has many long term multiple year transportation contracts, and Westcoast advised that it is not required to file or post its negotiated prices under these contracts. We are advised by Ms. Ruth Mills of the NEB that TransCanada Pipelines is not required to post or file with the NEB the negotiated prices that it charges for its interruptible transportation at or above its Bid Floor price (Toll Schedule at Exhibit K2.5). Westcoast and TransCanada Pipelines are Group 1 companies that are subject to more rigorous regulation, and under the more light handed Group 2 regulation it is expected that the NEB would have allowed the same treatment to Dawn Gateway.

The assertion from Board Staff that the NEB's publication "Regulation of Traffic, Tolls and Tariff" requires the actual tolls (i.e. the negotiated prices) to be included in the tariff is incorrect. The Sur-Reply refers to the fact that under the NEB Act a pipeline company cannot charge a toll unless it is included in a tariff filed with

the NEB or approved by an order of the NEB. The filing of the range rate in the tariff or the approval of the range rate by the NEB is sufficient to satisfy this requirement without the need for the specific contract prices to be posted.

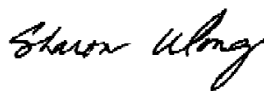
In this case, Dawn Gateway has applied to the OEB for a range rate with specified rate caps. If the OEB approves the range rate, then Dawn Gateway would be authorized by OEB order to charge any toll price up to the specified maximum, and this would satisfy the requirements of s. 36 of the *OEB Act*. Consistent with the Board's previous approval of Union's C1 range rate, there would certainly be no need for the OEB to approve every price being paid by a shipper as suggested on page 6 of the Sur-Reply.

Under the form of complaints based, light handed regulation being requested, the Board can at first instance be satisfied that prices being paid are "just and reasonable" by the fact that sophisticated shippers with market knowledge as to the value of the service (i.e. the price differential between Michigan and Dawn) have agreed to the prices. There is no unjust discrimination if shippers value the service differently and voluntarily chose to subscribe at different prices. If shippers believe that they are being unfairly treated they can complain to the Board, and the Board can investigate the matter at that time.

CME's letter makes the point that the AEC Suffield and Pipestone Pipelines NEB decisions related to fixed tolls and not range rate tolls. The relevant point of those decisions is that they show that Group 2 regulation need not have any link to cost of service, and Group 2 can be fully market based. Those cases are not germane to the issue of whether a negotiated price under a range rate must be publically disclosed. Dawn Gateway relies on the OEB's own practice with respect to the C1 range rate, and the NEB's practice with respect to Vector, Westcoast and TransCanada Pipelines for its position that public disclosure of the negotiated prices should not be ordered.

Board staff put forward two reasons for posting prices: 1) because the NEB requires it, and 2) because posting prices is necessary for the OEB to be able to determine if the prices are "just and reasonable". For the reasons set out above, Dawn Gateway respectfully submits that neither reason is valid. Dawn Gateway therefore requests that the Board not order the posting of prices for the reasons given at the hearing, being that it would put both the shippers using the line and Dawn Gateway at a competitive disadvantage.

Yours truly,



Sharon Wong

SW/kw

c: All Intervenors in EB-2009-0422

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