

By electronic filing and by e-mail



March 25, 2010

Kirsten Walli
Board Secretary
Ontario Energy Board
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Dear Ms Walli,

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

We are writing to provide our comments on the Draft Accounting Orders circulated by Union Gas Limited ("Union") on or about March 15, 2010.

We have had a number of e-mail communications with Mr. Ripley of Union and with Union's counsel, Ms Wong, in an attempt to gain a clear understanding of the amounts that Union proposes to record in each of these deferral accounts and the related entries in Union's accounting records.

The comments that follow are based on the positions Mr. Ripley and Ms Wong have outlined to us in their e-mails.

Account 179-121

We understand that under the accounting Union proposes, the sale of the St. Clair Line to DGLP will be recorded in Union's corporate accounts as a sale at the Net Book Value ("NBV") of \$5.2M and not a sale at the fair market value of the St. Clair Line determined by the Board to be an amount of about \$13.2M.

This approach leads to a characterization of the \$6.402M gain on the sale that the Board requires Union to record in a deferral account for subsequent clearance to ratepayers as a "loss" in Union's corporate accounts and a reduction to its 2009 corporate income.

In our e-mails to Union, we questioned this proposed approach on the grounds that it is not compliant with paragraph 1 (a) of the Board's November 27, 2009 Order granting Union leave to sell the St. Clair Line to DGLP on condition that:

"The sale price for ratemaking purposes shall be the fair market value which is defined as the replacement cost of the line."
(emphasis added)

In its March 2, 2010 Decision and Order, the Board determined the fair market value of the St. Clair Line to be \$13.17M.

In our communications with Union, we argued that the deferral accounts the Board established in paragraph 123 of its November 27, 2009 Decision and Order and paragraph 56 of its March 2, 2010 Decision and Order were created for ratemaking purposes. We argued that the amount of \$6.402M that the Board directed Union to record in a deferral account for the benefit of its ratepayers does not stem from a sale price at the NBV of the St. Clair Line. We submitted that a sale price of \$5.2M should not be used in the deferral accounts the Board created for utility ratemaking purposes. We argued that no "loss" should be recorded in the accounts as Union proposes and suggested that the transactions in the deferral account should reflect a cash sale at the fair market value of \$13.17M determined by the Board.

In response, Union asserted that, according to the rules pertaining to the Uniform System of Accounts ("USofA"), all of the entries in the deferral accounts the Board has established must be made in accordance with corporate financial statements accounting, and that "regulatory accounting" cannot be reflected in the deferral account debit and credit transactions.

We rely on the Board to apply its specialized expertise to determine whether the deferral accounts Union proposes should or should not reflect the "regulatory accounting" that flows from a sale of the line for a cash consideration of \$13.17M.

If Union is incorrect and the deferral account debit and credit transactions associated with the sale can reflect the appropriate "regulatory accounting", then we submit that the only accounting that complies with the Board's November 27, 2009 Decision and Order approving the sale is the accounting that flows from a cash sale of the St. Clair Line for a consideration equal to its fair market value of \$13.17M. If appropriate "regulatory accounting" can be reflected now, then the debit and credit transactions Union proposes should be revised to reflect a cash sale for \$13.17M.

On the other hand, if Union is correct in its assertion that the accounting entries in the deferral accounts must be made in accordance with corporate financial statements accounting, then, in issuing its accounting orders, the Board should make it clear that the orders will have no effect on a subsequent determination of the appropriate "regulatory accounting" to apply to the transaction.

This provision is important because Union is asserting that the appropriate "regulatory accounting" for the transaction has earnings sharing implications. The point that we are making is that the appropriate "regulatory accounting" for utility purposes calls for the sale to be recorded at a cash value of about \$13.2M. After deducting the \$6.4M portion of the gain to be credited to the deferral account, there appears to us to be a residual gain on the sale transaction of \$1.2M. Under the "regulatory accounting" that we submit is appropriate for utility regulatory purposes, there is no "loss" to be deducted from utility income when determining earnings sharing as Union asserts. Rather, under the "regulatory accounting" that we submit is appropriate, there is an amount to be added to utility income.

If Union is correct in its assertion that the implications of "regulatory accounting" on utility income need to be taken into account for the purposes of determining earnings sharing, then the outcome, in our submission, is that the utility earnings will be higher by an amount that we think is about \$1.6M and not lower by an amount of \$6.4M as Union contends. The risk Union faces by pursuing its earnings sharing position is that it will have to pay an additional amount to ratepayers under the auspices of the earnings sharing mechanism.

We reiterate that, in our submission, any USofA accounting order that results in a "loss" of about \$6.4M in Union's corporate accounts should be expressed stated to have no effect on the debate pertaining to the appropriate "regulatory accounting" to apply to the transaction for the purposes of determining its earnings sharing implications, if any.

Account 179-122

Mr. Ripley informs us that the credit balance allocable to ratepayers that results from the accounting Union is proposing for Account 179-122 is an amount of about \$1M and that the accounting Union proposes has no impact on utility earnings that is either potentially favourable or unfavourable to ratepayers. Our understanding that the credit balance in the deferral account associated with the removal of the St. Clair Line from rate base for the period March 1, 2010, to December 31, 2010, is an amount of about \$1M stems from the revenues and expenses Union filed for 2010 to support its initial calculation pertaining to the share of the gain on the sale of the St. Clair Line to be allocated to ratepayers.

On the basis of our understanding that the credit to ratepayers will be in an amount of about \$1M and that the accounting entries Union is proposing have no impact on utility earnings, we support the accounting order Union proposes to reflect a removal of the St. Clair Line from rate base and cost of service for the period March 1, 2010, to December 31, 2010.

We reserve CME's rights to seek similar relief by way of a deferral account or otherwise for the years 2011 and 2012 when Union brings forward its applications for rates in each of those years.

Please contact us if any further elaboration of the points contained in this letter is required.

Yours very truly,



Peter C.P. Thompson, Q.C.

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c. Parties to EB-2008-0411

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