

March 24, 2010

Kirsten Walli, Board Secretary
ONTARIO ENERGY BOARD
2300 Yonge Street, 27th Floor
Toronto, ON M4P 1E5

Dear Ms. Walli:

Re: EB-2009-0422: Dawn Gateway Pipeline Limited Partnership Regulatory Approvals.

Industrial Gas Users Association (IGUA) Comment on Draft Rate Order.

Pursuant to the Board's Decision and Order herein dated March 9, 2010, the applicant - Dawn Gateway - has filed a Draft Rate Order. On behalf of IGUA, we wish to comment two aspects of the Draft Rate Order. Both aspects pertain to the Board's Conditions of Approval of the regulatory framework for Dawn Gateway.

1. Posting of Operationally-Available Transportation Capacity pursuant to section 4.1.1 (ii) of the Board's *Storage and Transportation Access Rule (STAR)*.

At paragraph 30 of its Decision, the Board found as follows:

The Board is of the view that Dawn Gateway should comply with STAR. In particular, the Board concludes that Dawn Gateway should post operationally-available capacity as provided for in Section 4.3.1. The Board will, however, grant a limited exemption from the relevant sections for a period of one year. For that period, the company will only be required to post operationally-available capacity after its first nomination window. The Board will review this exemption a year from now to examine the extent to which capacity is being made available in subsequent windows and to determine whether the

limited exemption is still warranted. This requirement is reflected in the Conditions of Approval.[Emphasis added.]

At Appendix C to the Decision and Order, the foregoing finding by the Board is translated into the following Condition of Approval (item 3):

Dawn Gateway will comply with the Board's Storage and Transportation Access Rule ("STAR"). For the purposes of section 4.1.1(ii) and related sections 4.1.4, 4.1.6, and 4.3.1 of STAR, Dawn Gateway is only required to post the operationally-available transportation capacity once each day. The Board will review this provision on an annual basis and determine whether further daily postings are necessary depending on the extent to which Dawn Gateway offers those services.

This reformulation of the Board's findings is reproduced in the Draft Rate Order at page 2, and then further restated in the "Order" section of the Draft Rate Order (page 3), as follows (as item 4.):

Dawn Gateway will comply with the Board's Storage and Transportation Access Rule ("STAR"). For the purposes of section 4.1.1(ii) and related sections 4.1.4, 4.1.6 and 4.3.1 of STAR, Dawn Gateway is only required to post the operationally-available transportation capacity once each day.

In IGUA's view, there is a material distinction between a provision in the final order that specifies that Dawn Gateway is only required to post operationally-available transportation capacity once each day, on the one hand, and the Board's findings on the issue, on the other. IGUA respectfully submits that the Board's final Rate Order should reflect the Board's findings accurately. In particular, item 4. of the final Order should specify the one year limited exemption from the relevant STAR requirements. Framing the final Order in this fashion will ensure that the applicant retains responsibility for seeking an extension of the limited exemption granted, in the event that it is of the view that such exemption is warranted. An appropriate exemption application process can then be followed, including opportunity for any further relevant information to be brought to the Board's attention.

2. Compliance with the Board's *Affiliate Relationships Code for Gas Utilities (ARC)*.

In respect of the applicability of the *ARC*, the Board in its Decision found (paragraph 35) as follows:

For the purposes of Union's compliance with ARC, effective June 1, 2010 the Board will deem Dawn Gateway to be an affiliate of Union. Union will be required to provide written assurance to the Board that Union will treat Dawn Gateway as an affiliate for the purposes of ARC.

The same wording appears at section 2) of the Conditions of Approval, Regulatory Framework included as Appendix C to the Board's Decision and Order.

In the "Order" section of Dawn Gateway's Draft Rate Order (page 3), the applicant has dropped the first sentence of the Board's findings and related approval condition, restating the proposed Order provision as follows (as item 4.):

Union Gas Limited will provide written assurance to the Board that Union will treat Dawn Gateway as an affiliate for the purposes of ARC.

IGUA submits that the omission from the proposed final order of the first part of the Board's findings, which deem Dawn Gateway to be an affiliate of Union, is material.

IGUA acknowledges that reference to the applicability of the ARC is included in Article 21 of the General Terms and Conditions filed by Dawn Gateway with its Draft Rate Order, as required by item 5) of the Board's Conditions of Approval, Regulatory Framework (Appendix C to the Board's Decision and Order). Notwithstanding, IGUA submits that the Board's "deeming" provision, as contained in both its findings and its Condition of Approval, should be reinserted in the final rate order, as this provision governs Dawn Gateway as well as Union.

Your truly,
MACLEOD DIXON LLP



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