



By electronic filing and by e-mail

June 16, 2010

Kirsten Walli
Board Secretary
Ontario Energy Board
2300 Yonge Street
27th floor
Toronto ON M4P 1E4

Dear Ms Walli,

**Union Gas Limited ("Union")
2009 Earnings Sharing Mechanism ("ESM") and
Deferral Account and Other Balances
Board File No.: EB-2010-0039
Our File No.: 339583-000070**

Please find attached the Interrogatories of our client, Canadian Manufacturers & Exporters ("CME"). Paper copies are being sent as required.

Yours very truly,

A handwritten signature in black ink, appearing to read 'Peter Thompson', is written over a horizontal line.

Peter C.P. Thompson, Q.C.

\slc
enclosure

c. Chris Ripley (Union)
Crawford Smith (Torys)
EB-2010-0039 Intervenors
Paul Clipsham (CME)

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Borden Ladner Gervais LLP
Lawyers • Patent & Trade-mark Agents
World Exchange Plaza
100 Queen Street, Suite 1100
Ottawa ON K1P 1J9
tel.: (613) 237-5160 fax: (613) 230-8842
www.blgcanada.com

PETER C.P. THOMPSON, Q.C.
direct tel.: (613) 787-3528
e-mail: pthompson@blgcanada.com

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IN THE MATTER OF the *Ontario Energy Board Act*, 1998, S.O. 1998, c. 15, Schedule B;

AND IN THE MATTER OF an Application by Union Gas Limited for an order or orders amending or varying the rate or rates charged to customers as of October 1, 2010.

**INTERROGATORIES OF
CANADIAN MANUFACTURERS & EXPORTERS ("CME")
FOR UNION GAS LIMITED ("UNION")**

Details of Balances in Storage Deferral Accounts

Reference: Exhibit A, Tab 1, Page 8, Table 2

1. Please broaden Table 2 to show separate line items for "Interest, return and income taxes".
2. Please produce an additional table, comparable to Table 2, as broadened in response to the previous question, to show the "Short-term", "Long-term" and "Total" line items for "Storage revenue", "Operating costs", "Interest, return and income taxes" that lead to the "Board approved" margins for "Short-term", "Long-term" and "Total" shown in Table 2 of \$15.829M, \$21.405M, and \$37.234M respectively.

LRAM

Reference: Exhibit A, Tab 1, Pages 9 and 10

3. As confirmed at Exhibit A, Tab 1, page 10 of 26, Union previously disposed of the 2008 LRAM balance related to unaudited DSM activities. CME wishes to better understand the 2008 variance that is being trued-up in this proceeding. To this end, please provide an explanation of the drivers of the variance between the unaudited and audited 2008 DSM activities.
4. At Exhibit A, Tab 1, page 10, Union confirms that there were no 2009 DSM volumes included in 2009 rates. Is this consistent with Union's practice in previous years? For instance, were 2008 DSM volumes not included in 2008 rates? If this constitutes a change in practice, then please provide an explanation as to why this change has occurred. If it does not constitute a change in practice, then please explain why an estimate of 2009 DSM volumes was not included in 2009 rates.

Shared Savings Mechanism (“SSM”) Variance Account

Reference: Exhibit A, Tab 1, Pages 18 and 19

5. Union is relying on previous Board-approved practice to justify clearing the recorded SSM balance related to unaudited 2009 DSM activities. CME acknowledges that in previous years the SSM incentive payout variance has not been material. That said, CME wishes to better understand Union's position on the clearance of recorded SSM balances based on unaudited DSM activities where concerns have been raised that could have a material impact on the SSM. Specifically, where an ongoing audit has identified issues that could have a material impact on the SSM balance to be cleared to ratepayers, is it Union's position that it should nevertheless clear the full amount of the SSM balance? If so, please explain why.

Cumulative Under-Recovery – St. Clair Transmission Line and Impact of Removing St. Clair Transmission Line from Rates

Reference: Exhibit A, Tab 1, Pages 21 to 24

Preamble

In this proceeding, Union proposes to refrain from clearing the \$6.402M the Board ordered it to record in the “Cumulative Under-recovery – St. Clair Transmission Line” deferral account. Union is also refusing the record anything in the “Impact of Removing the St. Clair Line from Rates” deferral account, effective March 1, 2010. Union takes these positions on the basis of arrangements Dawn Gateway Limited Partnership (“DGLP”) has allegedly made with its five (5) long-term shippers, the largest of which is Union's unregulated storage services business. DGLP has supposedly arranged to delay construction of the Dawn Gateway Pipeline and to determine by November 1, 2010, whether the Pipeline will be constructed for an in-service date in November 2011. The extent to which these arrangements operate to relieve DGLP's shippers of the financial commitments they made to DGLP is unclear.

According to evidence in this proceeding, DGLP has not proceeded with the purchase of the St. Clair Line, despite repeated representations that both DGLP and Union made to the Board to the effect that the purchase and sale transaction would be completed in March 2010. Union appears to be tolerating DGLP's refusal to comply with the commitments it made to acquire the St. Clair Line in March 2010.

The proposals Union makes in this proceeding appear to be premised on the notion that DGLP and its committed long-term shippers are not at risk for costs associated with DGLP's failure to complete the sale transaction in March 2010 as represented to the Board. Union's proposals appear to be premised on the notion that Union's ratepayers remain at risk for DGLP's failure to complete the sale transaction in March.

We strongly disagree with the premises upon which Union appears to have proceeded and we wish to obtain information pertaining to the prudence of the actions of DGLP, including whether the arrangements it has made with its shippers require them to indemnify DGLP for the commitments it made to Union and others with respect to the Dawn Gateway Pipeline. Similarly, we wish to obtain information pertaining to the prudence of those managing Union's

regulatory utility and its apparent tolerance for DGLP's refusal to complete the purchase of the St. Clair Line in March 2010. In this connection, we are interested in determining how Union managed the significant conflict of interest it faced with its unregulated storage business being the largest and longest term shipper committed to DGLP and its regulatory utility being obliged to credit ratepayers an amount of \$6.402M and to remove the St. Clair Line from Rate Base as of March 1, 2010, by posting amounts to the "Impact of Removing the St. Clair Line from Rates" deferral account.

We also wish to obtain information showing the amounts to be cleared to ratepayers in the scenario where all of the orders the Board has made, for ratemaking purposes, in proceedings pertaining to the Dawn Gateway Pipeline continue to apply so that any and all risks associated with DGLP's failure to acquire the St. Clair Line in March 2010 rest, not with the ratepayers of Union's regulated utility, but with DGLP and its shippers, including Union's unregulated storage business.

In the context of this preamble, please provide the information requested below:

DGLP's Contracts with its Shippers

Reference: Exhibit A, Tab 1, page 23, line 6

6. Please produce, in confidence, to those who execute the Board's Confidentiality Undertaking, the five (5) long-term Precedent Agreements between DGLP and its shippers in the same format that these documents were filed, in confidence, in the EB-2008-0411 proceeding.
7. Please confirm that the duration of each of these contracts is five (5) years or longer.
8. Please confirm that Union, on behalf of its unregulated storage business, is the largest committed shipper on DGLP and that the term of its contract is the longest of the five (5) shippers that have made long-term binding commitments to DGLP.
9. Please confirm that each of the committed shippers to DGLP agreed to pay monthly and annual reservation or demand charges for the duration of the terms of their respective agreements, and that these amounts do not vary with the volume shipped. The amounts are payable, even if no volumes are shipped.
10. Please confirm that the contracts between DGLP and its shippers impose binding financial commitments on the shippers that are not conditional on a minimum spread between the price of gas in Michigan and at Dawn.
11. Please confirm that, in total, the contracts call for the payment of many millions of dollars per annum.

Spreads between Gas Prices in Michigan and at Dawn

Reference: Exhibit A, Tab 1, page 23, lines 14 to 17

12. Please provide the information that was filed in the EB-2008-0411 proceeding showing the historic spreads between gas prices in Michigan compared to Dawn and update that

information to show the spreads that existed on a daily basis between the period June 1, 2009, to June 1, 2010.

March 2010 Transaction Date Representations and Board's Transaction Date Determination

Preamble

The Board's November 27, 2009 Decision in EB-2008-0411 proceeding, approving Union's request for permission to sell the St. Clair Line to DGLP, was subject to certain conditions. One condition called for a sale price, for ratemaking purposes, at fair market value and another for a credit amount that ratepayers would receive, for ratemaking purposes, for the cumulative under-utilization of the St. Clair Line from 2003 to the time of the sale transaction. The Decision indicated that once the transaction date had been set, Union's obligation to pay the credit amount to its ratepayers was mandatory.

DGLP accepted the conditions established by the Board in its November 27, 2009 Decision and decided to proceed with the Dawn Gateway Pipeline. On December 23, 2009, DGLP applied to the Board for leave to construct the St. Clair to Bickford Line and for approval of a light-handed regulatory regime similar to that applied by the National Energy Board ("NEB") to Group 2 Pipelines. The Application was premised on DGLP's purchase of the St. Clair Line from Union. DGLP pressed for a decision approving its leave to construct and light-handed regulatory regime Application on or before the beginning of March 2010 because of commitments it had made to its shippers, its contractor and the need to order pipe for the purposes of achieving an in-service date in November 2010.

Concurrently, Union submitted information to the Board pertaining to the cumulative under-recovery of the St. Clair Line from 2003 to March 1, 2010. In its presentations to the Board, Union represented that its sale of the St. Clair Line to DGLP would be completed in March 2010. After referring to these representations in paragraph 25 of its Decision and Order in the EB-2008-0411 proceeding dated March 2, 2010, the Board accepted the transaction date of March 1, 2010, that Union requested and characterized it as "the deemed transaction date". In that Decision, the Board ordered that:

*"1. The deemed sale price of the St. Clair Line for ratemaking purposes shall be \$13.17M. The deemed net gain on the sale of the St. Clair Line shall be \$7.97 million.
(emphasis added)*

*2. Union's ratepayers shall be allocated \$6.402 million of the deemed net gain on the sale of the St. Clair Line."
(emphasis added)*

The Board also directed Union to file Draft Accounting Orders pertaining to the \$6.402M ratepayer's share of the deemed net gain and the Board's Decision to establish a deferral account to record the impact of removing the St. Clair Line from rates beginning March 1, 2010.

The Board's Decision and Order granting DGLP leave to construct the Bickford to Dawn Line and authorizing a light-handed regulatory framework that proved to be satisfactory to DGLP was rendered on March 9, 2010. In its 2009 Annual Report dated March 17, 2010, Union acknowledged that the Board's Decision on March 9, 2010, approved both items upon which the sale of the St. Clair Line was contingent. The Annual Report states at page 8 as follows:

"The sale of the St. Clair Line is contingent on DGLP receiving OEB approval to construct a new 17 km section of pipeline from the eastern end of the St. Clair Line to Dawn. The sale is also contingent on DGP receiving OEB approval for a new light-handed regulatory framework for the Ontario-based portion of the new transportation service they propose to offer. In March 2010, a hearing was held and a decision received from the OEB, approving both of these items."

In its Financial Statements for the period ending December 31, 2009, included in its Annual Report released on or about March 17, 2010, Union treated the sale transaction as having been completed and charged the \$6.402M to earnings in recognition of the Board ordered payment to ratepayers.

Matters pertaining to the recording of items in each of the deferral accounts for the cumulative under-recovery from 2003 to March 1, 2010, and the impact of removing the St. Clair Line from rates effective March 1, 2010, were finalized by a Board Order and Decision that issued on May 11, 2010. DGLP's formal Rate Order issued on June 3, 2010.

In the context of this preamble, please provide the information requested below.

13. Please provide copies of all statements made by or on behalf of Union and DGLP, either in evidence or in submissions made during the course of each of the proceedings in EB-2008-0411 and EB-2009-0422 to the effect that DGLP's purchase of the St. Clair Line would be completed in March 2010, immediately following the OEB approval for the construction of a new 17 km pipeline from Bickford to Dawn and a new light-handed regulatory framework for the Ontario based portion of the transportation service DGLP proposed to offer.
14. Please explain why Union does not now consider itself bound by these representations and the mandatory provisions of Orders made by the Board based thereon, including the deemed transaction date of March 1, 2010; the deemed sale price of the St. Clair Line for ratemaking purposes of \$13.17M; the deemed net gain on the sale of the St. Clair Line of \$7.97M; and the ratepayers share of the deemed net gain, which the Board determined shall be an amount of \$6.402M, all reflected in the Board's Decision and Order dated March 2, 2010.

DGLP's Altered Arrangements with its Shippers

Reference: Exhibit A, Tab 1, page 23, line 7 to page 24, line 2

15. Mr. Baker, an executive of Union, testified to support Union's Application for leave to sell the St. Clair Line and DGLP's subsequent application for leave to construct the Bickford to Dawn extension of the St. Clair Line and approval of a light-handed regulatory regime for DGLP. Is Mr. Baker responsible for representing Spectra's interests in DGLP? If not Mr. Baker, then who is?
16. Who is the executive at Union that is responsible for Union's unregulated storage business?

17. Please provide copies of all documents and e-mails exchanged between DGLP and any of its shippers that asked to delay construction of the Dawn Gateway Pipeline and DGLP's responses to those requests.
18. Did a representative of Union's unregulated storage business submit a written or oral request to DGLP to delay construction of the pipeline? If so, identify who made the request on behalf of the unregulated storage business and the representative of DGLP to whom the request was made.
19. What action, if any, was taken by Union's Board of Directors to determine whether Union should or should not seek a delay in the construction of the Dawn Gateway Pipeline? If any action was taken by the Board of Directors, then please produce excerpts from the Minutes of the Board of Directors meetings pertaining to the matter.
20. Please list the commitments DGLP had made to third parties such as its contractor(s), steel supplier(s), and land owners as of April 22, 2010, when Union filed its evidence in this proceeding and quantify the approximate value of each of those commitments.
21. Please quantify all of the costs DGLP incurred in connection with the Dawn Gateway Pipeline, including the costs of its participation in Union's application to sell the St. Clair Line, DGLP's initial application to the NEB and its subsequent application to the OEB for leave to construct and approval of a light-handed regulatory regime for DGLP.
22. What indemnities did DGLP demand from its five (5) committed shippers in exchange for its agreement to delay construction and to determine by November 1, 2010, whether the pipeline will proceed for in-service in November 2011?
23. Have DGLP's shippers agreed to indemnify DGLP for the cost consequences of all of the commitments it made and the actions it took to obtain the requisite approvals for constructing the Dawn Gateway Pipeline for an in-service date of November 2010? If not, then what action does DGLP plan to take to recover the costs it has incurred for such commitments from its five (5) committed shippers?
24. Please produce, in confidence if necessary, copies of the amended agreements DGLP has made with each of its five (5) committed shippers.

Union's Tolerance for DGLP's Failure to Complete its Purchase of the St. Clair Line in March 2010

Reference: Exhibit A, Tab 1, page 24, lines 4 and 5

25. The evidence at Exhibit A, Tab 1, page 24, lines 4 and 5 states:

"Given the delay in the construction of the Dawn Gateway Pipeline, Dawn Gateway has not proceeded with the purchase of the St. Clair Transmission Line."

Please provide copies of all communications from a representative of DGLP to a representative of Union's utility pertaining to DGLP's decision not to proceed with the purchase of the St. Clair Transmission Line.

26. What executive at Union is responsible for representing the interests of Union's regulated utility in transactions involving the sale of Union's transmission line assets to a third party?
27. What was the response of the Union executive representing the regulated utility to the notice from DGLP that it would not proceed with the purchase of the St. Clair Transmission Line in March 2010 as repeatedly represented to the Board?
28. What action, if any, was taken by Union's Board of Directors in determining whether Union's utility should or should not insist upon the completion of the transaction in March 2010. If any action was taken by the Board of Directors, then please provide excerpts from the Minutes of Board of Directors Meetings pertaining to the matter.
29. What amount did Union spend in 2009 and 2010 in connection with its application for leave to sell the St. Clair Line and DGLP's application to the NEB, followed by its application to the OEB for leave to construct and approval of a light-handed regulatory regime? Please provide a breakdown of these amounts by service provider.
30. Please explain what amounts Union plans to claim from DGLP in the event that the Board affirms, in this proceeding, that Union is, for ratemaking purposes, obliged to credit its ratepayers with \$6.402M and to remove the St. Clair Line from Rate Base as of March 1, 2010, by making the credit entries to the "Impact of Removing the St. Clair Line from Rates" deferral account and eventually clearing those balances to ratepayers.

Adherence to Board Decisions in EB-2008-0411 and EB-2009-0422

Reference: Exhibit A, Tab 1, pages 21 to 24

31. For the purposes of providing responses to the following requests, please assume that, for ratemaking purposes in this proceeding, the Board adheres to its Decisions in the EB-2008-0411 and EB-2009-0422 proceedings and that, *inter alia*, as of March 1, 2010, Union ratepayers are no longer at risk for any costs associated with the St. Clair Transmission Line. Under these assumptions, please provide the following information:
 - (a) Please revise Exhibit A, Tab 1, Schedule 1 to include, in Account #179-121, the credit balance of \$6.402M, plus accrued interest thereon, if any.
 - (b) Assuming that the amount recorded in Account #179-121 of \$6.402M, plus any accrued interest thereon, is to be allocated to ratepayers now, please show how Union would propose to allocate that amount to its various rate classes.
 - (c) Please provide an estimate of the March 1, 2010, to December 31, 2010 monthly amounts and year end balances that would be recorded in Account #179-122 to capture the effect of removing the St. Clair Transmission Line from rates effective March 1, 2010.
 - (d) Please provide an estimate of the monthly amounts and year end balances that would be recorded in Account #179-122 to capture the effect of removing the St. Clair Transmission Line from rates for each of the periods January 1, 2011, to December 31, 2011, and January 1, 2012, to December 31, 2012.

- (e) Please provide the net present value, at July 1, 2010, of the estimated amounts to be recorded in Deferral Account #179-122 above for the entire period March 1, 2010, to December 31, 2012.

2009 Utility Results and Earnings Sharing

References: Exhibit A, Tab 2
Exhibit A, Tab 2, Appendix B, Schedule 1

32. Please provide a copy of Union's Annual Financial Statements referred to at Exhibit A, Tab 2, page 4, line 16.
33. Please show the effect on the Earnings Sharing calculation at Exhibit A, Tab 2, Appendix B, Schedule 1 of recording a gain, for ratemaking purposes, of \$1.6M on a deemed sale of the St. Clair Line for \$13.17M on March 1, 2010, as described in the Board's EB-2008-0411 Decision and Order dated May 11, 2010.

Allocation of Costs between Union's Regulated and Unregulated Storage Operations

References: Exhibit A, Tab 4
Exhibit A, Tab 2, Appendix B, Schedule 1

34. In order to enable interested parties to obtain a clearer picture of the separation of Union's Utility and Non-utility Storage Revenues, Expenses and Earnings from the Total Corporate Revenues, Expenses and Earnings, please provide an Exhibit comparable to lines 1 to 16 of Exhibit A, Tab 2, Appendix B, Schedule 1 that shows, for each line item, the amounts for 2009 in column (a) and then, in a new column (b), the amounts, for each line item, for "Utility Storage", followed by the amounts for "Non-utility storage" now shown in column (b) of Exhibit A, Tab 2, Appendix B, Schedule 1, followed by a fourth column (d) entitled "Total Storage".
35. Please explain how Union separates regulated and unregulated storage revenues.
36. Was the storage capacity Union held at December 31, 2007, the total of 162.1 PJs referenced at Exhibit A, Tab 4, page 4, of which about 100 PJs or about 61.6% thereof was allocated to regulated storage? If not, then what are the correct amounts as of December 31, 2007?
37. What is the total storage capacity Union held at December 31, 2009, and what is the current ratio of regulated storage capacity of 100 PJs to total storage capacity?
38. To help interested parties better understand the allocation of Union's total net asset costs between its regulated and unregulated storage activities, we request that an Exhibit be filed, that reconciles with the Financial Statement Balance Sheets for Union Gas Limited, and shows, by OEB Uniform System of Accounts line item and account number, the total asset costs for the company as a whole at December 31, 2007. From the totals shown for the company as a whole, show in a second column the line item and

total asset costs related to "Storage". In a third column, show the portion of the line item and total storage related asset costs that are assigned or allocated to the Utility and in a fourth column, show the portion of each line item of costs that is allocated or assigned to Non-utility storage. In a fifth column, identify each of the allocators that have been used in each of the line items to separate the total storage costs between Utility and Non-utility storage.

39. Using the December 31, 2007 starting point for line item and total storage related costs and their separation between Utility and Non-utility costs to be provided in response to the previous questions, prepare a continuity schedule showing the line item and total additions and deletions for the period January 1, 2008, to December 31, 2008, and the situation at December 13, 2008, in the format of the response to the previous question.
40. Provide an additional schedule showing the line item and total additions and deletions for the period January 1, 2009, to December 31, 2009, to show how the net additions to total storage related costs have been allocated between Utility and Non-utility storage and present the situation at December 31, 2009, in the format of the responses to the previous two (2) questions.
41. The evidence at Exhibit A, Tab 2, Appendix B, Schedule 1 indicates that, for the year ending December 31, 2009, Union's Non-utility storage earnings before interest and taxes of \$90.052M were realized on Non-utility storage revenues of \$119.909M. This represents earnings before interest and taxes in an amount that is approximately 75% of revenues.
 - (a) What Return on Equity ("ROE") did Union earn on its unregulated storage assets in the fiscal period ending December 31, 2009?
42. We are interested in determining the sensitivity of the earnings sharing amount allocable to ratepayers and the calculation of the ratepayers share of storage margins in a scenario where the Board determines that additional costs should be shifted from Utility storage and allocated to Non-utility storage. For illustrative purposes, assume that the Board finds that another \$10M of costs should be shifted from Utility to Non-utility storage.
 - (a) Please show how a shift of \$10M of costs from Utility to Non-utility storage would affect the ratepayers portion of Earnings to be shared and the ratepayers share of storage margins, subject to deferral as described in Exhibit A, Tab 4, page 1, lines 19 to 21.