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By electronic filing and by e-mail

November 29, 2010

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

Dear Ms Walli,

Union Gas Limited (“Union”)

Motion to Adjourn

Board File No.: EB-2010-0039

Our File No.: 339583-000070

As solicitors for Canadian Manufacturers & Exporters (“CME”), we enclose the Affidavit of Jack Hughes and a Notice of Cross-Motion in response to the Motion and Affidavit delivered by counsel for Union November 19, 2010, to adjourn the December 6 and 7, 2010 hearing to a date to be fixed in late February 2011.

The purpose of the Hughes Affidavit is to identify the items in the record of this proceeding and others upon which CME relies to oppose Union’s Motion and to support the relief requested in CME’s Cross-Motion.

We are planning to circulate a written summary of CME’s Points of Argument in connection with this matter by Wednesday of this week so that the Board and other interested parties will be aware of the rationale for CME’s position in connection with these Motions.

Hard copies of the material will be provided to you by courier. Please contact me if there are any questions.

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.

PCT\slc
enclosure

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

OTT01\4289566\1

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.

NOTICE OF CROSS-MOTION

CANADIAN MANUFACTURERS & EXPORTERS ("CME") will make a cross-motion to the Ontario Energy Board (the "Board") at the oral hearing of the adjournment motion brought by Union Gas Limited ("Union") scheduled for Friday, December 3, 2010, at 9:30 a.m., in the Board's hearing room on the 25th Floor, 2300 Yonge Street, Toronto.

PROPOSED METHOD OF HEARING: Oral.

THE CROSS-MOTION IS FOR:

1. An Order directing Union to:
 - (a) Forthwith clear to ratepayers the credit balance in Account 179-121 of about \$6.4M, plus accrued interest to December 31, 2010 (the "Clearance Balance");
 - (b) Revise the draft rates circulated by Union on or about November 18, 2010, to reflect the Clearance Balance so that it will be included in the rates the Board approves for an effective date of January 1, 2011; and
 - (c) Clear the credit balance and accrued interest in Account 179-122 as of December 31, 2010, when Union brings forward its other 2010 deferral account balances for clearance in 2011;
2. Costs; and
3. Such further and other relief as counsel may advise and the Board permits.

THE GROUNDS FOR THE MOTION ARE:

1. The outcomes of the continued negotiations between Dawn Gateway Limited Partnership ("DGLP") and its committed shippers, and DGLP's November 15, 2010 Open Season are irrelevant to matters pertaining to the timely clearance, to ratepayers, of credit balances in deferral Accounts 179-121 and 179-122 because of:
 - (a) The representations made by DGLP and Union emphasizing that the issuance, by March 11, 2010, of Board regulatory approvals satisfactory to DGLP was essential to enable DGLP to meet its obligations to the five (5) shippers that had made long-term commitments for about 78% of the capacity of the pipeline, failing which the project would not likely proceed;
 - (b) The initial agreements between DGLP and its five (5) committed shippers, ranging in terms between five (5) and ten (10) years, empowering DGLP to proceed with the project for an in-service date of November 1, 2010, and entitling DGLP to recover substantial demand charges over the duration of the long-term agreements that were more than sufficient to cover the costs DGLP expected to incur to construct the pipeline, including the cost of acquiring the St. Clair Line from Union;
 - (c) Confirmation, provided under oath on March 1, 2010, by a representative of Union and DGLP that, upon DGLP's acceptance of the Board's leave to construct and regulatory framework approvals, as reasonable, the sale of the St. Clair Line to DGLP was to be treated, for regulatory purposes in Ontario, as having been completed in March 2010;
 - (d) The Board's Decisions and Orders in EB-2008-0411 dated November 27, 2009, and March 2, 2010, unconditionally establishing Union's ratepayers as the beneficiaries of deferral Accounts 179-121 and 179-122;
 - (e) The Board's Decision and Order in EB-2009-0422 dated March 9, 2010, approving DGLP's application for leave to construct and for a regulatory

framework on terms and conditions promptly confirmed by DGLP to be acceptable;

- (f) DGLP's waiver of the conditions precedent in the Purchase and Sale Agreement unequivocally evidenced by:
 - (i) Union's repeated statements that the transaction would be completed immediately following DGLP's acceptance of the Board's Leave to Construct and regulatory framework approvals;
 - (ii) the sworn evidence provided by DGLP on March 1, 2010; and
 - (iii) its acceptance of the Board's March 9, 2010 approvals as reasonable;
 - (g) Union's confirmation on March 17, 2010, in its 2009 Annual Report that the conditions precedent relating to the sale of the St. Clair Line to DGLP had been satisfied;
 - (h) Union's breach of its obligations to its ratepayers by failing to insist that DGLP complete its purchase of the St. Clair Line in accordance with the commitments previously made under oath; and
 - (i) The absence of any conditions in the deferral accounts providing Union with a right to claim balances therein, under any circumstances.
2. It would be a waste of time and resources to re-schedule the December 6 and 7, 2010 hearing to await outcomes that are irrelevant to the timely clearance, to ratepayers, of credit balances in the deferral accounts.
 3. Union's unequivocal acknowledgments in its November 2, 2010 written submissions in the Board's 2010 Natural Gas Market Review EB-2010-0199 to the effect that the Dawn Gateway Pipeline project will proceed because of its strategic importance in maintaining and enhancing liquidity at Dawn.
 4. The absence of any credible evidence to establish that the Dawn Gateway Pipeline Project is unlikely to proceed.

5. The absence of any genuine issue requiring a hearing with respect to the contingent claim Union purports to assert to an entitlement to credit balances recorded in deferral Accounts 179-121 and 179-122.
6. The prejudice to ratepayers from Union's inappropriate withholding of credit balances in the deferral accounts having a present value of approximately \$10M.
7. Rules 2.01 and 2.02 of the *Board's Rules of Practice and Procedure*, and Rule 20.04(1)(a) of the *Rules of Civil Procedure*.
8. Such further and other grounds as counsel may advise and the Board permit.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the cross-motion:

1. The Affidavit of Jack Hughes sworn November 29, 2010;
2. The record in the proceeding; and
3. Such further and other evidence as counsel may advise and the Board permit.

DATE: November 29, 2010

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TO: **ONTARIO ENERGY BOARD**

2300 Yonge Street
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Kirsten Walli

(416) 481-1967 telephone
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AND TO: **TORYS LLP**
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(416) 865-8203 telephone
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Counsel for Union Gas Limited

AND TO: All Intervenors

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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.

ONTARIO ENERGY BOARD

**NOTICE OF CROSS-MOTION OF
CANADIAN MANUFACTURERS & EXPORTERS
("CME")**

(Motion returnable December 3, 2010)

BORDEN LADNER GERVAIS LLP

World Exchange Plaza
100 Queen Street
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Ottawa, ON K1P 1J9

Peter C.P. Thompson, Q.C.
Telephone (613) 787-3528
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Lawyers for Canadian Manufacturers & Exporters ("CME")

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.

A F F I D A V I T

I, Jack Hughes, of the City of Ottawa, in the Province of Ontario, make oath and say as follows:

1. I am an associate with Borden Ladner Gervais LLP ("BLG") in Ottawa, solicitors for Canadian Manufacturers & Exporters ("CME"), and as such have knowledge of the matters to which I hereinafter depose. My knowledge is based on information contained in the record of this proceeding and others before the Ontario Energy Board (the "Board") pertaining to the Dawn Gateway Pipeline.

2. This Affidavit identifies, briefly summarizes and provides copies of documents in the records of these various proceedings that are considered by counsel for CME to be relevant to the Board's consideration of the Adjournment Motion brought by Union Gas Limited ("Union") dated November 19, 2010, and the relief requested by CME in its Cross-Motion dated November 29, 2010.

3. There are events and documents not included in the Affidavit of Mark Kitchen of Union Gas Limited ("Union") sworn November 19, 2010 (the "Kitchen Affidavit"), that relate to matters pertaining to the clearance of the credit balances in Deferral Accounts 179-121 and 179-122. A chronology of the events, including documents not attached to the Kitchen Affidavit, is as follows:

- (a) On November 27, 2009, the Board released its Decision in EB-2008-0411 granting Union Leave to Sell the St. Clair Transmission Line to Dawn Gateway Limited Partnership ("DGLP"). The Board's Decision and Order is attached as Exhibit "A" to the Kitchen Affidavit;

- (b) On or about December 4, 2009, DGLP withdrew its application filed with the National Energy Board ("NEB") for Leave to Construct and other relief with respect to the proposed Dawn Gateway Pipeline. A copy of DGLP's December 4, 2009 letter to the NEB is attached to my Affidavit and marked as **Exhibit 1**;
- (c) On December 23, 2009, DGLP applied to the Ontario Energy Board (the "Board" or "OEB") for Leave to Construct a portion of the proposed Dawn Gateway Pipeline and for approval of a regulatory framework consistent with Group Number 2 regulation as practiced by the NEB. In its Application, DGLP stated:

"There is a limited time span in which this project may proceed. In order to meet a proposed in-service date of November 1, 2010, as contracted by the shippers, the Applicant must order pipe for the construction of the Bickford-Dawn Pipeline by beginning of March 2010."

A copy of DGLP's Application and some excerpts from the supporting pre-filed evidence are attached to my Affidavit and marked as **Exhibit 2**;

- (d) Concurrently, on December 23, 2009, and as required by the Board's November 27, 2009 Decision and Order, Union filed its calculation of the cumulative under-recovery from 2003 to March 1, 2010, being its projected closing date for the sale of the St. Clair Pipeline to DGLP. A copy of Union's letter and calculation is attached to my Affidavit and marked as **Exhibit 3**. At page 3 of this material, Union stated as follows:

"Assuming that the Board grants Leave to Construct the Bickford-Dawn Pipeline and authorizes a regulatory framework that is satisfactory to DGLP by February 26, 2010, Union expects to proceed with the sale of the St. Clair Line to DGLP immediately thereafter. Accordingly, for the purposes of calculating the cumulative under-recovery of the St. Clair Line, Union has assumed that the sale will occur on March 1, 2010." (emphasis added)

- (e) Parties opposite in interest to Union made submissions on Union's calculations. CME's submissions to this effect were made on January 4, 2010, and a copy thereof is attached to my Affidavit and marked as **Exhibit 4**. A question was raised by CME and others pertaining to the appropriateness of Union's transaction date estimate of March 1, 2010;

- (f) On January 15, 2010, Union replied to the submissions made by CME and others and reiterated that March 1, 2010, was a realistic transaction completion date. A copy of Union's letter is attached to my Affidavit and marked as **Exhibit 5**;
- (g) The hearing of DGLP's Application for Leave to Construct and approval of a light-handed regulatory framework commenced on March 1, 2010. At that time, counsel for CME questioned DGLP witnesses, who were also representatives of Union, about the regulatory implications of the matters the Board was then considering pertaining to the transaction date for the sale of the St. Clair Line to DGLP and the removal of the St. Clair Line from utility Rate Base. Attached to my Affidavit and marked as **Exhibit 6** are pages 23 to 31 of the Transcript of the proceedings before the Board pertaining to the cross-examination of the DGLP and Union representatives. The Transcript includes the following exchange:

"Mr. Thompson: So that regardless of what happens on the US side, for regulatory purposes in Ontario, we can treat this deal as having been done as of March 2010, assuming you accept what the Board has ruled on as being reasonable. (emphasis added)

Mr. Baker: That's correct."

The Transcript also contains an acknowledgement that on an adjustment date to be determined by the Board, the Net Book Value ("NBV") of the St. Clair Line of approximately \$5M would be removed from utility Rate Base, along with the related carrying costs and return. The questions posed on this topic concluded with the following exchange:

"Mr. Thompson: So it is the sum of those numbers, then, that would be coming out of cost of service annually, whenever this adjustment takes place; is that fair?

Mr. Baker: That's correct."

- (h) Other excerpts from the March 1, 2010 Transcript, at pages 14 to 16, and pages 18 to 21 are attached to my Affidavit and marked as **Exhibit 7**. These Transcript excerpts describe the maximum amount of \$2.5M, over and above the NBV of the St. Clair Line, that DGLP would be paying to Union to acquire the St. Clair Line;

- (i) On March 2, 2010, the Board rendered its Decision and Order requiring Union to record a credit of \$6.402M in Account 179-121. The Decision describes the commitment to proceed with the sale of the St. Clair Line immediately following DGLP's acceptance of the Leave to Construct and regulatory framework approvals as reasonable as follows:

“[25] Union estimated that the closing date of the transaction for the sale of the St. Clair Line will be March 1, 2010 because DGLP indicated in its December 23 2009 Application, under Board File No. EB-2009-0422, that it is seeking leave to construct the Bickford Dawn Pipeline by February 26, 2010 and that the project will not likely proceed if it does not receive approval by this date. Union also noted that the hearing in the EB-2009-0422 proceeding is scheduled for early March, 2010 and Union will proceed with the sale of the St. Clair Line immediately thereafter (assuming that the Board grants DGLP leave to construct the Bickford to Dawn Line and authorizes a regulatory framework that is satisfactory to DGLP).”
(emphasis added)

The Board's Decision and Order also required Union to establish a deferral account to record the impact of removing the St. Clair Line (and related St. Clair River Crossing) from rates (including all Rate Base and OM&A consequences) beginning March 1, 2010. A copy of the Board's March 2, 2010 Decision and Order is attached to my Affidavit and marked as **Exhibit 8**;

- (j) Oral submissions were made in the DGLP Leave to Construct and regulatory framework proceeding on March 2, 2010. Confidential Exhibit X2.1 illustrating the extent to which revenues under DGLP's long-term agreements were more than sufficient to recover the costs DGLP expected to incur to construct the Dawn Gateway Pipeline, including its costs of acquiring the St. Clair Line from Union, was filed during argument. Transcript excerpts from March 1, 2010, at pages 82 to 90 and from the oral argument on March 2, 2010, at pages 27 to 48 are attached to my Affidavit and marked as **Exhibit 9**. A copy of Confidential Exhibit X2.1 and a confidential schedule distributed by Union on January 15, 2010, pertaining to the costs of constructing the Bickford to Dawn Pipeline will be made available to the Board at the hearing of CME's Cross-Motion;
- (k) On March 9, 2010, the Board released its Decision and Order approving DGLP's Leave to Construct and a light-handed regulatory framework of the type proposed by DGLP. The Board's March 9, 2010 Decision and Order is attached

to and marked as Exhibit C to the Kitchen Affidavit. Shortly thereafter, DGLP confirmed that the approvals the Board had granted were satisfactory;

- (l) On March 17, 2010, Union released its 2009 Annual Report. Excerpts from Union's 2009 Annual Report pertaining to rate regulation are attached to my Affidavit and marked as **Exhibit 10**. The Annual Report confirms that the conditions precedent to a sale of the St. Clair Line, described in the Board's March 2, 2010 Decision, had been satisfied as follows:

"The sale of the St. Clair Line is contingent on DGP 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."

- (m) Submissions pertaining to the wording of the Draft Accounting Orders circulated by Union in response to the Board's March 2, 2010 Decision were initiated by Union on March 15, 2010, and responded to by parties opposite in interest to Union on or about March 25, 2010. Submissions made by CME pertaining to the wording of the Draft Accounting Orders on March 25, 2010, are attached to my Affidavit and marked as **Exhibit 11**;
- (n) Union's reply to submissions made by CME and others was delivered on or about April 15, 2010, and a copy thereof is attached to my Affidavit and marked as **Exhibit 12**;
- (o) On or about April 19, 2010, a date after submissions with respect to the wording of deferral accounts proposed by Union had closed, DGLP wrote to the Board providing an update on the status of the proposed Dawn Gateway Pipeline. DGLP's April 19, 2010 letter advising that it had agreed with its committed shippers to delay construction of the pipeline is attached to and marked as Exhibit D to the Kitchen Affidavit;
- (p) On April 22, 2010, Union distributed its pre-filed evidence in the EB-2010-0039 proceeding. Excerpts from the pre-filed evidence pertaining to Deferral Accounts 179-121 and 179-122 are attached to my Affidavit and marked as **Exhibit 13**.

The evidence contains Union's proposal to refrain from disposing of credit balances in Deferral Accounts 179-121 and 179-122 on the grounds that changing market conditions had caused a decline in spreads between gas prices in Michigan compared to Dawn. According to Union, the decline in spreads, in turn, prompted Dawn Gateway and its shippers to delay the commencement of construction. The pre-filed evidence makes no mention of the acknowledgement made on March 1, 2010, that the sale of the St. Clair Line transaction is to be treated as completed, for regulatory purposes, in Ontario, upon DGLP's acceptance of the Board's Leave to Construct and regulatory regime approvals. In the pre-filed evidence, Union stated as follows:

"If Dawn Gateway does not proceed with the purchase of the St. Clair Line, Union will file a motion with the Board in EB-2008-0411 for approval to attribute the amounts in these deferral accounts back to Union and to continue to recover the costs of the St. Clair Transmission Line in delivery rates."

- (q) On May 11, 2010, the Board issued its Decision and Order pertaining to the wording of the Accounting Orders related to the two (2) Deferral Accounts. This Decision and Order is attached and marked to the Kitchen Affidavit as Exhibit "B".
- (r) On June 3, 2010, the Board issued the Rate Order that stemmed from its March 9, 2010 Decision approving a light-handed regulatory framework of the type proposed by DGLP. A copy of the Board's Rate Order, excluding the schedules in Appendix A thereof, is attached to my Affidavit and marked as **Exhibit 14**;
- (s) On June 28, 2010, Union responded to Interrogatories pertaining to the evidence it had filed on April 22, 2010. Interrogatory responses to CME marked as Exhibits B3.12 – pertaining to spreads between Michigan and Dawn; Exhibit B3.17 – pertaining to communications between DGLP and its shippers; Exhibit B3.18 – pertaining to any actions taken by Union's unregulated business under its contract with DGLP; and Exhibit B3.31 – showing the value of credit balances in Deferral Accounts 179-121 and 179-122 are attached to my Affidavit and marked as **Exhibit 15**;

- (t) The Transcript of the examination by counsel for CME of Union witnesses at the Technical Conference held on July 9, 2010, is attached to my Affidavit and marked as **Exhibit 16**;
- (u) A letter pertaining to answers provided by a Union witness during the course of July 9, 2010 Technical Conference was circulated by Union on July 23, 2010, and is attached to my Affidavit and marked as **Exhibit 17**;
- (v) On or about July 27, 2010, the parties to the EB-2010-0039 proceedings entered into a Settlement Agreement. The Agreement is attached as part of Exhibit "E" to the Kitchen Affidavit. The Agreement to defer the determination of matters pertaining to Deferral Accounts 179-121 and 179-122 to a hearing to be held between November 29, 2010, and December 31, 2010, was:

"without prejudice to the parties' position with respect to the proper determinations concerning the accounts or the appropriateness of any relief requested in the proposed Application."

- (w) The Settlement Agreement required Union to produce certain documents that it had previously refused to produce. These documents were produced by Union in confidence and without prejudice to its position pertaining to relevance and admissibility and included:
 - (i) The Precedent Agreements between DGLP and its shippers filed confidentially in the EB-2008-0411 proceedings;
 - (ii) Communications, including e-mails between DGLP and its shippers, pertaining to amendments to the Precedent Agreements aforesaid;
 - (iii) The Amended Precedent Agreement between DGLP and each of its shippers, and
 - (iv) The Agreement of Purchase and Sale pertaining to the St. Clair Line between DGLP and Union.

Copies of these confidential documents will be made available to the Board at the hearing of CME's Cross-Motion. The total demand-related revenues DGLP

was entitled to receive under these contracts can be derived from the information contained in the confidential documents.

- (x) On November 2, 2010, Union filed its written submission in the Board's 2010 Natural Gas Market Review conducted under docket EB-2010-0199. A copy of Union's submission is attached to my Affidavit and marked as **Exhibit 18**. At page 9 of the submission, Union stated as follows:

"Dawn Gateway Michigan to Dawn Path

To take advantage of the development of the Rockies Express Pipeline (a new pipeline that brings new supply from the U.S. Rockies basin to markets in the mid west U.S., Northeast U.S., and the Great Lakes region in general), and the need for greater access to emerging shale supply in the Gulf area, and increased access to Michigan storage, multiple pipeline projects emerged to transport gas supplies from Michigan to Dawn. New projects were proposed by TCPL (Dawn Eclipse and Dawn Express), Enbridge (Niagara Gas Link Pipeline), Vector (an expansion of their existing system), and Spectra/DTE – Dawn Gateway.

Market participants have chosen to support Dawn Gateway as the preferred economic and routing option. The Dawn Gateway Pipeline will link DTE's Belle River Mills and Dawn. The Dawn Gateway project was approved by the Board in March of 2010 and is currently on hold waiting for the market dynamics to provide additional support. When in service this pipeline will further add to Dawn liquidity by providing linkages as noted above. Dawn Gateway will benefit the Ontario natural gas market by adding additional supply to Dawn at a time of declining WCSB deliveries to Ontario, and enhancing market liquidity at the Dawn Hub."

- (y) On or about November 9, 2010, Union representatives orally advised certain intervenor representatives that Union would be proposing to adjourn the December 6 and 7, 2010, hearing that had been fixed to deal with matters pertaining to Deferral Accounts 179-121 and 179-122. By letter dated November 9, 2010, a copy of which is attached to my Affidavit and marked as **Exhibit 19**, counsel for CME asked Union to provide a description of the facts upon which the proposed adjournment would be based so that a determination could be made as to whether the adjournment proposal makes sense;
- (z) On November 15, 2010, Union responded to counsel for CME and a copy of that letter is attached to my Affidavit and marked as **Exhibit 20**;

- (aa) Counsel for CME responded to Union's letter initially by e-mails on November 18 and the morning of November 19, 2010, that are attached to my Affidavit and marked as **Exhibit 21**, and then by letter dated November 19, 2010, a copy of which is attached to my Affidavit and marked as **Exhibit 22**;
- (bb) On November 19, 2010, at about 6:41 p.m., an electronic copy of Union's Notice of Motion and the Affidavit of Mr. Kitchen in support thereof was distributed to parties of record in this proceeding;
- (cc) Counsel for CME sought clarification of certain aspects of the affidavit evidence provided by Mr. Kitchen and a calculation from Union of the allocation to rate classes of the credit balance in Account Number 179-121 by letter dated November 19, 2010, attached to my Affidavit and marked as **Exhibit 23**; and
- (dd) Union responded by letter dated November 26, 2010, attached to my Affidavit and marked as **Exhibit 24**.


SWORN BEFORE ME at the City of Ottawa,
in the Province of Ontario, this 29th day
of November, 2010.

A commissioner etc.

OTT01\4284997\1

~~Jack Hughes~~

This is Exhibit 1 to the Affidavit of
Jack Hughes, sworn before me this
29 day of November, 2010.



A Commissioner etc.



December 4, 2009

Ms. Anne-Marie Erickson
Acting Secretary of the Board
National Energy Board
444 - 7th Avenue SW
Calgary, AB T2P 0X8

Dear Ms. Erickson:

**Re: Dawn Gateway Pipeline General Partner Inc. (Dawn Gateway GP)
Application for Dawn Gateway Pipeline dated 6 May 2009
NEB File No. OF-Fac-Gas-D159-2009-01 01
Hearing Order GH-2-2009
Request to Terminate the GH-2-2009 Proceeding**

In light of the Ontario Energy Board's ("OEB") decision dated November 27, 2009, Dawn Gateway GP on behalf of Dawn Gateway Pipeline Limited Partnership ("Dawn Gateway") has decided to withdraw its applications filed with the National Energy Board. Accordingly, Dawn Gateway GP respectfully requests the termination of the GH-2-2009 hearing process.

Dawn Gateway's project cannot sustain the cost, uncertainty and delay associated with the jurisdictional impasse that has arisen as a result of the OEB's ruling in a Union Gas application to sell a surplus pipeline asset. Dawn Gateway's partners are reviewing that decision to determine whether a re-structured project might be feasible under provincial jurisdiction, failing which the project will be abandoned.

Dawn Gateway wishes to express its appreciation to the Board and its staff for the effort expended in the review of its applications and regrets any inconvenience resulting from the decision and Dawn Gateway's withdrawal of its applications.

Yours truly,

A handwritten signature in black ink, appearing to read "B. Pydee", with a stylized flourish at the end.

Bruce E. Pydee

Director, Dawn Gateway GP

cc: Interested Parties GH-2-2009

This is Exhibit 2 to the Affidavit of
Jack Hughes, sworn before me this
29 day of November, 2010.



A Commissioner etc.

ONTARIO ENERGY BOARD

IN THE MATTER OF the *Ontario Energy Board Act, 1998*, S.O. 1998, c.15, Schedule B, and in particular, s. 90(1) and s. 36(1) thereof;

AND IN THE MATTER OF an Application by Dawn Gateway Pipeline Limited Partnership ("Dawn Gateway LP") for an Order or Orders granting leave to construct a natural gas pipeline and ancillary facilities in the Townships of St. Clair and Dawn-Euphemia, all in the County of Lambton, and approving the regulatory framework and the tariff for the transmission of gas on the Ontario portion of the Dawn Gateway Pipeline.

DAWN GATEWAY LP

1. The Applicant, Dawn Gateway LP, hereby applies to the Ontario Energy Board (the "Board"), for an Order or Orders:
 - a) pursuant to section 36(1) of the *Ontario Energy Board Act, 1998* (the "Act"), approving the regulatory framework and the Tariff for the Ontario portion of the Dawn Gateway Pipeline.
 - b) pursuant to section 90(1) of the Act, granting leave to construct approximately 17 kilometres of NPS 24 pipeline from the existing Bickford Compressor Station, located in Lot 6, Concession XII, Township of St. Clair easterly to the Dawn Compressor Station, in the Township of Dawn-Euphemia, all in the County of Lambton; and
 - c) such further order or orders as Dawn Gateway LP may request and the Board may deem appropriate or necessary.

2. Dawn Gateway LP and Dawn Gateway Pipeline, LLC ("Dawn Gateway LLC"), a Delaware limited liability company, are proposing to provide natural gas transportation service from the Belle River Mills Compressor Station in Michigan to the Dawn Compressor Station in Ontario using a pipeline system to be known as the Dawn Gateway Pipeline.
3. Dawn Gateway LP is owned jointly by Spectra Energy Corp. ("Spectra") and DTE Pipeline Company ("DTE") through various affiliates. Spectra and DTE through various affiliates are also equal 50/50 members in Dawn Gateway LLC.

Regulatory Framework

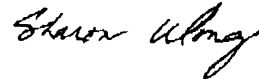
4. Dawn Gateway LP seeks approval from the Board for the regulatory framework, including charging tolls at negotiated prices, in accordance with the Tariff to be filed as part of Dawn Gateway LP's pre-filed evidence in support of this application. This approach is wholly consistent with Group 2 regulation as practiced by the National Energy Board.
5. It is intended that the Dawn Gateway Pipeline would be an at-risk pipeline with the owners assuming all risk for construction and operating costs, and all risk of uncommitted capacity and contract non-renewals.

Leave to Construct

6. The portion of the proposed pipeline running from the Bickford Compressor Station to the Dawn Compressor Station (the "Bickford Dawn Pipeline") has not yet been constructed, and Dawn Gateway LP seeks leave to construct the Bickford Dawn Pipeline in this Application. Attached hereto as Schedule 'A' is a map showing the general location of the proposed Bickford Dawn Pipeline and the municipalities, highways, railways, utility lines and navigable waters through, under, over, upon or across which the Bickford Dawn Pipeline will pass.
7. The Applicant has prepared an Environmental Report for the proposed Bickford Dawn Pipeline which will be included in the pre-filed evidence.
8. There is a limited time span in which this project may proceed. In order to meet a proposed in-service date of November 1, 2010 as contracted by the Shippers, the Applicant must order pipe for the construction of the Bickford Dawn Pipeline by the beginning of March 2010.
9. The Applicant is negotiating with the affected landowners to try to reach a settlement agreement with them. If the Applicant is not able to arrive at a settlement with the landowners by January 31, 2010, then the Applicant expects that it will withdraw this Application.

10. Accordingly, the Applicant requests a decision from the Board respecting both the regulatory framework and the leave to construct portions of this application by no later than Friday February 26, 2010.

Dated at Toronto, Ontario this 23rd day of December, 2009.



Per: Sharon Wong
Counsel for Dawn Gateway LP

Comments respecting this Application should be directed to:

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SECTION 1

PROJECT SUMMARY

1. Westcoast Energy Inc. ("Spectra") and DTE Pipeline Company ("DTE") have formed a joint venture ("Dawn Gateway") through their respective affiliates which is proposing to offer a point-to-point natural gas transmission service, which will commence at the Belle River Mills Compressor Station in Michigan that is owned by Michigan Consolidated Gas Company ("MichCon"); and which will terminate at the Dawn Compressor Station in Ontario owned by Union Gas Limited ("Union"). The proposed pipeline to support this service (the "Dawn Gateway Pipeline") is depicted in Section 1 – Schedule 1. The present applications relate to the Ontario segment of the Dawn Gateway Pipeline beginning at the middle of the St. Clair River and terminating at Union's Dawn Compressor Station ("Dawn").
2. This Application arises out of Union's Application EB-2008-0411 to the Ontario Energy Board ("Board") for leave to sell the St. Clair Line. The Board concluded in EB-2008-0411 that it has jurisdiction over that portion of the proposed Dawn Gateway Pipeline from the St. Clair Valve to Dawn, and the Board stated in paragraph 4 of its Order in EB-2008-0411 that submissions could be filed regarding the appropriate regulatory framework for the proposed Dawn Gateway Pipeline.
3. As a result of the Board's Decision and Order in EB-2008-0411, Dawn Gateway Pipeline Limited Partnership ("Dawn Gateway LP") has withdrawn its application to the National Energy Board ("NEB") for approvals and is bringing this Application to the Board for approval of a new regulatory framework and also for leave to construct.
4. Dawn Gateway LP seeks approval from the Board of the regulatory framework (Section 4) for the Ontario portion of the proposed Dawn Gateway Pipeline, including charging tolls at negotiated rates in accordance with the proposed Tariff which Dawn Gateway LP is filing for Board Approval. This approach is based on and consistent with Group 2 regulation as practiced by the NEB.

5. Dawn Gateway LP is also seeking an order from the Board granting leave to construct approximately 17 kms of NPS 24 pipeline from the Bickford Compressor Station to the Dawn Station (the “Bickford Dawn Pipeline”) and ancillary facilities to meet the transportation service demands identified in Dawn Gateway’s binding open season. A map showing the location of the proposed pipeline can be found at Section 1 – Schedule 2.
6. Dawn Gateway LP plans to construct the pipeline during the 2010 construction season for service to customers effective November 1, 2010.
7. An Environmental Report (“ER”) and update was prepared for the Bickford Dawn Pipeline. The concerns of various provincial and municipal agencies and affected landowners have been solicited and considered in the development of the ER. Dawn Gateway LP will contract with Union to oversee the construction of the pipeline. Union’s standard construction procedures combined with the supplemental mitigation measures recommended in the ER will be employed to address environmental and landowner concerns. The ER concluded that construction and operation of the pipeline will have no long-term significant environmental effects. The ER has been provided to the Ontario Pipeline Coordination Committee (“OPCC”) and other provincial and municipal agencies.
8. In order to commit to the materials required to meet the targeted in-service date of November 1, 2010, approvals to construct the facilities and a satisfactory alternative regulatory framework, are required by February 26, 2010.

SECTION 3

NEED FOR THE PROJECT

Introduction

15. The proposed Dawn Gateway Pipeline would provide shippers with a greatly enhanced connection between Michigan storage and Ontario's Dawn market hub. The proposed Dawn Gateway Pipeline would initially have the capacity to transport 360,000 Dthd (379,876 GJ/d, 10,198 $10^3\text{m}^3/\text{d}$) between MichCon's Belle River Mills Compressor Station and Union's Dawn Hub on a firm basis, and its capacity would be expandable in the future. The Dawn Gateway Pipeline would also allow shippers enhanced access to existing and new storage developments in the Great Lakes region, and the ability to connect and access new sources of supply upstream of the Belle River Mills Compressor Station. The Dawn Gateway Pipeline would provide a new transportation service that would allow downstream customers in Ontario and Quebec to access gas supplies from emerging supply regions like the U.S. Rockies, various U.S. Southeast shale basins and Gulf Coast LNG. Access to these new sources of supply will improve the depth and liquidity of the Dawn market hub. The Dawn Gateway Pipeline is completely consistent with the Board's decision in the Natural Gas Electricity Interface review, as it supports both the importance and development of Dawn as a market hub and greater access to new storage developments.

Binding Open Season Process

16. DTE and Spectra held a non-binding open season in September/October of 2008 to determine the level of interest in the services to be provided by the Dawn Gateway Pipeline. Based on the bids received, DTE and Spectra determined that there is sufficient interest in the proposed service to justify proceeding with the Dawn Gateway Pipeline. Subsequently, five shippers entered into binding Precedent Agreements to subscribe for a total of 280,000 Dthd (295,459 GJ/d, 7,932 $10^3\text{m}^3/\text{d}$) of firm transportation service on the Dawn Gateway Pipeline (subject to regulatory approval), thereby demonstrating that there is market support for the new transportation service that Dawn Gateway is proposing. Any non-contracted capacity will be made available to shippers through future open seasons or through direct negotiation.

17. The obligation of Dawn Gateway under the Precedent Agreements to provide the proposed services is conditional on timely approval of all applications necessary to complete the entire pipeline path. The Precedent Agreements provide for the execution of multi-year transportation contracts pursuant to which Dawn Gateway will provide shippers with gas transportation services between the Belle River Mills Compressor Station and the Dawn Compressor Station at a fixed price for the entire term of their respective transportation contracts.
18. The Precedent Agreements are based on Dawn Gateway assuming all project risks, including construction, exchange rate, operating costs, inflation, credit, un-contracted capacity, and capacity renewal risks which allows Dawn Gateway to provide shippers with toll certainty for the term of their agreements. The addition of new shippers or the loss of existing shippers would have no effect on the existing negotiated tolls or terms. All the shippers who signed Precedent Agreements have agreed to support the present Application. The Precedent Agreements with the existing shippers were previously filed with the Board on a confidential basis as part of EB-2008-0411. There have subsequently been minor amendments to the Precedent Agreements to reflect the change from NEB to OEB regulation.

Findings in EB-2008-0411

19. In EB-2008-0411, the Board found that there are clear benefits from the proposed Dawn Gateway Pipeline:

[58] The Board accepts that there will be benefits from the transaction. There will be two types of benefits: direct and indirect. The direct benefit is the rate reduction resulting from removing the asset, which is currently under-utilized, from ratebase and rates. This benefit is small; the estimated rate impact is less than \$1 per year for residential customers in the Southern Operations Area.

[59] The indirect benefits are more significant and flow from the broader project, including the expansion of capacity from Bickford to Dawn. These benefits include enhanced transportation capacity between Michigan storage and Dawn and enhanced access to supply. These benefits have the potential to lead to greater liquidity and reduced price volatility at the Dawn Hub. The proposed Dawn Gateway pipeline would have a capacity of 385,000 GJ/d on a firm basis, and that capacity could be expanded. Although these indirect benefits rely on projections, there are already five Precedent Agreements in

place, thereby demonstrating that the enhanced access is desired by the marketplace.

SECTION 6

FACILITIES CONSTRUCTION

48. This section describes the construction techniques and mitigation procedures that will be used for the Bickford Dawn Pipeline. Dawn Gateway LP will contract with Union to oversee construction of the Bickford Dawn Pipeline and maintenance thereafter of the Ontario portion of Dawn Gateway Pipeline. As a result, the proposed construction methods will be the same as the construction methods typically used by Union.
49. Section 6 - Schedule 1 describes the general techniques and methods of construction that will be employed for the construction of the proposed facilities. It details such activities as clearing, grading, stringing of pipe, welding, trenching, backfill, tile repair and clean-up.
50. Section 6 - Schedule 2, page 1 of 2, provides the overall project schedule. Section 6 - Schedule 2, page 2 of 2, indicates the proposed schedule for 2010 pipeline construction. It is anticipated that construction of the proposed pipeline facilities will begin in the summer (not including clearing) and be completed by October. The proposed construction schedule takes advantage of the drier summer months thereby minimizing the impact of construction on agricultural lands and other features such as watercourses.
51. Dawn Gateway LP needs to receive Board approval by ~~February 26~~ March 11, 2010 for an order granting leave to construct the Bickford Dawn Pipeline in order to provide adequate time to meet the proposed construction schedule in the summer of 2010.
52. Dawn Gateway LP foresees no issues obtaining material for the project and foresees no problem in obtaining a contractor to complete the proposed construction so long as it receives all necessary approvals by ~~February 26~~ March 11, 2010. If approvals are obtained after that date, Dawn Gateway LP will be unable to commit to the required pipe in time to meet the 2010 construction schedule.
53. Union will oversee the construction of the proposed pipeline in compliance with Union's current construction procedures, the environmental mitigation identified in the ER,

This is Exhibit 3 to the Affidavit of
Jack Hughes, sworn before me this
29 day of November, 2010.



A Commissioner etc.



uniongas

A Spectra Energy Company

December 23, 2009

Ontario Energy Board
2300 Yonge Street
Suite 2700
Toronto, Ontario
M4P 1E4

Attention: Ms. Kirsten Walli, Board Secretary

Re: EB-2008-0411 - Calculation of Under-Recovery

Dear Ms. Walli:

On December 23, 2008 Union Gas Limited ("Union") filed an application with the Ontario Energy Board ("Board") seeking leave to sell the St. Clair Line to the Dawn Gateway Pipeline Limited Partnership ("DGLP").

The Board issued its Decision and Order on November 27, 2009 granting Union leave to sell the St. Clair Line to DGLP subject to conditions including Union filing the calculation of the cumulative under-recovery from 2003 to the current time and its estimate as of the closing date of the transaction.

On December 23, 2009 DGLP filed an application with the Board for approval of a regulatory framework for the proposed new Dawn Gateway Pipeline as well as leave to construct a pipeline from Bickford to Dawn to be incorporated into the Dawn Gateway Pipeline.

Given DGLP's decision to proceed with the project, Union is filing herewith its calculation of the cumulative under-recovery from 2003 to the end of December 2009 (i.e. the current time) and its estimate as of March 1, 2010 which is the projected closing date of the transaction should the project proceed. Union is also requesting approval of a draft accounting order relating to the establishment of the deferral account to record the cumulative under-recovery which is referenced in paragraph 1(b) of the November 27, 2009 Order.

Yours truly,

[original signed by]

Chris Ripley
Manager, Regulatory Applications

cc: EB-2008-0411 Intervenors

1 **Introduction**

2 On December 23, 2008 Union Gas Limited (“Union”) filed an application with the Ontario
3 Energy Board (“Board”) seeking an Order of the Board granting leave to sell the St. Clair Line to
4 the Dawn Gateway Pipeline Limited Partnership (“DGLP”).

5
6 On November 27, 2009 the Board issued its Order granting Union leave to sell the St. Clair Line
7 to DGLP subject to the following conditions:

- 8 1. a) The sale price for ratemaking purposes shall be the fair market value which is defined
9 as the replacement cost of the line.
- 10 b) The ratepayers will receive a credit for ratemaking purposes equal to the amount of the
11 cumulative under-recovery from 2003 until the time of the transaction which shall be
12 placed in a deferral account for disposition in a rates proceeding.
- 13 c) Union shall file with the Board, with a copy to all intervenors, its calculation of the
14 cumulative under-recovery from 2003 to the current time and its estimate as of the
15 closing date of the transaction. Union at its discretion may file its estimate of the
16 replacement cost of the line.

17
18 In accordance with the Board’s Order, Union is filing its calculation of the cumulative under-
19 recovery from 2003 to the end of December 2009 (i.e. the current time) and its estimate as of
20 March 1, 2010 which is the projected closing date of the transaction should the project proceed.
21 Union is also requesting approval of a draft accounting order relating to the establishment of the

1 deferral account to record the cumulative under-recovery which is referenced in paragraph 1(b)
2 of the Order.

3
4 **1. Deferral Account**

5 In the Board's EB-2008-0411 decision dated November 27, 2009, at paragraph 123, the Board
6 stated:

7
8 *"The Board will approve the transaction conditional on the ratepayers*
9 *being allocated a portion of the deemed net gain equivalent to the*
10 *cumulative under-recovery as of the date of the transaction. The Board*
11 *directs Union to file necessary evidence to substantiate the cumulative*
12 *under-recovery of the assets since 2003. Given the Board expects the net*
13 *gain, calculated as the difference between replacement costs and net book*
14 *value, will be well in excess of this cumulative under-recovery, it will not*
15 *be necessary for Union to file evidence on the replacement cost, unless it*
16 *chooses to do so. The Board will then fix the amount to be allocated to*
17 *ratepayers to compensate for the harm arising from the transaction. This*
18 *amount will vary depending upon the timing of the actual transaction. The*
19 *determination of the relevant amount will be made as part of this*
20 *proceeding so as to provide certainty to the parties. A deferral account*
21 *will be established to capture the amount of the allocation as of the date of*
22 *the transaction."*
23

24 In accordance with the Board's Order, Union requests that the Board approve the establishment
25 of a deferral account by Union if the sale of the St. Clair Line to DGLP proceeds. If the sale
26 does not proceed, Union will not require a deferral account as there would be no refund of the
27 cumulative under-recovery to customers.

28

1 Union also requests that the Board approve the draft accounting order attached as Appendix A, to
2 be effective on the date of the sale of the St. Clair Line to DGLP, establishing a deferral account
3 to record the cumulative under-recovery of the St. Clair Line from 2003 until the time of sale.
4 Union expects to propose the disposition of the deferral account balance in Union's 2009 non-
5 commodity deferral account disposition proceeding in 2010, should the St. Clair Line sale
6 transaction have occurred by that time.

7
8 **2. Estimated Closing Date of the St. Clair Line Sale**

9 As indicated by DGLP in its December 23, 2009 application, there is a limited time span in
10 which the project would likely proceed, and DGLP is asking for leave to construct the Bickford
11 Dawn Pipeline and for approval of an alternate regulatory framework by Friday February 26,
12 2010.

13
14 Assuming that the Board grants leave to construct the Bickford Dawn Pipeline and authorizes a
15 regulatory framework that is satisfactory to DGLP by February 26, 2010, Union expects to
16 proceed with the sale of the St. Clair Line to DGLP immediately thereafter. Accordingly, for the
17 purposes of calculating the cumulative under-recovery of the St. Clair Line, Union has assumed
18 that the sale will occur on March 1, 2010.

19
20 **3. Cumulative Under-Recovery of the St. Clair Line**

21 Union has calculated the cumulative under-recovery of the St. Clair Line as the difference
22 between estimated net revenue and the estimated actual cost of service. For the period January 1,

1 2003 to March 1, 2010, Union estimates the cumulative under-recovery of the St. Clair Line will
2 be \$3.951 million. The calculation of the cumulative under-recovery can be found at Appendix
3 B. The amount of the cumulative under-recovery will form part of Union's 2009 regulated
4 earnings for the purpose of calculating any earnings sharing under the incentive regulation
5 framework.

6
7 Estimated net revenue for the St. Clair Line is the actual and forecast revenue associated with
8 firm and interruptible C1 transportation, net of unaccounted for gas and compressor fuel. This
9 approach is consistent with the methodology used to determine net revenue in response to
10 Undertaking No. J1.1 in this proceeding. For the period January 1, 2003 to March 1, 2010, net
11 revenue of the St. Clair Line is estimated to be \$3.542 million. This amount can be found at
12 Appendix B, Line 1, column (i).

13
14 The estimated actual cost of service of the St. Clair Line is the sum of a) return and taxes, b)
15 depreciation expense and c) operating expenses. For the period January 1, 2003 to March 1,
16 2010, the estimated actual cost of service of the St. Clair Line is \$7.493 million. This amount
17 can be found at Appendix B, Line 11, column (i).

18
19 Return and taxes were calculated using Union's Board-approved capital structure, rates of return
20 and actual or forecast tax rates. This approach is consistent with Union's response to
21 Undertaking No. J1.2 in this proceeding. For the period January 1, 2003 to March 1, 2010,

1 return and taxes on the St. Clair Line are estimated to be \$5.232 million. This amount can be
2 found at Appendix B, Line 5, column (i).

3
4 Depreciation expense was calculated using the net depreciated value of the St. Clair Line as
5 provided in response to FRPO Interrogatory #6 in this proceeding. The calculation is also
6 consistent with the approach used in response to Undertaking No. J1.1. For the period January 1,
7 2003 to March 1, 2010, depreciation expense is estimated to be \$1.985 million. This amount can
8 be found at Appendix B, Line 6, column (i).

9
10 Union has calculated the operating expenses consistent with the methodology used in
11 Undertaking No. J1.1, with one exception. The cost of the NEB-regulated St. Clair River
12 Crossing toll has been removed. Union believes that any cumulative under-recovery amount
13 payable to customers should be limited to the revenues and costs directly attributable to the St.
14 Clair Line itself, and should exclude the cost of any upstream pipeline (including the St. Clair
15 River Crossing). This approach appears to be consistent with the Board's decision, where they
16 agreed with intervenors that nothing material has changed (para. 27) and that "the St. Clair Line
17 is not integral to the St. Clair River Crossing" (para. 47). Accordingly, for the period January 1,
18 2003 to March 1, 2010, operating expenses are estimated to be \$0.276 million. This amount can
19 be found at Appendix B, Line 10, column (i).

20
21 As noted above, Union estimates the cumulative under-recovery of the St. Clair Line from
22 January 1, 2003 to March 1, 2010 will be \$3.951 million. The cumulative under-recovery is

1 calculated as the difference between estimated net revenue of \$3.542 million and an estimated
2 actual cost of service of \$7.493 million. The cumulative under-recovery amount can be found at
3 Appendix B, Line 12, column (i). As indicated above, the cumulative under-recovery will form
4 part of Union's 2009 regulated earnings for the purposes of determining any earnings sharing.

UNION GAS LIMITED

**Accounting Entries for
Cumulative Under-recovery – St. Clair Transmission Line
Deferral Account No. 179-121**

Account numbers are from the Uniform System of Accounts for Gas Utilities, Class A prescribed under the Ontario Energy Board Act.

Debit	-	Account No. 105 Accumulated Depreciation – Utility Plant
Credit	-	Account No. 179-121 Cumulative Under-recovery – St. Clair Transmission Line

To record, as a credit in Deferral Account No. 179-121, the cost of removal for the St. Clair Transmission Line ordered by the Board in EB-2008-0411 to be equal to the amount of cumulative under-recovery of Union's St. Clair Pipeline, from 2003 until the time of the sale of the asset, to be refunded to ratepayers.

Debit	-	Account No. 171 Extraordinary Plant Losses
Credit	-	Account No. 105 Accumulated Depreciation – Utility Plant

To record, as a debit to Account No. 171, the loss on the sale of the St. Clair transmission line and related assets. The loss represents the cost of disposition ordered by the Board in EB-2008-0411 that could not have been provided for previously in the accumulated provision for depreciation.

Debit	-	Account No. 333 Other Income Deductions
Credit	-	Account No. 171 Extraordinary Plant Losses

To record, as a debit to Account No. 333, the write-off to operations for the loss on the sale of the St. Clair transmission line and related assets.

Debit	-	Account No. 179-121 Other Deferred Charges - Deferred Customer Rebates/Charges
Credit	-	Account No. 323 Other Interest Expense

To record, as a debit (credit) in Deferral Account No. 179-121, interest on the balance in Deferral Account No. 179-121. Simple interest will be computed monthly on the opening balance in the said account in accordance with the methodology approved by the Board in EB-2006-0117.

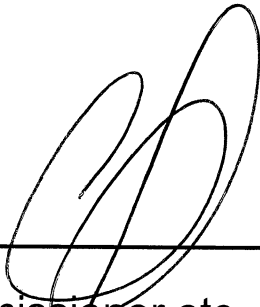
UNION GAS LTD
Estimated Cumulative Under-recovery of the St. Clair Line - January 1, 2003 to March 1, 2010

Line No.	Particulars (\$000's)	2003 (a)	2004 (b)	2005 (c)	2006 (d)	2007 (e)	2008 (f)	2009 (g)	2010 (1) (h)	Total (i)	
1	Net Revenue	(2)	400	836	642	297	120	510	707	30	3,542
2	Net Depreciated Value (St. Clair Line)	(3)	6,961	6,710	6,433	6,155	5,877	5,738	5,461	5,414	
3	Working Capital - Linepack	(4)	64	64	64	64	64	64	64	64	
4	Total Rate Base (line 2 + line 3)		7,025	6,774	6,497	6,219	5,941	5,802	5,524	5,478	
5	Return and Taxes	(5)	886	824	794	759	657	622	595	94	5,232
6	Depreciation Expense		275	277	278	278	278	276	278	46	1,985
<u>Operating Expenses</u>											
7	St. Clair River Crossing - Toll	(6)	342	342	342	342	342	342	342	57	2,451
8	Less: St. Clair River Crossing - Toll		(342)	(342)	(342)	(342)	(342)	(342)	(342)	(57)	(2,451)
9	Operating and Maintenance	(7)	35	36	37	39	40	40	41	7	276
10	Total Operating Expenses (line 7 + line 8 + line 9)		35	36	37	39	40	40	41	7	276
11	Estimated Actual Cost of Service (line 5 + line 6 + line 10)		1,196	1,138	1,109	1,075	974	939	914	148	7,493
12	Estimated Annual Under-recovery of the St. Clair Line (line 1 - line 11)		(796)	(302)	(467)	(778)	(854)	(429)	(208)	(118)	(3,951)
13	Estimated Cumulative Under-recovery of the St. Clair Line		(796)	(1,098)	(1,565)	(2,343)	(3,197)	(3,626)	(3,834)	(3,951)	

Notes:

- (1) The estimates for 2010 are pro rated for 2 months, as per the proposed closing date of the sale of the St. Clair Line.
- (2) Revenue associated with firm and interruptible transport, net of unaccounted for gas and excluding compressor fuel.
- (3) EB-2008-0411, FRPO, Interrogatory #6.
- (4) St.Clair Valve Site to Bickford Compressor Station Linepack of 6,758 GJ, valued at \$9.439/GJ (as per EB-2005-0520).
- (5) Return on Rate Base calculated as per Board Approved Capital Structure and Rate of Return.
2003 Return on Rate Base as per RP-1999-0017, Exhibit B, Tab 2, Appendix H, Schedule 7.
2004 to 2006 Return on Rate Base as per EB-2005-0520, Exhibit 6, Tab 1, Schedule 1.
2007 to 2010 Return on Rate Base as per EB-2009-0101, Exhibit A, Appendix A, Schedule 4.
- (6) Cost Based on the September 16, 1996 agreement between St. Clair Pipelines (1996) Ltd. And Union.
- (7) Estimated Operating and Maintenance Expenses based on EB-2005-0520, Exhibit G3, Tab 3, Schedule 1, Updated for EB-2005-0520 Board Decision.

This is Exhibit 4 to the Affidavit of
Jack Hughes, sworn before me this
29 day of November, 2010.

A handwritten signature, possibly reading "JP", is written over a horizontal line.

A Commissioner etc.



BORDEN
LADNER
GERVAIS

By electronic filing and by e-mail

January 4, 2010

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

Dear Ms Walli,

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

A. Introduction and Overview

These are the submissions of Canadian Manufacturers & Exporters ("CME") pertaining to the estimate provided by Union Gas Limited ("Union") on December 23, 2009, of the Cumulative Under-Recovery since January 1, 2003, related to the St. Clair Line. Union's estimate is \$3.951M as of March 1, 2010.

We also support Mr. Quinn's request for an extension of the deadline for responding to Union's subsidy burden calculation to Friday, January 8, 2010. We seek the deadline extension to enable us to liaise with Mr. Quinn for the purpose of preparing and filing by Friday a Schedule comparable to Appendix B in Union's December 23, 2009 evidence that will show the corrections that we say are needed to reflect the spirit and intent of the Board's November 27, 2009 Decision and Order.

For reasons which follow, we submit that Union's estimate is incorrect and materially low.

1. Summary of Errors in Union's Calculation

The reasons why Union's calculation is incorrect and materially low, each of which is discussed in further detail below, include the following:

- (a) The estimate should be done as of December 31, 2010, and not March 1, 2010, as Union proposes. By grossing up, for twelve (12) months, Union's Under-Recovery estimate of \$118,000 for the two (2) months ending March 1, 2010, we

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estimate that the use of a December 31, 2010 calculation date increases Union's calculation by about \$590,000.¹

- (b) Union's exclusion from the subsidy burden absorbed by its ratepayers since January 1, 2003, of the St. Clair River crossing toll of \$342,000 per annum is incorrect and inappropriate for the reasons described below. These costs are clearly part of the subsidy burden related to the St. Clair Line as Union acknowledged in its evidence in this proceeding and, in particular, in Exhibits J1.1 and J1.2, upon which the Board relied in rendering its November 27, 2009 Decision and Order. Including the St. Clair River crossing toll increases Union's calculation of \$3.951M to March 1, 2010, by \$2.451M and by a further \$285,000 from March 1, 2010, to December 31, 2010, for a total increase of \$2.736M.²
- (c) Union's calculation fails to include yearly interest at the Board approved rate applicable to deferral account balances on the cumulative balances for each of the years between January 1, 2003, and December 31, 2010. Using an illustrative simple interest rate of 3% per annum, we estimate that without compounding the inclusion of interest in the subsidy burden calculation from January 1, 2003, to December 31, 2010, adds an amount of about \$1M to the calculation. We need Mr. Quinn's input to verify that we have properly estimated the interest amount.³

When adjustments are made for the errors in Union's calculation, the portion of the gain on the sale to be recorded in the deferral account is not \$3.951M, as Union proposes, but an amount of about \$8.277M, including interest, or about \$7.277M, excluding interest.⁴

2. Other Ratemaking Consequences to be Considered in Union's Next Rate Case

At the outset, it needs to be emphasized that the amount that the Board is now determining for recording in the deferral account only pertains to the ratepayers' share of the gain on the sale of the St. Clair Line to Dawn Gateway Limited Partnership ("DGLP").

In its November 27, 2009, Decision and Order, the Board defines the gain as the difference between the Net Book Value ("NBV") of the St. Clair Line and its market value sale price that the Board established at the replacement costs of the pipeline. The ratemaking consequences for Union's ratepayers of the transfer of the St. Clair River

¹ To add 10 months to Union's 2010 calculation, one multiplies Union's 2 month Under-Recovery estimate of \$118,000 by 5 for a total of \$590,000.

² These amounts are extrapolated from Union's Appendix B.

³ When the information in Union's Appendix B is adjusted to include Union's St. Clair crossing costs and to reflect 12 months instead of 2 months for 2010, the subsidy burden in 2003 becomes \$1.138M and the cumulative subsidy burden in 2010 is about \$7.278M. We estimate the interest amount by applying 3% to the average of these 2 amounts being \$4.208M to produce an annual amount of about \$126,000 which we then multiply by 8 to cover the years 2003 to 2010 inclusive. This gives us a total amount slightly in excess of \$1M.

⁴ These numbers reflect the addition of \$3.951M (Union's calculation); \$.590M for the December 31 date adjustment, \$2.736M for St. Clair River crossing toll and \$1M for interest, for a total of \$8.277M including interest or \$7.277M excluding interest.

crossing and the St. Clair Line to DGLP in addition to their share of a portion of the gain, include the removal of the St. Clair Line and related assets from Union's utility Rate Base and the Cost of Service.

We submit that these other ratemaking consequences are to be determined in a Union Rate Case. We interpret the last sentence in paragraph 123 of the November 27, 2009 Decision and Order to be a finding to this effect. There, the Board stated as follows:

"Rates can be adjusted at a subsequent rate proceeding."

Union did not include this sentence in the passage it extracted from paragraph 123 of the Board's Decision and Order of November 27, 2009, which is quoted at page 3 of Union's Evidence filed on December 23, 2009.

Since Union's 2010 rates have already been set under its five year Incentive Rate Plan ("IRP"), the first Union Rate Case in which these other ratemaking consequences can be considered will be Union's Application for 2011 Rates.

In its initial pre-filed evidence in this proceeding, Union suggested that these other ratemaking consequences were limited to the removal of the NBV of the St. Clair Line on re-basing when Union's five year IRP terminates on December 31, 2012. The Board referred to this aspect of Union's proposal in paragraph 78 of its November 27, 2009, Decision and Order.

We wish to emphasize that we disagree with Union's position that these other ratemaking consequences are not to be considered until re-basing. It is our position that such an approach is incompatible with the terms of Union's IRP and is unreasonable and unfair. It is inappropriate for Union's owner to concurrently collect costs associated with the St. Clair Line and St. Clair River crossing from both Union ratepayers and DGLP ratepayers.

While we recognize that this is not a matter to be determined now, we wish to make it clear that we reserve our client's rights to raise the matter in Union's 2011 and 2012 rate applications. We will raise the matter in the event that Union does not reduce its IRP rates in each of those years by the net cost reductions that will ensue in each of those years as a result of the transfer of the St. Clair River crossing and St. Clair Line to DGLP.

These net cost reductions are in an amount of \$993,000 in each of those years if one uses the full year 2010 subsidy burden as the measurement surrogate, or about \$1.196M if one uses the 2007 base year subsidy burden as the measure of those cost reductions.⁵

The Board recently determined in Union's restructuring application that net cost reductions of about \$1.3M per year during the term of Union's IRP are material and are to be flowed through to ratepayers.⁶ The materiality of the 2011 and 2012 cost reductions

⁵ These numbers reflect the amounts in Union's Appendix B adjusted to include St. Clair crossing tolls.

⁶ EB-2008-0304 Decision and Order dated November 19, 2008.

cannot reasonably be challenged when it is recognized that in combination with the ratepayer share of the gain, they total between about \$9M and \$10M using our estimate of the ratepayer share of the gain at \$8.277M, including interest, or \$7.277M, excluding interest.⁷

3. Implications for 2009 Earnings Sharing

In its December 23, 2009 evidence, Union suggests that the cumulative under-recovery amount will have implications for 2009 Earnings Sharing. The evidence suggests that Union plans to deduct the entire amount of the gain to be allocated to ratepayers as an expense when calculating 2009 Earnings Sharing. If this is what Union plans, then we do not agree that this is appropriate. However, rather than debating matters pertaining to 2009 Earnings Sharing in this proceeding, we suggest that the implications for 2009 Earnings Sharing, if any, of the final determination in this proceeding of the ratepayers' share of the gain should be determined in the second quarter of 2010 when Union has presented its 2009 Earnings Sharing calculation to the Board and interested parties for their consideration.

4. Regulatory Framework and Leave to Construct Issues

The Board's November 27, 2009 Decision and Order allows a regulatory framework proposal for DGLP to be made in this the concluding phase of this proceeding. However, Union has not presented the regulatory framework proposal in its evidence.

Union's December 23, 2009 letter to the Board indicates that DGLP has initiated separate proceedings with respect to the regulatory framework issue. In those proceedings, DGLP has requested leave to construct the Bickford to Dawn extension of the St. Clair Line.

DGLP has not yet provided a copy of this Application to us and, as a result, we are, as yet, unaware of the regulatory framework it proposes.

In these circumstances, we assume that in due course, the Board will require DGLP to provide parties to this proceeding with notice of its application and that initial comments on the regulatory framework DGLP proposes will now be made in its application rather than in this proceeding.

We also assume that the Board will follow its normal processes in responding to DGLP's application for leave to construct the new Bickford to Dawn pipeline and that in due course, further directions with respect to pre-hearing discovery and a hearing of matters pertaining to the relief DGLP seeks will issue.

In these circumstances, we are not planning to make any initial comments in this proceeding on the regulatory framework DGLP proposes. We expect CME will intervene in DGLP's application to support construction of the new Bickford to Dawn

⁷ When you add 2 x \$993,000 or 2 x \$1.96M to these numbers, you get amounts in the \$9M to \$10M+ range.

pipeline and to support a regulatory framework which reasonably accommodates the contracts DGLP has executed with shippers.

B. Detailed Rationale for Corrections to Union's Subsidy Burden Calculation

1. Factual Context for Subsidy Burden Calculation

(a) Date for Subsidy Burden Calculation

In its initial evidence in this proceeding, Union stated that obtaining all of the requisite regulatory approvals may take several years. The Board referred to this evidence in paragraph 17 of its November 27, 2009 Decision and Order. On the basis of this evidence, Union requested and the Board approved the transfer of the St. Clair Line to DGLP as long as it takes place before December 31, 2013.

In its December 23, 2009 evidence, Union is now suggesting that the requisite regulatory approvals need to be granted on an immediate basis. This evidence is incompatible with the initial filing.

The reality is that the sale transaction cannot be completed before DGLP obtains the regulatory approvals it has requested. In the context of Union's initial evidence, as well as the processes that need to be followed by the Ontario Energy Board to respond to DGLP's December 23, 2009 application, we suggest that it is unrealistic for DGLP and Union to expect all requisite regulatory approvals will be granted before the end of February 2010.

While CME will likely be supporting DGLP's leave to construct request and a regulatory framework that allows DGLP to honour the agreements it has already signed, it is unrealistic to expect that all requisite regulatory approvals will be granted before sometime in the third quarter of 2010. There may well be environmental, landowner and other issues that the Board will need to hear and determine in DGLP's application.

On this ground alone, the date of March 1, 2010, that Union has used in its calculation is unreasonable and unrealistic.

Moreover, another important fact relevant to a determination of the date to use in the subsidy burden calculation is that Union's 2010 rates have already been set. In these circumstances, an adjustment to 2010 rates to reflect a mid-year transfer of the St. Clair Line and the St. Clair River crossing to DGLP cannot now be made with ease.

We submit that, in combination, these two facts operate to require the use of a December 31, 2010 date in the subsidy burden calculation.

(b) Union's St. Clair Crossing Costs are part of the Subsidy Burden

The St. Clair River crossing connects the integrated system of Michigan Consolidated Gas Company ("MichCon") to Union's integrated system at the north westerly end of the St. Clair Line. St. Clair crossing tolls are embedded in Union's rates and are costs that Union incurs to generate the Rate C1 revenues that are included in Appendix B to the December 23, 2009 evidence.

In these circumstances, Union's St. Clair crossing tolls are clearly part of the subsidy burden on its ratepayers related to the St. Clair Line. We submit that Union's recognized this reality when it submitted its initial evidence in this case, including Undertaking Response J1.1. The acknowledgement that St. Clair crossing tolls and/or costs are part of the subsidy burden is reflected in the heading of Union's response in Exhibit J1.1 which reads:

"2003-2008 Net Revenues and Estimated Operating Costs"

Exhibit J1.1 also included a specific line item for "St. Clair River crossing toll" in the amount of \$342,000 per year.

These costs are not absorbed by the owner of the St. Clair crossing and there is no reasonable basis for now excluding these costs from the subsidy burden calculations.

Exhibits J1.1 and J1.2 are St. Clair Pipeline subsidy burden calculations submitted by Union during the course of the hearing. They cover the period 2003 to 2008 inclusive and do not deal with the years 2009 and 2010. These calculations are not dependent upon the jurisdictional character of either the St. Clair crossing or the St. Clair pipeline. The Board's determination that the St. Clair pipeline remains within provincial jurisdiction does not operate to permit Union to now materially change the subsidy burden calculations in Exhibits J1.1 and J1.2.

The fact that, in a constitutional sense, the St. Clair Line is not integral to the St. Clair crossing is irrelevant to the question of whether the St. Clair crossing tolls are costs incurred by Union to produce the Rate C1 revenues reflected in Appendix B of its December 23, 2009 evidence. Union's reliance on the Board's jurisdictional determinations to now attempt to exclude St. Clair crossing costs from subsidy burden calculation is inappropriate and lacks merit.

We recognize that in paragraph 122 of its November 27, 2009 Decision and Order, the Board estimated the cumulative subsidy burden at about \$5M. While the manner in which the Board derived its subsidy burden estimate of \$5M is not detailed in the Decision and Order, relevant evidence pertaining to the matter is contained in Exhibits J1.1 and J1.2. Because these exhibits cover the period 2003 to 2008, we believe that the Board's \$5M estimate is for the period January 1, 2003, to December 31, 2008. This belief is reinforced by the Board's reliance on Exhibit J1.1 in paragraph 83 of the November 27, 2009 Decision and Order to

quantify the cumulative operating cost deficit at about \$1.8M. This deficit is for the period 2003 to 2008 inclusive.

Our belief that the Board's \$5M cumulative subsidy burden estimate does not include 2009 and 2010 subsidy burdens is also corroborated by Union's Appendix B in its December 23, 2009 evidence which shows the cumulative subsidy burden at December 31, 2008, at about \$5.680M⁸ when St. Clair crossing costs are included in the subsidy calculation. This amount is higher than the Board's \$5M estimate because Union's calculations in Appendix B include Rate Base items for working capital and line pack that bring the 2008 Rate Base to about \$5.8M which is higher than the \$5.2M NBV discussed at the hearing and to which the Board refers in paragraph 78 of its November 27, 2009 Decision and Order.

We rely on this analysis to make two points. The first is that in rendering its November 27, 2009 Decision and Order, the Board has relied on Union's evidence which acknowledges that its St. Clair crossing costs are part of the subsidy burden. Union cannot now effectively make a material change to that evidence by eliminating its St. Clair crossing costs as part of the subsidy burden for the purpose of implementing the Board's Decision and Order of November 27, 2009. Union is estopped from now resiling from that evidence.

The second is that our calculation of the subsidy burden to December 31, 2010, at \$8.227M including interest and at \$7.277M excluding interest is compatible with the Board's Decision and Order estimate of \$5M at the end of 2008 based on Union's evidence in Exhibits J1.1 and J1.2. In contrast, Union's calculation of the subsidy to March 1, 2010, at \$3.951M is, we submit, at odds with the Board's \$5M estimate based on Exhibits J1.1 and J1.2. Union is seeking approval for a calculation that is not in accordance with the evidence at the hearing and the November 27, 2009 Decision and Order based thereon. We urge the Board to reject Union's post-Decision attempt to benefit its owner by now materially reducing the subsidy burden calculations submitted during the hearing in Exhibits J1.1 and J1.2.

We reiterate that Union incurs St. Clair crossing costs to provide Rate C1 service from St. Clair to Dawn. With a transfer of the St. Clair Line and the St. Clair crossing to DGLP, the Rate C1 service from St. Clair to Dawn will no longer be available. This, in and of itself, demonstrates that St. Clair crossing costs are a part of the subsidy burden. Put another way, Union cannot reasonably expect to have St. Clair crossing costs remain embedded in its rates after completion of the sale transaction when the Rate C1 transportation service from St. Clair to Dawn is no longer available. Yet, this is the effect of what Union is now proposing.

⁸ This is the cumulative amount in Union's calculation at December 31, 2008, with St. Clair tolls included.

2. Corrections to Reflect the Use of a December 31, 2010 Calculation Date

We have already noted in Section 1, subparagraph (a) of the Introduction and Overview Section of this letter that the use of a December 31, 2010 calculation date increases Union's calculation of \$3.951M by \$590,000.

3. Corrections to Reflect Inclusion of St. Clair Crossing Costs to December 31, 2010

As earlier noted in Section 1, subparagraph(b) of the Introduction and Overview Section of this letter including St. Clair crossing costs to March 1, 2010, increases Union's calculation by \$2.451M and by a further \$285,000 for the period March 1 to December 31, 2010, for a total of \$2.736M.

4. Rationale for Interest on Yearly Cumulative Balances and Corrections to Include Interest

We recognize that in its November 27, 2009 Decision and Order, the Board did not require Union to include interest on the annual cumulative subsidy burden amounts from January 1, 2003. Nevertheless, we suggest that an interest allowance in each year is appropriate because Union's owner has enjoyed the use of the subsidy burden money ratepayers have provided since January 1, 2003.

If the situation were reversed and Union's owner had absorbed part of this subsidy burden for ten (10) years, then Union would undoubtedly have included an interest component in any subsidy burden calculation that its owner was authorized to recover from the gain on the sale of the assets.

For illustrative purposes, we have assumed that the interest rate the Board allows on deferral account balances in each of the years 2003 to 2010 inclusive is 3%. Under the assumptions we have used, we calculate the interest rate addition to be about \$1M. We rely on the Board to apply the correct rate in each year if it agrees with us that an interest rate addition to the subsidy burden calculation is appropriate. In this regard, CME urges the Board to apply the prescribed interest rates established pursuant to the methodology approved in EB-2006-0117 for deferral and variance accounts.

5. Corrected Amount to be Recorded in the Deferral Account

Based on the foregoing, we submit that the subsidy burden from January 1, 2003, to December 31, 2010, to be recorded in the deferral account is the sum of about \$8.277M, including interest, or about \$7.277M, excluding interest.

C. Conclusion

For all of these reasons, we urge the Board to determine that the ratepayers' share of the gain to be recorded in the deferral account is about \$8.277M as of December 31, 2010.

As noted above, our plan is to obtain Mr. Quinn's help in preparing and filing by Friday, January 8, 2010, a Schedule comparable to Union's Appendix B in its December 23, 2009

evidence to reflect the corrections to Union's calculation that we say are needed to properly reflect the spirit and intent of the Decision and Order.

We urge the Board to direct Union to present its proposals for clearing the deferral account and for addressing the other ratemaking consequences of a transfer of the St. Clair Line and the St. Clair crossing to DGLP in its application for 2011 rates. Any attempt by Union to avoid adjusting its 2011 and 2012 rates for cost reductions associated with these transfers to DGLP can be addressed at that time.

Any implications for 2009 Earnings Sharing should be addressed later when Union seeks Board approval for its 2009 Earnings Sharing Mechanism ("ESM") calculations.

D. Costs

We request that CME be awarded its reasonably incurred costs of participating in this phase of this proceeding.

Please contact us if there are any questions about the manner in which we derived the correction amounts described in this letter.

Yours very truly,

A handwritten signature in black ink, appearing to read 'Peter C.P. Thompson', with a long horizontal flourish extending to the right.


Peter C.P. Thompson, Q.C.

PCT\slc

c. Sharon Wong (Blakes)
All Intervenors EB-2008-0411
Paul Clipsham (CME)

OTT01\3904169\1

This is Exhibit 5 to the Affidavit of
Jack Hughes, sworn before me this
29 day of November, 2010.



A Commissioner etc.



uniongas

A Spectra Energy Company

January 15, 2010

Ms. Kirsten Walli
Board Secretary
Ontario Energy Board
2300 Yonge Street, 27th Floor
Toronto, Ontario M4P 1E4

Dear Ms. Walli:

**Re: EB-2008-0411 – Calculation of Under-Recovery
Union's Reply Submission**

Please find attached Union's Reply in the above-noted proceeding. A confidential Schedule has been filed under separate cover and couriered to the Board and to the Intervenor who executed the Declaration and Undertaking.

Yours truly,

[Original signed by]

Chris Ripley
Manager, Regulatory Applications

c.c.: EB-2008-0411 Intervenor
Sharon Wong, Blakes

Attach.

CR/la

Introduction

This is the Reply of Union Gas Limited (“Union”) to the submissions filed by Board Staff, Canadian Manufacturer & Exporters (“CME”) and Federation of Rental-Housing Providers of Ontario (“FRPO”) regarding the calculation of the cumulative under-recovery from 2003 to the current time and Union’s estimate as of the closing date of the transaction.

1. Date of Transaction

If the sale of the St. Clair Pipeline actually occurs, Union estimates that the closing date of the sale to Dawn Gateway Pipeline Limited Partnership (“DGLP”) would most likely be on or about March 1, 2010.

DGLP filed an Application for Leave to Construct the Bickford Dawn Line and for approval of the regulatory framework for the Dawn Gateway Pipeline on December 23, 2009. In that Application, DGLP stated that there is a limited time window in which the project would likely proceed, and DGLP asked the Board to issue a decision by Friday February 26, 2010. Although the date for a decision requested by DGLP is sooner than would normally be expected, since it is unlikely that the transaction will proceed if DGLP does not receive approval in the requested time frame, the estimated closing date of March 1, 2010 is the most realistic date. Therefore, it is this date that should be used for any regulatory calculations associated with the sale of the St. Clair Pipeline.

1 **2. Interest**

2 The Board's decision did not direct Union to include interest in the calculation of the cumulative
3 under-recovery. It was appropriate for the Board to exclude interest prior to the establishment of
4 the deferral account as there is no principled reason why such interest should be included.

5
6 There is no basis at all for CME's speculation that Union would be seeking interest if
7 circumstances were reversed. Mr. Thompson on behalf of CME could provide no example of
8 Union requesting interest be included in a deferral account prior to the establishment of a
9 deferral account approved by the Board. The normal treatment for a deferral account is that
10 interest does not accrue until it has been approved by the Board.

11
12 The investment in the St. Clair Pipeline was made in 1988 with the approval of the Board, and no
13 one alleges that the investment was imprudent or the facilities were not used or useful. Union
14 only earned an approved rate of return on the approved utility investment. Union's evidence in
15 the 1988 proceeding for leave to construct the St. Clair Pipeline indicated that the incremental
16 construction costs of the St. Clair Pipeline would be more than recouped in savings on gas costs
17 in less than 2 years after construction. No party has disputed this. From the time of
18 construction to the time of the eventual sale of the regulated utility asset (assuming a sale
19 occurs), Union will have only received a fair return on an investment that benefited ratepayers
20 and was made in the public interest. In these circumstances, there is no reason why the Board's
21 Decision should be implemented retroactively by requiring Union to pay interest on returns it

1 earned in the past since 2003. To include past interest would amount to retroactive ratemaking,
2 an approach that has been consistently rejected by the Board.

3
4 According to paragraph 92 of the Board's Decision, the cumulative under-recovery amount is
5 intended to compensate for the harm that the ratepayers may suffer in the future if the sale of the
6 St. Clair Pipeline takes place. The ratepayers have suffered no compensable harm in the past.
7 According to the Board's Decision, the harm to ratepayers takes place in the future, after the St.
8 Clair Pipeline is sold, because of the "inability of ratepayers to recoup the cumulative past
9 subsidy since 2003 through future revenues" which Union might have earned if it retained
10 ownership of the St. Clair Pipeline. Because the harm that is being compensated for is meant to
11 address a future impact after the time of the sale, there is no basis for applying interest prior to
12 the sale.

13
14 **3. St. Clair River Crossing**

15 In paragraphs 122 and 123 of the Board's November 27, 2009 Decision and Order therein (the
16 "Decision"), the Board directed Union to calculate an amount equivalent to the cumulative
17 under-recovery "**of the asset**". The asset is the St. Clair Pipeline itself, and does not include the
18 St. Clair River Crossing which is owned by St. Clair Pipelines LP. Accordingly, Union submits
19 that the cumulative under-recovery amount related to the St. Clair Pipeline should be limited to
20 the revenues and costs directly attributable to the St. Clair Pipeline itself, and should exclude the
21 cost of the St. Clair River Crossing which is not part of the asset.

1 In addition, as noted above, the St. Clair River Crossing was constructed to provide security and
2 diversity of supply to Ontario, a role that it has played since construction and will continue to
3 play regardless of the ownership of the St. Clair Pipeline.

4
5 **4. Other Considerations - Cost of Building Replacement Line**

6 In paragraph 121 of the Decision, the Board estimated that the total deemed net gain on the sale
7 by Union would be approximately \$8 to \$13 million based on the Board's estimate that the cost
8 of the most economical replacement line would be in the range of \$13 to \$18 million.¹

9
10 In paragraph 122 of the Decision, the Board estimated that the amount of the deemed net gain to
11 be allocated to the ratepayers would be approximately \$5 million which the Board further
12 estimated to be in the range of 35% to 65% of the total deemed net gain of \$8 to \$13 million.

13
14 Union estimates that the actual cost of the most economical alternative to the purchase of the St.
15 Clair Pipeline is approximately \$11.4 million which is less than the Board's initial estimates.
16 The most economic alternative to the purchase of the St. Clair Pipeline would not be to build a
17 replacement for the St. Clair Pipeline. If Dawn Gateway did not have the use of the St. Clair
18 Pipeline, the most economic alternative would be to build a new pipeline directly from the St.
19 Clair River to Dawn on a direct path, rather than the proposed indirect route which utilizes the
20 existing St. Clair Pipeline and the proposed new Bickford to Dawn line.

¹ To arrive at the deemed net gain, the Board apparently subtracted the Net Book Value of the St. Clair Pipeline from the cost of the most economical replacement line.

1 Accordingly, the cost of the most economic alternative to the use of the St. Clair Pipeline is
2 equal to the difference between the cost of a direct pipeline from the St. Clair River to Dawn and
3 the cost of the proposed Bickford to Dawn Pipeline.

4
5 At the hearing, Union filed Confidential Undertaking X 1.1 which contained a general estimate
6 of pipeline construction costs to build Bickford to Dawn as of June 30, 2009. Union is filing a
7 confidential Schedule with this Reply regarding the estimated the costs of constructing the most
8 economical alternative to the St. Clair Pipeline. This Schedule contains the most up to date
9 evidence regarding pipeline construction costs.

10
11 With the cost of the most economic alternative estimated at \$11.4 million, the deemed net gain
12 on the sale using the method set out in the Board's decision is \$6.2 million (being \$11.4 million
13 less the NBV of \$5.2 million). In its December 23, 2009 submission, Union estimated the
14 cumulative under-recovery to be \$3.951 million, which would represent approximately 64% of
15 the deemed net gain from the sale and which is at the upper end of the 35% to 65% range
16 identified by the Board in its decision.

17
18 Board Staff, CME and FRPO are requesting changes to the method for calculating the
19 cumulative under-recovery which would result in the amount of the allocation to ratepayers
20 increasing to somewhere in the range of \$6.577 million plus interest (Board Staff submission, p.
21 3) to \$8.1 million (FRPO submission, Appendix A). If the Board set the allocation at the levels
22 requested by Board Staff, CME and FRPO it would allocate more than 100% of the deemed gain

1 to the ratepayers, making this route more expensive than DGLP's alternative. Union submits
2 that there is no precedent for allocating more than the deemed gain to the ratepayers.

3
4 The Board estimated that only about 35% to 65% of the deemed gain would be allocated to
5 ratepayers, and invited Union to submit evidence if the deemed net gain was not in fact going to
6 be well in excess of the cumulative under-recovery to the ratepayers (Decision, para. 123).

7 Based on these statements, Union believes that the Board did not intend to allocate the entire
8 deemed gain to the ratepayers, and certainly did not intend to allocate more than the deemed gain
9 to the ratepayers.

10
11 In the Board's Interpretive Guidance to the Affiliate Relationships Code for Gas Utilities, issued
12 on December 9, 2004, the Board advised that in the normal course gains from the disposition of a
13 utility asset to an affiliate would be shared 50/50 between ratepayers and utility shareholders:

14 The final disposition of a capital gain or loss on the sale of utility assets to an
15 affiliate will be dealt with at the subsequent rate hearing. In order to provide
16 stakeholders guidance, the Board will generally expect that any capital gains or
17 losses on the transfer of utility assets to an affiliate should be shared 50/50
18 between ratepayers and utility shareholders. Panels on rates cases will determine
19 if there are exceptional circumstances justifying different treatment.

20 (at p. 2 of the Interpretive Guidance)

21 Although DGLP and Union are not affiliates subject to the Affiliate Relationships Code, Union
22 submits that, at a minimum, the Board should apply these same principles in this case with
23 respect to the sharing of the gains from a sale and that there are no exceptional circumstances
24 which justify allocating all of the deemed net gain to the ratepayers. In fact, the circumstances

1 suggest that the allocation should be closer to the normal allocation of 50% because the
2 allocation is intended to compensate ratepayers for the loss of the possibility to recoup some of
3 the under-recovery in the future if Union were to retain ownership of the St. Clair Pipeline, but
4 there is no certainty that the ratepayers would recoup all (or even any) of the under-recovery in
5 the future if the sale does not occur.

6
7 **5. Implications for 2009 Earnings Sharing**

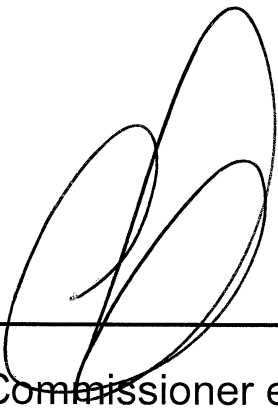
8 CME and FRPO have taken issue with Union's intention to include the amount of the cumulative
9 under-recovery in Union's 2009 regulated earnings for the purposes of earnings sharing. Union
10 believes that the amount allocated to ratepayers should be treated as a reduction to its regulated
11 utility earnings, however Union agrees with FRPO and CME that the matters should be
12 determined at its next rate case where the Board will have the benefit of full submissions from all
13 interested parties.

14
15 **Conclusion**

16 Union therefore requests that the Board accept the estimated amount of the cumulative under-
17 recovery of \$3.951 million as calculated by Union in its December 23, 2009 submission. The
18 alternative cost of replacing the St. Clair Pipeline is approximately \$11.4 million which is \$6.2
19 million in excess of the net book value of \$5.2 million. Union's cumulative under-recovery
20 calculation of \$3.951 million represents 64% of the \$6.2 million and is consistent with the 35%
21 to 65% range identified by the Board in its decision and aligns with prior Board decisions related
22 to the sharing of gains on the disposition of utility assets. Union further requests that the Board

- 1 approve the draft accounting order relating to the establishment of the deferral account as set out
- 2 in Appendix A to Union's December 23, 2009 submission.

This is Exhibit 6 to the Affidavit of
Jack Hughes, sworn before me this
29 day of November, 2010.



A Commissioner etc.



ONTARIO ENERGY BOARD

FILE NO.: EB-2009-0422

VOLUME: 1

DATE: March 1, 2010

Gordon Kaiser	Presiding Member and Vice-Chair
Cathy Spoel	Member
Cynthia Chaplin	Member

1 MR. ISHERWOOD: Something like that. That's fair.

2 Yes.

3 MR. THOMPSON: Will you take that subject to check?

4 MR. ISHERWOOD: That's fair.

5 MR. THOMPSON: Okay. So is that the toll that Dawn
6 Gateway is going to pay?

7 MR. ISHERWOOD: Still to be negotiated, actually.

8 MR. THOMPSON: Well, what does that mean? It could be
9 higher or lower?

10 MR. ISHERWOOD: It could be higher, it could be lower.

11 MR. THOMPSON: Why would it be higher?

12 MR. ISHERWOOD: It is being negotiated between St.
13 Clair pipeline and Dawn Gateway.

14 MR. THOMPSON: Well, that is not a very tough
15 negotiation, is it? I mean you are all friends. Why would
16 it be higher than the toll?

17 MR. ISHERWOOD: It is more likely to be the same or
18 lower, to be fair.

19 MR. THOMPSON: Thank you. Now, the St. Clair line,
20 the plan is to own that and acquire it from Union.

21 In the debate that is going on about how much
22 ratepayers should get, Union, as I understand it, is taking
23 the position this transaction, the purchase transaction is
24 going to be completed in March of 2010. Is that correct?

25 MR. BAKER: That's fair.

26 MR. THOMPSON: And so if you get, in this case, the
27 approval for the leave to construct Bickford, the Bickford
28 to Dawn, is the purchase a "go"? Or are there some other

1 things hanging out there that you need?

2 MR. BAKER: I think in total, we need certainty on all
3 aspects of this application. So it would be leave to
4 construct the Bickford to Dawn piece. It would be a
5 decision in this application on approval for the form of
6 regulation that we're seeking, along with any conditions,
7 as well as the Board's final decision in the leave to sell
8 the St. Clair line on the final ratepayer harm amount as
9 well.

10 MR. THOMPSON: All right. Well, let's just explore
11 that a little bit.

12 Let's just take the ratepayer harm issue. Your
13 proposal is 4 million, I think I am as high as eight. A
14 major component of the differential is whether the St.
15 Clair toll is in or out of the subsidy calculation. Would
16 you agree with that?

17 MR. BAKER: That's my understanding, yes.

18 MR. THOMPSON: Are you the man I should be speaking to
19 about this?

20 MR. BAKER: I guess it depends what you're going to
21 ask.

22 MR. THOMPSON: Well, the -- with the St. Clair toll
23 and the subsidy calculation, your number becomes, give or
24 take, \$6.5 million, there is then a dispute about interest.
25 And our number goes higher because we factor in z-factor
26 implications in considering the completion date.

27 But assume the number is \$6.5 million, is it a go or
28 is it not a go?

1 MR. BAKER: I just don't think I can answer that
2 question fully today, because there are still, as I said,
3 this is not just a matter of one decision. There is a
4 number of things that are at play here that we would need
5 to have all of them to decide whether we're going forward
6 on the project.

7 MR. THOMPSON: All right. Assume you get a decision
8 on March 10th that says the number is \$6.5 million, what
9 happens then? Are we then waiting for you folks to come
10 back to us?

11 MR. BAKER: Well, it would be -- we realize the fact
12 that we're going to have to make a fairly quick decision
13 here because of the time frame that we're under, to hit a
14 2010 in-service date. So it would need to be practically a
15 pretty quick turnaround, incorporating all of the decisions
16 that this Board will need to make.

17 MR. THOMPSON: Okay. Well, in the interrogatory
18 responses to Board Staff, I don't know that I have the
19 number right at hand. You do mention the ordering of the
20 pipe and this point you were mentioning in-chief about the
21 March 11th date. Let me just see if I can find that.

22 Can you help me with the interrogatory, where that is
23 discussed?

24 MR. BAKER: I will try.

25 MS. WONG: Are you just looking for the interrogatory
26 talking about the ordering of the pipe?

27 MR. THOMPSON: Yes. And the renegotiation of the
28 cancellation date. 28? It is Board Staff No. 28.

1 So this is Exhibit K1.10, interrogatory 28. Do you
2 have that, Mr. Baker?

3 MR. BAKER: Yes, we do.

4 MR. THOMPSON: Okay. It says here in sub (c) that:

5 "Approval is requested by March 11. Pipe has
6 been ordered and Dawn Gateway has obtained an
7 extension of the no cost cancellation to
8 accommodate the above date."

9 When was that extension obtained?

10 MR. ISHERWOOD: The initial pipe order was placed
11 early January, and in that order we had an out, a no-cost
12 out until I think February 26th, if I remember correctly.

13 We had asked the Board initially for a decision by
14 about the same time. When we saw the hearing schedule,
15 hearing on March 1st, we went back to the pipe company and
16 asked for an extension as long as we possibly could and
17 they gave us until February 11th -- or, sorry, March 11th.

18 MR. THOMPSON: So at the time you requested that
19 extension, the debate as to whether it is four or eight was
20 out in the open and on the table?

21 MR. BAKER: That's correct.

22 MR. THOMPSON: So you made that request for an
23 extension, knowing that you were exposed to as much as
24 \$8 million?

25 MR. BAKER: That's right.

26 MR. THOMPSON: Thank you. All right. So do I
27 understand correctly, then, that if you get what you are
28 asking from this Board, it is a go? The deal closes on

1 March 11th in terms of acquiring the St. Clair line?

2 MR. BAKER: Again, I am trying to be clear. We
3 need -- there is really, you know, a number of things at
4 play. There is the Board's final decision on the amount of
5 the ratepayer harm. There is the Board's decision in this
6 case on the regulatory framework and the leave to
7 construct.

8 MR. THOMPSON: All right. But my question is: If you
9 get a result from this Board along the lines of what you
10 are asking for, then the sale will be completed by March
11 11th?

12 MR. BAKER: I guess what I'm saying is that for the
13 sale to be completed means that we have made a decision in
14 total, based on all of the decisions of this Board, that
15 the project will proceed.

16 And so it won't just be a decision in this case. As I
17 said, it does -- it will also take into account the
18 decision in the St. Clair leave to construct application.

19 MR. THOMPSON: I appreciate that. So I guess maybe I
20 should say, when the St. Clair leave to construct
21 application decisions are rendered and the decisions in
22 this case are rendered, are we done in terms of what you
23 are waiting for?

24 MR. BAKER: Yes, we are. We will have everything that
25 we need to make a decision.

26 MR. THOMPSON: So that regardless of what happens on
27 the US side, for regulatory purposes in Ontario we can
28 treat this deal as having been done as of March 2009,

1 assuming you accept what the Board has ruled on as being
2 reasonable?

3 MR. BAKER: That's correct.

4 MR. THOMPSON: And so if something goes wrong on the
5 US side -- is there any prospect of that?

6 MR. BAKER: Sorry, could you just repeat that? I
7 didn't hear.

8 MR. THOMPSON: If something goes wrong on the US side
9 -- the US issues, based on some information you have
10 provided again in interrogatories, are not going to be
11 resolved until the third quarter of 2010, as I understand
12 it.

13 MR. BAKER: That's correct.

14 MR. THOMPSON: Okay. But regardless of what happens
15 over there, as I understand it, here in Ontario for
16 regulatory purposes we can -- ratepayers can treat the St.
17 Clair line as having been disposed of to Dawn Gateway and
18 they will be entitled to, if you folks approve the -- or if
19 you don't crater the deal on what the Board decides, the
20 amount they're entitled to will go into the deferral
21 account. This is the amount over and above net book value?

22 MR. BAKER: That's correct.

23 MR. THOMPSON: Okay. So if -- I just want to
24 understand the regulatory implications of that for Union
25 customers, if I may; that is, the deal being treated for
26 regulatory purposes as having been completed in March 2010.

27 Am I correct that rate base will be reduced by
28 \$5 million? That is the net book value of the St. Clair

1 line? That's Union's rate base?

2 MR. BAKER: I believe that is what is contemplated to
3 happen.

4 MR. THOMPSON: Are we correct that in addition to
5 the --

6 MR. BAKER: I should say that -- and I am trying to
7 remember. I seem to remember that there was some
8 discussion in terms of when that adjustment to rate base
9 would happen, and, I apologize, but I just can't remember
10 where all of the positions on that ended up.

11 So I will have to check that at break and get back to
12 you, if that is any different.

13 MR. THOMPSON: Okay. Well, I think what you are
14 getting at, you are in the midst of an IRM regime, and I
15 think your initial evidence said, We are not going to
16 rebase until 2013. And certainly my client is saying this
17 is a Z factor type of issue.

18 So I take your point that when this happens may be a
19 debate?

20 MR. BAKER: That's right.

21 MR. THOMPSON: But let's just focus on what happens
22 when it happens, okay?

23 So the rate base amount will be reduced by
24 approximately \$5 million, and the return in taxes on and
25 depreciation on rate base will come out of cost of
26 service --

27 MR. BAKER: That's correct.

28 MR. THOMPSON: -- when this happens, when it is

1 brought into account?

2 MR. BAKER: Yes.

3 MR. THOMPSON: In addition, there will be the O&M
4 expenses and property tax expenses that will come out when
5 this is accounted for?

6 MR. BAKER: That's correct.

7 MR. THOMPSON: Now, can we just confirm for the
8 record, in this case, that the total of those amounts based
9 on, I think it is, Exhibit J1.1 in the 0411 case, the St.
10 Clair River crossing toll is one item. Would you take,
11 subject to check, that is \$342,000?

12 MR. BAKER: Yes, we will accept that.

13 MR. THOMPSON: Okay. Then for operating, maintenance,
14 insurance, property taxes, capital taxes, would you take,
15 subject to check, that that is almost \$150,000?

16 MR. BAKER: Sorry, that was \$150,000?

17 MR. THOMPSON: Yes, 150, roughly.

18 MR. BAKER: I will take that subject to check.

19 MR. THOMPSON: It is probably a little bit less than
20 that, but that is the ballpark.

21 Would you take, subject to check, the depreciation
22 amount is about \$276,000?

23 MR. BAKER: I believe you are referring to monthly
24 amounts. Oh, no, those are annual amounts. You are
25 correct.

26 MR. THOMPSON: It is annual?

27 MR. BAKER: No, you are correct. It is annual.

28 MR. THOMPSON: I was just taking these numbers off

1 J1.1.

2 MR. BAKER: Yes. We have the schedule now.

3 MR. THOMPSON: Okay.

4 Then in terms of the return on taxes amount, would you
5 take, subject to check, it is about \$564,000? That is not
6 in J1.1. That is coming out of a calculation that is
7 linked to the rate base. It is a number I think you
8 provided in your evidence in a calculation phase.

9 MR. BAKER: That sounds about right, yes.

10 MR. THOMPSON: So it is the sum of those numbers,
11 then, that would be coming out of cost of service annually,
12 whenever this adjustment takes place; is that fair?

13 MR. BAKER: That's correct.

14 MR. THOMPSON: Thanks. Okay, let's move, then, from
15 that to your regulatory framework proposal. And it was
16 pointed out in opening this morning that this has evolved
17 somewhat since you initially filed the evidence in this
18 proceeding.

19 In other words, it was initially NEB group 2
20 equivalency with confidentiality and no STAR compliance, as
21 I understood it?

22 MR. BAKER: That's correct.


23 MR. THOMPSON: Now it is NEB group 2 equivalency with
24 STAR compliance?

25 MR. BAKER: That's correct.

26 MR. THOMPSON: And that change has occurred during the
27 course of the discovery process?

28 MR. BAKER: I think it has changed on that time frame,

This is Exhibit 7 to the Affidavit of
Jack Hughes, sworn before me this
29 day of November, 2010.



A Commissioner etc.



ONTARIO ENERGY BOARD

FILE NO.: EB-2009-0422

VOLUME: 1

DATE: March 1, 2010

Gordon Kaiser Presiding Member and Vice-Chair

Cathy Spoel Member

Cynthia Chaplin Member

1 ratepayers, Union is capturing and separating its costs
2 related to the development of Dawn Gateway in a manner
3 consistent with the costs associated with Union's
4 unregulated storage business.

5 It is felt that -- while it is felt that these issues
6 are really specific to Union Gas and its regulatory process
7 and not Dawn Gateway specifically, we do understand from
8 Board Staff that there was an interest in this matter and,
9 as such, as Ms. Wong mentioned, that's why we have Mr.
10 Tuckwell here this morning with us.

11 Second, in terms of the storage and transportation
12 access rules, or STARS, again, as was covered this morning,
13 our initial application was based on the premise that the
14 STAR would not apply. However, as noted in various
15 interrogatory responses, we are no longer now seeking to be
16 exempted from the STAR.

17 In terms of financial statements, again, we had
18 proposed to file those confidentially with the Board
19 initially and we have updated our evidence to commit to
20 file those publicly with this Board, consistent with what
21 group 2 pipelines do under the NEB.

22 In terms of the Dawn Gateway agreements that were
23 marked this morning, while Dawn Gateway is still in the
24 process of developing the project and the agreements, we
25 did file the two agreements that were referenced this
26 morning, the first being the development agreement, which
27 really governs the development and the construction of the
28 new Bickford to Dawn pipeline, and the second one being the

1 field services agreement, which governs the ongoing
2 maintenance and operation of the Ontario portion of the
3 Dawn Gateway pipeline.

4 In terms of the development agreement, there are two
5 fees contained within that -- within that agreement related
6 to services and payments that Dawn Gateway will make to
7 Union Gas.

8 The first fee is a two-and-a-half-million-dollar
9 management fee, and this fee is specifically related to the
10 Board's decision in the St. Clair leave to sell application
11 and really reflects a negotiated settlement between Dawn
12 Gateway and Union Gas.

13 So in the St. Clair leave to sell decision, the Board
14 ruled that Union would be required to allocate an amount to
15 ratepayers to mitigate the harm associated with the sale of
16 the St. Clair line, and while the Board has not yet ruled
17 on that specific amount or what the final allocation will
18 be, we know that Union asked the allocation to be set at
19 around 3.9 million and intervenors had different numbers
20 that they were proposing.

21 But I guess the salient point for this morning is the
22 two-and-a-half-million-dollar management fee contained in
23 the development agreement is the amount that Dawn Gateway
24 will fund to partially compensate Union for the amount that
25 it will ultimately have to allocate to its ratepayers, and
26 it reflects the maximum amount that Dawn Gateway is
27 prepared to accept as a project cost.

28 To the extent that that ultimate amount is greater

1 than the two-and-a-half million, it will not flow to the
2 Dawn Gateway partnership. It will be -- that difference in
3 amount will remain with Union Gas.

4 The second fee is a \$700,000 success fee, and this is
5 tied to Union Gas managing and constructing the project
6 within the agreed-to capital budget for Dawn Gateway. And
7 this fee is contingent on the successful completion of the
8 project within the capital budget.

9 Lastly, as was also mentioned, we are seeking a
10 decision from the Board inclusive of any conditions that
11 may flow from this proceeding on, or preferably before,
12 March 11th. And as mentioned, this timing is really
13 related to the fact that we have ordered the pipeline for
14 Dawn Gateway and we have the ability to cancel that
15 pipeline order, up to and including by March 11th, without
16 incurring any penalties.

17 To the extent that we were unable to get a decision by
18 the March 11th date, Dawn Gateway would be in a position
19 where we would be unable to commit to the pipeline and,
20 therefore, unable to meet the targeted November 1, 2010 in-
21 service date.

22 That concludes my comments. Thank you.

23 MS. WONG: That is the entire examination-in-chief,
24 sir.

25 MR. KAISER: Mr. Baker, you referred to the code of
26 conduct.

27 MR. BAKER: Yes.

28 MR. KAISER: And, in particular, you referred to the

1 **CROSS-EXAMINATION BY MR. THOMPSON:**

2 MR. THOMPSON: Just on a couple of points, Mr. Baker.
3 In your evidence-in-chief, the 2.5 management fee that you
4 described, is that -- as I understand it, that relates to
5 the amount that the Board is considering that Union has to
6 pay to ratepayers over and above the net book value of the
7 St. Clair line.

8 Have I got that straight?

9 MR. BAKER: That's correct.

10 MR. THOMPSON: And there is an unresolved debate
11 before the Board. You take the view, I think, the number
12 is around \$4 million and others have it as high as
13 \$8 million; is that fair?

14 MR. BAKER: That's correct.

15 MR. THOMPSON: Okay. And so the -- whatever that
16 amount is determined to be, Dawn Gateway is going to pay
17 2.5 million of that sum?

18 MR. BAKER: To Union Gas, that's right.

19 MR. THOMPSON: To Union Gas. And how is that going to
20 be accounted for in Dawn Gateway? Is that a one-time
21 operating cost? Is it a capital cost?

22 MR. BAKER: That would form part of the capital cost
23 of the project.

24 MR. THOMPSON: Right. Thanks.

25 So from Dawn Gateway's perspective, the capital cost
26 of the St. Clair line would be its net book value of in the
27 order of \$5 million?

28 MR. BAKER: That's right.

1 MR. THOMPSON: Plus this 2.5, for a total of
2 \$7.5 million?

3 MR. BAKER: That's correct.

4 MR. THOMPSON: Thanks. Then the success fee that Dawn
5 Gateway is going to pay to Union; do I understand that
6 correctly?

7 MR. BAKER: That's right.

8 MR. THOMPSON: Is that up to \$700,000?

9 MR. BAKER: That's correct.

10 MR. THOMPSON: So could you just help us with what
11 Union has to do to get it?

12 MR. BAKER: What Union has to do is manage the project
13 within the targeted capital cost contained in the
14 development agreement. To the extent that we don't do
15 that, if the project comes in over that targeted budget,
16 then there will be no amount paid.

17 MR. THOMPSON: Okay. And, again, in terms of the
18 accounting for that within Dawn Gateway, is that a capital
19 item or a one-time operating expense item? Can you help me
20 there?

21 MR. BAKER: That would be part of the capital cost.

22 MR. THOMPSON: All right. Thanks.

23 Then in terms of the total capital cost to Dawn
24 Gateway of the project over and above these amounts would
25 be the construction cost of the Bickford to Dawn segment?

26 MR. BAKER: That's correct.

27 MR. THOMPSON: And there are numbers in the record in
28 confidence with respect to that aspect of the matter. Do

1 those numbers need to continue to be held in confidence for
2 the purposes of this case?

3 MR. BAKER: Yes.

4 MS. WONG: I should point out, Mr. Thompson, I believe
5 those numbers were only filed in the St. Clair case. So if
6 you want them to be filed confidentially in this case,
7 perhaps we should make arrangements to do so.

8 MR. THOMPSON: Okay. I was hoping we could just refer
9 to them as having been filed in a prior case, but you want
10 me to actually identify documents in the St. Clair case
11 that we would bring into this case?

12 MS. WONG: I think that might be best, just so that
13 we're all on the same page. And if we are going to talk
14 about it, because the filings were confidential, I would
15 request that that portion of the evidence also be
16 confidential if you are going to get into the numbers.

17 MR. KAISER: Our view of it, I believe, is that we had
18 adopted the record in that case for the purpose of this
19 case.

20 MS. WONG: I wasn't aware of that, sir, but are you
21 adopting the entire record?

22 MR. KAISER: Well, for the sake of efficiency. Is
23 there a problem with that?

24 MS. WONG: Well, Dawn Gateway had requested that the
25 portions that -- to be adopted would be identified just so
26 that we are all clear on what is going in. But if the
27 Board's view is that everything goes in...

28 MR. KAISER: We only did that for purpose of

1 efficiency, without spending time going through it. Is
2 there any problem with adopting the records of that case
3 for the purpose of this case?

4 MS. WONG: No, that's fine.

5 MR. KAISER: Let's proceed on that basis.

6 MR. THOMPSON: Thanks.

7 Okay, so, let me then move back to my planned cross.

8 First of all, just a few questions on the structure of
9 the arrangement now. Initially when you filed -- when
10 Union filed the application, the evidence as I recall it,
11 was that Dawn Gateway, the limited partnership, was going
12 to buy the three segments, three existing segments, the
13 Belle River segments, the St. Clair crossing and the St.
14 Clair line.

15 Just stopping there, was that the initial vision, as
16 you recall it, when the application was filed?

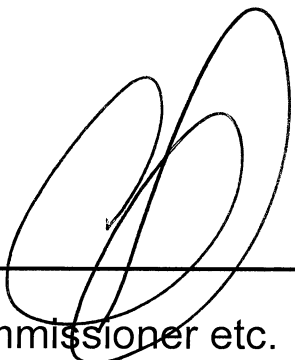
17 MR. BAKER: I think the only -- I believe the only
18 difference was that at the time we were contemplating
19 either a purchase or a lease on the Belle River Mills line.
20 We had not made a determination at that time.

21 MR. THOMPSON: Okay. And then I recall that in the
22 evidence in the Union application, the decision to lease
23 Belle River had been made. So the purchase had been ruled
24 out and my recollection is you had a long-term lease in
25 mind, because of some tax benefits on the US side.

26 MR. BAKER: That's right. A long-term lease with an
27 option to purchase at some future date.

28 MR. THOMPSON: All right. Now, is that still the plan

This is Exhibit 8 to the Affidavit of
Jack Hughes, sworn before me this
29 day of November, 2010.



A horizontal line is drawn across the page, and a handwritten signature is written over it.

A Commissioner etc.



EB-2008-0411

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 pursuant to section 43(1) of the Act, for an Order or Orders granting leave to sell 11.7 kilometers of natural gas pipeline running between the St. Clair Valve Site and Bickford Compressor Site in the Township of St. Clair, all in the Province of Ontario.

BEFORE: Gordon Kaiser
Vice Chair and Presiding Member

Cynthia Chaplin
Member

Cathy Spoel
Member

DECISION AND ORDER

Introduction

[1] On November 27, 2009 the Board issued a Decision granting Union Gas Limited (“Union”) leave to sell 11.7 kilometers of 24 inch diameter steel natural gas pipeline running between the St. Clair Valve Site and the Bickford Compressor Site in the Township of St. Clair (the “St. Clair Line”)¹. The Decision was subject to the following conditions:

¹ November 27, 2009 – EB-2008-0411

- a) The sale price for ratemaking purposes shall be the fair market value which is defined as the replacement cost of the line.
- b) The ratepayer will receive a credit for ratemaking purposes equal to the amount of the cumulative under-recovery from 2003 until the time of the transaction which amount shall be placed in a deferral account for disposition in a rates proceeding.
- c) Union shall file with the Board, with a copy to all intervenors, its calculation of the cumulative under-recovery from 2003 to the current time and its estimate as of the closing date of the transaction. Union at its discretion may file its estimate of the replacement cost of the line.

[2] This Decision determines the fair market value of the St. Clair Line, the cumulative under-recovery, and the appropriate amount to be credited to ratepayers.

[3] The Board received written submissions from Board staff, Union, Canadian Manufacturers and Exporters ("CME"), and the Federation of Rental-housing Providers of Ontario ("FRPO"). Additional evidence regarding the replacement cost was received in confidence.

The Transaction

[4] Union has proposed to sell the St. Clair Line to Dawn Gateway LP, a limited partnership owned jointly by Spectra Energy Corp. ("Spectra") and DTE Pipeline Company ("DTE") through various affiliates. Union is a subsidiary of Spectra.

[5] Spectra and DTE have formed a joint venture to develop a 34 km pipeline (the "Dawn Gateway Pipeline") that will commence at the Belle River Mills storage facility in Michigan, owned by a DTE subsidiary, Michigan Consolidated Gas Company ("Michcon"), and will terminate at the Dawn Compressor Site in Ontario owned by Union.

[6] When the transactions are completed, the Dawn Gateway pipeline will have four components. The first three components are existing pipelines. The last component is a new pipeline to be constructed by the joint venture.

[7] The first component is a 4.74 km pipeline owned by Michcon which runs from the Belle River Mills compressor station in St. Clair County, Michigan, to the international border between the United States and Canada in the middle of the St. Clair River. Known as the Belle River Mills Pipeline, this pipeline is currently regulated by the Michigan Public Service Commission. As part of this transaction this pipeline will be leased to Dawn Gateway Pipeline LLC.

[8] The second component of the Dawn Gateway Line is .873 km of pipe presently owned by St. Clair Pipelines LP which commences at the international border between the United States and Canada in the St. Clair River and terminates at Union's St. Clair valve site in Lambton County, Ontario. Known as the St. Clair River Crossing, this line is currently regulated by the NEB. St. Clair Pipelines LP is owned by Westcoast Energy Inc. (which is a subsidiary of Spectra).

[9] The third component is the St. Clair Line, which is the subject of this proceeding. The St. Clair Line is currently regulated by the Ontario Energy Board.

[10] The last component of the Dawn Gateway Line is a proposed new 17 km pipeline running from the St. Clair Line near Union's Bickford station to the Dawn Compressor Station in Lambton County, Ontario.

The Fair Market Value of the St. Clair Line

[11] In its November 27, 2009 Decision, the Board stated that the sale price of the St. Clair Line, for ratemaking purposes, shall be the fair market value which was defined as the replacement cost of the line. The Board directed that the replacement cost of the St. Clair Line is the cost of the most economical alternative to purchasing the St. Clair Line.

[12] Union argued that if DGLP does not purchase the St. Clair Line, then the most economical way for DGLP to transport gas from the St. Clair River to Dawn would be for DGLP to build a new pipeline directly between these two points. Union stated that the replacement cost of the St. Clair Pipeline is equal to the difference between the cost of a hypothetical direct pipeline from the St. Clair River to Dawn and the cost of the proposed Bickford to Dawn Pipeline.

[13] Union filed, in confidence, its most recent estimate of the costs to construct the Bickford to Dawn Pipeline.² Union utilized these pipeline construction costs to estimate the cost of the most economical alternative to the St. Clair Line. Union estimated that the cost of the most economic alternative to purchasing the St. Clair Line (or in other words, the replacement value) is \$11.4 million. This replacement value results in a deemed net gain on the sale of the St. Clair Line of approximately \$6.2 million.³

[14] CME and FRPO submitted that there was a threshold concern related to the inability of intervenors to test all elements of the updated pipeline construction costs that Union provided in its confidential filing. The updated cost estimate is significantly lower than the estimate that Union provided during the hearing for the construction of the Bickford to Dawn Pipeline. CME and FRPO requested that the Board strike the evidence related to the updated estimated cost of replacing the St. Clair Line from the record. The Board instead allowed parties to make further submissions on the updated evidence.

[15] CME and FRPO argued that the updated pipeline construction cost estimate used by Union does not accurately reflect the land-related costs involved in constructing a direct route pipeline from the St. Clair River to Dawn because neither Union nor DGLP currently have any rights or interests over the property affected. FRPO noted that the proposed Bickford to Dawn Pipeline will run through previously acquired easements and therefore the land, easement and consultant costs used in the Bickford to Dawn direct route cost estimate do not reflect all of the relevant costs. FRPO concluded that including these costs would substantially increase the estimated pipeline construction costs.

[16] Board staff, CME, and FRPO also submitted that Union's methodology for calculating the estimated replacement cost of the St. Clair Line is incorrect. CME and FRPO argued that the direct pipeline option proposed by Union to estimate the replacement cost of the St. Clair Line should include the cost of the consequential write-off by Union of the \$5.2 million Net Book Value ("NBV") of the no longer useful St. Clair Line.

² This was an update to the estimate of pipeline construction costs filed by Union in Confidential Undertaking X1.1.

³ \$11.4M - \$5.2M (Net Book Value of the St. Clair Line) = \$6.2M

[17] CME asserted that DGLP has two options to transport gas from the St. Clair River to Dawn:

- a) Purchase the 11.7 km St. Clair Line and construct a 17 km pipeline from Bickford to Dawn; or
- b) Construct a shorter direct line from the St. Clair River to Dawn with the accompanying write-off for Union of the NBV of the St. Clair Line.

[18] Board staff, CME, and FRPO submitted that the “Proportional Approach” is the appropriate methodology to follow to determine the replacement cost of the St. Clair Line. In the Proportional Approach, the proportion of the St. Clair Line to the total pipeline is determined. That proportion is then applied to the total cost of the direct route pipeline to determine the replacement cost of the St. Clair Line. Using this approach results in a significantly higher replacement cost and therefore a significantly higher deemed net gain.

[19] Union argued that the Proportional Approach is completely hypothetical. Union noted that a real purchaser would never use the Proportional Approach to make a rational decision as to whether to buy the St. Clair Line because the result has no relevance to whether or not it would be less expensive to build a pipeline on an alternative route.

Board Findings

[20] The Board finds that Union’s methodology for calculating the estimated replacement cost of the St. Clair Line is appropriate and in accordance with the principles the Board set out in its Decision. The Board notes that the estimate provided by Union reflects the costs of an actual economic alternative to using the St. Clair Line while the estimate proposed by Board staff, CME, and FRPO is hypothetical in nature.

[21] The Board finds that the appropriate pipeline construction cost estimate to be used in the calculation of the estimated replacement cost of the St. Clair Line is the cost estimate originally provided by Union in Confidential Undertaking X1.1 as this cost estimate represents the information available to the parties closer to the time when the commercial parameters of the transaction were established and therefore more closely matches the value at that time. Although the date of the transaction is some time in the future, the commercial aspects of the transaction have already been established. Costs

of construction may fluctuate further between now and the time of actual construction; however the Board concludes that the value is appropriately fixed at the time the commercial parameters were established, or close to that time. Using the original cost estimate in the calculation of the replacement cost of the St. Clair Line the Board finds that the estimated replacement cost is \$13.17 million and the net gain is \$7.97 million.⁴

The Cumulative Under-Recovery of the St. Clair Line

[22] In its Decision, the Board concluded that the sale of the St. Clair Line would be approved on the condition that ratepayers are allocated a portion of the deemed net gain equivalent to the cumulative under-recovery of the St. Clair Line. The Board directed Union to file the necessary evidence to substantiate the cumulative under-recovery of the asset since 2003 until the estimated closing date of the transaction.

[23] Union estimated that for the period January 1, 2003 to March 1, 2010 the cumulative under-recovery of the St. Clair Line will be \$3.951 million. Union calculated the cumulative under-recovery of the St. Clair Line as the difference between estimated net revenue and estimated actual cost of service.

[24] Board staff, CME and FRPO submitted that Union's estimate is incorrect and does not reflect the actual cumulative under-recovery of the St. Clair Line. Board staff, CME and FRPO challenged three aspects of Union's estimate: the transaction date, the interest calculation, and the St. Clair River Crossing tolls.

The Transaction Date

[25] Union estimated that the closing date of the transaction for the sale of the St. Clair Line will be March 1, 2010 because DGLP indicated in its December 23, 2009 Application, under Board File No. EB-2009-0422, that it is seeking leave to construct the Bickford Dawn Pipeline by February 26, 2010 and that the project will not likely proceed if it does not receive approval by this date. Union also noted that the hearing in the EB-2009-0422 proceeding is scheduled for early March, 2010 and Union will proceed with the sale of the St. Clair Line immediately thereafter (assuming that the Board grants DGLP leave to construct the Bickford to Dawn Line and authorizes a regulatory framework that is satisfactory to DGLP).

⁴ \$13.17M - \$5.2M (NBV of St. Clair Line) = \$7.97M

[26] Board staff, CME and FRPO disputed Union's estimated transaction date. CME and FRPO argued that Union's estimated transaction date of March 1, 2010 is based on Union's presumption that the transaction will not proceed if DGLP does not receive approval of its leave to construct the Bickford Dawn Pipeline in the requested time frame. Both parties submitted that this statement is incompatible with Union's initial filing where Union stated that it may take several years to obtain all the requisite regulatory approvals to put the Dawn Gateway pipeline into service.

[27] CME and FRPO claimed that Union's 2010 rates have already been set and there is no evidence that the St. Clair Line will not continue to under-recover until the Dawn Gateway Pipeline is put in service. Therefore, CME and FRPO believe that the most equitable date for the purposes of calculating the cumulative under-recovery is December 31, 2010.

[28] Board staff submitted that Union's estimated transaction date is unrealistic and noted that the Board has established metric dates for the release of Board Decision for both written and oral hearings. The metric schedule for a leave to construct application requires the Board to issue a Decision within 130 calendar days of the date the application was filed when a written proceeding is held and 210 days if it is an oral proceeding. Board staff submitted that for the purpose of establishing a timeframe for the EB-2009-0422 proceeding, the shortest expected date for a decision should be 130 days. This means that the earliest assumed date for a Decision in that proceeding should be early May 2010. Therefore, Board staff submitted that the estimate of the cumulative under-recovery of the St. Clair Line should be made as of May 1, 2010.

Interest Expenses

[29] Board staff, CME and FRPO all argued that Union did not include interest carrying charges in its estimate of the cumulative under-recovery of the St. Clair Line. All three parties suggested that in order to accurately calculate the cumulative under-recovery of the St. Clair Line, interest must be included in the calculation.

[30] CME and FRPO submitted that interest should be included in the calculation of the cumulative under-recovery because Union's owner has enjoyed the use of subsidy burden money that ratepayers have provided to the St. Clair Line since 2003. Both parties noted that if the situation were reversed and Union's owner had absorbed part of this subsidy burden, Union would have included an interest component in any subsidy

burden calculation that its owner was authorized to recover from the gain on the sale of assets.

[31] Board staff stated that interest charges must be applied to the cumulative under-recovery balances to ensure that ratepayers recover the full value, which includes the time value of money, of the subsidy that they have been providing to the St. Clair Line since 2003. Board staff submitted that Union should apply the Board approved Accounting Interest Rate Methodology as set out in the Board's letter of November 28, 2006, under Board File No. EB-2006-0117, to the cumulative under-recovery of the St. Clair Line for the period January 1, 2003 to May 1, 2010.

[32] In its reply submission Union noted that the Board's November 27, 2009 Decision did not direct Union to include interest in the calculation of the cumulative under-recovery. Union stated that there is no basis for the intervenors' speculation that Union would be seeking interest if the circumstances were reversed. Union noted that the intervenors could provide no example of Union requesting interest be included in a deferral account prior to the establishment of a deferral account approved by the Board. Union noted that the normal treatment for a deferral account is that interest does not accrue until it has been approved by the Board.

[33] Union noted that the investment in the St. Clair Line was made in 1988 with the approval of the Board, and no one has alleged that the investment was imprudent or the facilities were not used or useful. Union stated that from the time of construction to the time of the eventual sale of the regulated utility asset (assuming a sale occurs) Union will have only received a fair return on an investment that benefited ratepayers and was made in the public interest. Union believes that in these circumstances, there is no reason why the Board's Decision should be implemented retroactively by requiring Union to pay interest on returns it earned in the past.

[34] Union also noted that paragraph 92 of the Board's Decision states that the cumulative under-recovery amount is intended to compensate for the harm that the ratepayers may suffer in the future if the sale of the St. Clair Line takes place. Union submitted that considering the harm that is being compensated for is meant to address a future impact after the time of the sale, there is no basis for applying interest prior to the sale.

[35] In its final reply submission, CME stated that Union's reply submission implies that CME relies on the Board's creation of a deferral account for the recording of the ratepayer's share of compensation to justify the claim for interest. CME submitted that this is incorrect and that the creation of a deferral account is not the rationale for the interest claim. Rather, it is the method that the Board adopted for determining compensation that is the principled basis for the claim. In CME's view, the Board has determined that ratepayers are to be compensated for the St. Clair Line subsidy burden they have paid since January 1, 2003. CME noted that the past subsidy burden payment should attract pre-judgment interest in the same way that the prior payment of any other out-of-pocket expenses attract pre-judgment interest.

St. Clair River Crossing Tolls

[37] Union did not include the cost of the NEB-regulated St. Clair River Crossing toll in its calculation of the cumulative under-recovery. Union stated that any cumulative under-recovery amount payable to customers should be limited to the revenues and costs directly attributable to the St. Clair Line itself, and exclude the cost of any upstream pipeline (including the St. Clair River Crossing).

[38] Board staff, CME and FRPO all submitted that this is incorrect and the St. Clair River Crossing toll for the period 2003 to the closing date of the transaction should be included in the calculation of the cumulative under-recovery.

[39] Board staff, CME and FRPO noted that Union had initially acknowledged in its evidence in this proceeding⁵ that St. Clair River Crossing tolls are operating expenses related to the St. Clair Line.

[40] CME and FRPO stated that the Board, in rendering its November 27, 2009 Decision, relied on Union's original evidence which included the St. Clair River Crossing costs as part of the subsidy burden calculation. CME and FRPO submitted that Union cannot now effectively make a material change to the evidence by eliminating the St. Clair Crossing costs from the subsidy burden estimate for the purpose of implementing the Board's November 27, 2009 Decision and Order.

⁵ See Exhibit J1.1

[41] Board staff, CME and FRPO also noted that the St. Clair River Crossing costs are clearly attributable to the St. Clair Line as the St. Clair Crossing tolls are embedded in Union's rates and are costs that Union incurs to generate revenues on the St. Clair Line.

[42] In its reply submission, Union reiterated its position that the Board directed Union to calculate an amount equivalent to the cumulative under-recovery of the asset. Union believes that the asset is the St. Clair Line itself, and does not include the St. Clair River Crossing which is owned by St. Clair Pipelines LP. Therefore, Union believes that the cumulative under-recovery amount related to the St. Clair Line should be limited to the revenues and costs directly attributable to the St. Clair Line, and should exclude the cost of the St. Clair River Crossing which is not part of the asset.

Final Positions of the Parties

[43] Union estimated that for the period January 1, 2003 to March 1, 2010 the cumulative under-recovery of the St. Clair Line will be \$3.951 million. This estimate assumes a transaction date of March 1, 2010, no interest applied to the balances of the cumulative under-recovery, and the exclusion of costs related to the St. Clair River Crossing.

[44] Board staff estimated that for the period January 1, 2003 to May 1, 2010 the cumulative under-recovery of the St. Clair Line will be \$6.577 million plus interest. This estimate assumes a transaction date of May 1, 2010, interest applied to the balances of the cumulative under-recovery, and the inclusion of costs related to the St. Clair River Crossing.

[45] CME and FRPO estimated that for the period January 1, 2003 to December 31, 2010 the cumulative under-recovery of the St. Clair Line will be \$8.101 million (including interest). This estimate assumes a transaction date of December 31, 2010, interest applied to the balances of the cumulative under-recovery, and the inclusion of costs related to the St. Clair River Crossing.

Board Findings

[46] The Board finds that the March 1, 2010 transaction date proposed by Union is appropriate for purposes of determining the cumulative under-recovery, because the

Board will also establish a mechanism whereby the St. Clair Line will be effectively removed from rate base and rates (via deferral account) as of the same date.

[47] The Board finds that Union's exclusion of interest in its estimate of the cumulative under-recovery of the St. Clair Line is appropriate. The Board did not address interest carrying charges in its November 27, 2009 Decision and did not envision the inclusion of interest in the calculation.

[48] The Board finds that Union's exclusion of the costs related to the St. Clair River Crossing is inappropriate. The St. Clair River Crossing toll should be included in the estimate of the under-recovery of the St. Clair Line as the St. Clair Crossing tolls are embedded in Union's rates and are costs that Union incurs to generate revenues on the St. Clair Line through the provision of service under Rate C1. In addition, these costs were included in the original Union estimate of the level of subsidy provided as evidence in the proceeding.

[49] The Board's Decision increases the estimate of the under-recovery of the St. Clair Line from \$3.951 million to \$6.402 million.⁶ The under-recovery amount of \$6.402 million means the ratepayers are allocated approximately 80.32%⁷ of the deemed net gain of the sale of the St. Clair Line.

Removal of Assets from Rate Base

[50] CME and FRPO argued that there are other ratemaking consequences related to the sale of the St. Clair Line. There is the issue of removing the St. Clair Line assets from Union's utility rate base and Cost of Service.

[51] The parties agree that the net book value of the St. Clair Line should be removed from rate base, the question is when. Union takes the position it should be removed after Union's 5-year IRP ends on December 31, 2012. CME and FRPO say the amount should be removed as of December 31, 2010 and reflected in Union's 2011 rates.

⁶ \$3.951M (Union's estimate of the under-recovery of the St. Clair Line) + \$2.451M (St. Clair River Crossing tolls January 1, 2003 – March 1, 2010)

⁷ \$6.402M (estimated cumulative under-recovery of the St. Clair Line) / \$7.97M (deemed net gain)

Board Findings

[52] The Board finds that the net book value and associated expenses should be removed from rate base and rates as of March 1, 2010, so as to coincide with the deemed transaction date. The Board directs that the reduction in the revenue requirement going forward from that date will be captured in a deferral account for later disposition to ratepayers. The underlying rates will also be adjusted in due course.

2009 Earnings Sharing

[53] Union argued that the amount of the cumulative under-recovery should be considered in calculating Union's 2009 regulated earnings for the purpose of calculating any earnings sharing under the incentive regulation framework. CME and FRPO argued that the Board has decided to compensate ratepayers for harm by allocating ratepayers a portion of the deemed net gain. Union's proposal infers that the ratepayers' portion of the net gain would serve to reduce the earnings sharing available to ratepayers for the 2009 period. CME and FRPO submitted that for Union to recover part of the deemed harm by having ratepayers co-fund the compensation in the earnings sharing proceeding would be unfair and contrary to the intent of the Board's decision. They request that the Board reject Union's proposition that the amount of gain allocated to ratepayers can be treated as a reduction to regulated earnings for the purposes of earnings sharing. CME and FRPO requested that the Board address this issue in the current proceeding.

[54] Union's response to CME and FRPO is that the EB-2009-0101 Settlement Agreement in respect of Union's Incentive Rate mechanism, approved by the Board on June 8, 2009, provides that Union may include in the earnings sharing calculation those expenses that would be allowable as deductions from earnings in a cost of service application. On this basis, Union argues that any allocation to ratepayers in respect of the cumulative under-recovery is an allowable expense in the earnings sharing calculation. Union stated that this matter should be determined in its next earnings sharing proceeding.

Board Findings

[55] The Board finds that these issues are appropriately addressed in the relevant Union rates proceeding. The Board notes that Union intends to address this issue in its

upcoming application, which it expects to make on or about March 31, 2010 and that intervenors in that proceeding will be able to test the related evidence and make submissions.

Deferral Accounts

[56] The Board finds it appropriate to establish the following deferral accounts.

- 1) Union will establish a deferral account to record the amount of \$6.402 million, which represents the ratepayers' share of the deemed net gain on disposition of the utility asset as compensation for harm as a result of the transaction. The amount recorded in the deferral account will attract interest carrying charges based on the Board's approved methodology until the time of disposition. The Board directs Union to file a Draft Accounting Order as presented in Appendix A of its December 23, 2009 Submission.
- 2) Union will establish a deferral account which will capture the effect of removing the St. Clair Line (and related St. Clair River Crossing) from rates (including all rate base and OM&A consequences, including return) beginning March 1, 2010. The amounts recorded in the deferral account will attract interest carrying charges based on the Board's approved methodology until the time of disposition. Union shall file a Draft Accounting Order that reflects the Board's Decision.

Cost Awards

[57] Due to the length of this proceeding, the Board adopted a two-phase cost award process. (1) costs incurred up to and including November 30, 2009; (2) costs incurred from December 1, 2009 until the conclusion of the proceeding.

[58] The phased cost award process was available to all intervenors determined to be eligible for cost awards. Eligible intervenors had the option of requesting cost claims for each phase of the proceeding or making a single cost claim for the entire proceeding in Phase 2 of the cost award process.

[59] Cost claims, and any objections to the cost claims, for Phase 2 of the proceeding shall be made in the timeframe set out below.

[60] Note that when determining the amount of the cost awards, the Board will apply the principles set out in section 5 of the Board's Practice Direction on Cost Awards. The maximum hourly rates set out in the Board's Cost Awards Tariff will also be applied.

THEREFORE THE BOARD ORDERS THAT:

- 1) The deemed sale price of the St. Clair Line for ratemaking purposes shall be \$13.17M. The deemed net gain on sale of the St. Clair Line shall be \$7.97 million.
- 2) Union's ratepayers shall be allocated \$6.402 million of the deemed net gain on the sale of the St. Clair Line.
- 3) Union shall file the following with the Board and forward a copy to all intervenors by **March 15, 2010**:
 - a) the Draft Accounting Order which was filed as Appendix A to Union's December 23, 2009 Submission; and
 - b) a Draft Accounting Order reflecting the Board's Decision to establish a deferral account to record the impact of removing the St. Clair Line (and related St. Clair River Crossing) from rates (including all rate base and OM&A consequences) beginning March 1, 2010.
- 4) Board staff and intervenors wishing to make comments on Union's Draft Accounting Orders may do so by filing such submissions with the Board Secretary and serving a copy on Union by **April 1, 2010**.
- 5) Union shall file reply to any comments received by filing such replies with the Board Secretary and serving a copy on all parties by **April 15, 2010**.
- 6) Intervenors shall file with the Board and forward their respective cost claims for Phase 2 of the proceeding by **April 30, 2010**.
- 7) Union shall file with the Board and forward to the applicable intervenor any objections to the claimed costs by **May 14, 2010**.

- 8) The applicable intervenor shall file with the Board and forward to Union any responses to any objections for cost claims by **May 28, 2010**.
- 9) All filings to the Board must quote the file number, EB-2008-0411, be made through the Board's web portal at www.errr.oeb.gov.on.ca, and consist of two paper copies and one electronic copy in searchable / unrestricted PDF format. Filings must clearly state the sender's name, postal address and telephone number, fax number and email address. Please use the document naming conventions and document submission standards outlined in the RESS Document Guideline found at www.oeb.gov.on.ca. If the web portal is not available you may email your document to the address below. Those who do not have internet access are required to submit all filings on a CD or diskette in PDF format, along with two paper copies. Those who do not have computer access are required to file 7 paper copies. All communications should be directed to the attention of the Board Secretary office at BoardSec@oeb.gov.on.ca, and be received no later than 4:45 p.m. on the required date.

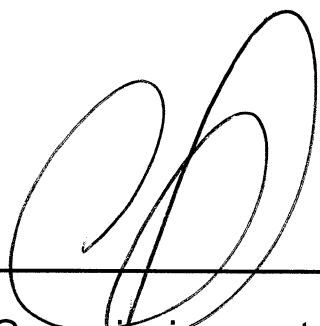
DATED at Toronto, March 2, 2010.

ONTARIO ENERGY BOARD

Original signed by

Kirsten Walli
Board Secretary

This is Exhibit 9 to the Affidavit of
Jack Hughes, sworn before me this
29 day of November, 2010.



A Commissioner etc.



ONTARIO ENERGY BOARD

FILE NO.: EB-2009-0422

VOLUME: 1

DATE: March 1, 2010

Gordon Kaiser	Presiding Member and Vice-Chair
Cathy Spoel	Member
Cynthia Chaplin	Member

1 we were talking about earlier.

2 So the financial -- we can get the revenues from --
3 confidentially from doing the math on these contracts.
4 Right?

5 MR. BAKER: Correct.

6 MR. THOMPSON: Then in terms of the costs, then, that
7 we are trying to measure, we have the -- in my illustrative
8 example, I used \$35 million of costs using the three items
9 we know about and the one that is confidential, just making
10 an assumption. Right? Are you with me so far?

11 MR. BAKER: Yes.

12 MR. THOMPSON: Okay. Then in terms of the -- so the
13 return on that amount in a utility return calculation,
14 based on the assumptions that we presented, would be
15 assumed 40 percent equity, and we then apply 9.75 percent
16 to -- multiplying 40 times my illustrative 35? That would
17 be the equity cost at a utility return level?

18 MR. BAKER: I am following you.

19 MR. THOMPSON: Okay. Then we take 60 percent of that
20 number, and that would be the debt component, and apply
21 6 percent to that. That would be the debt cost; is that
22 correct?

23 MR. BAKER: Correct.

24 MR. THOMPSON: There would be a tax add-on to the
25 utility component. Is 30 percent tax rate in the ballpark?

26 MR. BAKER: I think it is roughly in the ballpark.

27 MR. THOMPSON: Okay. And we then have depreciation.
28 And in the Exhibit J1.1, the rate being used would appear

1 to be about 5 percent. Is that the rate that has been used
2 in this calculation, in number 5?

3 MR. BAKER: I am not sure. That sounds about right.
4 I think it is reasonable.

5 MR. THOMPSON: Well, subject to check -- would you let
6 me know if it is inappropriate to use 4 percent?

7 MR. BAKER: Yes, we will.

8 MR. THOMPSON: All right. Then we have the St. Clair
9 charge, the Belle River costing charge totalling \$600,000,
10 and the property taxes and O&M, you say, at a million-
11 three; is that right?

12 MR. BAKER: That's right.

13 MR. THOMPSON: Those are the total costs, as I make
14 it, or am I missing something?

15 MR. BAKER: No. I think you've got it.

16 MR. THOMPSON: So if I multiply those revenues by 12
17 and subtract those costs, do I get a negative number?

18 MR. BAKER: Again, I think you are trying to do a
19 calculation on an annual basis. When we look at a project
20 or a capital investment, we are looking at the return over
21 the life of that asset. So in this case, we do our
22 economics over a 40-year life.

23 So, you know, while you may have a return of X in year
24 1 of a project, that doesn't mean that you are going to
25 have that same return for the life of the -- for the 40-
26 year life of the asset.

27 MR. THOMPSON: All right. So just stopping -- the way
28 I have done it is the way the Board would traditionally do

1 these.

2 MR. BAKER: On an annual basis, that's right.

3 MR. THOMPSON: Right. Would you agree with me, when
4 you do it that way, the return is certainly not negative?

5 MR. BAKER: I would agree with you, and we obviously
6 wouldn't expect it to be. If a project has a negative
7 return in year 1, we wouldn't be here talking about it.

8 MR. THOMPSON: Right. But what gives it, then, the
9 negative return in the calculation that you have done is
10 you are taking it out 40 years and you're making some
11 assumptions at the end of five, seven and ten about these
12 existing contracts, are you?

13 MR. BAKER: I don't think we are making any
14 assumption.

15 We had understood the question to be: Based on the
16 contracts and the precedent agreements that we have, what's
17 the return on the project? So we have not made any
18 assumptions post the determination of those contracts.

19 MR. THOMPSON: So when you take it out 40 years, what
20 does that answer mean? That they're in effect not renewed?

21 MR. BAKER: That's right.

22 MR. THOMPSON: So the calculation that's producing a
23 negative assumes three contracts for five years end at five
24 years?

25 MR. BAKER: That's right.

26 MR. THOMPSON: And the one at seven years ends at
27 seven years, and the one at ten years ends at ten years?

28 MR. BAKER: That's right.

1 MR. THOMPSON: Right. Could you redo the calculation,
2 please, assuming that they all continue for 40 years, by
3 way of undertaking?

4 MS. WONG: Mr. Thompson, our concern here is that we
5 really don't know what the relevance of all of this is.
6 The proposal is an at-risk pipeline where it is at
7 negotiated rates. That was the proposal that the Board
8 looked at in the St. Clair application. That was the
9 proposal that the Board found had benefits to the system.

10 We could do all kinds of assumptions here that have no
11 foundation. At the moment, all that is firm are the five
12 contracts with those dates.

13 MR. KAISER: Doesn't it go to the reasonableness of
14 the cap?

15 MR. BAKER: I would say, on that, that the
16 reasonableness of the cap, when we looked at the cap for
17 the tariff, it was, you know, as Mr. Isherwood described.
18 It was trying to be able to have a tariff that was wide
19 enough that would allow us to capture fluctuations in the
20 market, not based on, you know, a traditional cost of
21 service methodology in terms of what the upper limit of
22 your toll would be.

23 MR. KAISER: Thank you.

24 MR. THOMPSON: Well, I submit it is arguably relevant
25 to the reasonableness of the cap. Could you give us the
26 undertaking so we can see the number, please?

27 MS. WONG: No. That is an objection. We would put
28 ourselves in the hands of the Board. Our view is it is not

1 relevant for the reasons I stated, that all we have at the
2 moment are the five contracts that have been entered into,
3 and speculation as to what might happen in the future is
4 not relevant to an at-risk pipeline.

5 As far as the cap goes, the witness's answer is that
6 it is meant to capture market opportunities as they arise.
7 It has nothing to do with the return on equity over the
8 long term.

9 MR. THOMPSON: Well, I submit it is reasonable to the
10 -- where you set the limit on this cap, Mr. Chairman,
11 whether it is two times the tradition, or one-and-a-half
12 times the traditional level or something close to Vector.

13 I think -- I am in the Board's hands if it would be
14 helpful.

15 MR. KAISER: How is the cap set in the case of Vector
16 by the NEB; do you know?

17 MR. BAKER: My understanding is that the cap on Vector
18 was actually done through a negotiated settlement with the
19 shipper, so I am not sure whether the NEB formally
20 adjudicated that, or not.

21 But, again, I would go back, if it is helpful for the
22 Board, in Union's C1 rate schedule, which is our short-term
23 interruptible transportation, we do have -- again, subject
24 to check, I believe it is a \$75 a gigajoule max rate on our
25 C1 tariff, and it is there for the exact same reason. Not
26 that we are expecting that that is going to be the rate by
27 which we are providing service every day, but to the extent
28 that there is a situation in the market that happens, we've

1 got the flexibility within the toll to meet that market
2 need.

3 And in the case of Union, that goes, in terms of the
4 revenue stream, as part of our regulated operations.

5 MR. ISHERWOOD: I would just add to that, if I could,
6 on the TransCanada Pipeline side, their interruptible toll
7 starts at 120 percent of firm. So it is not -- Vector
8 sounds like it is a cap based on firm. TransCanada
9 actually starts -- the minimum price is 120 percent of
10 their firm toll, and I don't believe there is a cap. It
11 just runs from there. It is negotiated.

12 MR. KAISER: You indicated -- this is going back to
13 Mr. Thompson's interrogatory 1. It sort of bears on this.
14 I was going to come to it, but before we rule on this cap
15 issue, let me ask you.

16 Those were questions asking what you were going to do
17 with Michigan Public Service Commission regarding the
18 approvals to operate the Dawn Gateway Pipeline in Michigan,
19 as well as approval of the tariff.

20 And to paraphrase, you said, Well we haven't filed
21 anything yet, but we intend to apply for the same type of
22 negotiated rates with a cap, as we are in Ontario, and we
23 are hopeful that Michigan will grant us that.

24 How are you going to determine the cap in that filing,
25 or do you know?

26 MR. BAKER: I am not aware of exactly how we are
27 planning to file that application with the Michigan Public
28 Service Commission.

1 MR. KAISER: So what's the purpose of the cap? You
2 would ordinarily think that the purpose of a cap was to
3 protect the consumer, i.e., the price couldn't go above
4 that amount, that there was some protection you get.

5 And in this interrogatory 5 of Mr. Thompson, you had
6 this graph that bounced around, and, as Mr. Isherwood
7 indicated in -- I forget if it was in January 2003 or
8 January 2004 -- it went up to \$8.00 or whatever it was. It
9 just went nuts in one day.

10 Does that extreme represent the cap you have chosen?

11 MR. ISHERWOOD: Does that, sorry, in the extreme?

12 MR. KAISER: There is an extremely high differential
13 in the graph that you attached to your ultimate answer to
14 Interrogatory 5(f).

15 MR. ISHERWOOD: Our firm cap is a dollar and our
16 interruptible cap would be at two dollars. So I think the
17 dollar and two dollars would capture a lot of the
18 opportunity along that line. It wouldn't capture the
19 extreme. It looks like there is two or three days it
20 wouldn't capture.

21 MR. KAISER: Okay.

22 MR. BAKER: I think to answer your question, Mr.
23 Chairman, we didn't set it at the maximum that we have seen
24 historically.

25 MR. KAISER: So when you did set it at the rates you
26 have just described, you were thinking of what, that this
27 was a reasonable range?

28 MR. BAKER: That's right. Based on what we had seen

1 historically.

2 MR. KAISER: Of price variances that one might see
3 over a long period of time?

4 MR. BAKER: That's correct.

5 MR. THOMPSON: Well, there is the outstanding item of
6 the undertaking.

7 MR. KAISER: We will rule on that after lunch, Mr.
8 Thompson, is that satisfactory?

9 MR. THOMPSON: That's fine. I am just about done.
10 That's fine. Let's leave it.

11 MR. KAISER: Do you want to take a break now for
12 lunch? Do you have more?

13 MR. THOMPSON: I thought that's what you were
14 signalling but...

15 MR. KAISER: I was.

16 MR. THOMPSON: That's fine.

17 MR. KAISER: We will come back in an hour.

18 --- Luncheon recess taken at 12:30 p.m.

19 --- Upon resuming at 1:37 p.m.

20 MR. KAISER: Please be seated.

21 Mr. Thompson?

22 MR. THOMPSON: Thank you, Mr. Chairman. I think Ms.
23 Wong had a preliminary matter dealing with this document.

24 **PRELIMINARY MATTERS:**

25 MS. WONG: And I was wondering, sir, if you had a
26 ruling on the objection?

27 MR. KAISER: Yes, I do. We have decided, Mr.
28 Thompson, not to order the production of that information

1 at this time.

2 If there is an issue with respect to these caps, they
3 can be raised by individual complainants on the basis of
4 actual facts at the proper time as opposed to worrying
5 about forecasting some proper cap at this point.

6 MS. WONG: Thank you, sir.

7 Before the break, there had been an undertaking given
8 regarding the Vector letter of October 16, 2009 --

9 MR. KAISER: Yes.

10 MS. WONG: -- and Vector rates. I have provided to
11 Ms. -- to Board Staff a copy of the letter and some toll
12 schedules, and I was going to ask Mr. Isherwood just to
13 make some brief comments on the material. So perhaps we
14 could mark that as the next exhibit.

15 MR. KAISER: Yes, we will. What number is this?

16 MS. WONG: I think it is K1.13.

17 MS. DJURDJEVIC: That's right.

18 **EXHIBIT NO. K1.13: LETTER DATED OCTOBER 16, 2009 FROM**
19 **VECTOR.**

20 MR. ISHERWOOD: The handout actually is three pieces.
21 It is a letter that Vector Pipelines sent to the National
22 Energy Board on October 16th, and then what we also
23 attached is Vector's -- off their website, their current
24 interruptible toll from the Canadian border to Dawn, and
25 also their US toll, as well, is I believe the third page.

26 When Vector first negotiated a settlement with their
27 shippers, prior to the pipeline being built, they had an
28 obligation to come back to the NEB annually with a revised



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Gordon Kaiser	Presiding Member and Vice-Chair
Cathy Spoel	Member
Cynthia Chaplin	Member

1 Those documents, comprising in combination the tariff,
2 include the Dawn Gateway Pipeline Limited Partnership
3 general terms and conditions. That is segment 1. Segment
4 2 is the toll schedule for firm transportation service.

5 Segment 3 is the statement of tolls, firm
6 transportation service tolls. That is found at page 26
7 under schedule 3.

8 The fourth segment is the interruptible transportation
9 agreement. It starts at page 27 under this schedule.

10 And the fifth segment is the interruptible
11 transportation service schedule, and the sixth, if I
12 haven't missed one, is the interruptible transportation
13 service tolls.

14 I may have missed one here. Let me just check.

15 Yes. The first one are the general terms and
16 conditions. The second is the firm transportation
17 agreement. The third is the firm transportation toll
18 schedule. I believe I missed that. The fourth is the
19 statement of tolls for firm transportation service.

20 Fifth is the transportation service agreement. Sixth
21 is the transportation toll schedule, and the seventh is the
22 statement of tolls for interruptible transportation
23 service.

24 We support and we have no -- we have no specific
25 concerns with the components of the proposed tariff, except
26 the tolls. Except the tolls.

27 So the submissions I am making to you relate to the
28 statement of tolls for firm transportation service at page

1 26 and the statement of tolls found at page 35, under
2 schedule 3.

3 The question that we ask you to consider and determine
4 is whether the tolls specified in these schedules for firm
5 and interruptible service, specify -- use caps that are
6 reasonable in the context of NEB group 2 regulation. That
7 is the point that I will be addressing now.

8 We question the reasonableness of these caps being
9 proposed for both firm service and interruptible service.

10 The firm caps being proposed are, first of all, a
11 demand charge cap of US \$30 per decatherm per month. And
12 the usage rate and overrun charge is the equivalent of that
13 on a daily basis. It is a one dollar per US -- one US
14 dollar per day per -- one US dollar per decatherm per day.

15 The interruptible proposed caps do not involve a
16 demand charge, but the usage rate and the authorized
17 overrun rate are two US dollars per decatherm per day which
18 is essentially 200 percent of the usage and authorized
19 overrun rates for firm service.

20 Our analysis of the question, are these caps
21 reasonable, in the context of NEB group 2 equivalents
22 regulation starts with a submission that NEB group 2
23 regulation is cost of service-based and not value of
24 service based. This, we submit, is evident from the
25 guidelines that I had referred to previously and again, at
26 page 2, as I mentioned, the guidelines require the filing
27 of financial statements showing revenues and costs
28 associated with the regulated pipeline. Stopping there.

1 That is a feature of cost of service regulation, not value
2 of service.

3 The guidelines do not require the production of
4 information showing the spreads between commodity prices at
5 two different points. The guidelines do require group 2
6 companies to include in their tariffs an explanatory note,
7 the note reads as follows:

8 "The tolls of the company are regulated on a
9 complaint basis. The company is required to make
10 copies of tariffs and supporting financial
11 information readily available to interested
12 persons. Persons who cannot resolve traffic and
13 tariff issues with the company may file a
14 complaint with the Board and in the absence of a
15 complaint the company does not normally undertake
16 a detailed examination of the company's tolls."

17 The guidelines go on and say, however, that it is the
18 responsibility of a group 2 company to provide its shippers
19 and interested parties with sufficient information to
20 enable them to determine whether a complaint is warranted
21 and, importantly, upon receipt of the complaint, the Board
22 can examine the toll, make a toll interim, and can request
23 additional information relating to -- information of the
24 type that is required of group 1 companies specified in
25 section P of the Board's filing manual.

26 Section P and Guide P of the Board's filing manual
27 relates to cost of service filings by group 1 pipelines.

28 So the guideline, in our submission, indicates, we

1 submit fairly convincingly, that the regulation -- NEB
2 group 2 regulation is light-handed, but linked to cost of
3 service analysis, if necessary.

4 That submission, I submit, is reinforced when you
5 consider the Vector tariff that was discussed at some
6 length yesterday. The document in evidence is Exhibit
7 K1.13.

8 The Board's decision in Vector, I will just give you
9 the reference. It is GH-5-98. It is a March 1999 decision
10 of the National Energy Board.

11 When you read that decision, the tolls and tariffs
12 part of it, you will see what I understood Mr. Baker to
13 acknowledge yesterday, that the negotiated tolls in that
14 case with shippers were essentially cost of service tolls.

15 Then the toll schedules do have some variances
16 permitted, but in reference to the cost of service base.

17 I submit you can see that in the attachments to
18 Exhibit K1.13, where you have, in the charges for long-term
19 transportation service tolls, caps that are considerably
20 below what Dawn Gateway is proposing and I submit,
21 obviously derived from some cost of service base. And I
22 submit the reasons for decision support that.

23 But what Vector is permitted to do in the case of
24 shorter terms is to negotiate tolls capped at
25 certain percentage levels over and above those cost-based
26 charges.

27 So for ten-year firm transportation service or less,
28 the cap goes up to 115 percent. And - sorry, for ten

1 years, it is 115 percent and that is something higher than
2 the 15-year toll.

3 Then for transportation service for less than ten
4 years, it can be up to 300 percent of the cost-based toll.
5 So that gives you some idea of how far the NEB is going to
6 go under group 2 regulation, with long-term transportation
7 that is in the 1 to 10- year range, which is what we're
8 dealing with with Dawn Gateway.

9 The five precedent agreements. Three are for five
10 years. One is for seven. And one is for ten.

11 Similarly, when you look at interruptible service, it
12 is capped in relation to the 15-year cost-based toll at
13 300 percent above that cap.

14 So it is in that context that we, then, look at the
15 level of caps that Dawn Gateway is proposing in relation to
16 an estimate of what the cost-based number would look like.
17 And that, then, brings me to this confidential document
18 that forms part of my argument. I don't know if we need to
19 give it a number. Perhaps we should, just for --

20 MS. DJURDJEVIC: I think we should. That will be
21 X2.1.

22 **EXHIBIT NO. X2.1: CONFIDENTIAL DOCUMENT.**

23 MR. THOMPSON: The calculations here are based on the
24 examination -- my examination of the witness panel
25 yesterday.

26 What I am attempting to do is look at the revenues
27 that are under these confidential precedent agreements,
28 which you have in your possession. There are five of them.

1 They each specify a monthly reservation charge, and
2 the witnesses agreed that if you take the total of those
3 monthly reservation charges, multiply them by 12, you will
4 get the total revenues to be realized by Dawn Gateway under
5 those precedent agreements for --

6 MR. KAISER: Mr. Thompson, do we need to go off the
7 air?

8 MR. THOMPSON: I don't think so. I am not going to
9 mention any numbers. I am just going to point you to them.

10 MR. KAISER: All right. I understand.

11 MR. THOMPSON: I am going to try and not get myself
12 into the penalty box here. I am just trying to explain to
13 you where these numbers come from.

14 So what I have tried to calculate here is the
15 situation at 78 percent utilization, because these five
16 precedent agreements use up 78 percent of the capacity.

17 So the first number that you see on my exhibit comes
18 from those confidential documents. Then in terms of the
19 costs - and I am doing a utility-type calculation here that
20 Mr. Baker and I discussed - we have the St. Clair crossing
21 and Belle River costs. That number is on the record of
22 600,000. That is in CME No. 5.

23 We have O&M and property taxes. This is the number,
24 again, from the record in CME 5 of \$1,300,000. We question
25 the level of that amount, but for the purposes of this
26 analysis we have accepted it.

27 The next number I put in is depreciation. When I
28 discussed this with Mr. Baker, I suggested 4 percent, but

1 when he came back and was describing how Dawn Gateway did
2 its internal calculations, he used a 40-year time Horizon.
3 So I have used 2.5 percent.

4 MR. THOMPSON: That number is not in the record and is
5 derived from confidential information, which I will refer
6 to in a moment.

7 The return on equity percentage that I have used is
8 9.75. That comes from your recent cost of capital report.
9 I have used taxes at 30 percent, and I have used debt costs
10 at 6 percent, and we have used a 60 percent debt/40 percent
11 equity ratio.

12 Again, these numbers, return on equity, taxes and debt
13 costs, derive from numbers, some of which are in the
14 record, but the total is not.

15 Just on that point, if you would drop down to the
16 bottom, you will see I've got here DGLP capital costs, and
17 based on the discussion we had with the witnesses
18 yesterday, they consist of the NBV of the St. Clair line at
19 about 5 million that's on the record, the \$2.5 million of
20 compensation that Dawn Gateway is contributing to Union's
21 obligations to its shareholders -- sorry, to its ratepayers
22 as a result of your decision in the 0411 case.

23 The next item I have characterized "bonus to Union".
24 That's the success fee that Mr. Baker was talking about.
25 Then the last item, Bickford to Dawn, that is a
26 confidential number that derives from the documents
27 provided by Union in the course of the calculation exercise
28 that followed your decision in the 0411 case.

1 So that gives the total estimated capital costs of the
2 Dawn Gateway line based on the evidence. That number is
3 confidential.

4 Then on the left-hand side, I have subdivided that
5 between equity at 40 percent and debt at 60 percent, and it
6 is those numbers to which the percentages up above have
7 been applied to produce my calculation of return on equity,
8 taxes and debt costs.

9 So what you see from this analysis is that at
10 78 percent occupancy, there's a considerable amount that is
11 in excess of what I call a utility return. You will see
12 that amount as the third number down the column.

13 What I then do is attempt to calculate what that
14 excess does in terms of the equity return. So there,
15 again, I take taxes on the excess at 30 percent and I get
16 after-tax -- an after-tax excess amount, which is then
17 added to the utility return amount above, and it produces
18 a percentage that Dawn Gateway will earn, based on these
19 contracts in place, that is almost two times the utility
20 return.

21 So what does that mean? It means the numbers
22 reflected in these confidential contracts are already
23 producing, at 78 percent occupancy, 200 percent, roughly,
24 of more than the cost-based charge. And a ceiling -- if
25 you use the NEB guideline, a ceiling of 300 percent above
26 this base would be less than the 15 cents amount that Mr.
27 Isherwood acknowledges is the traditional upper limit of
28 the range of long-term commodity price differentials

1 between Michigan and Dawn.

2 On the second page of this document, essentially what
3 I asked: What would this look like if there is 100 percent
4 utilization, assuming that the 80,000 decatherms per day is
5 sold at the lowest price paid by the precedent agreement
6 shippers?

7 And so I have gone through that calculation in the
8 same manner as I did the previous one. You see there that
9 if they sell out in November of 2010 when they are
10 proposing another open season in 2010, if they sell out in
11 2010 at around the same prices that they're getting now,
12 then the amount that Dawn Gateway will realize at these
13 prices increases to something in the order of about three
14 times the utility return, 300 percent.

15 When you then overlay on that what would 15 cents as a
16 cap -- what potential would that provide, it allows -- my
17 calculations, it gives them another 150 percent to
18 200 percent head room above either the 200 -- either the
19 78 percent utilization, two times equity return, or the
20 100 percent, three times equity return.

21 So that analysis, in my respectful submission, prompts
22 us to submit that the \$30.00 US per day per decatherm
23 demand charge is about six times -- more than six times too
24 high.

25 It should be in the order of \$4.50 US dollars per
26 decatherm per day. And the same thing with the usage
27 charge and the unauthorized overrun charge. That is way
28 too high.

1 We submit that it should be 15 cents and not the
2 dollar.

3 And that allows this company an opportunity to earn
4 some three-times a utility return. More than three times.
5 Sorry. It allows them to earn 4.5 to 5 times utility
6 return at that level.

7 That, I submit, is generous in the context of the
8 NEB's regulation of Vector where the caps are set at
9 300 percent.

10 So we urge you to examine these caps in the context of
11 this analysis and we invite you to conclude that they are
12 too high. We are not dealing here, in my submission where
13 we are dealing with long-term storage. One needs to be
14 careful before you commoditize long-term storage to the
15 degree that the company is proposing.

16 We would submit that the lower caps we're proposing do
17 not prejudice the company in terms of the contracts that it
18 has entered into, nor is it likely to prejudice them in the
19 effort to sell the rest under long-term contracts, because
20 the witnesses acknowledged for long-term, purchasers are
21 going to look at the traditional spread, 10 to 15 cents.

22 We do acknowledge that there is a tension between what
23 should the caps be and what information is available to
24 prospective purchasers, if, for example, the contracts, the
25 pricing in the contracts were available to someone
26 considering acquiring service from Dawn Gateway, we would
27 probably have less concern about the caps because they
28 would know the prices being paid.

1 We still think the caps are too high, but the more
2 information that is available on a contract-specific basis
3 in a timely fashion to market participants, then the
4 concern about the level of caps tends to decline.

5 Based on what the company's proposing in this case, we
6 submit the Board should be cautious about establishing the
7 caps. And perhaps revisit the situation after the open-
8 season in November, assuming they get this thing up and
9 running because if it is all sold out under long-term, I
10 think the caps that we are suggesting will be just fine.

11 So that is our submission. The group 2 equivalents
12 concept, in our submission, calls for some linkage of caps
13 to cost of service and the linkage that we are suggesting
14 of \$4.50 for the demand charge, 15 cents for the commodity
15 charge, and on the interruptible we would envisage two
16 times the usage charge and authorized overrun charge for
17 firm would be -- should be sufficient. So that would be 30
18 cents.

19 We urge you to consider those caps as reasonable and,
20 once again, revisit the situation if everything doesn't
21 sell out on a long-term basis in November of 2010.

22 MR. KAISER: Mr. Thompson, are the caps in Vector, was
23 that essentially a settlement between the parties? Or was
24 there an NEB decision on the proper amount of the cap?

25 MR. THOMPSON: It was a settlement with the parties,
26 as I understand it, sir, based on my reading of the
27 decision. I wasn't there.

28 MR. KAISER: Is that the only case that we are aware

1 of, where the caps? Or are there other cap amounts
2 floating around outside of the Vector ones?

3 MR. THOMPSON: I think Mr. Baker mentioned some and I
4 should know them but there are caps in TransCanada's
5 situation for interruptible, as I recall it. Maybe some
6 other. Well maybe Mr. Isherwood can help us.

7 MR. KAISER: What I am really asking, are there any
8 NEB decisions as opposed to settlements on the
9 reasonableness of cap amounts?

10 MR. THOMPSON: I think there are. But I would have to
11 undertake to find those for you.

12 At the NEB, there have been debates as to the pricing
13 of short-term services and interruptible services and
14 various combinations, short-term firm services.

15 My recollection is that some of those services have
16 been capped at a percentage that is above their regulated
17 FT service toll.

18 MR. KAISER: You said that your concern with cap
19 levels goes down as the amount of information goes up, or
20 paraphrasing what you said?

21 MR. THOMPSON: Right.

22 MR. KAISER: The fact, unlike the NEB, as I understand
23 it, in this case there is going to be an application of
24 STAR and then some other concessions that they made.

25 Is the information available in this case greater
26 than, in your view, than would exist under the NEB regime?

27 MR. THOMPSON: I couldn't answer that with any degree
28 of certainty.

1 I think the answer is "yes" but I don't think the
2 pricing information under STAR is -- there's not enough of
3 it to be sufficiently helpful.

4 The other point that I guess I have some concern about
5 is that the regulator does have an obligation to prevent a
6 regulated transportation utility from earning excessive
7 returns or super-normal returns so that is another
8 consideration, I submit, that bears on what is the
9 appropriate level of caps.

10 MR. KAISER: Well, that responsibility -- I mean you
11 say we have a responsibility to make sure that these aren't
12 excessive returns. I guess you would say, have said, they
13 are excessive returns. But is not the theory here that
14 this is a totally at risk pipeline? The shareholders is at
15 risk. The ratepayer is not at risk. And also that there
16 has been -- nobody has contested this, that these customers
17 are big boys, they know what they're doing, and they have
18 alternatives.

19 So are we trying to create some fudge in the middle
20 here. Either this is essentially a competitive market not
21 requiring us to make a judgment about returns are excessive
22 or not. I mean what's the theory for even having caps at
23 all?

24 MR. THOMPSON: Well, it is --

25 MR. KAISER: Outside of the NEB does that.

26 MR. THOMPSON: It is a regulated pipeline and it is
27 not a fully competitive market, in my submission.

28 If you start treating transportation as a commodity,

1 then utilities are going to make a killing and that, in my
2 submission -- there is not enough transportation. The fact
3 that they sold out 78 percent before they even got up and
4 running and that Vector is fully subscribed, to me, should
5 prompt the Board to be very cautious before it treats Dawn
6 Gateway as, in effect, a commodity.

7 The other point there that I would urge you to
8 consider are these notice of proposed rule-making by FERC.
9 As I understand it, the FERC is introducing more pricing
10 information requirements -- the rule is proposing to
11 introduce that more pricing information be available, which
12 transmits to me a concern that the -- too much light-handed
13 regulation of transportation is leading to some
14 difficulties.

15 I hope that is responsive to your question, but...

16 MR. KAISER: The only other question I have, and I may
17 have the answer to my question, but we had said, when we
18 were ruling on your request for further information to
19 determine the reasonableness of the caps --

20 MR. THOMPSON: Right.

21 MR. KAISER: -- that, well, that can be dealt with on
22 a case-by-case basis as part of the complaint process, but
23 I suppose your answer would be, Well, once you have set the
24 caps, we have set the caps. I mean, you could revisit the
25 caps, but it comes back to the same question.

26 Somebody could come along six months from now and say,
27 Look at these prices and look at the rate of return. It is
28 six times the utility rate of return. The caps are

1 unreasonable.

2 So I guess you would say the cap issue is -- I mean, I
3 guess I am saying: Is that, in your view, justification
4 for us to say, Well, there may be an issue on these caps,
5 but these customers can come forward and they can make the
6 argument on the basis of actual facts at the time that the
7 caps are unreasonable? We don't have to get into that now?

8 MR. THOMPSON: Well, that is really saying no caps.

9 MR. KAISER: Right.

10 MR. THOMPSON: And the company is proposing caps and
11 we are questioning whether their caps are appropriate.

12 Again, I would caution you that you may end up there,
13 but I would urge you to go there slowly to see how it plays
14 out.

15 As I say, if they're sold out in November, then there
16 is not a problem for anybody, but the caps issue --
17 somebody is going to get victimized, in my submission, if
18 the caps are not examined closely by this Board, and I
19 therefore urge you to set them at a reasonable level.

20 MR. KAISER: The victims being the people who might
21 buy this capacity that is left over?

22 MR. THOMPSON: That's right, and then discover later,
23 Gee, somebody else got 50,000 decatherms at half of what I
24 paid. And to me that would -- is not -- these tolls have
25 to be just and reasonable.

26 MR. KAISER: Isn't the answer to that that they
27 bellied up to the bar early and made long-term commitments
28 and allowed the company to build the pipe, as opposed to

1 somebody that comes down later and just want a little bit
2 who is going to pay more?

3 MR. THOMPSON: No. My understanding is that they
4 agreed to these prices because they fall within this range.

5 If you accept that evidence of Mr. Isherwood that the
6 range is ten to 15 cents, then the upper end of their
7 negotiating ability should be that number, in my view.
8 It's not without its difficulties, I concede.

9 There is one other point that I wanted to -- have I
10 finished responding to you, sir?

11 MR. KAISER: Yes.

12 MR. THOMPSON: And that is other matters that are not
13 part of the approvals sought in this case, and that, in my
14 submission, pertains to the discussion that was had on the
15 record about the outstanding compensation issue.

16 I submit that that issue should not have a bearing on
17 the Dawn Gateway decision, because the economics for Dawn
18 Gateway will not change with your decision on compensation.

19 Everything over 2.5 million is for Union's account,
20 based on the arrangements Dawn Gateway has made with Union,
21 and the debate over whether the cost to Union is between
22 1.5 million and 5.5 million over what Dawn Gateway has
23 contributed is apparently going to be brought forward into
24 the earnings sharing proposal that Union will make later
25 this year.

26 As I understand it, whatever Union has to pay over the
27 2.5 million Union will be seeking to deduct in its
28 calculation of earnings over the threshold that is to be

1 shared with ratepayers.

2 So I guess I would conclude with the Lord giveth and
3 the Lord taketh away, but, fortunately, you folks and not
4 Union will speak for the almighty when that issue comes
5 forward.

6 But I say that is not something that should bear on
7 your decision in this case.

8 And unless there are any further submissions, those
9 are my submissions on -- any further questions, those are
10 my submissions on behalf of CME.

11 MR. KAISER: Thank you.

12 MS. CHAPLIN: Mr. Thompson, I believe you would have
13 us use this Vector statement of tolls as a bit of a model
14 or framework for how we might analyze the Dawn Gateway
15 proposal. I am just wondering how comparable they are
16 since, in the case of Dawn Gateway, there isn't a suite of
17 contracts for 15 years.

18 I am just wondering if that has any bearing on it, in
19 terms of you've done an analysis which shows a level of
20 return and you have characterized it in a particular way.
21 But I am just wondering if that analysis fully reflects the
22 fact that those contracts -- I mean, there is one ten-year
23 contract and one seven-year contract, but three five-year
24 contracts, if I am correct in my...

25 So there is not that same kind of longevity as there
26 would be if all of the contracts were 15 years.

27 MR. THOMPSON: Yes, I agree. So what I was focussing
28 on was the Vector tariff, firm transportation service tolls

1 for a term of less than ten years, where the cap is set at
2 well above the cost-based toll, but it is 300 percent.

3 What my analysis shows is that a cap at 15 cents would
4 provide a 500 percent increase above a cost-based toll at
5 100 percent occupancy and about 450, I think it is --
6 sorry, 350 at 78 percent occupancy.

7 So I was trying to suggest that in the context of that
8 aspect of Vector's toll, this proposal for 15 cents or 450
9 was, if anything, more generous than what the NEB would
10 allow.

11 MS. CHAPLIN: Okay.

12 With respect to the comments you made about the
13 concern about shippers being potentially victimized by the
14 extent of these caps, can you help me, again, with how that
15 would happen?

16 I mean, my perception is that given the long-term
17 trend is around the 10 to 15 cents, why would a shipper
18 feel any compulsion to contract at more than what the
19 service is worth?

20 MR. THOMPSON: Well, tolls on a -- I will try to
21 answer it this way. Tolls on a regulated transporter are
22 supposed to be just and reasonable, and under the NEB it is
23 similar -- the wording is similar prices for the similar
24 service or same prices for the same service.

25 So if someone contracts for -- say they have head room
26 of \$30 dollars, US dollars, per decatherm per day, someone,
27 when the situation is tight, could sign up for something
28 well in excess of what a ten-year shipper is paying now.

1 It could sign up for ten years.

2 Those two tolls would be discriminatory, in my
3 respectful submission, and that party would have a right to
4 complain. They may buy it because they are desperate, but
5 that doesn't relieve the obligation of regulating these
6 tolls so that they remain non-discriminatory.

7 It would be the same thing with a residential. You
8 could say, Well, he could pay ten times as much. So what?
9 You know, he's done it as a -- I am not talking about
10 transportation, but that concern --

11 MS. CHAPLIN: Your view is that faced with short-term
12 market situation which the price might be unusually high, a
13 shipper might feel compelled to sign a long-term contract
14 that was reflective of those short-term market
15 circumstances?

16 MR. THOMPSON: Well, if there is no long-term space
17 available, they may have to buy a series of short -- it
18 comes back to pipeline capacity for transmission is
19 regulated.

20 This is not unregulated storage. That's the way this
21 company likes to characterize it. It is just an adjunct of
22 our unregulated storage business.

23 It is not. It is pipeline transmission. They are
24 selling to five shippers, and there may be more than five
25 shippers.

26 If your question is should short term prices be
27 allowed to go higher, I think my answer would be yes,
28 probably yes. But then you should have a separate subset

1 for short-term caps, like what is in the C1. But for long-
2 term service, I submit you should be linked to cost of
3 service in some definable basis.

4 MS. CHAPLIN: Okay, thank you.

5 MR. KAISER: We were referred to the Union case in
6 argument.

7 MR. THOMPSON: Right.

8 MR. KAISER: Were you involved in that?

9 MR. THOMPSON: Yes, I was.

10 MR. KAISER: And they were asking that the cap be
11 increased and you and your panelists agreed. What was the
12 rationale there?

13 MR. THOMPSON: Well, again, I emphasize it is for
14 short term and interruptible.

15 MR. KAISER: Yes.

16 MR. THOMPSON: One year or less. I don't recall any
17 debate on this, quite frankly, but --

18 MR. KAISER: I am not familiar with the case at all.
19 Is there any learning in the analysis or the agreement or
20 the discussion you had with respect to that issue, where I
21 forget, I guess it was five years ago, you agreed to -- a
22 cap was increased substantially.

23 MR. THOMPSON: Yes, it was. Now, is this the IRM
24 case? Or the one before it?

25 MS. WONG: It is the 2007 rates case.

26 MR. THOMPSON: It's the base rate case.

27 MS. WONG: That's my understanding.

28 MR. THOMPSON: Yes, right. No, I can't offer you any

1 learning as obviously we didn't learn very much when we
2 went along with this.

3 But you were dealing with short term and the analogy
4 there was market-based. No doubt about that. But here we
5 are talking, in my submission, we are talking about group 2
6 NEB equivalents, which is not market-linked. It is cost of
7 service-linked and some definable link to cost of service,
8 and it is in that context that I do make my submissions.

9 I think you get into dangerous territory if you set
10 market-based rates for long-term transportation, because,
11 quite frankly, I don't think there is a competitive market
12 for long-term transportation.

13 MR. KAISER: Just on a related point. You made a
14 point in your argument when you were going through the NEB
15 guidelines that the NEB, in the event of a complaint, could
16 order the utility or approve some information and you
17 referred to us whatever the part of the regulations were,
18 which were essentially cost of service-type data.

19 MR. THOMPSON: Correct.

20 MR. KAISER: I took it from your remarks that if there
21 is a complaint, if the Board has to get involved, it is
22 implicit that it essentially goes back to cost of service,
23 does the type of analysis you've done. Let's see what a
24 proper utility rate-of-return would be and then -- is that
25 what we were to take from that?

26 MR. THOMPSON: I would say it looks at the cost of
27 service analysis, but then it also looks at undue
28 discrimination as between similar customers.

1 MR. KAISER: Is it important, just as the NEB put that
2 in, however cryptically they do it, that in order to avoid
3 further debates, that if in our decision we should have
4 some reference to the kind of information they have to
5 produce in the event of an enquiry or a complaints? Or
6 were you just making that in terms of verifying that this
7 wasn't market based but it was really cost of service-
8 based?

9 MR. THOMPSON: No.

10 My submission is that you should adopt language
11 similar to what the NEB has done, because that's part of
12 their group 2 regulation. If you want to be more specific,
13 that is fine, but all I was saying is at least capture what
14 the NEB has said.

15 MR. KAISER: Fine. Thank you.

16 MR. THOMPSON: Thank you.

17 MR. KAISER: Who is next?

18 MR. MONDROW: I believe I am, Mr. Chairman. If you
19 want to take the break, that would be fine, or I am
20 prepared to proceed although I must say following on the
21 heels of Mr. Thompson is an awkward task for mere mortals.
22 But if you would like me to, I will give it a shot.

23 MR. KAISER: All right. Please go ahead.

24 MR. MONDROW: Thank you very much.

25 **SUBMISSIONS BY MR. MONDROW:**

26 MR. MONDROW: IGUA takes no position, first of all, on
27 the leave to construct portion of the proceedings so I
28 wanted to put that on the record.

This is Exhibit 10 to the Affidavit of
Jack Hughes, sworn before me this
29 day of November, 2010.



A Commissioner etc.



uniongas

A Spectra Energy Company

March 17, 2010

Dear Shareholder:

I am pleased to forward you a copy of the Union Gas Limited (Union Gas) 2009 annual report. It contains Union Gas' management's discussion and analysis, consolidated financial results, statement of corporate governance and corporate directory. I invite you to visit www.sedar.com for electronic versions of Union Gas' consolidated financial statements, management's discussion and analysis, and other filings throughout the year.



Julie Dill
President

This discussion and analysis of Union Gas Limited for the twelve months ended December 31, 2009, should be read in conjunction with the audited consolidated financial statements and accompanying notes. The terms ("we," "our", "us" and "Union Gas") as used in this report refer collectively to Union Gas Limited and its subsidiary unless the context suggests otherwise. These terms are used for convenience only and are not intended as a precise description of any separate legal entity within Union Gas. The results reported herein have been prepared in accordance with Canadian generally accepted accounting principles (GAAP) and are presented in millions of Canadian dollars except where noted. Additional information relating to us, including our most recent Annual Information Form, can be found at www.sedar.com.

FORWARD LOOKING INFORMATION

This Management's Discussion and Analysis (MD&A) includes forward-looking statements. Forward-looking statements are based on management's beliefs and assumptions. These forward-looking statements are identified by terms and phrases such as: anticipate, believe, intend, estimate, expect, continue, should, could, may, plan, project, predict, will, potential, forecast, and similar expressions. Forward-looking statements involve risks and uncertainties that may cause actual results to be materially different from the results predicted. Factors that could cause actual results to differ materially from those indicated in any forward-looking statement include, but are not limited to:

- local, provincial and federal legislative and regulatory initiatives that affect cost and investment recovery, have an effect on rate structure, and affect the speed at and degree to which competition enters the natural gas industries;
- outcomes of litigation and regulatory investigations, proceedings or inquiries;
- weather and other natural phenomena, including the economic, operational and other effects of storms;
- the timing and extent of changes in commodity prices and interest rates;
- general economic conditions which can affect the long-term demand for natural gas and related services;
- potential effects arising from terrorist attacks and any consequential or other hostilities;
- changes in environmental, safety and other laws and regulations;
- results of financing efforts, including the ability to obtain financing on favourable terms, which can be affected by various factors, including credit ratings and general economic conditions;
- increases in the cost of goods and services required to complete capital projects;
- declines in the market prices of equity and debt securities and resulting funding requirements for defined benefit pension plans;
- growth in opportunities, including the timing and success of efforts to develop pipeline, storage, and other infrastructure projects and the effects of competition;
- the performance of transmission, storage and distribution facilities;
- the extent of success in connecting natural gas supplies to transmission systems and in connecting to expanding gas markets;
- the effects of accounting pronouncements issued periodically by accounting standard-setting bodies;
- conditions of the capital markets during the periods covered by the forward-looking statements; and
- the ability to successfully complete merger, acquisition or divestiture plans; regulatory or other limitations imposed as a result of a merger, acquisition or divestiture; and the success of the business following a merger, acquisition or divestiture.

In light of these risks, uncertainties and assumptions, the events described in the forward-looking statements might not occur or might occur to a different extent or at a different time than we have described. We undertake no obligation to publicly update or revise any forward-looking statements, whether as a result of new information, future events or otherwise, except as required by law.

GENERAL

Union Gas is a major Canadian natural gas storage, transmission and distribution company based in Ontario with nearly 100 years of experience and service to customers. The distribution business serves 1.3 million residential, commercial and industrial customers in more than 400 communities across northern, southwestern and eastern Ontario. Union Gas' growing storage and transmission business offers premium storage and transportation services to customers at the Dawn Hub (Dawn). Dawn is a storage facility located in Dawn, Ontario just south of Sarnia, Ontario and is the largest underground storage facility in Canada and one of the largest in North America. It offers customers an important link in the movement of natural gas from Western Canadian and U.S. supply basins to markets in central Canada and the northeast U.S.

Our system consists of approximately 60,000 kilometres of distribution main and service pipelines. Distribution pipelines carry or control the supply of natural gas from the point of local supply to customers. Our underground natural gas storage facilities have a working capacity of approximately 156 billion cubic feet (Bcf) in 23 underground facilities located in depleted gas fields. The transmission system consists of approximately 5,000 kilometres of high-pressure pipeline and six mainline compressor stations.

Union Gas' common shares are held by Great Lakes Basin Energy L.P., a wholly-owned limited partnership of Westcoast Energy Inc. (Westcoast). Westcoast is a wholly-owned subsidiary of Spectra Energy Corp (Spectra Energy).

Spectra Energy is a Delaware corporation that is a public company in the United States and whose shares are listed on the New York Stock Exchange.

Our board of directors is comprised of at least one-third independent directors with the remainder consisting of officers of Union Gas, Westcoast or Spectra Energy and there is no audit committee of the board. The function of an audit committee is carried out at the level of Spectra Energy during the review of its consolidated financial statements.

HIGHLIGHTS

	For the Years Ended December 31		
<i>(\$millions except where noted)</i>	2009	2008	2007
Income			
Total operating revenues	2,019	2,130	2,063
Earnings applicable to common shares	173	175	140
Dividends			
Dividends on preference shares	2	5	5
Dividends on common shares	165	115	36
Assets and long-term liabilities			
Total assets	5,446	4,856	4,413
Total long-term liabilities	2,874	2,505	2,056
Volumes of gas (10⁶m³)¹			
Distribution volumes	12,849	13,844	13,878
Transportation volumes	22,668	25,181	23,716
Total throughput	35,517	39,025	37,594
Customers (thousands)	1,325	1,309	1,289
Heating degree days² (degree Celsius)			
Actual	4,130	4,161	3,928
Normal ³	4,034	4,070	4,139

¹ 10⁶m³ equals millions of cubic meters. One cubic meter is equivalent to 35.31467 cubic feet.

² A heating degree day is a measure of temperature that identifies the need for heating. A degree day occurs when the average temperature falls below 18 degrees Celsius. A temperature of zero degrees Celsius equals 18 heating degree days.

³ As per OEB approved methodology used in setting rates.

RESULTS OF OPERATIONS

(\$millions)	For The Three Month Period Ended December 31			For The Year Ended December 31		
	2009	2008	Increase (Decrease)	2009	2008	Increase (Decrease)
Gas sales and distribution revenue	458	598	(140)	1,684	1,852	(168)
Cost of gas	276	422	(146)	1,026	1,177	(151)
Gas distribution margin	182	176	6	658	675	(17)
Storage and transportation revenue	71	70	1	299	244	55
Other revenue	11	11	-	36	34	2
	264	257	7	993	953	40
Expenses	163	152	11	608	587	21
Other (income) and expenses, net	2	(3)	5	2	(3)	5
Interest expense	41	41	-	160	148	12
Income taxes	8	12	(4)	48	41	7
Net income	50	55	(5)	175	180	(5)
Earnings applicable to common shares	50	54	(4)	173	175	(2)

Three month period ended December 31, 2009 compared to three month period ended December 31, 2008

Gas sales and distribution revenue. The \$140 million decrease was primarily driven by:

- a \$143 million decrease from lower natural gas prices passed through to customers without a mark-up, and
- a \$40 million decrease in customer usage of natural gas due to warmer weather and a slower economy partially offset by
- a \$21 million increase due to growth, and
- a \$19 million increase due to lower earnings to be shared with customers.

Cost of gas. The \$146 million decrease was primarily driven by:

- a \$143 million decrease due to lower natural gas prices passed through to customers without a mark-up, and
- a \$31 million decrease in customer usage of natural gas due to warmer weather and a slower economy, partially offset by
- a \$18 million increase due to growth.

Expenses. The \$11 million increase was primarily due to higher expenses related to expansion projects.

Income taxes. The \$4 million decrease was primarily due to a decrease in pre-tax income.

Twelve month period ended December 31, 2009 compared to twelve month period ended December 31, 2008

Gas sales and distribution revenue. The \$168 million decrease was primarily driven by:

- a \$157 million decrease due to lower natural gas prices passed through to customers without a mark-up,

- a \$76 million decrease in customer usage of natural gas due to a slower economy, and
- a \$11 million decrease due to a settlement on 2008 earnings to be shared with customers, partially offset by
- a \$60 million increase due to growth, and
- a \$12 million increase due to lower earnings to be shared with customers.

Cost of gas. The \$151 million decrease was primarily driven by:

- a \$157 million decrease due to lower natural gas prices passed through to customers without a mark-up, and
- a \$62 million decrease in customer usage of natural gas due to a slower economy, partially offset by
- a \$52 million increase due to growth, and
- a \$6 million increase in fuel used in operations⁴.

Storage and transportation revenue. The \$55 million increase was attributable to higher revenues related to growth of the storage system and an increase in short-term transportation services provided to customers.

Expenses. The \$21 million increase was primarily due to an increase in depreciation resulting from assets placed into service and higher expenses related to expansion projects.

Interest expense. The \$12 million increase was primarily due to an issuance of long-term debt in September 2008.

Income taxes. The \$7 million increase was primarily due to a higher effective tax rate.

QUARTERLY RESULTS

	Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4
(\$millions)	2008	2008	2008	2008	2009	2009	2009	2009
Gas sales and distribution revenue	733	299	222	598	788	254	184	458
Storage and transportation revenue	64	48	62	70	83	72	73	71
Other revenue	7	8	8	11	6	9	10	11
Total operating revenues	804	355	292	679	877	335	267	540
Net income	101	22	2	55	108	6	11	50
Net earnings applicable to common shares	100	20	1	54	107	6	10	50

Seasonal Trends

The natural gas distribution business is highly seasonal due to volume-based rates and the significant effect of the winter heating season on volumes. This is typically reflected in strong first quarter results, second and third quarters that show either small profits or losses and strong fourth quarter results, subject to the impact of weather variations relative to demand during the winter heating season. Changes in natural gas rates that are charged to customers result in corresponding changes in gas sales and distribution revenue. These increases or decreases in gas sales revenue are completely offset in the cost of gas, as a result of the associated regulatory recovery and refund mechanisms.

⁴ Fuel used in operations includes customer supplied fuel, compressor fuel and gas measurement variances.

RATE REGULATION

Union Gas is regulated by the Ontario Energy Board (OEB) pursuant to the provisions of the *Ontario Energy Board Act* (1998), which is part of a package of legislation known as *The Energy Competition Act* (1998). This legislation provides for different forms of regulation and competition in the energy (electricity and natural gas) industry in Ontario. We are subject to regulation with respect to the rates that we may charge our customers, system expansion or facility abandonment, adequacy of service, public safety aspects of pipeline system construction and certain accounting practices.

In February 2009, the Ontario Superior Court of Justice dismissed a class action claim commenced against us, and approved settlement of another class action claim, both relating to the OEB-approved late payment fees charged by Union Gas prior to 2002. The amount of the settlement was \$9 million, which includes \$5 million to be paid in three equal, annual instalments to the Winter Warmth Fund (administered by the United Way), \$3 million in legal fees, disbursements and other expenses, and less than \$1 million paid to the Class Proceedings Fund (operated by the Law Foundation of Ontario). We will be seeking OEB approval during 2010 to recover the full cost of the settlement plus interest and the related legal costs from ratepayers. Based on the full recovery of a similar settlement allowed by the OEB for Enbridge Gas Distribution, we do not expect a material impact on us.

Distribution Rates

In November 2006, the OEB issued a decision on the regulation of rates for gas storage services in Ontario (Storage Forbearance Decision). As a result of its finding that the market for storage services is competitive, the OEB does not regulate the rates for storage services to ex-franchise customers⁵ or the rates for new storage services to in-franchise customers⁶. Existing storage services to in-franchise customers will continue to be provided at cost-based rates. The decision creates an unregulated storage operation within Union Gas and provides the framework required to support new storage investments.

Incentive Regulation

Our distribution rates, effective January 1, 2008 are set under a multi-year incentive regulation framework. The incentive regulation framework establishes new rates at the beginning of each year through the use of a pricing formula rather than through the examination of revenue and cost forecasts. The incentive regulation framework allows for annual inflationary rate increases, offset by a productivity factor of 1.82% that is fixed for each of the next five years. The framework also allows for rate increases in the small volume customer classes where average use is declining, a five-year term, certain adjustments to base rates, the continued pass-through of gas commodity, upstream transportation and demand side management costs, an allowance for unexpected cost changes that are outside of management's control, earnings sharing between Union Gas and our ratepayers beyond specified earnings levels and equal sharing of income tax changes between Union Gas and ratepayers.

The incentive regulation framework included a provision for a review of that framework if we experienced a variance of 3% or more between our actual utility return on equity (ROE) as normalized for weather and the benchmark utility ROE determined by the OEB. Our weather-normalized utility ROE for 2008 exceeded the upper review threshold, and accordingly, we filed for a review by the OEB in April 2009.

In June 2009, we reached a settlement agreement with our stakeholders that was subsequently approved by the OEB. The settlement amends the terms of the original incentive regulation framework. The amendment replaces the provision for a review of the framework with a 90/10 sharing mechanism, in favour of customers, for any weather normalized utility ROE of 3% or more above the benchmark utility ROE for the year and is retroactive to 2008. Accordingly, we recorded an \$11 million charge to reflect the credit to customers of 90% of our 2008 utility earnings that exceeded the benchmark utility ROE by 3% or more. No other changes to the incentive regulation framework were made.

⁵ Ex-franchise customers refer to those customers that are not served directly through our facilities and generally are market participants such as marketers, other utilities and power customers served by other utilities.

⁶ In-franchise customers refer to those customers that are within our franchise area and served through our facilities.

In September 2009, we applied for approval of 2010 regulated distribution, storage and transmission rates, determined pursuant to the incentive regulation framework, which was approved by the OEB as proposed. The approved delivery rate increase is less than 1% for a typical residential customer in our service territory effective January 1, 2010.

Non-Commodity Deferral Account Disposition

In March 2009, we applied for the annual disposition of the 2008 non-commodity deferral account balances which was approved by the OEB as proposed. The combined impact on customers was a credit of approximately \$22 million which will be refunded through future rates.

Commodity Rates

Union Gas and the OEB have a mechanism in place to change gas commodity rates on a quarterly basis (Quarterly Rate Adjustment Mechanism), to ensure that customers' rates reflect future expected prices to the extent reasonably possible. The difference between the approved and the actual cost of gas incurred is deferred for future recovery from or repayment to customers. These differences are included in quarterly gas commodity rates and recovered from or refunded to customers over the subsequent twelve months and are also subject to review and approval by the OEB on an annual basis. This allows us to adjust customer rates closer to the time of incurrence.

During 2009, the OEB conducted a review of the Quarterly Rate Adjustment Mechanism (QRAM) and other related practices of the Ontario natural gas utilities. The proceedings focused primarily on the standardization of certain aspects of the QRAM. A decision was issued in September, with no material impact on the Company.

Cost of Capital

In December 2009, the OEB issued its policy report on the Cost of Capital for Ontario's Regulated Utilities. In that report, the OEB determined that Union Gas' utility ROE should be increased by approximately 125 basis points. Union Gas is currently assessing how and when that increase might be implemented in light of its multi-year incentive regulation parameters.

Sale of the St. Clair Line

In December 2008, we filed an application with the OEB to sell our St. Clair Line to the Dawn Gateway Pipeline Limited Partnership (DGP). The St. Clair Line runs approximately 12 kilometres in the Township of St. Clair, and was constructed in 1988 to bring new and additional gas supplies to Dawn. The need for the St. Clair Line was largely replaced by the construction of the Vector Pipeline in 2005, such that the St. Clair Line is underutilized.

Spectra Energy and DTE Pipeline Company, through various affiliates, have formed a 50:50 joint venture that proposes to offer a point-to-point transportation service from the Belle River Mills storage facility in Michigan to Dawn. As part of this joint venture, DGP was formed to own and operate the St. Clair Line and a new 17 km section of pipeline to be constructed from the eastern end of the St. Clair Line to Dawn to support this new transportation service. In November 2009, the OEB approved the sale of the St. Clair Line from Union Gas to DGP, with such approval expiring on December 31, 2013. The OEB also determined that the sale price for ratemaking purposes should be set at a value higher than net book value as proposed by Union Gas and that ratepayers should receive a credit for the cumulative under-recovery in rates of the St. Clair Line from 2003 to the date of sale. We filed the calculation of the cumulative under-recovery amount with the OEB in December 2009. A decision on the amount of the ratepayer credit was issued by the OEB in March 2010, establishing the amount of the credit as \$6.4 million. The OEB also directed Union Gas to record the effect of removing the assets, revenues and costs of the St. Clair Line from regulated operations in a deferral account for disposition later this year.

The sale of the St. Clair Line is contingent on DGP 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.

LIQUIDITY AND CAPITAL RESOURCES

We manage cash to maximize value while assuring appropriate amounts of cash are available, as required. We invest our available cash in high-quality money market securities. Such money market securities are designed for the safety of principal and for liquidity, and accordingly do not include equity-based securities. We do not invest in asset-backed commercial paper.

We meet our short-term cash requirements through funds generated from operations, issuance of short-term debt and access to our lines of credit. Long-term capital requirements are met through the combination of cash flow from operations, issuance of long-term debt and preference shares.

Changes in Cash Flow

<i>(\$millions)</i>	2009	2008
Operating activities	642	162
Investing activities	(247)	(404)
Financing activities	(361)	242

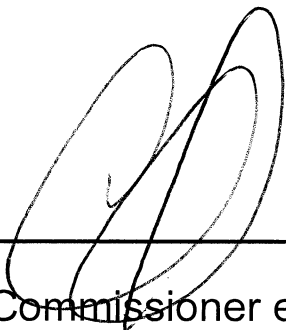
Operating Activities

The primary factors impacting cash flow from operations include fluctuations in weather, commodity rates, and gas prices, as well as the timing of cost recovery in regulated rates. Union Gas' heating season extends from approximately November through March. We begin the heating season with near-capacity natural gas inventory levels which are drawn throughout the heating season. Inventory levels decrease from December and thus contribute to a positive cash flow from operations during the first quarter. After the heating season ends, inventory is replenished for the next heating season. During the third quarter, gas inventory injections typically exceed withdrawals, negatively affecting cash flows. During the fourth quarter inventory decreases as withdrawals exceed injections.

Many of our customers purchase gas directly from marketers. Marketers typically deliver gas to us evenly throughout the year, whereas most of their customers use gas based on seasonality. As part of our normal billing process, we bill the marketers' customers as gas is used and remit this cash to the marketer when gas is delivered to us. Therefore, during the first and fourth quarters of the year, customers typically use more gas than is delivered to us and we collect cash from the marketers' customers creating a positive cash flow. During the second and third quarters, marketers deliver more gas than their customers use, thus creating a significant cash outflow. These are normal seasonal trends.

Cash flows from operations have improved for 2009 compared to 2008 primarily due to lower natural gas prices. These lower prices have led to lower accounts receivable balances, lower inventory costs, and costs recovered through rates which exceed the actual cost of gas, resulting in an overpayment from customers to be refunded in future periods.

This is Exhibit 11 to the Affidavit of
Jack Hughes, sworn before me this
29 day of November, 2010.



A Commissioner etc.



By electronic filing and by e-mail

March 25, 2010

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

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

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.

PCT\slc

c. Parties to EB-2008-0411

OTT01\3978289\1

This is Exhibit 12 to the Affidavit of
Jack Hughes, sworn before me this
29 day of November, 2010.

A handwritten signature, possibly reading "B. Hughes", is written over a horizontal line.

A Commissioner etc.



uniongas

A Spectra Energy Company

April 15, 2010

Ms. Kirsten Walli
Board Secretary
Ontario Energy Board
2300 Yonge Street, 27th Floor
Toronto, ON M4P 1E4

Dear Ms. Walli:

**Re: EB-2008-0411: St. Clair Transmission Line –
Reply of Union Gas Limited (“Union”), re: Draft Accounting Orders**

We are writing to provide Union’s Reply to the submissions of CME, FRPO and Board Staff regarding the corrected draft Accounting Orders filed by Union on March 22, 2010.

The main concern of CME, FRPO and Board Staff appears to be whether the accounting treatment reflected in the Accounting Orders could preclude the Board from treating the sale of the St. Clair Line differently for earnings sharing purposes. As requested by Board Staff in their submissions, Union confirms that it agrees that the Accounting Orders do not preclude the Board from treating the sale of the St. Clair Line differently for earnings sharing purposes.

In order to reduce possible confusion, Union would like to clarify its position with respect to the concept of “regulatory accounting” which was referred to in CME’s submissions. CME stated in its submissions:

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.

In its correspondence with CME’s counsel, Union did not use the term “regulatory accounting” in the manner suggested in CME’s submissions. It appears that CME may believe that there is another set of accounting entries that are for “regulatory accounting” in addition to the accounting entries that are completed in accordance with the Uniform System of Accounts for Class A Gas Utilities (“USofA”). That is not the case. There is only one set of accounts, and it is prepared in accordance with the USofA. The USofA rules are applied by Union for its “corporate financial statements accounting”.

In its correspondence with CME's counsel, Union tried to explain the distinction between:

- 1) the accounting rules that Union is required to follow under the USofA; and
- 2) regulatory reporting and filing for ratemaking purposes (this is what CME refers to as "regulatory accounting").

It is the USofA rules that determine what goes into Union's accounts and what goes into the financial statements. Union's accounts must reflect the transaction that actually takes place – e.g. the books of account cannot recognize a \$13.2 million cash receipt for the St. Clair Line if only \$5.2 million is received from the purchaser. The draft Accounting Orders submitted by Union follow the requirements of the USofA.

When it comes to ratemaking however, the Board can require a utility to treat a transaction differently for ratemaking purposes than what actually happened. When Union used the term "regulatory reporting and filing for ratemaking purposes", it was referring to making whatever adjustments or filings that may be required to comply with Board orders that affect rates. There is no separate set of books to do this. If the Board makes an order that affects rates, for example by disallowing an expense for ratemaking purposes, Union adjusts the calculation of the rates to reflect the Board's order, but the disallowed expense still stays in Union's accounts because the expense was actually incurred.

Board Staff's submissions accepted that the draft Accounting Orders reflect the proper accounting treatment for the creation of the deferral accounts as ordered by the Board. Union requests that the Board approve the corrected Accounting Orders as filed on March 22, 2010.

Yours truly,

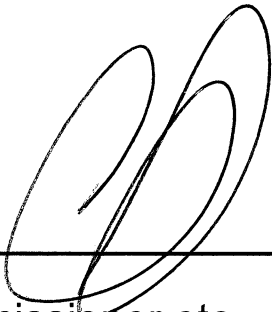
[Original signed by]

Chris Ripley,
Manager, Regulatory Applications

CR/la

c.c.: S. Wong – Blakes
EB-2008-0411 Intervenors

This is Exhibit 13 to the Affidavit of
Jack Hughes, sworn before me this
29 day of November, 2010.

A stylized, handwritten signature consisting of several overlapping loops, positioned above a horizontal line.

A Commissioner etc.

1 Consulting costs

2 Consulting costs include amounts paid to third parties for their expert advice and analysis
3 specific to Union's transition to IFRS. The consultants include Ernst and Young, LLP for
4 accounting advice and project management assistance; Deloitte and Touche for
5 accounting advice and confirmation of accounting policies; Foster Associates Inc., for
6 assistance with componentization of our Property Plant and Equipment, and Towers and
7 Watson (formerly Towers Perrin) for Pension valuation services.

8

9 Employee costs

10 Employee costs include incremental salaries and wages related to employees that are
11 solely dedicated to the IFRS transition, training and travel costs related to the transition.

12

13 Account No. 179-121 Cumulative Under-recovery – St. Clair Transmission Line and
14 Account No. 179-122 – Impact of Removing St. Clair Transmission Line from Rates

15

16 In its EB-2008-0411 Decision, the Board granted Union leave to sell the St. Clair
17 Transmission Line to Dawn Gateway Pipelines Limited Partnership ("Dawn Gateway")
18 for the purpose of Dawn Gateway integrating the St. Clair Line into a new pipeline, to be
19 known as the Dawn Gateway Pipeline, running from the Belle River Mills Compressor
20 Station in Michigan to Union's Dawn Station. Leave to sell was granted on condition
21 that Union allocate to the ratepayers on the sale of the St. Clair Line the amount of \$6.402
22 million as the ratepayers' share of a deemed net gain from the sale. The Board ordered

1 that the \$6.402 million should be placed into a deferral account and also that Union create
2 another deferral account to capture the effect of removing the St. Clair Transmission Line
3 from rates effective March 1, 2010.

4

5 On March 15, 2009, Union filed for approval by the Board two draft accounting orders to
6 create the deferral accounts ordered in EB-2008-0411. Account No. 179-121 is to
7 capture the \$6.402 million to be allocated to the ratepayers at the time of the sale, and
8 Account No. 179-122 is to capture the effects of removing the St. Clair Transmission
9 Line from rates effective March 1, 2010. On March 22, 2010, Union filed a correction to
10 the draft accounting order for Account 179-121.

11

12 On April 1, 2010, intervenors and Board staff filed submissions on Union's draft
13 accounting orders. On April 15, 2010, Union filed submissions in reply to those made by
14 intervenors and Board Staff. At the time of this filing the Board has not issued a decision
15 regarding the draft accounting orders.

16

17 Union is proposing to not dispose of the balances in Account No. 179-121 and Account
18 No. 179-122 as part of this proceeding for the following reasons.

19

20 On March 6, 2010, the Board issued its EB-2009-0422 Decision approving a complaint
21 based regulatory framework for Dawn Gateway and granting leave to construct new

1 facilities from Bickford to Dawn. Based on the EB-2009-0422 decision and the EB-
2 2008-0411 decision, Dawn Gateway was prepared to move forward with the construction
3 of the Dawn Gateway Pipeline.

4

5 Prior to applying for approval for the Dawn Gateway Pipeline, Dawn Gateway had
6 entered into precedent agreements with 5 shippers (the “Shippers”) who agreed to
7 purchase transportation capacity on the Dawn Gateway Pipeline. However, shortly after
8 the release of the Board’s EB-2009-0422 Decision, several of the Shippers requested that
9 construction, originally planned for 2010, be delayed due to recent changes in North
10 American supply dynamics. Specifically, the recent large increase in shale gas supplies
11 in the Northeast United States, increased supplies of Rockies gas as a result of the
12 completion of the Rockies Express Pipeline, the decline in Western Canadian supplies
13 and reduced North American demand due to economic conditions have impacted natural
14 gas pricing and storage spreads across North America. These changing market conditions
15 have caused a rapid and significant decline in the spread between gas prices in Michigan
16 compared to Dawn, thus making the Dawn Gateway Pipeline uneconomic for the
17 Shippers at this time.

18

19 In light of the current market conditions, Dawn Gateway and its Shippers have agreed to
20 delay the construction of the Dawn Gateway Pipeline. Dawn Gateway and its shippers

1 will monitor market conditions and will determine by November 1, 2010 whether the
2 pipeline will proceed for in-service in November 2011.

3

4 Given the delay in the construction of the Dawn Gateway Pipeline, Dawn Gateway has
5 not proceeded with the purchase of the St. Clair Transmission Line. Union will,
6 however, record in Account No. 179-121 the \$6.402 million amount to be allocated to the
7 ratepayers at the time of the sale, and will record in Account 179-122 for disposition in
8 the future the amount attributable to the St. Clair Line that is included in Union's rates.
9 Union will continue to track the ratepayer credit in deferral account 179-122 based on a
10 sale date later than March 1, 2010. Union will use the Board's methodology as outlined
11 its EB-2008-0411 Decision to calculate the ratepayer credit. If Dawn Gateway does not
12 proceed with the purchase of the St. Clair Line, Union will file a motion with the Board
13 in EB-2008-0411 for approval to attribute the amounts in these deferral accounts back to
14 Union and to continue to recover the costs of the St. Clair Transmission Line in delivery
15 rates.

16

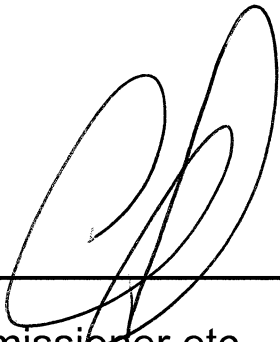
17 OTHER ITEMS

18

19 Market Transformation Incentive

20 Union is claiming a \$0.500 million incentive for the Market Transformation ("MT") drain
21 water heat recovery program created and executed in Union's operations area in 2009.

This is Exhibit 14 to the Affidavit of
Jack Hughes, sworn before me this
29 day of November, 2010.

A handwritten signature in black ink, consisting of a large, stylized 'C' or 'G' shape with a loop, positioned above a horizontal line.

A Commissioner etc.



EB-2009-0422

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 Dawn Gateway Pipeline Limited Partnership for an Order or Orders granting leave to construct a natural gas pipeline and ancillary facilities in the Townships of St. Clair and Dawn-Euphemia, all in the County of Lambton, and approving the regulatory framework and the tariff for the transmission of gas on the Ontario portion of the Dawn Gateway Pipeline.

BEFORE: Gordon Kaiser
Vice Chair and Presiding Member

Cynthia Chaplin
Vice Chair

Cathy Spoel
Member

RATE ORDER

Introduction

On December 23, 2009, Dawn Gateway Pipeline Limited Partnership ("Dawn Gateway" or "Applicant") filed an application with the Ontario Energy Board under sections 36(1) and 90(1) of the *Ontario Energy Board Act*, 1998 for approval of a regulatory framework for the Ontario portion of the Dawn Gateway Pipeline, including charging tolls at negotiated prices, and for leave to construct approximately 17 kilometers of 24 inch diameter steel natural gas pipeline in the County of Lambton.

On March 9, 2010, the Board issued its Decision and Order (the "Decision") approving a regulatory framework for Dawn Gateway and granting leave to construct.

The Regulatory Framework and the Tariff were approved subject to a certain conditions as set out in the Decision. The Decision required Dawn Gateway to file a Draft Rate Order and allowed the intervenors an opportunity to comment and the Applicant to reply to intervenors' comments, if any. Industrial Gas Users Association ("IGUA") and Canadian Manufacturers and Exporters ("CME") filed written submissions objecting to certain wording in the Draft Rate Order and Dawn Gateway replied to the objections.

Submissions with respect to the Draft Rate Order identified two issues in dispute between intervenors and the Applicant: (i) the filing of contracts between Dawn Gateway and shippers on Dawn Gateway Pipeline; and (ii) the posting of operationally available capacity as required by the Board's Storage and Transportation Access Rule ("STAR").

With respect to the issue of filing of long-term contracts only, as proposed by Dawn Gateway, CME submitted that Dawn Gateway should file in confidence all individual contracts including short-term contracts with terms less than a year. Dawn Gateway responded that it would not be meaningful or practical to file with the Board short-term contracts.

With respect to the second issue, IGUA submitted that the wording proposed by Dawn Gateway did not accurately reflect the Board's findings and condition of approval in the Decision. IGUA submitted that Dawn Gateway should apply for review of the exemption from the STAR requirements to post operationally available capacity. In Dawn Gateway's view, "the Decision stated that the Board would review the issue and determine whether any further postings were needed. DGLP understands this to mean that the Board will initiate a review as it deems necessary."

Board Findings

With respect to the filing of contracts between Dawn Gateway and shippers on Dawn Gateway Pipeline, Dawn Gateway has proposed to file contracts over one year in term only. However, the Board notes that paragraph 51 of the Decision states:

*[51] The Board will not require that the individual negotiated tolls be published. The Board does not require this in relation to Union's negotiated C1 tolls and the publication of negotiated tolls does not form part of the Board's STAR. Wholesale shippers and marketers, the parties which have or are likely to contract for service on Dawn Gateway, have not requested that this information be made public. However, given the unsatisfactory nature of the evidentiary record, **the***

Board will require Dawn Gateway to file individual contracts with the Board on a confidential basis. That will allow the Board to monitor the situation. Given that this is a new regulatory procedure that is likely a prudent step in any event. Shippers making a complaint can then make a motion that the contracts should be put on the public record or at least disclosed to them for the purpose of arguing the complaint. The Board will also be able to determine at that point whether any further information is required. (emphasis added)

It is clear that the Decision is not limited to contracts over one year and the Board's concerns were not limited to long term arrangements. The Board finds that all contracts should be filed and that the Rate Order will reflect this finding.

With respect to the posting of operationally available capacity as required by the STAR, Dawn Gateway has drafted the Rate Order so that the exemption continues until such time as the Board initiates a review. The Board notes that Paragraph 30 of the Decision states:

*[30] 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)*

It is clear from the excerpt above that the exemption is to be in place for one year.

The Board finds that the Rate Order should be worded so that it is clear the exemption is in place for one year. This would require Dawn Gateway to apply to have the exemption extended. The Board would then review the request and determine whether an extension of the exemption is desirable.

In light of these findings and in accordance with the Decision the details of the approved regulatory framework are set out below.

THE BOARD THEREFORE ORDERS THAT:

1. The Tariff set out in Appendix "A" is approved effective November 1, 2010.
2. Dawn Gateway will comply with the Code of Conduct as set out in Appendix "B".
3. Union Gas Limited will provide written assurance to the Board that Union will treat Dawn Gateway as an affiliate for purposes of the Board's Affiliate Relationships Code.
4. Dawn Gateway will comply with the STAR. For a period of one year, Dawn Gateway is exempt from the requirements of section 4.1.1(ii) and related sections 4.1.4, 4.1.6, and 4.3.1 of the STAR and is only required to post the operationally-available transportation capacity once each day. Dawn Gateway is required to apply to the Board if it intends to seek an extension of this exemption.
5. Dawn Gateway will maintain separate books of account in Canada in a manner consistent with Generally Accepted Accounting Principles and will file with the Board and post on the company's website audited financial statements for the preceding financial year within 120 days after the financial year end. Such statements will provide details of revenues and costs associated with the regulated pipeline.
6. Dawn Gateway's Rate Order, its audited financial statements, its Code of Conduct, and the Board's STAR will be posted on Dawn Gateway's website.
7. Dawn Gateway is required to file individual long-term and short-term contracts with the Board on a confidential basis upon execution with its customers.

DATED at Toronto June 03, 2010

ONTARIO ENERGY BOARD

Original Signed By

Kirsten Walli
Board Secretary

APPENDIX A

EB-2009-0422

The Tariff including the following schedules:

Schedule 1: The Toll Schedule Firm Transportation Service

Schedule 2: Statement of Tolls Firm Transportation Service

Schedule 3: Interruptible Transportation Agreement

Schedule 4: Toll Schedule Interruptible Transportation Service

Schedule 5: Statement of Tolls Interruptible Transportation Service

Schedule 6: General Terms and Conditions of the Tariff

Schedule 7: Firm Transportation Agreement

This is Exhibit 15 to the Affidavit of
Jack Hughes, sworn before me this
29 day of November, 2010.

A handwritten signature, possibly reading "JP", is written over a horizontal line.

A Commissioner etc.

UNION GAS LIMITED

Answer to Interrogatory from
Canadian Manufacturers and Exporters ("CME")

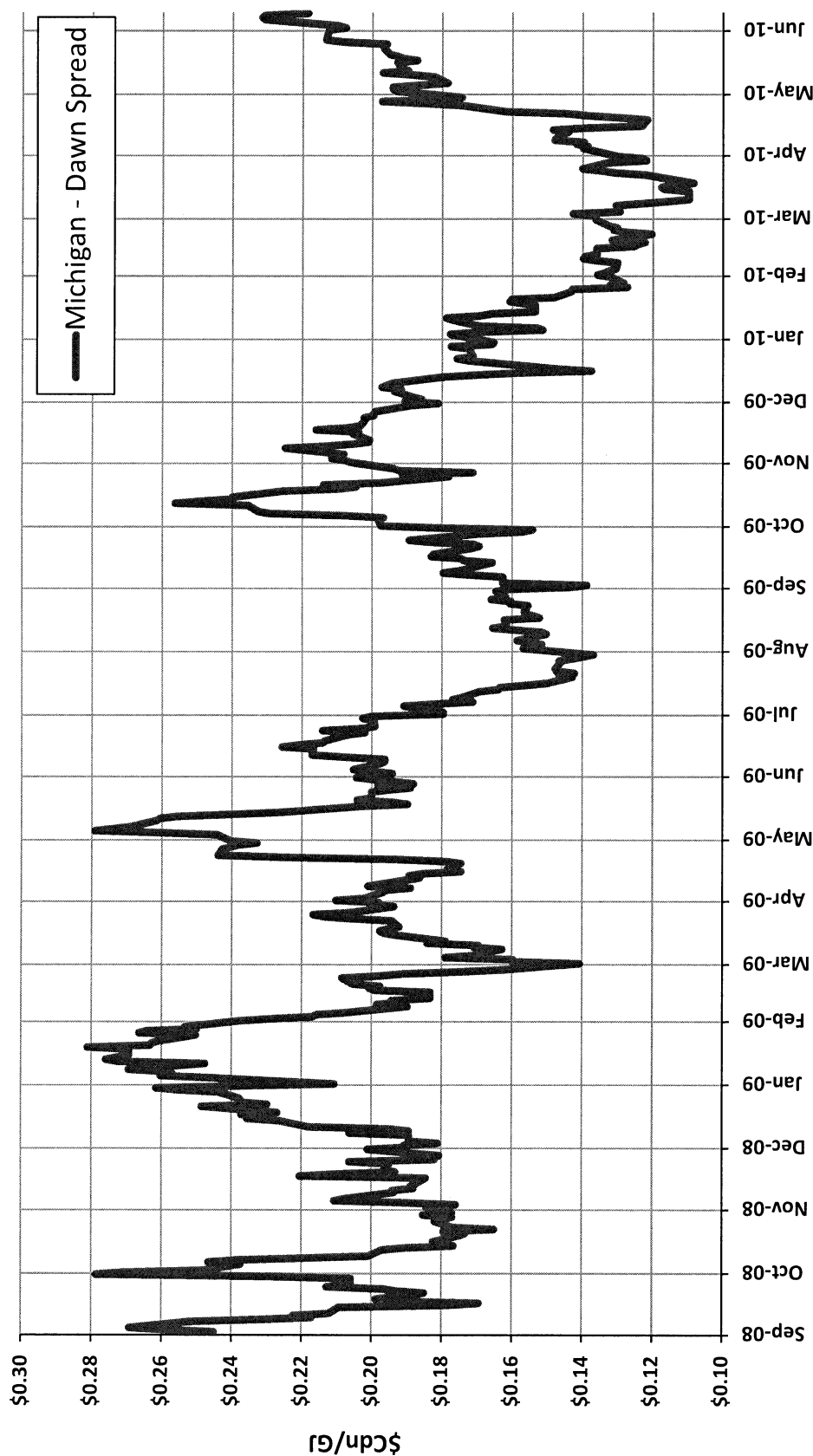
Reference: Exhibit A, Tab 1, page 23, lines 14 to 17

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.

Response:

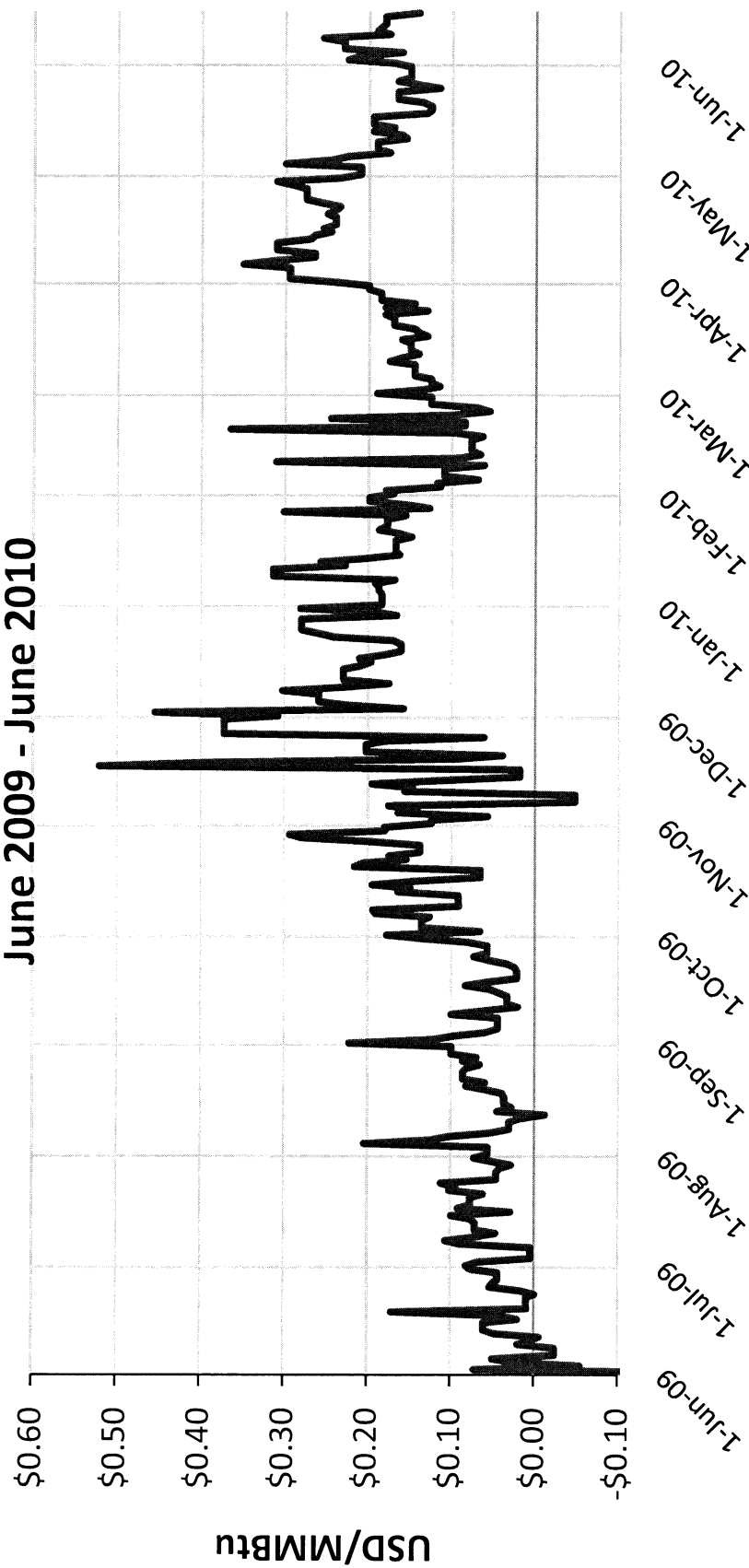
Please see the attachments.

Michigan - Dawn Spread
\$Cdn / GJ



Source: ICE End of Day Settles, forward basis swap, 12 month avg (Dawn less Michigan)

Michigan - Dawn Spread June 2009 - June 2010



Source: Dawn Platts Gas Daily (Settlement Price)

UNION GAS LIMITED

Answer to Interrogatory from
Canadian Manufacturers and Exporters ("CME")

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

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.

Response:

Union understands that the Shippers' request for a delay of the Dawn Gateway project was substantively conveyed in discussions between DGLP and the shippers. Attached are two emails which summarize those discussions and relevant events..

- 1) March 12th email, is a summary of telephone communications between DGLP's co-presidents and shippers. Due to the rapidly changing market conditions the shippers requested the ability to exit the project. Based on the options discussed, DGLP agreed with the shippers request and made the decision to exit and cancel the project subject to shippers reimbursing DGLP for project costs.
- 2) March 31st email, is a summary of a March 30th meeting between DGLP and shippers to finalize the terms and conditions of the amendment to the existing Precedent Agreements. The original proposal to exit and cancel the project discussed on March 12th was modified at the shippers' request. The shippers now wanted the option to delay the project until 2011 or 2012 rather than terminate the project outright. In exchange for not only covering the existing project costs, the shippers agreed to modify their existing rate to cover any potential increase in project costs due to delaying the project. These terms and conditions discussed within the email were ultimately incorporated into the amended Precedent Agreements executed April 8th.

From: Baker, Steve - Chatham
Sent: March 12, 2010 1:17 PM
To: Dill, Julie; Birmingham, Rick; Shannon, Mike - Chatham; Capps, Allen
Cc: Isherwood, Mark; Priestley, Glen; Baker, Steve - Chatham; Lindsay, Michelle
Subject: Dawn Gateway

Importance: High

Pete Cianci and I have had calls all morning with [REDACTED] and [REDACTED] on the project – the following are the highlights:

- 1) Both [REDACTED] and [REDACTED] would prefer to exit the project and pay our out of pocket costs – the MI- Dawn spreads have fallen to such a level that they could not cover variable fuel costs in summer and only \$0.03/dth value in the winter ([REDACTED] appears to be in same position although I did not talk to them directly) – these spreads have come off within the last 1-2 weeks (ie. Very quickly)
- 2) Ton of uncertainty in all markets – no economics anywhere to flow gas on any pipeline (ie. Generally, basis differentials do not even cover variable fuel costs)
- 3) Options Pete and I discussed:
 - a) Go forward and construct project
 - b) Not commit to pipe today but try to seek another 30-40 day extension – if that is not possible, look into other pipe suppliers that could meet timing to still allow us to construct in 2010 (Note: we want/need to preserve 2010 build so that we preserve the option to proceed to extent that the shippers do not agree to cover our out of pocket costs incurred to date)
 - c) Delay pipe and project to 2011 – keep shippers committed to project and assess market conditions over the next 12 months
 - d) Exit/cancel project and shippers agree to pay out of pocket costs

We have landed on option (d) – both [REDACTED] and [REDACTED] would prefer to cut a cheque and exit – they will consider project in future if market conditions support. Option (a) just does not feel right – to have no shipper support and with relations/business we have with the shippers, we do not feel this would be in our best interests moving forward. Option (b) as noted is to preserve our option to build in order to put us in strong position to negotiate for recovery of costs. Option (c) was considered but this would entail us taking on additional risk – ie. If we agreed to defer 1 year, there is good chance our costs would increase (pipe and contractor costs) and we would have the issue of the UG “ratepayer harm” which would continue to increase over time until we actually purchased the St Clair line – we did not feel we should provide this type of no cost option to shippers and as noted above, they did not want it. This really left us with Option (d).

Next Steps:

- 1) Mike S – communicate with Supply Chain – see if current pipe supplier will extend the no cost cancellation timing – if they will not provide this, we will need to inform that we are not in a position to commit to the pipe and we need supply chain to look at other pipe acquisition options to deliver pipe in time to meet 2010 in service
- 2) Mark/Carol – DTE wanted to know if we were still interested in any of the [REDACTED] bcf Milhcon storage even if Gateway does not proceed – pls consider this – I indicated to Pete that we would consider this but I felt it would be unlikely we would need/take it – Mark – pls conclude and inform DTE ASAP
- 3) Pete/DTE – will take lead to arrange a meeting of all 4 non-owner shippers to discuss exit plan with objective to arrive at an agreement that will see all our out of pocket costs covered – target end of March
- 4) Glen/Chris Z – finalize details of all out of pocket costs
- 5) Rick – will need to inform the OEB + as discussed, we should continue to seek the rate order and seek and extension of leave to construct to allow project to proceed at a later date if market conditions support – also

assume we will need to meet with Board at some point to walk them through what happened and the market drivers

- 6) We discussed continued work to get Michigan PUC tariff approvals so we had all regulatory approvals in hand so we would be in position to restart the project if supported by market – DTE and SE are still committed to pursue the project in future should conditions support.

This is clearly not where we wanted to be but I believe this proposal to be our best course of action in the circumstances we find ourselves in – this market is changing quickly as we know, and this is certainly support for the volatility.

Please do NOT forward this email – this is extremely confidential as we will be heading into a negotiated settlement with shippers very shortly.

Thx

Steve Baker

Vice President
Business Development, Storage & Transmission
Union Gas Limited, A Spectra Energy Company

sbaker@spectraenergy.com

519.436.5216 (office)

519.359.4929 (cell)

519.436.4667 (fax)

From: Baker, Steve - Chatham
Sent: March 31, 2010 5:25 AM
To: Isherwood, Mark; Priestley, Glen
Cc: Baker, Steve - Chatham; Capps, Allen
Subject: Dawn Gateway

Overview of shipper meeting:

- shippers agree to pay [REDACTED] except [REDACTED] - remaining 3 will split on dth basis
- 3 shippers want extension option to 2011 and 2012
- 3 shippers agree to potential for rate escalator if pipe/contractor costs increase (part of decision to proceed)
- 3 shippers will pay costs (all different timing) and then want this recognized in rate if DG proceeds [REDACTED] to pay now in 2010, [REDACTED] wants to pay Jan/2011 and [REDACTED] monthly over 2011
- [REDACTED] would agree to exit and terminate PA (they are escaping any costs) - 3 remaining shippers not happy but appeared only option
- 3 remaining shippers would split [REDACTED] (effectively get option on this capacity in return for paying [REDACTED] share of costs)
- would require unanimous vote by all 3 to proceed
- [REDACTED] wanted land rights to B-D - I said no way

Issues/concerns:

- 1) Extension option to 2012 and timing of cost payment - suspect that if we do make decision in 2010 for 2011 in service AND we do not get cost recovery/cash in 2010, we would have to take write off of costs in 2010 - need to discuss with Finance. If we deferred to 2012 but shippers paid cash in 2010, could we avoid having to write-off in 2010?
- 2) Deal structure - discussed doing side/letter agreement to cover:
 - A) need unanimous agreement by all 3 to proceed
 - B) outline [REDACTED] costs sharing among the 3
 - C) outline timing of payment (ideally all in 2010 - we should not take any more carry cost risk)
 - D) outline allocation of [REDACTED] capacity among remaining 3
 - E) IF [REDACTED] does not agree to pick up share of [REDACTED] costs, the [REDACTED] of [REDACTED] capacity would get split between [REDACTED] and [REDACTED] (based on MDQxtermx rate)
 - F) outline project timing - ie. Decision no later than Nov/2010 for 2011 ISD + decision no later than Nov/2011 for 2012 ISD

Overall - 3 remaining shippers are agreeing to pay costs and in return get:

- 1) Option to decide to proceed (if market turns around and if rate adjustment works to pick up any costs increases we may face)
- 2) Option to get allocation of [REDACTED] capacity in return for picking up [REDACTED] share of costs

Need to get all this finalized and papered by Apr 8 - DTE will take lead on drafting agreement.

We need to get clarity on accounting treatment/potential 2010 write off of the options being considered as we need to find a way to avoid.

Will call when get to Houston.

UNION GAS LIMITED

Answer to Interrogatory from
Canadian Manufacturers and Exporters ("CME")

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

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.

Response:

Union supported the pipeline project proceeding but understands there were other shippers who had approached DGLP and requested that the project be delayed. Union did not submit a written or oral request to DGLP to delay the pipeline. See also response at Exhibit B3.17.

UNION GAS LIMITED

Answer to Interrogatory from
Canadian Manufacturers and Exporters ("CME")

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

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.

Response:

- a) A restatement of Exhibit A, Tab 1, Schedule 1 is provided at Attachment 1.
- b) The allocation to rate classes is provided in Attachment 2.

- c) Union estimates it will record \$102,400 per month in account 179-122 for the period March 1, 2010 to December 31, 2010. At December 31, 2010, the estimated year-end balance is \$1.024 million plus \$2,597 of accrued interest.
 - d) Union estimates it will record \$99,750 per month in account 179-122 for 2011. At December 31, 2011, the estimated year-end balance is \$1.197 million plus \$3,580 of accrued interest.
- Union estimates it will record \$97,417 per month in account 179-122 for 2012. At December 31, 2012, the estimated year-end balance is \$1.169 million plus \$3,497 of accrued interest.
- e) The net present value of the monthly amounts shown in c) and d) at July 1, 2010 is \$3.370 million.

UNION GAS LIMITED

Deferral Account Balances, Market Transformation Incentive and Federal and Provincial Tax Change
Year Ending December 31, 2009

Line No.	Account Number	Account Name	Balance (\$000's)	(1)
	<u>Gas Supply Accounts:</u>			
1	179-108	Unabsorbed Demand Costs Variance Account	(1,285)	(2)
	<u>Storage Accounts:</u>			
2	179-70	Short-Term Storage and Other Balancing Services	(4,949)	
3	179-72	Long-Term Peak Storage Services	(14,787)	
4	Total Storage Accounts (Lines 2 + 3)		(19,736)	
	<u>Other:</u>			
5	179-26	Deferred Customer Rebates/Charges	-	
6	179-75	Lost Revenue Adjustment Mechanism	2,394	
7	179-102	Intra-period WACOG Changes	(7,615)	
8	179-103	Unbundled Services Unauthorized Storage Overrun	-	
9	179-111	Demand Side Management Variance Account	1,468	
10	179-112	Gas Distribution Access Rule (GDAR) Costs	-	
11	179-113	Late Payment Penalty Litigation	5,651	
12	179-115	Shared Savings Mechanism	8,922	
13	179-117	Carbon Dioxide Offset Credits	-	
14	179-118	Average Use Per Customer	(2,144)	
15	179-120	IFRS Conversion Cost	3,989	
16	179-121	Cumulative Under-recovery – St. Clair Transmission Line	(6,402)	
17	Total Other Accounts (Lines 5 through 16)		6,262	
18	Total Deferral Account Balances (Lines 1 + 4 + 17)		(14,759)	
19	Market Transformation Incentive		500	
20	Federal and Provincial Tax Changes		(1,500)	
21	Total Deferral Account Balances, Market Transformation Incentive and Federal and Provincial Tax Changes (Lines 18 + 19 + 20)		(15,758)	

Notes:

(1) Account balances include interest to December 31, 2009.

(2) With the exception of UDC (No. 179-108), all gas supply-related deferral account balances are disposed through the QRAM process.


Account #179-121 Cumulative Under-recovery - St Clair Transmission Line

Line No.	Rate Class	Ojibway / St. Clair Design Day Demand ⁽¹⁾ (10 ³ m ³ /day)	Cumulative Under-recovery St. Clair Transmission Line (\$000's)
1	01	-	-
2	10	-	-
3	20	-	-
4	20T	-	-
5	77	-	-
6	100T	-	-
7	25	-	-
8	Total Northern & Eastern Operatio	-	-
9	M1	3,763	1,586
10	M2	1,231	519
11	M4	532	224
12	M5	103	44
13	M7	389	164
14	M9	-	-
15	M10	-	-
16	T1	7,866	3,316
17	T3	-	-
18	Total Southern Operations	13,885	5,853
19	M12	-	-
20	M13	-	-
21	C1	1,023	431
22	M16	279	118
23	Total Storage and Transportation	1,302	549
24	Total	15,187	6,402

Notes:

(1) EB-2005-0520, Exhibit G3, Tab 5, Schedule 24, Page 5.

This is Exhibit 16 to the Affidavit of
Jack Hughes, sworn before me this
29 day of November, 2010.



A Commissioner etc.



ONTARIO ENERGY BOARD

FILE NO.: EB-20109-0039

VOLUME: Technical Conference

DATE: July 9, 2010

1 There is -- I am struggling as to what formal --

2 MR. BUONAGURO: I am trying to understand. So the
3 original forecast would be based on a time study, but at
4 the end of the year when you do a true-up, you did it based
5 on a...

6 MS. ELLIOTT: There were no time studies. It was,
7 again, when people do their budget, they estimate the level
8 of effort required for, and we set the activity -- we set
9 the percentage allocation for those groups based on that
10 assessment of activity levels.

11 MR. BUONAGURO: Okay. So originally it was based on
12 an estimate, and at the end of the year it is trued up
13 based on a rethinking of that estimate ex post facto, I
14 guess?

15 MS. ELLIOTT: In the event that the estimate is
16 significant, and we considered it to be significant enough
17 in 2009 to make the adjustment.

18 MR. BUONAGURO: Okay, thank you. I think that answers
19 the question.

20 Those are my questions. Thank you.

21 MR. MILLAR: Thank you, Mr. Buonaguro. We hadn't
22 discussed an order. I know Mr. DeRose is happy to go, but
23 if someone had to go early because they had to be
24 somewhere, please speak up. Otherwise, we will go with Mr.
25 DeRose. Hearing no one, over to you, Vince.

26 **QUESTIONS BY MR. DEROSE:**

27 MR. DeROSE: Thanks, Mike.

28 Panel, my questions will be focussed almost entirely

1 on the issues surrounding the sale of the St. Clair line.
2 So I will be asking a number of questions or clarifications
3 out of the CME IRs that relate to that issue.

4 But I wanted to start with Board Staff IR No. 8. This
5 is the IR that attaches your annual report for 2009. Do
6 you have that IR?

7 MS. ELLIOTT: I do.

8 MR. DeROSE: And if I can take you to page 9 of the
9 2009 annual report, this is where the sale of the St. Clair
10 line is described.

11 MS. ELLIOTT: Yes.

12 MR. DeROSE: Do you have that?

13 MS. ELLIOTT: Yes.

14 MR. DeROSE: Right at the bottom of the page, the
15 report describes two condition precedents. The first is
16 that the sale of the St. Clair line would be contingent
17 upon OEB approval to construct the new 17-kilometre section
18 of pipeline from the eastern end of the St. Clair line to
19 Dawn.

20 Do you see that?

21 MS. ELLIOTT: Yes.

22 MR. DeROSE: And the second condition is that Dawn
23 Gateway receive OEB approval for the new light-handed
24 regulatory framework, and that goes on on the next page.
25 Again, do you see that?

26 As I understand it, both of those approvals were
27 granted by the Board in March of 2010; is that right?

28 MS. ELLIOTT: That's the next sentence in that

1 paragraph, yes.

2 MR. DeROSE: All right.

3 Once those two conditions were met, were there any
4 other condition precedents that are not included in this
5 annual report that had to be fulfilled before the sale
6 could close?

7 MS. ELLIOTT: I'm not sure I am really in a position
8 to answer the details of the contract, but these were --

9 MR. DeROSE: Because you don't know them or...

10 MS. ELLIOTT: Well my responsibility is for the
11 financial statements. So as I understand it, these are the
12 conditions precedent and these are the facts of the St.
13 Clair sale.

14 MR. DeROSE: I would be happy to have an undertaking.
15 I simply want to know if -- these are the only two that are
16 identified in the annual report. Are there additional
17 contingencies or condition precedents that had to be met
18 and, if so, what were they?

19 MR. SMITH: Counsel, I think, if I understand your
20 question, you are essentially asking for Union to
21 reconsider the position it answered in response to B3.06,
22 which seeks copies of the precedent agreements between Dawn
23 Gateway and the shippers. And, obviously, we indicated --
24 Union indicated in that interrogatory it wasn't prepared or
25 in a position to provide that information.

26 So we are not going to do so.

27 MR. DeROSE: I am not asking for reconsideration.
28 That can be dealt with in a motion.

1 What I am asking for is, in the annual report, there
2 are only two contingencies identified. Are those the only
3 two, or did you leave something out? That's not asking for
4 an agreement. That is asking: Are the two contingencies
5 identified in the annual report the only two contingencies
6 that existed?

7 MR. SMITH: Well, they're the only two that are
8 identified in the annual report, and as I understand it,
9 the only two condition precedents that Union is aware of.
10 Whether there is something else in the agreement that Dawn
11 Gateway had with the shippers, we are not in a position to
12 provide you with that.

13 MR. DeROSE: And are you not in a position to provide
14 us with that because you do not have the agreements or are
15 not in possession of the agreements, or because you feel
16 that that is not relevant?

17 MR. SMITH: Both. Union is not a party -- apparently
18 my answer is so unpalatable the microphone won't turn on.

19 Union is not a party to those agreements, so it can't
20 -- it is not in a position to provide them.

21 MR. MONDROW: Is Union a shipper? Is Union to be a
22 shipper on the new line?

23 MR. SMITH: Well, I think that you will find there is,
24 Mr. Mondrow, there is an interrogatory that deals with
25 that, what Union knows about the shippers and whether the
26 various shipper arrangements as well, and there has been a
27 refusal to that as well. But I also don't see whether
28 Union is a shipper, how that is relevant.

1 MR. MONDROW: If Union is a shipper, presumably it's
2 executed one of these agreements, and it hasn't. Is that
3 not the case?

4 MR. SMITH: I think you have our position.

5 MR. MONDROW: Well, no. Your position is you don't
6 have access to the agreements. And I am asking whether
7 Union executed an agreement.

8 MR. SMITH: As I understand it, the party with the
9 agreements is Dawn Gateway, and Dawn Gateway is the only
10 party in a position to provide them, and Union can't.

11 MR. DeROSE: Okay. Maybe I can just back up.

12 Union was a party to the agreement for the sale of the
13 St. Clair Line; correct?

14 MR. SMITH: Is that a question for me or for the
15 witness?

16 MR. DeROSE: To the panel, unless you want to become a
17 witness.

18 MS. ELLIOTT: Yes. The St. Clair Line is a Union
19 asset, and the agreement was with -- between Union and Dawn
20 Gateway to purchase the asset.

21 MR. DeROSE: Right. And so I presume that since it is
22 in your annual report, Union would know what condition
23 precedents have to be met to close the sale on its own
24 asset.

25 MS. ELLIOTT: Yes. And these are the two conditions
26 precedent to close the sale on this asset.

27 MR. DeROSE: Thank you. That is all that my question
28 was.

1 If I can now turn you to the CME interrogatories,
2 which is Exhibit -- the B3 series, and I would like to
3 start with -- since Mr. Smith raised this issue, let's
4 start with B3.06.

5 And my question on this is -- Union states that it is
6 not in a position to provide the information as requested.
7 This is with respect to the long-term precedent agreements
8 between DGLP and its shippers.

9 Just to understand your refusal, is your refusal on
10 the basis that the information is not relevant, or on the
11 basis that Union was not a shipper, and as such, did not
12 execute such an agreement and so it is not in your
13 possession at all? So is it relevance or is it
14 availability?

15 MR. SMITH: Relevance.

16 MR. DeROSE: Okay. And so I take it that you would be
17 in possession of it, of the precedent agreement. At least
18 between Union and DGLP?

19 MR. SMITH: Yes.

20 MR. DeROSE: Okay. Thank you.

21 And similar question, if I can then take you to
22 Exhibit B3.07. And in fact, the next -- the responses to
23 CME Interrogatory 7, 8, 9, 10 and 11 all refer to the
24 response to B3.06.

25 I leave it up to perhaps counsel for Union whether we
26 want to go through each one individually or not. But is
27 the basis the same for all of those, that you are objecting
28 on the basis of relevance? Or is it because you don't know

1 the information that is being asked?

2 MR. SMITH: Well, it's -- we do take the position that
3 the information is not relevant.

4 I think it is particularly the case that it is both
5 not relevant and not in Union's possession, contracts that
6 are not with Union. So to the extent there are contracts
7 between Dawn Gateway and shippers who are not Union, those
8 are not contracts in Union's possession, nor do we see
9 those contracts as being relevant.

10 MR. DeROSE: Okay. And so for instance in B3.07, I
11 assume that subject to relevance, you would know the
12 duration of the contract between Union and DGLP?

13 MR. SMITH: Yes.

14 MR. DeROSE: And would you have knowledge of the
15 duration of the contracts with the other parties? So not
16 actual copies of the contracts, but knowledge of the
17 duration?

18 MR. SMITH: No. That is Dawn Gateway's information.

19 MR. DeROSE: Okay.

20 And just a question on that -- and we will get into
21 this in a little bit into the future -- but in situations
22 where you have a single individual representing Spectra's
23 interest in DGLP and also representing Union as the seller,
24 how do you separate the knowledge of that person, whether
25 it's Union's knowledge or DGLP's knowledge?

26 MR. SMITH: Well, the information is referable to the
27 entity. That is simply the answer.

28 MR. DeROSE: But if a Union employee does know this

1 information by virtue of their role, is it your position
2 that Union doesn't know that information?

3 MR. SMITH: Certainly our position is that Union, to
4 the extent the individual happens to be an individual who
5 works at Union or has responsibilities in Union and at
6 Dawn, that that does not put Union in a position to provide
7 the information.

8 MR. DeROSE: Okay.

9 If I can then take you to Exhibit B3.12, and
10 specifically you have two attachments, this relates to
11 information showing the spreads that existed on a daily
12 basis between June of 2009 and June of 2010.

13 If we go to attachment number 1, am I right when I
14 read it that the drop of spreads which caused concern and
15 which is identified in your evidence as causing the concern
16 in March of 2010, that is where we have this dip down to
17 somewhere in the range of -- I would put it at about
18 11 cents.

19 Is that the right spot I am looking at?

20 MR. TETRAULT: I think it is, Vince.

21 MR. DeROSE: And then by April, you have the spreads
22 going up so that right now we are up around 23 cents.

23 Am I reading that right?

24 MR. TETRAULT: You are.

25 MR. DeROSE: Okay. Are you aware of -- has there been
26 any further discussions about the sale of the St. Clair
27 Line on the basis that this appears to be a bit of an
28 anomaly? It is a one-month dip that has gone back up?

1 MR. TETRAULT: Not to my knowledge.

2 MR. DeROSE: Okay.

3 And the other question is this: Does Union have any
4 knowledge about whether the fixed price, at least for its
5 contract as a shipper with DGLP, would have been below that
6 11-cent spread?

7 MR. TETRAULT: I don't have any knowledge of that,
8 Vince.

9 MR. DeROSE: Would anyone at Union?

10 MR. TETRAULT: Presumably.

11 MR. DeROSE: Can I get that answer by way of
12 undertaking, unless you feel it is irrelevant?

13 MR. SMITH: We don't feel it is relevant.

14 MR. DeROSE: Okay. So I take it that is an objection?

15 MR. SMITH: It is.

16 MR. DeROSE: Okay. Then can I take you to the next
17 attachment, attachment number 2?

18 In this one, if I am reading this right, first of all,
19 just to make sure I am reading it right, in June of 2009
20 and in November of 2009 you actually have negative spreads;
21 is that right? Is that showing negative spreads?

22 MR. TETRAULT: That's correct.

23 MR. DeROSE: So the year leading up to or the year
24 previous leading up to the March/April 2010 period, you
25 actually have negative spreads, which are quite a bit lower
26 than the spreads that are being shown in the March/April
27 period; correct?

28 MS. ELLIOTT: That's correct.

1 MR. DeROSE: Okay.

2 Now, can you explain to me -- I see attachment number
3 1, the source is ICE end of day settles, forward basis
4 swap, 12-month average, and that the source for attachment
5 number 2 is the Dawn Platts Gas Daily. So I recognize they
6 come from two different sources, but these seem to be
7 pretty significant differences, in that one is showing
8 negative spreads and the other is not.

9 Do you have any explanation why these two different
10 sources would have such different spreads?

11 MR. TETRAULT: My understanding is that attachment 1
12 is a forward-looking 12-month price, whereas attachment 2
13 is essentially a daily close or a daily settled price.

14 MR. DeROSE: Oh, okay. So is the -- am I right that
15 the daily settled price is a historical actual, as opposed
16 to attachment 1 is -- because it is forward looking, is
17 just anticipated?

18 MR. TETRAULT: That's correct.

19 MR. DeROSE: So from a historical perspective,
20 attachment number 2 would be -- is it fair to say it is
21 more accurate with what actually occurred?

22 MR. TETRAULT: It does represent actual closes on
23 individual days. Whether it is more accurate or not, I
24 don't know that I could say, because it is really a bit of
25 an apples/oranges comparison between the two attachments.

26 MR. DeROSE: Okay.

27 Can I then take you to B3.15? I just want to make
28 sure I understand the roles that people are playing.

1 First of all, the IR indicates that Mr. Baker and Mr.
2 Isherwood represented Union at the leave to sell hearing,
3 as well as DGLP at the leave to construct hearing, and that
4 Mr. Capps has replaced Mr. Baker, who has assumed a new
5 role in Spectra, and that Mr. Capps currently represents
6 Spectra's interest in DGLP.

7 Now, does Mr. Capps also represent Union's interest in
8 the sale of the St. Clair line on behalf of Union?

9 MR. TETRAULT: I would say Mr. Capps has the same
10 responsibilities as Mr. Baker did in that regard.

11 MR. DeROSE: So is that a "yes"?

12 MR. TETRAULT: Yes.

13 MR. DeROSE: Okay. Then if I turn the page to --
14 sorry, B3.16, it identifies that Mr. Capps is responsible
15 for Union's unregulated commercial business.

16 Would that responsibility include the responsibility
17 surrounding Union as a shipper on the DGLP line, if the
18 sale had closed?

19 MR. TETRAULT: Yes.

20 MR. DeROSE: Were there any processes or procedures
21 put in place so that Union or Spectra or DGLP could
22 determine or identify when Mr. Capps was representing Union
23 on the sale, as opposed to DGLP on the build, as opposed to
24 Union as a shipper? How would people know what hat he was
25 wearing at any given point?

26 MR. TETRAULT: I don't know that I can answer that.
27 We certainly have an Affiliate Relationships Code that I
28 believe these types of relationships fall under, but I

1 can't provide you any more details than that.

2 MR. DeROSE: Sorry. That is an internal Union
3 affiliation code?

4 MR. TETRAULT: I believe it is in respect to the
5 Board's Affiliate Relationships Code.

6 MR. DeROSE: Okay. That is the Board-approved ARC.

7 MR. KITCHEN: Just to be clear, I think that -- I
8 can't remember who testified to this in the Dawn Gateway
9 proceeding, but I think it was Mr. Baker and Mr. Isherwood
10 that indicated that Union employees are also required to
11 follow the Spectra code of business ethics, in addition to
12 any requirements under the ARC, and I think the Board found
13 that for the purposes of DGLP, Union would apply with the
14 ARC as well.

15 MR. DeROSE: Okay. I wasn't actually -- if my
16 questions conveyed we were suggesting you were somehow
17 violating ARC, I wasn't suggesting you were violating ARC.
18 I was just trying to understand how you would know at any
19 given point the interests that Mr. Baker was pursuing, in
20 light that there may be at times conflicting obligations.
21 So that is where I was going, but we will leave that for
22 argument.

23 If I can then take you to B3.17, this, along with the
24 attachments, relates to documents or conversations with
25 respect to the delay in the construction of the Dawn
26 Gateway pipeline.

27 First of all -- and perhaps I am just being too picky
28 on the word, but in the first sentence, you say:

1 "Union understands that the Shipper's request for
2 a delay of the Dawn Gateway project was
3 substantively conveyed..."

4 Is there a magic in the term "substantively conveyed"
5 or -- as opposed to is there something I should be reading
6 into that?

7 MR. SMITH: No.

8 MR. DeROSE: Okay. So it wasn't insubstantially
9 conveyed before or informally conveyed before?

10 MR. SMITH: Well, I think it was meant to convey,
11 counsel, that it is possible that there were telephone
12 conversations, but there were -- there were the meetings
13 that are referenced in the e-mails that are attached, and
14 that's the crux of it. That's what is intended to be
15 conveyed.

16 MR. DEROSE: Okay. Well, then let me take you to
17 attachment number 1. This is an e-mail from Steve Baker on
18 March 12th.

19 Now, first of all, just from looking at this e-mail,
20 are you able to tell in what capacity or what role Mr.
21 Baker is sending this e-mail, whether he is sending it on
22 behalf of Spectra, whose interests are in DGLP, or whether
23 he is sending it on behalf of Union as a shipper or Union
24 as the seller of a pipeline?

25 MS. ELLIOTT: I certainly read this to be Mr. Baker
26 conveying the message as Dawn Gateway Limited Partnership.

27 MR. DeROSE: Okay.

28 Then if we go through who he is sending it to, Julie

1 Dill is the president of Union, correct, or was?

2 MS. ELLIOTT: That's right. Still is.

3 MR. DeROSE: Still is? Okay.

4 Now, Ms. Dill, did she have any role or interest in
5 DGLP?

6 MS. ELLIOTT: I don't know.

7 MR. DeROSE: Is that something that Union is able to
8 answer now, or in an undertaking?

9 MR. SMITH: She did not.

10 MR. DeROSE: Okay. So I take it, then, that her
11 receipt of this e-mail would be either with respect to the
12 seller or, I guess, both as the seller of the pipeline and
13 as a potential shipper; is that fair?

14 MR. SMITH: I think it is a fair statement.

15 MR. DeROSE: Okay. And who is Mike Shannon?

16 MS. ELLIOTT: I am not sure of his precise title, but
17 he is our vice-president of storage and transmission
18 operations, and engineering.

19 MR. KITCHEN: Engineering and construction.

20 MR. DeROSE: Okay. And that is with Union, I assume?
21 Not with Spectra?

22 MS. ELLIOTT: He is with Union.

23 MR. DeROSE: Okay. And given his role, would he be
24 getting this because of the implications for Union as a
25 shipper, or because of the implications of Union as -- the
26 potential sale of the St. Clair Line?

27 MS. ELLIOTT: It would be more related to the storage
28 and transportation operations, as a result of Union's

1 connection with the Dawn Gateway partnership and the sale
2 of the line.

3 MR. DeROSE: Okay. Thank you.

4 Then we have Allen Capps, who we have talked about.
5 Again, I take it you would agree on the face of this e-
6 mail, we can't really tell in what capacity he is receiving
7 this, in terms of whether it is as his work for Spectra, or
8 his work for Union.

9 MS. ELLIOTT: I would assume it is his role as
10 replacing Mr. Baker about this same time frame.

11 MR. DeROSE: So if you thought Mr. Baker would have
12 been writing on behalf of DGLP, Mr. Capps would be
13 receiving it in the same capacity?

14 MS. ELLIOTT: Yes.

15 MR. DeROSE: Okay.

16 I take it Mark Isherwood, same thing, because he would
17 have just, Mr. Capps would have just been taking over from
18 Mr. Isherwood; is that --

19 MR. TETRAULT: No. Mr. Capps would have been taking
20 over for Mr. Baker.

21 MR. DeROSE: Oh, I'm sorry. In that case, why would
22 Mr. Isherwood be receiving this?

23 MR. TETRAULT: At the time and currently, Mr.
24 Isherwood reported to Mr. Baker in the past and Mr. Capps
25 today. It is a direct reporting relationship.

26 MR. DeROSE: Okay.

27 Who is Glen Priestley?

28 MS. ELLIOTT: He reports to Mr. Isherwood.

1 MR. DeROSE: Okay. And Michelle Lindsay?

2 MS. ELLIOTT: Mr. Baker's admin assistant.

3 MR. DeROSE: Okay.

4 Now, do you know what any of these people did in
5 response to Mr. Baker's e-mail?

6 MS. ELLIOTT: The people being those listed in the
7 next steps? No.

8 MR. DeROSE: No. Those -- all of the people that we
9 have just went through. He sent this e-mail to them on
10 March 12th.

11 MS. ELLIOTT: I would say it was for their
12 information.

13 MR. DeROSE: So nothing in this e-mail would be seen
14 as an action item for any of these people to take further
15 steps?

16 MS. ELLIOTT: Other than the next step, number five,
17 identifies an action item for Rick to follow up with the
18 Ontario Energy Board.

19 MR. DeROSE: Okay.

20 MS. ELLIOTT: And I guess number one is Mike Shannon,
21 so he had a next step to deal with the pipe purchase.

22 MR. DeROSE: Okay. Do you know whether those -- all
23 five of those next steps were undertaken and completed?

24 MS. ELLIOTT: I believe they have been, yes.

25 MR. DeROSE: Okay. Mr. Mondrow wanted to sneak in.

26 MR. MONDROW: Much to Mr. Smith's dismay. But just
27 while we're on that, the name Mark on item number 2, I
28 assume that would be Mark Isherwood?

1 MS. ELLIOTT: Yes, that's right.

2 MR. MONDROW: And the name Glen on item number 4 would
3 be Glen Priestley?

4 MS. ELLIOTT: Yes.

5 MR. MONDROW: Thanks.

6 MR. DeROSE: And in that case, I am just going to --
7 the next step I was going to say is number 4: "Glen
8 Priestley, finalize details of all out-of-pockets."

9 Can I just have you turn to B3.20? Oh, I'm sorry.
10 Not B3.20. Just give me one moment here to --

11 MR. SMITH: B3.29?

12 MR. DeROSE: Yes. Thank you. Do you have B3.29,
13 panel?

14 MS. ELLIOTT: Yes.

15 MR. DeROSE: First of all, would these be the out-of-
16 pocket costs that are referred to in that e-mail? Do you
17 know?

18 MS. ELLIOTT: Yes.

19 MR. DeROSE: Okay. Can you explain why DGLP is paying
20 for all of these costs incurred by Union?

21 MS. ELLIOTT: They were incurred on behalf of the
22 partnership.

23 MR. DeROSE: And my understanding was that it was
24 Spectra that had an interest in DGLP, not Union, that Union
25 was simply a shipper and the seller of a line. Is that not
26 -- am I wrong on that?

27 MS. ELLIOTT: You also saw Union's people in the
28 regulatory process. So Union's -- was facilitating the

1 partnership and the project.

2 So the costs that were directly incurred by Union Gas
3 were reimbursed by the partnership.

4 MR. DeROSE: Was there a contractual basis for
5 reimbursement of this money? I assume DGLP isn't just
6 being nice. I am just trying to understand the basis for
7 DGLP paying.

8 MS. ELLIOTT: I assume there was, but I am not sure.

9 MR. DeROSE: Okay. When I look at -- I mean, on the
10 e-mail that we had been discussing earlier, where it said:
11 "Glen to talk about out-of-pocket costs," it sounded like
12 that was -- to me that sounds like something that is to be
13 negotiated. Were these costs negotiated between Union and
14 DGLP?

15 MS. ELLIOTT: Not that I'm aware of, no.

16 MR. DeROSE: Well, if they weren't negotiated, what
17 was Glen finalizing, what details was he finalizing on all
18 out-of-pocket costs?

19 MR. KITCHEN: The costs that Glen would have been
20 finalizing are those out-of-pocket costs incurred by Dawn
21 Gateway, and that would be addressed subsequently by the
22 shippers who wanted out of the precedent agreements.

23 MR. DeROSE: Okay.

24 What I am going to request is that by way of
25 undertaking, Union identify the contractual basis, if any,
26 for DGLP reimbursing Union these costs, and to produce a
27 copy of the contract or any amendments that were made to
28 that. That's request number one.

1 And then secondly, any correspondence with respect to
2 the finalization of these out-of-pocket costs that led to
3 this number of 600 and -- well, that led to the numbers set
4 out in B3.29.

5 MR. SMITH: Just so I understand, and maybe some
6 clarification, Mr. Kitchen identified that in 3.17 what is
7 being referred to are Dawn's out-of-pocket costs, Dawn
8 Gateway's out-of-pocket costs.

9 What is identified in 3.29 are Union's costs that it
10 incurred in the application.

11 And you will see that those costs, counsel, are legal
12 fees, intervenor costs award, and Board costs.

13 And I guess I am struggling to understand if all of
14 the costs that Union has incurred are being covered and
15 ratepayers are not paying any of those costs, why
16 agreements that give rise to those payments would be
17 relevant.

18 Similarly, if what is being contemplated is the
19 payment of Dawn's costs, which are not borne by ratepayers,
20 are being covered by shippers, why are those relevant in
21 this proceeding?

22 MR. DeROSE: Well, in terms of the relevance, I mean,
23 the Exhibit B3.29 sets out the costs that Union has
24 incurred, that DGLP is paying.

25 And whether those costs are or are not being flowed to
26 ratepayers, I think we are entitled to know the basis for
27 Union's reimbursement. We are trying to understand the
28 process which occurred, and to also understand exactly --

1 well, let me back up.

2 The issue in this -- the issue which we are exploring
3 is whether, for regulatory purposes, the sale of the St.
4 Clair line should be treated as having been completed in
5 March, and on that basis - maybe this will help so you
6 understand where we are coming from - and whether it was
7 imprudent for Union, as the seller of the pipeline, to not
8 insist that the sale be completed once the condition
9 precedents had been fulfilled.

10 So put another way, if Union was an arm's-length
11 seller, would it have insisted that DGLP close the deal
12 once the condition precedents had been fulfilled, and the
13 extent to which Union, as not only the seller, but also as
14 a potential shipper and also as a part-owner in DGLP, chose
15 not to go ahead with the sale for reasons -- for cost
16 implications that fall outside of the regulated business?

17 So was there a choice made to prefer the unregulated
18 business over the regulated business?

19 So in that context I think -- I submit that
20 understanding exactly what the basis for DGLP paying the
21 costs was and whether this was, for instance, a clause of
22 the agreement of purchase and sale for the -- as seller, or
23 whether this was an agreement that was worked out on the
24 back end after the decision was made not to go ahead or as
25 a way to incent Union to not force their hand and close the
26 sale.

27 So that is why we want to understand the basis for
28 DGLP picking up all of these costs.

1 MR. KITCHEN: There were definitely agreements between
2 Dawn Gateway and Union with respect to the development of
3 the Dawn Gateway project and the construction. I believe
4 redacted versions of those were filed in the Dawn Gateway
5 proceeding.

6 The evidence that was given in that proceeding was
7 that Union's in-franchise ratepayers would be held harmless
8 against any costs associated with the construction of Dawn
9 Gateway, and included any costs associated with the
10 regulatory applications.

11 I still struggle with how the costs that would have
12 been incurred by Dawn Gateway and ultimately that would be
13 dealt with in terms of the shippers' desire to get out of
14 the current -- or their existing precedent agreements has
15 any relevance to whether or not Union should have proceeded
16 with the sale.

17 The fact is the shippers weren't interested in
18 proceeding at this time because of changes in the market,
19 and the shippers are also customers of Union. And it is in
20 no one's best interest to force shippers into a deal that
21 they don't like.

22 So Union's ratepayers aren't harmed, the shippers
23 aren't harmed, and we have set out a process that will
24 reevaluate Dawn Gateway going forward. None of that has
25 changed.

26 We are simply delaying dealing with the disposition of
27 the \$6.4 million or the under recovery in rates until such
28 time as we have certainty around what Dawn Gateway is

1 doing.

2 MR. SMITH: Counsel, if I can --

3 MR. DeROSE: I was going to give a suggestion.

4 MR. SMITH: I was just going to say, if you want a
5 reference to the Dawn Gateway proceeding and those
6 agreements that Mr. Kitchen referred to, we will provide
7 you with that.

8 MR. DeROSE: Actually, I think we are on the same page
9 there. If you could give us that reference, that would be
10 helpful. And if you could also -- if there are additional
11 agreements which were not filed, if you could, at the very
12 least -- obviously we would like them produced, but if you
13 object to production of them, if you could at least
14 identify whether they do or do not exist?

15 MR. SMITH: We will do that.

16 MR. MILLAR: Would you like that by way of
17 undertaking, Mr. DeRose?

18 MR. DeROSE: Yes. I think that would be the easiest.

19 MR. MILLAR: We will call that JT - "T" for technical
20 conference - 1.1.

21 **UNDERTAKING NO. JT1.1: TO PROVIDE THE REFERNCES TO**
22 **AGREEMENTS BETWEEN DAWN GATEWAY AND UNION FILED IN THE**
23 **DAWN GATEWAY PROCEEDING. TO THE EXTENT THAT**
24 **ADDITIONAL AGREEMENTS OR AMENDED AGREEMENTS EXIST THAT**
25 **WERE NOT PREVIOUSLY FILED, UNION WILL PRODUCE THEM**
26 **UNLESS UNION OTHERWISE RAISES AN OBJECTION. IF THERE**
27 **IS AN OBJECTION, UNION WILL IDENTIFY THE EXISTENCE OF**
28 **THE AGREEMENTS AND THE BASIS FOR THE OBJECTION**

1 **(SATISFIED FOLLOWING MORNING BREAK)**

2 MR. MILLAR: Are you happy to have that all as one
3 undertaking?

4 MR. DeROSE: Absolutely, unless Mr. Smith objects.

5 Okay. If we can go to B3.18? Now, as I understand
6 this answer, that Union supported the pipeline project
7 proceeding, but that in fact it was because of other
8 shippers requesting that the project -- first of all, that
9 the project be delayed.

10 Do I take it that the -- is the project terminated or
11 is it delayed? Is it in abeyance or is it over?

12 MR. SMITH: It's delayed. You will see that the e-
13 mails subsequent to the -- the second of the two e-mails at
14 3.17 makes that point clear.

15 MR. DeROSE: Okay, thank you.

16 The fact that you wanted the pipeline project to
17 proceed, did you convey that to DGLP? Did you tell them,
18 either in written form or in oral, that you wanted the
19 project to proceed?

20 MR. KITCHEN: I am just reviewing the e-mails. I
21 thought it was in one of the e-mails.

22 MR. DeROSE: I didn't see it. The reason I ask is
23 that in your answer in B3.18, you confirm that you did not
24 submit a written or oral request to delay the pipeline, but
25 you don't -- you are silent on whether you actually
26 conveyed the message that you wanted it to proceed. Would
27 you like to take that by way of undertaking?

28 MR. KITCHEN: Well, I think if you look at the last

1 sentence in the first e-mail.

2 MR. DeROSE: The one that says, "Please do not forward
3 this e-mail"?

4 MR. KITCHEN: No, the second last sentence, sorry,
5 where it says:

6 "This is clearly not where we want it to be -- we
7 want it to be but I believe this proposal to be
8 our best course of action in the circumstances we
9 find ourselves in -- The market is changing."

10 I think that that shows that Union, in any case,
11 was -- wanted the project to proceed, and it was the market
12 that drove the delay.

13 MR. DeROSE: Yes. I accept -- you have said in your
14 IR response in B3.18 that you wanted the project to
15 proceed.

16 My question is: Did you ever tell DGLP that, or did
17 you just, looking at the situation, decide to stay silent
18 and sort of accept what is described as option A in e-
19 mail 1?

20 MR. KITCHEN: I am sure our position with DGLP was we
21 wanted to proceed.

22 MR. DeROSE: Now, did Union, with its seller-of-the-
23 pipeline hat on, ever demand that DGLP close the deal?

24 MR. KITCHEN: No.

25 MR. DeROSE: Why not?

26 MR. KITCHEN: Because it was not in our interest to
27 proceed, or to do that.

28 MR. DeROSE: Okay.

1 MR. KITCHEN: It was the shippers that were making the
2 request, and we responded to the needs of the shippers.

3 MR. DeROSE: Okay. Now, if I can just take you back
4 to B3.17, the actual IR Response proper, sub (2), it refers
5 to the amendment of the existing precedent agreements.

6 Once the decision was made to delay the project, was
7 Union's consent required to amend the existing precedent
8 agreements?

9 MR. KITCHEN: I guess if you are asking whether
10 Union's consent was required, I would say it was not
11 required, but it was given by virtue of the fact that we
12 signed the precedent agreement.

13 MR. DeROSE: Okay. I realize that the amended
14 precedent agreements, that you have refused to produce
15 those based on relevance. But just to be clear, in case it
16 is not already, when we ask for a copy of the precedent
17 agreements -- we can deal with this later on the basis of
18 relevance -- but we would include not only the precedent
19 agreement original, but also any amendments throughout the
20 process, including these ones.

21 MR. SMITH: Okay. I understand your request.

22 MR. DeROSE: Okay. Thank you.

23 B3.19, this is a question in which we have asked
24 whether the issue on the delay, whether board of directors'
25 approval was required. And you say:

26 "The board of directors did not take any action,
27 nor was it required to."

28 Can you just explain your rationale for the board of

1 directors not having to be involved in this type of a
2 decision?

3 MR. KITCHEN: This was an internal management
4 decision, and there was no obligation on the part of Union
5 to take it to the board of directors, and nothing for the
6 board of directors to decide on.

7 MR. DeROSE: Okay. B3.20, this is with respect to
8 outstanding commitments as of April 22nd, 2010.

9 Would there have been outstanding commitments with
10 third parties at the time that the decision was made to
11 delay the project? So as of -- well, the e-mail is March
12 12th. Put another way, were outstanding commitments dealt
13 with between March 12th and April 22nd in that period?

14 MR. KITCHEN: I don't know the answer to that, but I
15 assume that given that the original e-mail went out on
16 March 12th and by April 22nd there were no outstanding
17 commitments, that they would have been dealt with in that
18 time period.

19 MR. DeROSE: Okay. In terms of any out-of-pocket
20 costs that would arise from that, who would have paid those
21 costs?

22 MS. ELLIOTT: The partnership would have paid those
23 costs, Dawn Gateway.

24 MR. DeROSE: So none of those costs would be flowed
25 through Union?

26 MS. ELLIOTT: No.

27 MR. KITCHEN: No.

28 MR. DeROSE: Okay. Then B3.21, this is with respect

1 to DGLP's costs incurred with respect to Union's
2 application.

3 Again, I understand that you are taking the position
4 this is not relevant. Would Union be in possession of this
5 information subject to relevance? So this is the same
6 thing as B3.06.

7 MR. KITCHEN: Union would not be in possession of the
8 partnership's costs.

9 MR. DeROSE: Okay. And in terms of B3.22 -- this is
10 the next one -- I recognize from what you have said
11 previous that you may not know the indemnities that DGLP
12 demanded from all five of its committed shippers, but I
13 presume that you would know the indemnities, if any, that
14 DGLP demanded from Union; is that fair?

15 MR. KITCHEN: That's fair.

16 MR. DeROSE: And that your basis of refusal, again, is
17 relevance, not the absence of possession of that
18 information?

19 MR. KITCHEN: That's right.

20 MR. DeROSE: Okay. Again, just to perhaps save time,
21 I think the same questions with respect to B3.23 and B3.24,
22 I just want to confirm that at least -- at least with
23 respect to the information as it relates to Union as one of
24 the committed shippers, you would have the information, but
25 you are objecting on the basis of relevance?

26 MR. KITCHEN: That's correct.

27 MR. DeROSE: Okay. Thank you.

28 MR. MILLAR: Mr. DeRose, we will be looking to take a

1 break before too long. Are you nearing the end of your
2 questions, or will it be more than five or 10 minutes?

3 MR. DeROSE: I would probably be 15 more minutes or 20
4 minutes. So if you want to have a break, and I can try and
5 tighten this up?

6 MR. MILLAR: Maybe we will do that. I would like to
7 keep the break relatively brief so we can keep moving
8 through this.

9 So we will begin again promptly at five after 11:00.

10 MR. DeROSE: Okay. Thank you.

11 --- Recess taken at 10:50 a.m.

12 --- Upon resuming at 11:03 a.m.

13 MR. MILLAR: Welcome back, everyone. Mr. DeRose, do
14 you wish to continue?

15 MR. SMITH: Sorry, Mr. DeRose, before you begin, we
16 had undertaken earlier to provide a reference to a question
17 relating to Board 1.01 in response to a question from Mr.
18 Buonaguro, and there was a follow-up from Mr. Quinn. The
19 reference is EB-2009-0052 in Union's reply argument in that
20 proceeding. I believe that is the answer to undertaking 1.
21 Thank you.

22 MR. MILLAR: Thank you.

23 MR. DeROSE: Thank you, Mr. Millar.

24 At the break, I have met with a couple of the other
25 intervenors, and one line of my questioning has now been
26 put aside, because they're going to be following up on it
27 in more detail. So the break did shorten things.

28 IR CME No. 25, I just want clarification here. The

1 two e-mails attached to B3.17, do those represent all of
2 the communications?

3 MR. KITCHEN: My understanding is that those represent
4 the communications, and all of the other communications
5 would have been oral.

6 MR. DeROSE: Okay. I take it if at some point you
7 determine that is incorrect and there are other written
8 communications, you will provide those to us?

9 MR. KITCHEN: I don't think that would be the case,
10 but, yes.

11 MR. DeROSE: Sorry, you don't think it is the case you
12 will identify them, or you don't think it is the case you
13 will give it to us?

14 MR. KITCHEN: I don't think it is the case we will
15 find any.

16 MR. DeROSE: Okay, that's fair.

17 I'm sorry to jump backwards, but I just had one more
18 question. If I can take you back to Board Staff -- we may
19 not have to turn there, but it is Board Staff 8. This is
20 the annual report.

21 The way that that report reads in the last paragraph
22 that we had gone through, where it identifies two
23 contingencies, both of which had been fulfilled by the
24 holding of the hearing, and then the subsequent OEB
25 decision in March 2010, it certainly would leave the reader
26 with the conclusion or impression that the sale either has
27 gone forward or is imminently about to go forward.

28 Has there been any additional -- any material change

1 report filed or any amendments to the annual report filed
2 by Union to identify that that is not the case, that the
3 sale is no longer going forward that was reported in the
4 2009 annual report?

5 MS. ELLIOTT: There have been no formal filings. The
6 sale has been delayed, not that it is not going forward.
7 But at this point, the decision hasn't been finalized, and
8 there will be a revisit.

9 MR. DeROSE: Okay. Then if I can take you to B3.41?
10 Now, just in terms of the answer here, Union takes the
11 position that the return on equity of its unregulated
12 storage operations does not have any relevance to the issue
13 of allocation of costs.

14 Did you undertake that type of calculation? So did
15 you calculate what the ROE for Union's unregulated storage
16 operations is for the fiscal period ending December 31st,
17 2009?

18 MR. SMITH: Counsel, notwithstanding the purity of
19 Union's position that it is not relevant, the information
20 was disclosed.

21 MR. DeROSE: Which was going to be my next question.
22 That is what I thought it was, but I wasn't sure.

23 Is that what you have disclosed at attachment number -
24 - at the attachment?

25 MS. ELLIOTT: Yes.

26 MR. DeROSE: On the attachment, not attacking the
27 purity of Union's position on relevance, the line item
28 "financial expenses", can you describe to me what you mean

1 by "financial expenses"?

2 MS. ELLIOTT: It's interest.

3 MR. DeROSE: Okay. So that entire 11.7 million, that
4 is entirely interest costs?

5 MS. ELLIOTT: This is a deemed calculation using the
6 same type of methodology that we would use for utilities.
7 So it is deemed interest on rate base.

8 MR. DeROSE: Fair enough. It was the phrase
9 "financial expenses" that we would usually see interest
10 costs.

11 So thank you very much. Those are all of my
12 questions.

13 MR. MILLAR: Thank you, Mr. DeRose. Mr. Mondrow,
14 would you like to go next?

15 MR. MONDROW: If that's okay.

16 MR. MILLAR: Or anyone else, for that matter? Okay,
17 it is you.

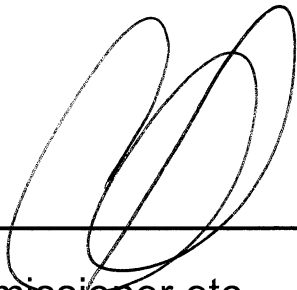
18 **QUESTIONS BY MR. MONDROW:**

19 MR. MONDROW: All right. Thanks.

20 I just want to step back to the earnings sharing
21 consequences, if any, of the Dawn Gateway issue, if I
22 could.

23 I wasn't involved -- IGUA wasn't involved in those
24 proceedings, and I just want to make sure I understand or
25 that we agree, at least -- you understand the same as I
26 understand about what the Board directed, and then I just
27 want to understand how that has been reflected in the
28 filing, in this application, if I could.

This is Exhibit 17 to the Affidavit of
Jack Hughes, sworn before me this
29 day of November, 2010.

A handwritten signature consisting of two large, overlapping loops, written in black ink.

A Commissioner etc.



uniongas
A Spectra Energy Company

July 23, 2010

Ms. Kirsten Walli
Board Secretary
Ontario Energy Board
2300 Yonge Street, 27th Floor
Toronto, ON
M4P 1E4

**Re: EB-2010-0039 - Union Gas Limited - 2009 Earnings Sharing & Disposition of
Deferral Account and Other Balances – Transcript Corrections**

Dear Ms. Walli:

Union is writing further to the technical conference in the above noted matter. Union has now had the opportunity to review the transcript from that conference and answers provided. Below are supplementary responses relating to the conditions precedent of the sale of the St. Clair Line and the split of O&M costs relating to the Spectra employee in the IFRS project.

Conditions Precedent on Sale of St. Clair Line

Ms. Elliot commented at page 21 of the transcript that the two conditions precedent identified in Union's annual report were the only two conditions precedent to the close of the sale of the St. Clair line to the Dawn Gateway Limited Partnership ("DGLP"). This answer was incorrect. Article 3 of the Purchase and Sale Agreement between Union and DGLP contains additional conditions precedent to the close of the sale of the St. Clair line.

The conditions in favour of DGLP are set out in Article 3.1. These conditions are for the exclusive benefit of DGLP and may only be waived by that party. Union has never received confirmation from DGLP that all of the conditions listed in Article 3.1 have been waived, satisfied or complied with.

Further, it is Union's understanding that at least the following conditions have not been waived, satisfied or complied with: Article 3.1 (e) requiring a vote of DGLP's partners in favour of proceeding with the Pipeline System (as defined); Article (g) relating to the contemporaneous closing of a lease or purchase between Dawn Gateway Pipeline, LLC and Michigan Consolidated Gas Company; and Article (l) requiring regulatory approvals including from the Michigan authority to the operation of the Pipeline System. As

indicated in Exhibit JT1.1, the Purchase and Sale Agreement was filed subject to the Board's Practice Direction on confidential filings in EB-2008-0411.

Split of O&M Costs Relating to Spectra Employee on the IFRS Project

Mrs. Elliot commented at page 77 of the transcript that the costs associated with the part-time Spectra employee were allocated equally across Chatham, Houston and Calgary. After investigation, Union has determined that half of the employee's costs were allocated to Union as only Union and Westcoast are converting to IFRS.

If you have any questions, please contact me at (519) 436-4521.

Yours truly,

[Original Signed by]

Chris Ripley
Manager, Regulatory Applications

cc Crawford Smith (Torys)
EB-2010-0039 Intervenors

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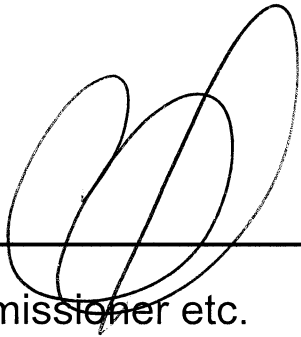
Please note that our addresses have changed and now end in blg.com. Please update your address book. You may also have noticed that we have recently changed our logo. This evolution represents our increased commitment to service and achieving the best results for our clients and serves as a constant reminder of our commitment and dedication to professional and service excellence in everything we do.



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This is Exhibit 18 to the Affidavit of
Jack Hughes, sworn before me this
29 day of November, 2010.

A handwritten signature consisting of several overlapping loops, written in black ink.

A Commissioner etc.



uniongas

A Spectra Energy Company

November 2, 2010

Ontario Energy Board
2300 Yonge Street, Suite 2700
Toronto, Ontario
M4P 1E4

Attention: Ms. Kirsten Walli, Board Secretary

RE: EB-2010-0199 - 2010 Natural Gas Market Review – Submission of Union Gas Limited

Dear Ms. Walli:

On July 13, 2010, the Ontario Energy Board (the “Board”) issued a letter indicating that an assessment of how the natural gas markets in Ontario are responding or adapting to changing market conditions, referred to as the 2010 Natural Gas Market Review (“NGMR”), would take place. The Board assigned docket number EB-2010-0199 to the review.

On August 20, 2010, the Board issued a letter stating that written comments relating to the NGMR were to be provided by November 2, 2010. Attached is the written submission of Union Gas Limited.

If you have any questions, please contact me at 519-436-5476.

Yours truly,

[original signed by]

Karen Hockin
Manager, Regulatory Initiatives

cc: Emily Kirkpatrick (Torys)
EB-2010-0199 Participants

Submission of Union Gas Limited

The North American natural gas market has recently undergone significant changes over a relatively short period of time. These changes have, and will continue to have, far-reaching implications on the Ontario natural gas market. In recent years, the natural gas market has experienced decreased reliance on Western Canadian Sedimentary Basin (“WCSB”) supplies, the emergence of new alternative supply sources and, changes in the physical flow of gas across the country and the province of Ontario. These continuing changes represent both a challenge and an opportunity for the Ontario natural gas market.

To better understand the implications of recent developments in the North American natural gas supply, the Ontario Energy Board (“the Board”) initiated the 2010 Natural Gas Market Review – EB-2010-0199 (“NGMR”) to assess how the natural gas market in Ontario is responding or adapting to changing market conditions. Through the NGMR, the Board had the specific objective of assessing the need, if any, for further regulatory initiatives in response to the changing market for natural gas.

On August 20, 2010, the Board released a report prepared for Board staff entitled *2010 Natural Gas Market Review* (the “ICF Report”), written by ICF International Inc. (“ICF”). The Report provided analysis and insight into the current state of the North American and Ontario gas market, and provided an outlook of the expected state of the Ontario gas market in the future.

On October 7-8, 2010, stakeholders participated in a Stakeholder Conference at which time views on the report, the issues in the Ontario gas market, and the appropriate regulatory response were discussed. Stakeholders were also invited to submit written comments.

The following is the written submission of Union Gas Limited (“Union”). Union’s submission focuses on what it sees as necessary to ensure that the Ontario natural gas

market remains effective and also responds to issues raised during the NGMR Stakeholder Conference by other participants.

I/ EXECUTIVE SUMMARY

The considerable changes experienced in the North American and Ontario natural gas markets represent significant opportunities for the residents of Ontario. Ontario is poised to benefit from the changing dynamics in the market through increased diversity of supply provided by alternatives to traditional WCSB supplies. Ontario continues to benefit from the liquidity of the Dawn Hub which will be further supported through the development of new supply paths into Ontario. The changing operational flows will require re-purposing parts of Union's Dawn-Trafalgar transmission system and has resulted in the potential for gas to flow into Ontario from Union's Kirkwall station for the first time. All of these developments have positive implications for the Ontario gas market.

As with any change however, there are challenges that must be addressed. Chief among these is the physical limitation of the infrastructure between Union's Parkway compression station and TransCanada Pipeline's ("TCPL") Maple station. The pipe connecting Parkway (Union) and Maple (TCPL) is currently at capacity and is a single pipeline connecting robust infrastructure at both ends. This limitation is impeding the flow of gas within the province of Ontario and restricting the services and supply options that can be offered to all parties sourcing supplies and seeking transportation away from Dawn. It also limits the options available to Union's customers in northern and eastern Ontario. Moreover, as the market options for gas supply continue to shift away from the WCSB to other locations, the impact of the Maple constraint will have greater impacts on the ability of consumers to minimize delivered gas costs and will make the expansion of the constraint between Parkway and Maple a priority.

TCPL has historically used a temporary measure that notionally transported gas westerly from Dawn, into Manitoba through the Great Lakes Transmission system and back into

Ontario through the TCPL mainline (“around the horn”). This was done by TCPL using their integrated system and diverting gas destined for Dawn to Parkway. Given the declines in WCSB gas and reduced flows on TCPL, the “notional” option is not available on all days any more. Union worked with TCPL to create a physical option where, starting November 1, 2010, gas can now physically flow “around the horn”. This stop-gap measure, however, is not a long-term solution and physical expansion to relieve the constraint between Parkway and Maple must take place. The “around the horn” strategy is inefficient in that it moves that gas in a flow pattern that is ten times the length of the most efficient method that begins from Dawn to Parkway and beyond.

As we move forward, taking steps to ensure that Ontario continues to have access to Dawn as a liquid hub will also be a key consideration. The liquidity of the Dawn Hub provides Ontario with a cost effective, stable and competitively priced source of gas supply, security of supply through access to multiple supply sources and immediate access to storage. The liquidity of the Dawn Hub also attracts many market participants, helping to facilitate competition. The Dawn Hub has a direct role in setting the price of gas in Ontario and increasingly, setting the price of electricity in Ontario. If Ontario is to have an effective gas market in the future, the liquidity of the Dawn Hub will need to be maintained and grow, if possible.

The market must be allowed to function efficiently and effectively. Participants in the market have been working together to bring new supply and the resultant benefits to Ontario and Ontario’s consumers. The market will seek to create and utilize new alternatives if existing transportation paths are not competitive with other options. The desire to increase the utilization of existing facilities should not thwart the construction of new facilities that result in a lower delivered cost of gas to Ontario consumers. If the Ontario market is not allowed to effectively develop needed transportation options, the market will move the new gas supply sources to the most economical alternative, whether it involves the Ontario gas market or not. If artificial barriers are created that slow or prevent expansions to existing infrastructure, like the constraint between Parkway and

Maple, then the market will find other markets to move the new supplies. For example, a market solution that bypasses Dawn due to infrastructure constraints or toll uncertainty will decrease liquidity at Dawn, and would be a detriment for both Ontario gas consumers and Ontario electricity consumers.

Union is also concerned about the potential impact of any TCPL framework redesign that would lead to short-haul tolls becoming uncompetitive due to the shifting of costs from TCPL long-haul tolls to short-haul tolls. As discussed at the consultation, if short-haul tolls rise significantly the future of the Dawn Hub liquidity could be diminished. It is imperative that the Board, the Ministry (“the Ministry”) and all market participants support the TCPL Mainline Competitiveness Initiative, but work to ensure that short-haul tolls remain competitive

The continued support of market development by the Board is vitally important. The expedited review and decisions on new services introduced to the market provides both price and regulatory certainty. The recent approval of the Dawn to Dawn-TCPL service and expedited issuance of the procedural order for the C1 Kirkwall to Dawn and M12-X proceeding are examples of the Board’s actions in this regard. The continued openness of the Board with respect to alternative forms of regulation, such as that approved in the Dawn Gateway proceeding, shows that Ontario is open to innovative proposals to bring access to additional storage to consumers in Ontario.

II/ KEY REQUIREMENTS FOR AN EFFECTIVE GAS MARKET IN ONTARIO

At the Stakeholder Conference Union provided its view of what is required to ensure support for continued strength of the natural gas market in Ontario. The key requirements for an effective gas market in Ontario are:

1. Maintain and grow Dawn as a liquid market hub
2. Allow the market to continue to adapt
3. Ensure appropriate infrastructure is in place-build Parkway to Maple

4. Continued regulatory support with the current processes in place

MAINTAIN AND GROW DAWN AS A LIQUID MARKET HUB

A market hub is a physical location that is supported by an extensive network of both storage and pipeline infrastructure where many natural gas buyers and sellers can easily transact. Market hubs are also characterized by a high level of competition that ensures price transparency, accurate market signals, diversity of supply options and reliable service. The Dawn Hub possesses these traits and is one of the best market hubs in North America.

Ten major pipelines have interconnections in the Dawn area providing a variety of supply options. This connectivity means that shippers can source natural gas from all major North American supply basins and transport gas downstream to markets in eastern Canada and the north eastern United States, or upstream, to markets in the mid-western United States. The Dawn Hub also features more than 260 PJs of gas storage (including Union and Tecumseh) that is capable of providing services needed by the market including the flexibility to provide natural gas during unpredictable weather patterns and electricity consumption. It is the largest underground natural gas storage area in Canada. Having this much storage in one area provides options, allowing market participants to most effectively balance their energy needs.

Having both transmission and storage infrastructure extensively connected provides reliability and choice. It also provides a common point to transact natural gas with many buyers and sellers, which in turn provides price transparency through accurate market signals. Both the physical and financial activity at the Dawn Hub continues to grow. Today, on average, over 10 PJs per day trades financially via title transfers. This represents over three times the average physical flow of gas at the Dawn Hub.

There are many points outside the Dawn Hub where transactions take place today and will likely continue to take place in the future. Gas currently trades at export/import points like Niagara/Chippawa, Waddington (a TCPL interconnect with Iroquois pipeline

near Cornwall), and also at Parkway to name a few. Although it is expected that the activity at these points will continue with the addition of the new shale plays, it is unlikely they will be major transaction points with high liquidity. This is due to the limited diverse pipeline infrastructure at these points, lack of storage geographically at the transaction point, and overall volume. Dawn remains the most liquid hub in Ontario and among the most liquid points in North America.

Benefits of Dawn as a liquid hub

Overall, a robust and liquid Dawn Hub provides several important benefits which are essential to providing cost effective gas supply to Ontario. It allows access to a cost effective, stable and competitively priced gas commodity. A liquid hub also attracts the participation of many parties which encourages competition and choice. Ontario also benefits from increased security of supply through access to multiple supply sources and immediate access to storage. These benefits are reflected in Ontario consumer's natural gas bills.

In addition to the direct benefits of Dawn liquidity to Ontario consumers' natural gas bills there are also indirect benefits to all Ontario consumers through their electricity bills. The Ontario Power Authority ("OPA") correctly linked the pricing mechanism for gas-fired generation, within the majority of gas-fired generation contracts, to the most liquid point for gas within Ontario, the Dawn Hub. The amount of time that gas-fired generation sets the price of electricity in Ontario has been steadily increasing from 15% (in the May 2008 to April 2009 period) to 23% (in the May 2009 to April 2010 period). As Ontario continues to diminish its reliance on coal-fired power generation, it is possible that this trend could continue. As a result, the liquidity of the Dawn Hub will have a direct impact on all Ontario energy consumers' bills, putting greater emphasis on the need for an effective gas market within Ontario.

Additionally the liquidity and ability to source gas at Dawn can also play an important role in the support of intermittent renewable generation resources such as wind and solar.

A liquid and well connected physical source of gas available on short notice is critical to “firming” intermittent renewable generation so to maintain the reliability and integrity of the power grid.

Preservation of a Liquid Market Hub

An effective gas market in Ontario can only be maintained as long as a liquid market hub is supported and encouraged by Ontario and the Board. As the WCSB declines, new sources of supply will have to be accessed to maintain and grow liquidity at Dawn. The market must be free to access those new supply basins. Infrastructure will have to be in place to allow effective movement of gas to and from the market hub, and the regulatory environment will have to be supportive of market developments.

Competition and market forces are critically important to creating and supporting effective gas markets in Ontario. Within the Natural Gas and Electricity Interface Review (NGEIR), the Board recognized the importance of liquidity at Dawn and endorsed the positive affect that competition has on the gas market.

“The Board concludes that it is in the public interest to maintain and enhance the depth and liquidity of the market at the Dawn Hub as a means of facilitating competition. One way to do this is to encourage the development of innovative services and to ensure access to those services. Choice is the bedrock of competition.” (EB-2005-0551, page 45)

As a result of the NGEIR proceeding that recognized a competitive and effective market exists for storage services, and as a result of the subsequent Board actions, market participants have invested in over 10 BCF of new storage infrastructure over the last three years. This validates that the competitive markets have worked and have enhanced the liquidity of Dawn and the value of Dawn to Ontario. Ontario is fortunate to have the Dawn Hub within its market area – other jurisdictions are trying to create a similar hub.

ALLOW THE MARKET TO WORK AND RESPOND TO CHANGING DYNAMICS

The ICF Report suggests the emergence of new supply basins will continue to impact the flow of gas into, out of, and within Ontario. Specifically, the ICF Report suggests that flows from the WCSB into Ontario will continue to decline and other alternative supplies will fill the void. This view was generally endorsed by the participants of the NGMR Conference.

Union generally agrees with the observations and conclusions drawn from the ICF report. However, Union believes the impacts of new alternative sources of supply are already being felt, and that the impacts will be of greater magnitude and will occur sooner than outlined in the report.

It is essential that the Ontario market gains access to as many new supply sources (conventional or unconventional) as possible to ensure that Ontario consumers are provided with a diverse, secure and economical natural gas supply. If there are barriers added to Ontario's access to new sources of supply, the market will work to provide a solution and take those supplies to other market areas.

FERC recognizes the importance of a natural gas market that is open and competitive. Empire Pipelines recently applied to FERC for a presidential permit to export natural gas from New York State to Ontario (as part of Marcellus supplies being brought to Ontario). In the FERC approval they stated:

"We find that granting the applicant's request for authority to use its existing border facilities for the export, as well as the import, of natural gas will promote national economic policy by reducing barriers to foreign trade and stimulating the flow of goods and services between the United States and Canada, both of which are signatories to the North American Free Trade Agreement". Taken from FERC docket CP10-136-000 issued Sept 16, 2010

The market has responded to the changing supply dynamics in the past and continues to do so moving forward. Examples of market responses include the Dawn Gateway project, open seasons inside and outside of Ontario to provide a path for Marcellus gas to reach the Dawn Hub, new service offerings, and new supply options for northern Ontario. These are described in the following paragraphs.

Dawn Gateway Michigan to Dawn Path

To take advantage of the development of the Rockies Express Pipeline (a new pipeline that brings new supply from the U.S. Rockies basin to markets in the mid west U.S., Northeast U.S. and the Great Lakes region in general), and the need for greater access to emerging shale supply in the Gulf area, and increased access to Michigan storage, multiple pipeline projects emerged to transport gas supplies from Michigan to Dawn. New projects were proposed by TCPL (Dawn Eclipse and Dawn Express), Enbridge (Niagara Gas Link Pipeline), Vector (an expansion of their existing system), and Spectra/DTE – Dawn Gateway.

Market participants have chosen to support Dawn Gateway as the preferred economic and routing option. The Dawn Gateway Pipeline will link DTE's Belle River Mills and Dawn. The Dawn Gateway project was approved by the Board in March of 2010 and is currently on hold waiting for the market dynamics to provide additional support. When in service this pipeline will further add to Dawn liquidity by providing linkages as noted above. Dawn Gateway will benefit the Ontario natural gas market by adding additional supply to Dawn at a time of declining WCSB deliveries to Ontario, and enhancing market liquidity at the Dawn Hub.

The diversity of these projects demonstrates the significant market competition that is addressing the market need for transportation of gas supplies to Dawn. The market has acted in an efficient manner when it comes to choosing the projects that are ultimately successful. Projects hold open seasons to gauge interest and in some cases commit

customers to a project. Competitive projects have come to market and the market response has dictated which will move forward.

Marcellus Shale

In regard to the Marcellus shale, a number of open seasons on both the Canadian and U.S. sides of the border have been supported by shippers. These will jointly create a path between the Marcellus producing region and Dawn for gas to flow back to Dawn as early as the fall of 2011, subject to regulatory approvals, including the Board. As outlined in presentations by both Enbridge and Union, there have been binding open seasons on three U.S. pipelines for transporting gas from the Marcellus producing region to the U.S./Canadian border at Niagara and Chippawa. The following volumes totaling 820,000 Dth/d of capacity or approximately 0.82 Bcf/d have been awarded and contracted on three U.S. pipelines:

- Tennessee Gas Pipeline 150,000 Dth/day to Niagara (2012)
- Empire Pipeline 350,000 Dth/day to Chippawa (2011)
- National Fuel Gas (NFG) 320,000 Dth/day to Niagara (2012)

In addition to the open seasons on U.S. pipeline projects south of the border, Union and TCPL have held open seasons on their transmission systems to allow gas arriving at Niagara and Chippawa to move west into Ontario and to Dawn. TCPL confirmed that their open season saw over 1 Bcf/d of interest and Union confirmed that they had approximately 1.2 Bcf/d of interest in their non-binding open season. In discussions with market participants, it is evident that gas from the Marcellus region will be transported to the liquid trading point of Dawn and much sooner than identified in the ICF report. It is important to note that these parties worked together to coordinate the timing of these open seasons and to reduce confusion in the marketplace.

New Services

To facilitate the movement of Marcellus gas back to Dawn, Union has recently applied to the Board for approval of a firm C1 transportation service that will allow gas to move from Kirkwall to Dawn. Union has also applied for approval of a multi-directional M12 transportation service (“M12-X”) that will allow shippers to move gas between any two of Dawn, Kirkwall and Parkway, in any direction on any day. These services will enhance access to Marcellus supplies and provide flexibility to move the gas into the Dawn Hub, where it can be easily transacted. This re-purposing of the Dawn to Parkway and Dawn to Kirkwall system is necessary to meet the needs of the changing marketplace.

Union also created a new Dawn to Dawn-TCPL service to facilitate the changing market by allowing westerly flow from Dawn to Great Lakes Gas Transmission. The Dawn to Dawn TCPL service is discussed in more detail later in this submission.

New Supply Options

i) North

In northern Ontario the current system portfolio is exclusively made up of WCSB gas delivered via the TCPL mainline. As the TCPL tolls have increased, the supply path from the WCSB to some parts of the North has become more expensive relative to other supply basins. In response, Union is actively working to identify and source other, more economical, supply paths for its northern customers (especially those in the TCPL Northern Delivery Area and the Eastern Delivery Area).

Union will be enhancing the Northern portfolio by adding new supply options. This will be accomplished through Union’s participation in the TCPL open season between Parkway and the TCPL Northern Delivery Area, and Parkway and the TCPL Eastern Delivery Area. The capacity Union is currently seeking will add approximately 20% diversity to the existing Union North system portfolio. Union would like to continue to increase diversity of supply for Northern customers, but this can only be fully

accomplished if new services and competitive short-haul rates are available on TCPL between Parkway and the respective delivery areas, which all must travel through Maple. Thus the expansion of Parkway to Maple is also key to facilitate providing new supplies (and thus potential lower rates) to the North.

Although northern customers have been referred to as being “captive” to WCSB supply basins and TCPL long-haul, the changing supply dynamics have resulted in the market working to develop alternative supply paths into northern Ontario.

In addition to Union’s efforts to diversify the North system portfolio, Union notes that a significant portion of the direct purchase customers in the North also have supply options due to the self serve characteristics of the T-service option. Over 80% of all direct purchase volumes (almost 70% of total throughput volumes) for the north customers operate under the T-Service arrangement. These customers choose and control from where they source their supply. Customers can either buy volumes delivered into the zone or buy from a liquid point like Dawn and arrange for transportation to the zone. These customers are constrained only by their own contract arrangements (TCPL capacity that they may have sourced themselves or had assigned from Union) and the unavailability of TCPL short-haul capacity out of Parkway.

ii) South

For Union’s South system portfolio, Union also recently entered the TCPL open season for capacity from Niagara to the interconnect with the Union system at Kirkwall. This will allow Union the ability to add Marcellus gas to the South system gas portfolio.

By entering into open seasons to establish new paths (TCPL Niagara to Kirkwall), building infrastructure to allow for changes in gas flows (Dawn to Dawn TCPL and reversing Kirkwall), working with TCPL on new or expanded services from Parkway and creating new services including M12-X, C1 Kirkwall to Dawn, and Dawn to Dawn TCPL, Union is creating the necessary tools to bring these opportunities to reality.

ENSURE APPROPRIATE INFRASTRUCTURE IS IN PLACE – THE NEED TO BUILD

PARKWAY TO MAPLE

It is also essential to enhance the liquidity of the Dawn Hub by ensuring that the required infrastructure is in place to move gas effectively from the emerging supply basins to Dawn. The Dawn Hub will only be successful in attracting these new supplies and providing benefits to all customers in Ontario if there are economical supply and take-away paths available for suppliers to allow them to move that gas to the markets that require it.

The Parkway to Maple limitation is impeding the flow of gas within the province of Ontario and restricting the services and supply options that can be offered to all parties sourcing supplies and seeking transportation away from Dawn. This includes limiting the options available to Union's customers in northern and eastern Ontario. Customers in Union's North and Eastern areas can be provided with a more diverse gas supply only if the current capacity constraint between Parkway and Maple is relieved. The Enbridge franchise downstream of Parkway and customers in the U.S. Northeast cannot transport their gas from and through Dawn to satisfy their incremental demands or their changing supply paths unless the Parkway to Maple capacity constraint is relieved. With the change in gas flows coming from the Marcellus Shale, there is no other way to serve those customers in a cost-effective manner.

Other entities, such as TCPL and Enbridge, could also benefit from a Parkway to Maple expansion. TCPL could benefit from the growth in demand for service from Parkway through Maple to eastern markets. Enbridge and its customers could benefit from greater supply security and diversity.

TCPL and "Around the Horn"

TCPL has historically relied on the diversity of its integrated system to meet its contractual obligations. The TCPL Pipelines system splits at Emerson Manitoba, with part of the volume flowing on the TCPL Northern Ontario mainline to Parkway (and

points east) and part of the volumes going south of the lakes on the Great Lakes system to Dawn. For example, beginning in 2003, TCPL sold capacity from Dawn to Parkway and points east using the integrated nature of their system. They were able to do this by shifting flows on their system that were otherwise destined to be delivered to Dawn (through the Great Lakes/TCPL system) to markets in Central Ontario and further east using TCPL's Northern Ontario Line. Provided the pipeline is flowing large volumes, this shift of volumes could "notionally" create flow from Dawn to Parkway (or other points east).

However, as exports from Empress on the mainline have decreased, and the resulting deliveries to Dawn have decreased, TCPL can no longer rely on the diversity of their system to meet all of their short-haul obligations from Dawn through the shifting of flows. TCPL required a new transportation service to physically export gas from Dawn backwards on the Great Lakes system. The gas will physically move from Dawn to Emerson Manitoba (on the Great Lakes system) and from Emerson, this gas will be transported on the TCPL Northern Ontario system to Parkway, or points farther east. Ultimately, the gas that was sourced at Dawn will travel over 3,800 km around the Great Lakes to be delivered to Parkway or further to points east. With an expansion of the TCPL facilities between Parkway and Maple, the same gas supplies could travel just 220 km directly from Dawn to Parkway on the Union system. An expansion of Parkway to Maple provides a solution to transporting gas "around the horn".

The Urgent Need to Expand Parkway to Maple

As discussed, with the changing dynamics of gas supply options in Ontario, parties will increasingly look to new sources of gas supplies and new supply at the Dawn Hub. As such, for Ontario customers to benefit, transportation capacity connecting the hub to all Ontario markets will be critical.

The one part of the Ontario infrastructure which is vulnerable is the pipe between Parkway and Maple. Although Union has three large diameter pipelines flowing into

Parkway, and TCPL has two large diameter pipelines between North Bay and Maple, and two additional pipelines between Maple and eastern Ontario, there is only one pipeline between Parkway and Maple. This single pipeline was built in 1958 and is at full capacity which creates a constraint for these new incremental supply sources to flow to markets east from Parkway.

Having a single line connecting Parkway to Maple also creates a security of supply issue as it is a critical supply link to Enbridge, a significant amount of new Ontario power generation, Union North and other markets east. Expanding and reinforcing this system will result in enhanced security of supply, expanded access to new sources of supply for many customers and enhanced liquidity of the Dawn hub, all of which will benefit the entire Ontario market.

TCPL acknowledged during the Stakeholder Conference that, although they have been able to facilitate the provision of gas to Parkway using their existing infrastructure, physical capacity would be required in the future. Union supports this position and submits that the required physical capacity should come in the form of a Parkway to Maple expansion as soon as possible.

Increased transportation requirements from Parkway to Maple may even be required today. Union conducted an open season in 2009 and received over 300,000 GJ/d of interest in new Dawn to Parkway capacity, starting in November 2011. However, as a result of a reverse open season, and the non-renewal of TCPL Dawn to Kirkwall contracts Union had sufficient existing capacity and did not need to expand the transportation facilities between Dawn and Parkway. In conjunction with the new incremental Dawn to Parkway contracts on Union, it is expected that TCPL would have also executed contracts with a Parkway receipt point and an obligation to deliver volume to downstream markets with a similar commencement date. Without an expansion of the Parkway to Maple facilities, Union is uncertain how these contract demands will be satisfied, as capacity was not available from Parkway to downstream points.

TCPL indicated in earlier open seasons that capacity is not available with a receipt point of Parkway or Dawn. The open season document of August 29, 2009 indicated the following under System Segment Capacity:

“No short-haul will be available at this time from the Dawn Area or Parkway. This includes receipts points such as SS. Marie, St. Clair, Dawn, Kirkwall, Niagara, Chippawa and Parkway”.

In addition to the uncertainty of serving transportation demands from Parkway commencing November 1, 2011, TCPL has held an open season (in which Union participated) during the summer of 2010 that included Parkway as a receipt point. Specifics have not yet been made public, however the need to physically build is clear.

The existing single 36” lateral between Parkway and Maple is the backbone of gas moving from the liquid market hub of Dawn and from new supply sources upstream of Dawn to the market east and north of Parkway. It is currently a roadblock to expanding the benefits of Dawn to incremental Ontario market participants and needs to be addressed either by TCPL or other market participants.

CONTINUED REGULATORY SUPPORT REQUIRED

Consideration of Alternate Forms of Regulation/Timely Approvals

Union encourages the Board to continue the timely approval of services in order to allow the market to respond to the changing market dynamics. The continued support of alternate forms of regulation, where appropriate, helps to facilitate innovation and efficiency and helps to strengthen the competitiveness of the Ontario gas market.

Early this year, the Board approved a National Energy Board (“NEB”) Group 2 style regulatory framework for the Dawn Gateway Pipeline. The Board provided an expeditious approval of this project and demonstrated its willingness to consider alternative forms of regulation for this pipeline that had multiple competitors. The approval of the Dawn Gateway project is important to support Dawn liquidity. In addition, the Board was also very timely with its approval of the Dawn to Dawn TCPL

rate during the summer of 2010. Union appreciates the flexibility that the Board has demonstrated. The market also has a favourable view of the timely conclusion of regulatory proceedings since this provides regulatory certainty for new projects and reduces the perceived project risk.

As indicated throughout this submission, it is important that market forces be allowed to work. The market is experiencing unprecedented change, and regulation of assets and policies needs to accommodate these changes. Union encourages the Board to continue to look for ways to provide flexibility in regulation and oversight, to continue to provide timely decisions to regulatory applications and to continue to regulate only what needs to be regulated. These actions will provide market confidence and demonstrate to market participants that Ontario and Dawn are open for business.

In summary, the Board should continue its current practices. The Board has followed its mandate and has the proper level of authority to gauge the necessary impacts on the markets it governs.

Support of Ontario's Competitiveness from the Board and the Ministry

The pricing of transportation services is an important factor in the success of attracting new supplies to Ontario. While the Board has a role in the pricing of transportation services for infrastructure that is wholly within the province of Ontario, TCPL is regulated by the NEB and the pricing of its transportation services also has a significant impact on the cost of transportation and the impacts the success of attracting new supplies to Ontario. As indicated by Union on slide 23 of its stakeholder presentation, transportation of WCSB gas supplies from Empress to Ontario using TCPL long-haul transportation contracts is the least competitive option to land gas supplies for Union's South customers. While long-haul transportation is not a competitive option, TCPL's short-haul transportation services (primarily within Ontario) remain robust and actively contracted.

TCPL is currently working with their shipper group to look for creative ways to address the impacts of declining throughput on the mainline. Union is supportive of this initiative, however wants to ensure that short-haul tolls remain competitive in the market place. Any move that will unduly add costs to these short-haul tolls will make the TCPL short-haul options uneconomic, which will lead to short-haul de-contracting, which will put additional pressure on TCPL tolls. The result may be that emerging supplies will be attracted elsewhere to more cost-effective markets where they can better compete. If TCPL experiences significant decontracting of its easterly short-haul capacity or if the new U.S. sources of supply find alternative markets, the liquidity of Dawn Hub and hence the Ontario market, will be diminished. With this in mind, it is imperative that the Board and the the Ministry work to ensure that cost allocation principles are followed and that no undue costs are allocated to TCPL's short-haul services, which could have negative impacts on all Ontario residents.

III. UNION'S RESPONSE TO THE SUBMISSIONS BY OTHERS

Union will respond to the following issues that were raised by other parties during their presentations:

1. TCPL's use of the "around the horn" solution to serve markets east and north of Parkway and the critical need to expand Parkway to Maple;
2. Consideration of impacts on TCPL or other jurisdictions when new infrastructure proposals are put forth;
3. The need to review the guidelines for new gas transmission projects;
4. The impact on the Parkway obligation of these changing supply dynamics; and
5. The need for incremental regulatory requirements in regard to the gas supply and resource planning actions of the LDC's.

**TCPL'S AROUND THE HORN SOLUTION AND WHETHER A PARKWAY TO MAPLE
EXPANSION IS REQUIRED**

As indicated above, it is Union's view that there is an urgent need to expand capacity between Parkway and Maple. The path between Parkway and Maple is a critical link between the Dawn Hub and markets east and north of Parkway.

As well, expanding the Parkway to Maple path is a solution to volumes currently flowing "around the horn". Union acknowledges that TCPL has traditionally been able to manage any constraints between Parkway and Maple through the use of their integrated system. TCPL's use of the "around the horn" solution, described in detail earlier, is an example of how their integrated system has been used to meet their contractual obligations east of Parkway. However, it is Union's view, given the decline in the WCSB, TCPL cannot continue to rely on its integrated system, and that a physical expansion of the path between Parkway and Maple is required.

Although TCPL would not acknowledge that the capacity between Parkway and Maple is currently constrained (TR. 1, p. 72, lines 19-22), TCPL did acknowledge that based on the recent open season and past open seasons, incremental capacity is required from Dawn to market or from Parkway to market. (TR. 1, p. 75, lines 25-28, p. 76, lines 1-20) Union believes that the required physical capacity should come in the form of a Parkway to Maple expansion to gain the benefits as identified earlier and to meet the needs of the various open seasons where participants have increasing needs at Parkway.

CONSIDERATION OF IMPACTS ON TCPL OF NEW INFRASTRUCTURE PROPOSALS

TCPL and others suggested that as part of the Board's mandate to approve gas transmission infrastructure expansion in Ontario, the Board should consider the impacts on other transmission pipelines in other jurisdictions. Specifically, TCPL requested that the Board consider the impact on its tolls and contracts when considering approval of facilities in Ontario. It is Union's view that the current process relating to approving facilities is sufficient. Union does not support any additional regulatory requirements or

process for the approval of facilities projects than those that currently exist. Further, Union is not aware of any other jurisdiction where the regulator considers the impact of new facilities expansions on existing facilities outside of their jurisdiction. The desire to increase the utilization of existing TCPL facilities in order to reduce the impact on TCPL tolls should not be used to impede the market from acquiring gas supplies at lower costs. To do so would have the effect of increasing gas costs for Ontario consumers compared to the cost of the alternative source of supply.

As part of a facilities application for new transmission facilities, Union must file comprehensive evidence with the Board in support of its application. This evidence includes a summary of the project, a demonstration of market need, an outline of project costs and economics, the construction practices and schedule, environmental assessments and land matters. Before making an application to expand transmission facilities Union undertakes a thorough analysis of alternatives to the proposed facilities. Further, it is only after Union has proven that the market supports the expansion and secured long term transportation contracts that Union moves forward with an expansion proposal.

During the analysis of the requirement for new facilities, however, Union does not consider how parties may adjust their transportation contracts on other pipelines as a result of new contracts with Union. The demand for new facilities can be attributable to several factors including access to a new supply basin, increased natural gas demand for the contracting party, and the desire to reduce the total natural gas costs for the contracting party. Each individual market participant is evaluating the best option for their customers. Union is not able to reliably determine what, if any changes a party contracting for service on the new facilities will make to their natural gas portfolio in the future. In addition, Union cannot reliably anticipate how changes to the contracts will affect upstream and downstream pipelines. Accordingly, Union is not in a position to produce evidence on the impacts of its expansion projects on TCPL or any other pipeline. Existing pipelines, including TCPL, have the right to intervene in Union's facilities proceedings. As such they have the ability to submit interrogatories, cross-examine

Union witnesses, file evidence and argue their position. This ability exists today. In making their determination as to whether or not a facility is in the public interest or not, the Board will consider all the evidence, both by the applicant and by interveners. The onus is on the existing pipeline to bring forward any evidence that it deems relevant to the determination of whether or not a new pipeline facility should proceed.

REVIEW OF GUIDELINES FOR NEW GAS TRANSMISSION PROJECTS

Mr. Rosenkranz, on behalf of ratepayers, recommended that the Board review the guidelines for new transmission projects to ensure that in-franchise customers do not subsidize facilities expansions for ex-franchise services or take on the risk for underutilized facilities. To achieve this, Mr. Rosenkranz proposed the following:

- limit the cost recovery period to the term of the expansion shippers contracts;
- incremental pricing where rolled in rates increase the costs to existing customers;
- and
- make utility shareholders responsible for the cost of unsold capacity.

Mr. Rosenkranz bases these recommendations on three assertions that he believes will necessarily lead to higher costs for natural gas consumers. First, Mr. Rosenkranz asserts that Ontario consumers will pay higher distribution rates if the incremental cost of expansion exceeds the existing Dawn to Parkway transportation rate. Although perhaps intuitive, the assumption that costs to in-franchise ratepayers will increase is simplistic and fails to take into account other changes in revenue requirement, such as depreciation, that will inevitably put downward pressure on rates. To understand the impact on both in-franchise and ex-franchise rates requires undertaking detailed analysis that Mr. Rosenkranz noted he was not required to perform (TR. 1, p. 174, lines 19-21).

Second, Mr. Rosenkranz states that because of uncertainty about future gas flows, there is increased risk that Union's existing transportation assets will go unutilized and new facilities will be stranded. As a result, costs to Ontario customers will rise. In support of

his position, Mr. Rosenkranz provides a quote from Union's 2009 annual report where Union stated that:

"Further, there is risk of continued contraction in the storage and transportation customer base as a result of changes and restructuring within the storage and transportation market"

This statement has been misrepresented by Mr. Rosenkranz. Nowhere in Union's annual report did Union refer to or suggest that it was a contraction in the actual market – only a contraction in the number of market participants. The quote is from the section entitled "Market Risk" and was intended to address the potential risk if there are fewer buyers and sellers. Further, the way to mitigate the risk is to grow the Dawn Hub through the removal of the Parkway to Maple constraint.

Third, Mr. Rosenkranz states that utilities may be incented to over-build transmission facilities to the benefit of their own transmission and unregulated storage business or an affiliate. Further, Mr. Rosenkranz states that as long as transmission costs are included in utility rates, utility shareholders will enjoy the benefits, but assume none of the risks of expanding transmission capacity. Mr. Rosenkranz's statements are without merit. Growth in Union's unregulated storage capacity has a minimal impact on the growth in Union's Dawn-Trafalgar transmission capacity. For example, for each 1 PJ of additional storage space that is added, an average of 12,000 GJ/d (or 1.2% of that space) requires transportation capacity. While market participants have added 10 PJ of new storage at Dawn since the conclusion of the NGEIR proceeding, at best, this supports only 120,000 GJ/d of new transportation capacity, which is approximately 10% of the total 1.2 PJ/d of new capacity that has been added to the Dawn to Parkway system since 2006. The major driver of growth in the Dawn-Trafalgar transmission system is the end-use demands of customers, not storage capacity. The fact that Dawn is an important and highly liquid trading hub with interconnections to various sources of supply means that customers want to transact at Dawn and therefore require Dawn-Trafalgar capacity to move their gas to market. Further, as indicated above any facilities application is supported with extensive evidence including a demonstration of market need. The Board also requires applicants to

conduct a reverse open season prior to an expansion, even though valid contracts are in place. The Board has already developed ways to mitigate the public interest concern of over-building. Accordingly, there is no support for the speculative assertions put forth by Mr. Rosenkranz that Union will build beyond that required by the market.

With respect to tolling of new facilities, Mr. Rosenkranz, in his written submission, seems to advocate that in cases where new transmission facilities to serve ex-franchise demands result in increases to in-franchise rates, utilities should be required to use incremental tolling. In support of that position, Mr. Rosenkranz cites Union's recent approval of the Dawn-Dawn TCPL service where the costs of the facilities are recovered over the 5 year term of the contract in recognition of both the temporary nature of the service, and the fact that the entire capacity was contracted by a single shipper – TCPL. Based on this approval, Mr. Rosenkranz believes that the same approach should be taken to other services that provide services to exfranchise customers.

Union disagrees for several reasons. First, the Dawn – Dawn TCPL service is designed to meet a specific need for a specific customer. If it was anticipated that the service would be used long term, and if there were contractual commitments consistent with a requirement for the service on a long term basis, and if multiple shippers had been interested in the service, Union's rate design would have been more traditional. It is inappropriate to suggest that the approach to the rate design for Dawn – Dawn TCPL should also be used for long term transmission expansions.

The rate impact on existing shippers, in-franchise or ex-franchise, is only one of many considerations that the Board must take into account when considering whether or not a transmission facility should be approved. Further, the question the Board must address, when approving a transmission facility is not “do the proposed facilities result in rate increase?” but rather “do the proposed facilities result in rate increases that are undue relative the other benefits of the project?”. In fact, the Board has approved on many occasions expansions to the Dawn-Trafalgar transmission system in spite of increases to

in-franchise rates. Mr. Rosenkranz, himself, agreed during the Stakeholder Conference that, even at the Federal Energy Regulatory Commission (“FERC”), rate impacts are only one consideration when determining whether or not a transmission facility should be approved under “rolled-in rates. (TR. 1, p. 157, lines 17-28 and p. 158, lines 1-10). FERC policy clearly identifies “system wide benefits” as a rationale for rolled-in rate treatment.¹

Finally, Mr. Rosenkranz suggests that utility shareholders should be “at risk” for the costs associated with expansions to serve ex-franchise markets to ensure that utilities do not recover costs of underutilized capacity from in-franchise customers. Mr. Rosenkranz also states that the capital and operating costs associated with these transmission facilities should be tracked separately in the same way that competitive storage facilities are tracked. As an “at risk” pipeline the rates charged by the utility would necessarily need to include a return commensurate with that risk. In addition, unlike they do today, any benefits associated with the “at risk” facility’s transportation optimization would flow 100% to the utility shareholder. In effect, Mr. Rosenkranz is asking the Board to view ex-franchise transmission facilities as competitive and forebear from traditional rate regulation without any evidence that the transportation market is sufficiently competitive to protect the public interest.

Further, it is important for the Board to note, of the gas transported on Union’s Dawn-Trafalgar transmission system, approximately 70% is used to serve Ontario customer needs. Any mandatory move to incremental tolling could be detrimental to Ontario customers including Enbridge distribution customers and power generators. Further, the tolling methodology could drive decisions of customers where to locate in Ontario.

¹ *Certification of New Interstate Natural Gas Pipeline Facilities*, 88 FERC ¶ 61,227 (1999); *Order Clarifying Statement of Policy*, 90 FERC ¶ 61,128 (2000); *Order Further Clarifying Statement of Policy*, 92 FERC ¶ 61,094

RE-EXAMINATION OF DELIVERY POINT OBLIGATIONS

Mr. Rosenkranz suggests that the Board should re-examine delivery obligations of direct purchase customers at Parkway and Empress. Union notes that, at the Stakeholder Conference, the primary concern discussed was with the Parkway delivery obligation.

Union's south direct purchase customers have an obligation to deliver their daily contract quantity ("DCQ") of gas supply at their obligated delivery point. The DCQ is a customer's annual consumption forecast divided by 365. The physical location of the obligated deliveries is dependent on where the customer is physically located and the time they left Union's system portfolio to go direct purchase. Predominantly those points are Empress (for those who have Union deliver their gas to Ontario using its TCPL contracts), Parkway (Union's farthest point east on the south system) or Dawn.

Union's requirement for obligated Parkway deliveries is based on the current facility design and reflects Union's historical reliance on supply from Western Canada and TCPL as the primary delivery option for supplies serving the Ontario market. Historically, Union has relied on obligated Parkway deliveries in designing the Dawn to Parkway transmission system. As a result of the Parkway obligation the Dawn-Parkway transmission system is smaller than would otherwise be necessary to meet peak demand requirements. In other words, if Union did not have, or if Union reduced, the Parkway delivery obligation, additional transmission facilities between Dawn and Parkway would be required. Since Union has utilized the Parkway obligation, the primary beneficiary of having the obligation has been Union's in-franchise customers through lower delivery rates in the Southern operations area. Current rates assume that customers are meeting their Parkway delivery obligation.

To relieve direct purchase customers of the Parkway delivery obligation, Union would either have to expand the Dawn Trafalgar transmission system or use existing capacity if it becomes uncontracted, to make up the shortfall. In either case, in-franchise delivery

rates would need to be increased to recover the costs associated with the additional facilities.

For example, between 2001 and 2004, Union introduced a temporary service option which reduced the Parkway obligation by 20% using a temporary turn back of TCPL capacity. Over the 2001 to 2004 period, in-franchise delivery rates were increased by approximately \$5.5 million dollars per year to recognize the costs of reducing the Parkway obligation. In 2004, Union asked market participants if they wanted Union to build to allow the delivery obligation to remain at Dawn and not to revert back to Parkway. The market did not support the build, and preferred to have the obligation revert back to Parkway. However, since that time, several in-franchise, Union South customers have contracted for their own Dawn to Parkway capacity to individually shift their obligations from Parkway to Dawn. Individual customers have that choice today.

Union does not anticipate any changes to the delivery point obligations at this time. To the extent that there are opportunities to reduce the obligation through turnback or facilities expansion, Union will propose changes to the obligation along with the recovery of the associated costs from the appropriate customer rate classes.

ESTABLISH A RESOURCE PLANNING REQUIREMENT FOR ONTARIO GAS UTILITIES

Mr. Rosenkranz suggests that the Board should require utilities to prepare and file a comprehensive resource plan for review by the Board and stakeholders. According to Mr. Rosenkranz, this resource plan would document the assumptions and the process the utility uses to assess the need for gas supply assets and evaluate available gas supply options. He is also of the view that such a process would give context to requests for pre-approval of long term transportation contracts and that it would also contribute to the simplification of rate cases.

Union does not believe that any new requirements related to resource or gas supply planning is required. Further, it is Union's view that any additional regulatory oversight

will only add to the regulatory burden without any obvious benefit to the Board or ratepayers. The Board has sufficient regulatory processes in place to ensure that the utility gas supply planning process is not resulting in imprudent contracting decisions. For Union, these processes include the requirement to file an Incremental Transportation Contracting Analysis for any new transportation contracts or extension to existing upstream transportation contracts with a term of one year or longer, and the existing guidelines for pre approval of long term contracts that support new natural gas infrastructure, both of which are discussed below. Intervenors and the Board also have the opportunity for a detailed review of utility demands and supply plans at all rate hearings.

In addition to the existing regulatory processes, Union's own annual gas supply planning process is guided by a set of principles that is intended to ensure that customers receive secure, diverse gas supply at a prudently incurred cost. These principles are:

1. Ensure secure and reliable gas supply to the Union Gas service territory.
2. Minimize risk by diversifying contract terms, supply basins and upstream pipelines.
3. Encourage new sources of supply as well as new infrastructure to the Union Gas service territory.
4. Meet planned peak-day and seasonal gas delivery requirements.
5. Deliver gas to various receipt points on the Union Gas system to maintain system integrity.

These guidelines underpin every decision Union makes and do not change from year to year. These principles are also applied independent of the current market conditions. Union returns to these principles each time it makes an evaluation regarding the acquisition of supply or transportation capacity.

Incremental Transportation Contracting Analysis

In accordance with the Board's EB-2005-0520, Settlement Agreement (Union's 2007 rate case), Union is required to file an Incremental Transportation Contracting Analysis for any new or extended upstream transportation contract with a term of one year or longer that form part of Union's system gas supply arrangements. Union is required to file this analysis as part of the evidence filed by Union in the applicable Board proceeding in which it seeks recovery of the cost consequences associated with the upstream transportation contract.

The Incremental Transportation Contracting Analysis includes:

- Union's rationale for entering into the new transportation contract
- All relevant transportation contract parameters including: transportation provider, term, price, receipt and delivery point.
- A quantitative comparison of the landed costs for newly contracted capacity to alternatives reviewed by Union at the time of its decision (a standardized form is provided).
- A quantitative and/or qualitative consideration of additional factors considered relevant by Union that may include, but not be limited to:
 - overall security of supply
 - supply basin diversity
 - contract term diversity
- Pipeline operator diversity
 - pipeline terms and conditions, and record of service
 - monthly demand charge/commodity charge structure

As indicated above, the Incremental Transportation Contracting Analysis is prepared for new or extended capacity on upstream transportation contracts. Existing contracts have already been reviewed and approved by the Board and, as such, the current process requiring Union to prepare the analysis and file it prior to the costs going into rates is

sufficient. If the Board or Intervenors have questions or concerns with the analysis, they are able to ask those questions or voice those concerns in the context of those proceedings.

Pre-Approval of Long Term Upstream Transportation Contracts

As part of the Board's Natural Gas Forum implementation, filing guidelines were developed for the Pre-Approval of Long-Term Natural Gas Supply and/or Upstream Transportation Contracts (EB-2008-0280).

These filing guidelines are used by a utility seeking approval of the cost consequences of long-term contracts prior to the utility entering into a formal agreement.

As part of the filing that applicant must complete the following information:

- Identification of the Applicant
- Needs, Costs and Benefits –a description of the project and the benefits it provides to Ontario consumers. The section also includes an assessment of the landed costs (supply costs + transportation costs including fuel costs) for the new contract compared to the landed costs of the possible alternatives.
- Contract Diversity – a description of the relevant contract parameters (capacity provider, contract length, conditions of service, price, volume and receipt and delivery points) as well as an assessment of how the contract fits into the applicant's overall supply portfolio in terms of contract length, volume and services.
- Risk Assessment – identification of all risks (including forecasting, construction, operating, commercial and regulatory risks). The section is also to include plans on how the risks are to be minimized and allocated between ratepayers, parties to the contract and/or the applicant's shareholder.
- Other Considerations – a description of the relationship and any other conditions, rights or obligations between the parties to the contract and the applicant's parent company and/or affiliates.

- Contract – the contract for which the utility is seeking approval is filed with the application.

Union participated in the recent TCPL new capacity open season and was awarded three new long-term transportation contracts on the TCPL system. Pre-approval of the cost consequences is being sought by Union and the application and evidence has been filed in accordance with these filing guidelines (EB-2010-0300).

These guidelines provide a framework that allows the utility to demonstrate the prudence of its contracting decision. It also provides the necessary evidence and analysis of the full range of reasonable alternatives for the Board to make a decision.

Integrated Resource Plan

At the end of Day 2 of the Stakeholder Conference, Mr. Quinn, on behalf of the Federation of Rental-Housing Providers of Ontario (“FRPO”), requested that TCPL, Union and Enbridge consider preparation of an “integrated system plan” for Ontario that would be useful to the Board when making facility decisions.

Union does not support the development of an integrated system supply plan by TCPL, Union, and Enbridge for a number of reasons and cannot participate. Firstly, future capital expansion ideas or concepts are confidential and proprietary information. TCPL, Enbridge and Union, while customers of each other are also competitors in the marketplace and as such should not be required to share confidential, commercially sensitive information about future projects with a competitor, supplier or customer. It would be unreasonable to require competing companies to act as one entity and share commercially sensitive information amongst themselves and with the market at large. To do so would negatively impact the competitiveness of the market players within Ontario and, subsequently, the Ontario natural gas market itself. Secondly, an integrated energy plan as envisioned by FRPO would require every pipeline and storage operator that is connected to Ontario be at the table and therefore shouldn’t be limited to TCPL, Enbridge

and Union. This is clearly impractical and unnecessary. Finally, even if it were possible to develop such a plan it would largely be an academic exercise of little use or value. It would not be possible to incorporate or anticipate changes impacting the Ontario gas market because of the complexity and continental scope of the changes. Accordingly, the Board would have no certainty that the plan would come to fruition. The only expansions that are definite are the ones that a party has brought forward for approval and has received approval from the Board. In Union's view it is more practical and useful to consider and seek approval of changes to Union's resource plans at the time changes are actually being put forward.

IV/ CONCLUSION

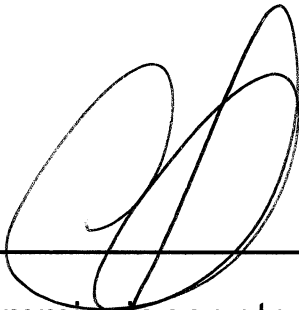
The North American and Ontario natural gas markets have undergone significant changes and this trend is only expected to continue. These changes provide both opportunities, such as diversification and security of supply, as well as challenges, such as the need for additional infrastructure.

As indicated by Union in its presentation at the Stakeholder Conference and throughout this submission it is essential to preserve and grow the liquidity at Dawn in order to maintain a cost effective supply for Ontario consumers. Critical to that goal is the urgent need to expand the capacity between Parkway and Maple which will support increased supply diversity and increase the security of supply for markets east and north of Parkway.

Union is also concerned about the potential impact of any TCPL framework redesign that would lead to short-haul tolls becoming uncompetitive due to cost shifting of costs from long-haul. As discussed, if short-haul tolls rise significantly the future of the Dawn Hub liquidity could be diminished. It is imperative that the Board, the Ministry and all market participants support the TCPL Mainline Competitiveness Initiative, but work to ensure that short-haul tolls remain competitive.

At this time, Union does not see any need for the Board to initiate any significant initiatives, make any changes to existing regulatory processes or increase regulatory oversight of the gas market. It is Union's view that the Board should let the market adapt to the changes in the North American supply dynamics. At the same time, the Board should continue to support the market through timely approvals of new service offerings and facilities. The Board should also continue to support alternative forms regulation such as the recently approved complaint based framework for Dawn Gateway. In general, the Board and the Ministry should continue to support the growth of Dawn and of Dawn liquidity and the growth of incremental supply paths to Ontario.

This is Exhibit 19 to the Affidavit of
Jack Hughes, sworn before me this
29 day of November, 2010.

A stylized, handwritten signature in black ink, consisting of several overlapping loops and a long horizontal stroke extending to the right.

A Commissioner etc.

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F (613) 230-8842
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By e-mail

November 9, 2010

Mark Kitchen
Director, Regulatory Affairs
Union Gas Limited
50 Keil Drive North
Chatham, ON N7M 5M1

Dear Mr. Kitchen,

Union Gas Limited ("Union")
2011 Rates Application
Your File: EB-2010-0148
Our File: 339583-000087

Yesterday, following the conclusion of the Settlement Conference, you informed those present and participating by conference call that Union was planning to seek an adjournment, to dates in February 2011, of the proceeding currently scheduled for December 6 and 7, 2010, to address balances in Union's Deferral Accounts 179-121 and 179-122.

Account 179-121 entitled "Cumulative Under-Recovery – St. Clair Transmission Line" records the Board determined amount to March 1, 2010, of \$6.4M, plus accrued interest.

Account 179-122 entitled "Impact of Removing St. Clair Line from Rates" records, on a monthly basis, the revenue requirement impacts of removing the St. Clair Line from rates effective March 1, 2010. Our understanding is that this deferral account will operate until December 31, 2012, following which Union's rates will be re-based.

You indicated that Dawn Gateway LP ("Dawn Gateway") was planning to conduct an "Open Season" for "uncommitted" portions of its pipeline. No specifics were provided as to why this action by Dawn Gateway should affect the rights of Union's ratepayers to have the balances recorded in either or both of these two (2) deferral accounts cleared to ratepayers now and brought into account before Union's rates for 2011 are implemented, effective January 1, 2011.

The facts you described yesterday indicate that Dawn Gateway plans to proceed with options that might mitigate the consequences it has brought upon itself by failing to hold its five (5) committed shippers to the terms of their long-term contracts. In our view, the actions that Dawn Gateway

takes to mitigate those consequences have no bearing on the entitlement of Union's ratepayers to a December 31, 2010 clearance of the credit balances in Deferral Accounts 179-121 and 179-122.

We need to have a complete description of all of the facts and grounds upon which Union is relying to support its request for a further postponement of matters pertaining to the clearance of these deferral account balances before we can determine whether the adjournment proposal makes any sense.

Please provide us with a letter to this effect if you wish us to re-consider the position outlined herein.

Yours very truly,



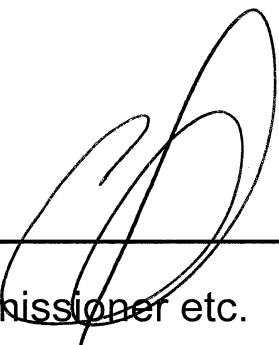
Peter C.P. Thompson, Q.C.

PCT\slc

c. Crawford Smith (Torys)
Chris Ripley (Union)
Intervenors EB-2010-0148
Paul Clipsham

OTT01\4262436\1

This is Exhibit 20 to the Affidavit of
Jack Hughes, sworn before me this
29 day of November, 2010.



A Commissioner etc.



uniongas

A Spectra Energy Company

November 15, 2010

Mr. Peter Thompson
Counsel for CME
Borden Ladner Gervais LLP
100 Queen St, Suite 1100
Ottawa, ON K1P 1J9

Dear Mr. Thompson:

Re: Adjournment of Union's December Proceeding to Address the Balances in the Deferral Accounts Related to the Sale of the ST. Clair Line.

We are writing in response to your letter dated November 9, 2010 concerning Union's proposed adjournment of the hearing currently scheduled for December 6 and 7, 2010 to address the balances in deferral accounts 179-121 and 179-122 related to sale of the St. Clair Line to Dawn Gateway Limited Partnership "(DGLP)".

Union is proposing to delay the hearing of this matter until late February of 2011 to allow DGLP to finalize negotiations resulting from a Dawn Gateway open season. Your letter asks Union to provide a "description of all the facts" so you "can determine whether the adjournment proposal makes sense". The relevant facts are set out below.

Subsequent to the Dawn Gateway hearing, the market experienced a rapid decline in the spread between gas prices in Michigan and Dawn. This decline made the transportation contracts uneconomic for the Dawn Gateway Shippers. As a result, DGLP and its Shippers agreed to delay the construction of the Dawn Gateway pipeline. Specifically, DGLP and the Shippers agreed to monitor market conditions and determine by November 1, 2010 whether the pipeline would proceed for an in-service date of November 1, 2011.

As of the timing of this letter, the Shippers have not provided DGLP with notice that they intend to proceed with construction of the Dawn Gateway pipeline. Nevertheless, we understand that DGLP remains committed to the project and is currently in discussions with the Shippers with the intent of securing their commitment for a 2011 in-service date on alternative terms. Of course, Union cannot force the Shippers to proceed with the project at this time, nor can DGLP.

Today, DTE Energy ("DTE"), on behalf of DGLP released a binding open season for firm transportation service between MichCon's Belle River facility and Union Gas' Dawn Hub. The decision to conduct an open season was driven by:

1. Recent improvements in the spread between gas prices in Michigan and Dawn;
2. The fact that there is a significant portion of the capacity not under firm contract;
- and
3. A desire on the part of DGLP to proceed with construction for in service November 2011.

The open season indicates that at least 80,000 Dth/d is available for a minimum term of 7 years. Should market interest be greater than 80,000 Dth/d, DGLP will evaluate the bids based on price and term and determine whether or not the bids in excess of the 80,000 Dth/d can be accommodated.

Interested parties must submit binding bids by December 7, 2010. Dawn Gateway will evaluate the bids and respond to interested parties by December 20, 2010. The open season document is attached.

The DGLP partners remain committed to advancing the Dawn Gateway pipeline as originally proposed. DGLP is still in discussions with Shippers regarding an in-service date of November 1, 2011 and it has issued an open season for the unsold capacity in effort to advance the project as soon as possible. It is DGLP's hope that the sale of existing capacity coupled with the ongoing discussions with Shippers will result in the project proceeding next year.

With this in mind, Union is seeking an adjournment of the hearing currently scheduled for December 6 and 7, 2010 to address the balances in deferral accounts 179-121 and 179-122. Union intends to seek an adjournment of the hearing until late-February 2011 to afford DGLP time to work with the existing Shippers and negotiate new contracts with the open season bidders.

Union and intervenors may disagree on whether ratepayers are entitled to the balances in deferral accounts, 179-121 and 179-122, if the Dawn Gateway project does not proceed, but there is no disagreement that if it does, these deferral accounts should be disposed of in favour of ratepayers. In Union's view, having a hearing in December 2010 would be a waste of Union's, intervenors and the Board's time if, as a result of the continuing discussions with shippers and the open season, the pipeline proceeds for in service in November 2011. In the event that the pipeline does not proceed at this time and the hearing is adjourned until late February ratepayers are not in any way harmed by the delay in the hearing.

Please advise whether you are prepared to consent to Union's motion by November 18, 2010, failing which we will file the necessary materials.

Yours truly,

A handwritten signature in black ink, appearing to read "Mark Kitchen / S. Anderson". The signature is fluid and cursive, with a large, sweeping flourish at the end.

Mark Kitchen
Director, Regulatory Affairs

c.c.: Crawford Smith (Torys)
Chris Ripley (Union)
Intervenors EB-2010-0148
Paul Clipsham

Dawn Gateway Pipeline Open Season



November 15, 2010

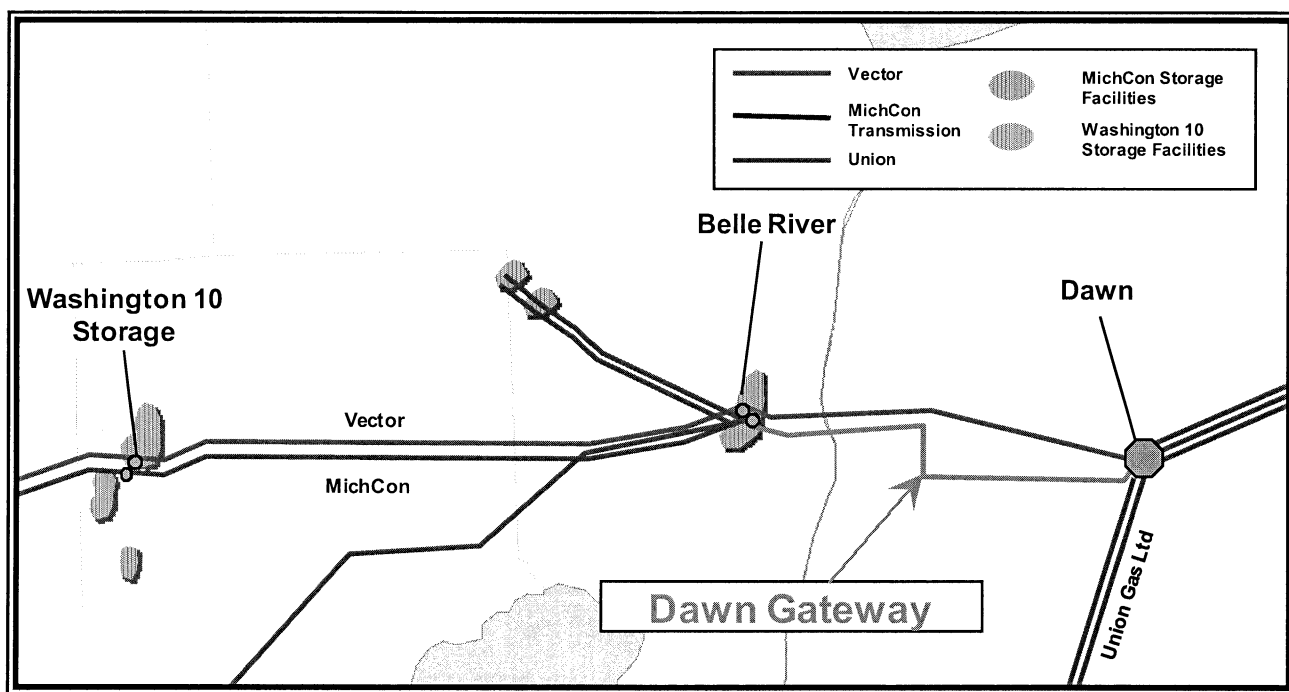
Dawn Gateway Pipeline Limited Partnership and Dawn Gateway Pipeline, LLC (collectively "Dawn Gateway") is conducting a binding open season for firm transportation between MichCon's Belle River facility and Union Gas' Dawn Hub ("Dawn"). At least 80,000 Dth/d is available for a minimum term of 7 years.

Dawn Gateway is an international pipeline joint venture between subsidiaries of Spectra Energy Corp. (www.spectraenergy.com) and DTE Energy Company (www.dteenergy.com). The proposed Dawn Gateway pipeline will have initial firm transportation capacity of 360,000 Dth/d, will utilize a combination of new and existing pipelines and may be available for service starting in November 2011 or November 2012, as the market dictates.

Interested participants must submit **binding** bids by email no later than 3pm Eastern Time on December 7, 2010. All responding parties will be notified as to the acceptance of their bid by December 20, 2010 and participants must sign the attached Precedent Agreement by January 11, 2011.

Concurrent with the Dawn Gateway open season, Michigan Consolidated Gas Company (MichCon) is conducting an open season for upstream services.

DTE Pipeline Company is acting as agent and coordinating the open seasons for both Dawn Gateway and MichCon. For additional information, participants should contact Mark Bering at (313) 235-6531 or beringm@dteenergy.com.



Dawn Gateway Pipeline Open Season



Project Description

Benefits:

The proposed Dawn Gateway pipeline adds much needed capacity between MichCon and Dawn. Supply declines from Western Canada to Dawn have caused price strengthening at Dawn and increases in the demand for transportation between Michigan and Dawn. MichCon can be a greater source of supply for the Dawn market via the proposed Dawn Gateway pipeline. MichCon is well connected to the North American pipeline grid and provides access to new supply basins such as Southeast shale gas (Barnett/Haynesville/Fayetteville), Rockies gas and the promising new Collingwood shale in Michigan.

The proposed Dawn Gateway pipeline offers Dawn customers access to multiple supply basins as well as over 600 Bcf of Michigan storage.

Facilities:

The proposed Dawn Gateway pipeline consists of approximately 21 miles of 24" high pressure pipeline and related facilities. For the initial capacity of 360,000 Dth/d, no compression is required. Approximately 10.6 miles of pipeline exists, including the St. Clair River crossing, with the remaining 10.5 miles being new construction in Ontario.

History of the Project:

Dawn Gateway first announced its international pipeline project in September 2008. The initial open season resulted in the sale of approximately 80% of the available capacity. In March 2010, Dawn Gateway received all required Ontario Energy Board ("OEB") approvals for the Canadian portion of the pipeline. Shortly thereafter, Dawn Gateway was approached by the anchor Shippers requesting a delay of the in-service date.

With the recent improvements in the value of transportation between Michigan and Dawn, Dawn Gateway is seeking additional market support in order to proceed with the project.

Regulatory Update:

The Canadian portion of the pipeline has received all approvals from the OEB, including facilities, rates and tariff approvals. The US portion of the pipeline will be regulated by the Michigan Public Service Commission ("MPSC"). Once there is sufficient market support to continue with the project, filings will be made with the MPSC seeking approval to transfer the existing assets to Dawn Gateway and seeking approval of rates and a tariff. No new facility approvals are required for the US portion of the pipeline.

Dawn Gateway Pipeline Open Season



Open Season Parameters and Rates

Capacity & Term:

Dawn Gateway has available at least 80,000 Dth/d of annual capacity for a minimum term of 7 years, starting in November 2011 or November 2012.

Rates:

The bid rate for transportation will be converted to a Monthly Demand Charge over the term. There are no Commodity Charges for firm transportation. Authorized Overrun shall be charged the bid rate per Dth.

Fuel:

Fuel will be based on actual fuel used and adjusted seasonally, as per Dawn Gateway's tariffs. For the initial capacity the estimated fuel rate is 0.2%, with the understanding that this fuel rate will change with future expansions.

Bid Process

Interested parties must complete and submit a binding bid form by email no later than 3pm Eastern Time on December 7, 2010. Participants may submit multiple bids using multiple bid forms.

Capacity shall be allocated to those with the highest economic value based on the Net Present Value ("NPV") of the bids received. If the economic values of separate bids are equal, then service shall be offered on a pro-rata basis. Based upon the bids received during the open season, Dawn Gateway may modify the project design being proposed. Only participants in the open season shall have the explicit right to participate in a modified project.

All responding parties will be notified as to the acceptance of their bid by December 20, 2010.
All successful parties agree to sign the attached Precedent Agreement by January 11, 2011.

More Information

Dawn Gateway reserves the right to reject any and all bids, at its sole discretion. Bids will be evaluated objectively and in a non-discriminatory manner.

Bid forms must be returned by email to Mark Bering at beringm@dteenergy.com no later than 3pm Eastern Time on December 7, 2010.

For more information, participants should contact Mark Bering at (313) 235-6531 or beringm@dteenergy.com.

PRECEDENT AGREEMENT

THIS PRECEDENT AGREEMENT ("Precedent Agreement") dated this ____ day of _____, 2010 by and between Dawn Gateway Pipeline, LLC, a Delaware limited liability company ("DG LLC") and Dawn Gateway Pipeline Limited Partnership, an Ontario limited partnership ("DG LP") (collectively "Dawn Gateway") and _____, a _____ corporation ("Shipper"). Dawn Gateway and Shipper may sometimes be referred to separately as "Party" or jointly as "Parties" in this Precedent Agreement.

RECITALS

WHEREAS, Dawn Gateway is the sponsor of a certain pipeline to be built from an interconnect with Michigan Consolidated Gas Company ("MichCon") at or near the Belle River point located in China Township, Michigan to an interconnect with Union Gas Limited ("Union Gas") at the Dawn Hub in Ontario, proposed to be in service by November 1, 2011 or November 1, 2012 and herein known as the "Dawn Gateway Pipeline"; and

WHEREAS, this Precedent Agreement is executed as evidence of Shipper's binding request for firm transportation service and the Parties agreement to enter into agreements for firm transportation service on the Dawn Gateway Pipeline, subject to the terms and conditions described in this Precedent Agreement; and

WHEREAS, Shipper acknowledges that Dawn Gateway is relying on Shipper's commitments and obligations set forth in this Precedent Agreement in order to own, build and operate the Dawn Gateway Pipeline; and

WHEREAS, the facilities and capacities described herein may change based on the final capacity requirements or project design as determined by Dawn Gateway in its sole discretion; and

WHEREAS, in the event that the conditions and obligations of this Precedent Agreement are satisfied or waived, Shipper agrees to enter into transportation agreements whereby (i) DG LLC will provide service and Shipper will receive service in the United States in accordance with the provisions of the effective tariff to be filed with the Michigan Public Service Commission ("MPSC"), as amended or superseded from time to time in accordance with the MPSC rules and regulations, and (ii) DG LP will provide service and Shipper will receive service in Canada in accordance with the tariff that has been filed and approved by the Ontario Energy Board ("OEB"), as amended or superseded from time to time in accordance with the OEB rules and regulations (such transportation agreements shall be referred to herein as the "Transportation Agreements").

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, and intending to be legally bound, Dawn Gateway and Shipper agree as follows:

1. Effective Date and Term

This Precedent Agreement shall become effective as of the date first stated above and shall remain in effect until the earlier of: (a) execution of the Transportation Agreements by Shipper and Dawn Gateway, or (b) Shipper or Dawn Gateway exercises their respective termination rights pursuant to this Precedent Agreement, or (c) December 1, 2012.

2. Firm Transportation Services

Subject to the terms and conditions of this Precedent Agreement, Shipper and Dawn Gateway agree to execute the firm Transportation Agreements necessary to satisfy Shipper's firm transportation requirements on the Dawn Gateway Pipeline under the terms set forth below. Such Transportation Agreements shall be in a form contained in the applicable Dawn Gateway tariff and shall be executed by Shipper no later than thirty (30) days following written notice from Dawn Gateway to Shipper of the satisfaction or waiver of the condition precedent set forth in Section 3(c) of this Precedent Agreement.

The Transportation Agreements shall provide firm transportation services on the Dawn Gateway Pipeline with the following terms:

- (a) Maximum Daily Quantity ("MDQ") of _____ dekatherms per day on an Annual basis;
- (b) Start Date of the in-service date of the Dawn Gateway Pipeline and an End Date of October 31 of the year that is [____] years from October 31 of the year the Dawn Gateway Pipeline begins service;
- (c) Receipt Point of MichCon – Belle River, Delivery Point of Union Gas – Dawn;
- (d) Reservation Rate of \$_____ per Dth/d annually, invoiced as a monthly demand charge of \$_____ US per month (the "Monthly Demand Charges"). If the Start Date occurs on a day that is not the first day of a month, then the Monthly Demand Charges for that month will be prorated based on the number of days from and including the Start Date until the end of that month;
- (e) At least twelve (12) months prior to the expiration of the Transportation Agreement, Shipper may, by written notice to Dawn Gateway, exercise an option to negotiate an extension of the term of the Transportation Agreement at terms agreeable to Dawn Gateway. In the event that the terms of any extension cannot be agreed upon by the Parties at least twelve (12) months prior to the expiration of the Transportation Agreement, Dawn Gateway may sell the capacity provided under the Transportation Agreement to a third party in its sole discretion.

Dawn Gateway reserves the right to allocate the Reservation Rate between DG LLC and DG LP, at its sole discretion, provided that such rate will, in any event, be payable in US dollars.

Shipper shall be responsible for any regulated charges, such as fuel and ACA, pursuant to the applicable Dawn Gateway tariff, and as amended from time to time.

3. Dawn Gateway's Conditions Precedent

The duties and obligations of Dawn Gateway set forth in this Precedent Agreement are subject to the satisfaction or, at the sole discretion of Dawn Gateway, the waiver of all of the following conditions:

- (a) Sufficient firm capacity subscription must exist at acceptable rates, as determined by Dawn Gateway at its sole discretion, to proceed with the Dawn Gateway Pipeline; and
- (b) Dawn Gateway obtaining the approval of its senior management or Board of Directors or any other organizational approvals, as it shall deem necessary, on or before February 28, 2011; and
- (c) DG LLC and DG LP, as applicable, receiving, in a form and substance acceptable to Dawn Gateway in its sole but reasonable discretion, all necessary permits, certificates, approvals, authorizations, orders, rates, terms and conditions from governmental, regulatory or other authorities having jurisdiction to transfer, construct, lease, own, operate and maintain the required facilities (including, but not limited to, all required approvals from the MPSC and the OEB) necessary to provide the firm transportation services contemplated herein and in the Transportation Agreements (the "Approvals"); and
- (d) Dawn Gateway procuring all necessary rights-of-way, easements or permits in form and substance acceptable to Dawn Gateway (the "Easements").

The terms and conditions contained in this Section 3 may be extended or modified only by mutual written agreement between the Parties.

4. Shipper's Conditions Precedent

The duties and obligations of Shipper set forth in this Precedent Agreement are subject to the satisfaction or, at the sole discretion of Shipper, the waiver of all of the following conditions:

- (a) Shipper obtaining the approval of its senior management or Board of Directors or any other organizational approvals, as it shall deem necessary, on or before January 11, 2011; and
- (b) Either: (i) on or before January 11, 2011, Shipper obtaining corresponding upstream transportation on MichCon necessary for Shipper to utilize the Dawn Gateway Pipeline acceptable to Shipper, including an equivalent MDQ to the MDQ set forth in Section 2(a) above; or (ii) on or before January 11, 2011, Shipper obtaining corresponding storage on MichCon necessary for Shipper to utilize the Dawn

Gateway Pipeline acceptable to Shipper, including an equivalent MDQ to the MDQ set forth in Section 2(a) above.

The terms and conditions contained in this Section 4 may be extended or modified only by mutual written agreement between the Parties.

5. In Service Timing

Subject to the satisfaction or waiver of the conditions precedent set forth in this Precedent Agreement and the other terms and conditions of this Precedent Agreement, Dawn Gateway anticipates that (i) the Dawn Gateway Pipeline will be ready for service on or before December 1, 2011, conditioned upon receipt and acceptance of all Approvals and Easements on or before June 30, 2011, and (ii) if any Approvals or Easements are not received until after June 30, 2011, then the Dawn Gateway Pipeline will be delayed until on or before December 1, 2012.

Notwithstanding anything else contained in this Precedent Agreement, Shipper agrees that it shall have no cause of action or claims against Dawn Gateway or its affiliates as a result of any delay in the in-service date for the Dawn Gateway Pipeline.

6. Termination

(a) Shipper's right to terminate this Precedent Agreement shall arise only if:

- (i) Shipper does not satisfy or waive each of the conditions precedent set forth in Section 4 of this Precedent Agreement by the respective dates specified for the satisfaction or waiver of such conditions precedent; or
- (ii) Dawn Gateway does not satisfy or waive each of the conditions precedent set forth in Section 3 of this Precedent Agreement by the respective dates specified for the satisfaction or waiver of such conditions precedent (if any); or
- (iii) Dawn Gateway defaults on any of its obligations under this Precedent Agreement.

(b) Dawn Gateway's right to terminate this Precedent Agreement shall arise only if:

- (i) Dawn Gateway does not satisfy or waive each of the conditions precedent set forth in Section 3 of this Precedent Agreement by the respective dates specified for the satisfaction or waiver of such conditions precedent (if any); or
- (ii) Shipper does not satisfy or waive each of the conditions precedent set forth in Section 4 of this Precedent Agreement by the respective dates specified for the satisfaction or waiver of such conditions precedent; or
- (iii) Shipper defaults on any of its obligations under this Precedent Agreement.

(c) Any such termination will be effective upon ten (10) days written notice to the other Parties; provided, however, that a Party's notice of termination for failure of any other Party to satisfy or waive a condition precedent, or for default under Section

6(a)(iii) or Section 6(b)(iii), shall not become effective if such condition precedent is satisfied or waived, or if such default is cured, by such other Party prior to the expiration of the 10-day notice period.

- (d) This Precedent Agreement will automatically terminate upon execution of the Transportation Agreements and thereafter Dawn Gateway shall not have any continuing obligations or liability to the Shipper under this Precedent Agreement and the rights and obligations of Dawn Gateway and Shipper shall be as provided for in the Transportation Agreements, as amended and in effect from time to time.
- (e) Except in the case of termination of this Precedent Agreement pursuant to Section 6(a)(iii) or Section 6(b)(iii), if this Precedent Agreement is terminated pursuant to this Section 6 or terminates automatically pursuant to Section 1(c), such termination shall be without liability for damages, costs or expenses of any Party to the other Parties or to any of the other Parties' shareholders, directors, officers, employees, agents, or representatives; and the Parties shall have no further rights or obligations whatsoever pursuant to this Precedent Agreement.

7. Credit for Precedent Agreement

- (a) If at any time and from time to time following Shipper's satisfaction or waiver of the condition precedent set forth in Section 4(a) of this Precedent Agreement any one of the following events occurs (each, a "Material Event");
 - (i) Shipper defaults on any of its obligations under this Precedent Agreement or is in default of any other material contract with another party; or
 - (ii) Shipper's or its Guarantor's corporate or debt rating falls below investment grade according to at least one nationally recognized rating agency; or
 - (iii) Shipper or its Guarantor ceases to be rated by a nationally recognized agency; or
 - (iv) Shipper has exceeded credit available as determined by Dawn Gateway from time to time,

then Shipper shall provide at its cost, within ten (10) days of Dawn Gateway's written request, either (1) a standby irrevocable letter of credit (in form and substance and in an amount reasonably acceptable to Dawn Gateway) from a Qualified Institution (the "Letter of Credit") or (2) a written guarantee (in form and substance and for an amount reasonably acceptable to Dawn Gateway) from the parent company or an affiliate of Shipper ("Guarantor") with a corporate or debt rating that is investment grade according to at least one nationally recognized rating agency ("Guarantee") or (3) some other form of credit acceptable to Dawn Gateway and Shipper. The credit requirement shall not exceed the Monthly Demand Charges multiplied by twelve (12). "Qualified Institution" shall mean a major U.S. commercial bank, or the U.S. branch offices of a foreign bank which has assets of at least US\$10 Billion Dollars and a credit rating of at least "A-" by S&P, or "A3" by

Moody's. Dawn Gateway may require Shipper at its cost to provide a substitute Letter of Credit ("Substitute Letter of Credit") if the Letter of Credit provided is, at any time, from a financial institution which is no longer a Qualified Institution. In the event that Shipper does not provide such Letter of Credit, Guarantee, Substitute Letter of Credit or some other form of credit acceptable to Dawn Gateway and Shipper within ten (10) days of Dawn Gateway's written request, Shipper shall be deemed to be in default of this Precedent Agreement. Shipper shall promptly notify Dawn Gateway of any Material Event throughout the term of this Precedent Agreement.

- (b) This Section 7 shall not be construed as limiting any rights or remedies of Dawn Gateway at law or otherwise.

8. Shipper's Support

Shipper agrees to not oppose, object to, obstruct or otherwise interfere with in any manner, and upon request by Dawn Gateway, Shipper agrees to reasonably support and cooperate with, the efforts of Dawn Gateway to obtain all Approvals necessary to provide firm transportation service contemplated in this Precedent Agreement.

9. Assignment

Any entity that shall succeed by purchase, merger, consolidation, or other transfer to the properties of Dawn Gateway or Shipper; either substantially or as an entirety, shall be entitled to the rights and shall be subject to the obligations of its predecessor in interest under this Precedent Agreement. Except as specified in this Section 9, a Party may not assign this Precedent Agreement or any of its rights or obligations hereunder unless the other Parties to this Precedent Agreement have first consented to such assignment in writing, which consent shall not be unreasonably withheld. If this Precedent Agreement is assigned by Shipper as permitted in accordance with this Section 9, Shipper shall remain liable for any obligations under this Precedent Agreement. If this Precedent Agreement is assigned by Dawn Gateway, then Dawn Gateway shall remain liable for any obligations under this Precedent Agreement.

10. Modification or Waiver

No modification or waiver of the terms and provisions of this Precedent Agreement may be made except by the execution of a written amendment to this Precedent Agreement. The waiver by any Party of a breach or violation of any provision of this Precedent Agreement shall not operate as or be construed to be a waiver of any subsequent breach or violation thereof.

11. Supersedes Other Agreements

This Precedent Agreement reflects the whole and entire agreement among the Parties with respect to the subject matter hereof and supersedes all prior agreements and understandings among the Parties with respect to the subject matter hereof.

12. Notices

Notices under this Precedent Agreement must be sent

If to Dawn Gateway:

Dawn Gateway Pipeline, LLC and Dawn Gateway Pipeline Limited Partnership
c/o DTE Pipeline Company
One Energy Plaza, 2084 WCB
Detroit, MI 48226
Attention: Director, Marketing & Optimization
Facsimile: (313) 235-6450

If to Shipper:

Any Party may change its address by written notice to that effect to the other Party. Notices given under this Section are deemed to have been effectively given upon receipt, if mailed via prepaid overnight mail by a reputable carrier or if delivered by courier. Notices will be deemed effectively given on the third (3rd) business day following the day when the notice properly addressed and postpaid is placed in the United States or Canadian mail. It is expressly understood and agreed, however, that any notices referred to in this Precedent Agreement must first be delivered by telex, facsimile or other similar means, in accordance with the dates and times provided in this Precedent Agreement and must be mailed as soon as practicable thereafter.

13. Governing Law

THIS PRECEDENT AGREEMENT SHALL BE INTERPRETED, PERFORMED AND ENFORCED IN ACCORDANCE WITH THE LAWS OF THE STATE OF MICHIGAN. EACH PARTY HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY SUIT, ACTION, CLAIM OR PROCEEDING RELATING TO THIS CONTRACT.

14. No Third Party Beneficiaries

Except as expressly set forth in Section 6(e) of this Precedent Agreement, this Precedent Agreement shall not create any rights in third parties, and no provision of this Precedent Agreement shall be construed as creating any obligations for the benefit of, or rights in favor of, any person or entity other than the Parties.

15. No Drafting Presumption

No presumption shall operate in favor of or against any Party as a result of any responsibility that any Party may have had for drafting this Precedent Agreement.

16. Force Majeure

- a. If by reason of “force majeure,” as defined in this Section 16, a Party is rendered unable, wholly or in part, to carry out its obligations under this Precedent Agreement, and if such Party gives notice and reasonably full particulars of such force majeure in writing, in accordance with Section 12 of this Precedent Agreement, to the other Party promptly after the occurrence of the cause relied on, the affected Party, and only so far as and to the extent that it is affected by such force majeure, shall be excused from performance hereunder without liability; provided, however, such cause shall be remedied with all reasonable dispatch.
- b. For purposes of this Precedent Agreement, “force majeure” shall mean an event that creates an inability to perform that could not be prevented or overcome by the due diligence of the affected Party, including but not limited to, any act, omission or circumstance occasioned by or in consequence of any acts of God, strikes, lockouts, acts of the public enemy, wars, sabotage, blockades, insurrections, riots, epidemics, landslides, lightening, earthquakes, fires, storms, hurricanes, tornadoes, floods, washouts, civil disturbances, explosions, the failure or inability to obtain or maintain any governmental authority which has been resisted in good faith by all reasonable legal means, the inability to obtain any materials or services, and any other cause, whether of the kinds herein enumerated or otherwise, not reasonably within the control of the affected Party. The failure to prevent or settle any strike or strikes shall not be considered to be a matter within the control of either Party.

17. Recitals

The recitals and representations appearing first above are hereby incorporated in and made a part of this Precedent Agreement.

18. Counterparts

This Precedent Agreement may be executed in multiple counterparts, each of which shall be deemed an original and all of which shall constitute one and the same instrument.

IN WITNESS WHEREOF, the Parties hereto have caused this Precedent Agreement to be duly executed in counterparts by their duly authorized officers as of the date first written above.

Dawn Gateway Pipeline, LLC

By: _____
Allen Capps, Manager

By: _____
Peter Ciani, Manager

Dawn Gateway Pipeline Limited Partnership
By Dawn Gateway Pipeline General Partner, Inc.,
Its General Partner

By: _____
Allen Capps, Manager

By: _____
Peter Ciani, Manager

[Shipper name]

By: _____

Title: _____

**Dawn Gateway Pipeline
Open Season Bid Form**



THIS IS A BINDING BID

Maximum Daily Quantity (MDQ): _____ Dth/d

Start Date: ☐ November 2011 ☐ November 2012

Term (# of years): _____ years **(Minimum Term of 7 years)**

Bid Rate: \$_____ per Dth/d, plus Fuel

Other Terms & Conditions (please specify):

Contact Information

Company Legal Name: _____

Contact Name (please print): _____ Phone: _____

Signature: _____

Please submit bid via email to beringm@dteenergy.com by 3pm Eastern Time December 7, 2010.

Dawn Gateway reserves the right to reject any and all bids, at its sole discretion.

This is Exhibit 21 to the Affidavit of
Jack Hughes, sworn before me this
29 day of November, 2010.



A Commissioner etc.

Thompson, Peter C. P.

From: Thompson, Peter C. P.
Sent: November 19, 2010 7:35 AM
To: 'mkitchen@uniongas.com'
Cc: 'csmith@torys.com'; 'cripley@uniongas.com'
Subject: Re: Response to CME letter dated November 9, 2010

Mark

After further reflection the conditional postponement order that I proposed in my earlier e mail is not the most appropriate way to respond to the adjournment proposal.

In essence what Union's submissions in the Market Review unequivocally demonstrate is that the DG pipeline will proceed. Union cannot credibly assert that there is a need to wait for the outcome of DGLP's further negotiations with its shippers to conclude that the project will proceed.

Accordingly there is now no factual basis for the proposal Union made in its April evidence in the case earlier this year to the effect that the clearance of balances in the 2 deferral acc'ts should be withheld on the grounds that the DG pipeline might not proceed.

It is that proposal that gave rise to the requirement for the Dec. hearing. Since there is no credible factual basis for that proposal, there is no basis on which Union can possibly continue to refrain from clearing the deferral account balances in a timely manner.

The order that should be made is one that dismisses your proposal to adjourn accompanied with an order requiring the clearance of 179-121 balances now and 179-122 balances when other 2010 deferral acc't balances are cleared in 2011.

The letter you receive from me later today will provide further rationale for this position.

Call me if you wish to discuss any of this.

Peter T

From: Thompson, Peter C. P.
Sent: Thursday, November 18, 2010 06:45 PM
To: Kitchen, Mark <MKitchen@uniongas.com>
Cc: Smith, Crawford <csmith@torys.com>; Ripley, Chris <CRipley@uniongas.com>
Subject: RE: Response to CME letter dated November 9, 2010

Mark

I have considered your letter and am in the midst of drafting a response to it. For several reasons (that I will address in my letter) I do not think it is reasonable for you folks to continue to hold back the \$6.4 M plus accrued interest credit balances in account 179-121 while DGLP finalizes negotiations with its shippers.

The fixing of the Dec 2010 dates as a deadline for dealing with the appropriateness of the Motion Union said it would bring to effectively set aside the Orders the Board had made establishing these deferral accounts on grounds the Dawn Gateway pipeline did not proceed was a pragmatic alternative to dealing with the issue in a summer hearing. That said, the contingent Motion Union raised is, in substance, a Motion to vary and rescind prior Board orders. Union is aware of the principles that apply to such Motions.

19/11/2010

I think that it's inappropriate and unreasonable to delay clearing deferral account credit balances in a timely manner on the basis of the possibility that Union might decide to bring a Motion to effectively set aside the Orders that established the deferral accounts.

Moreover, Union concedes in your recent letter that these deferral accounts should be cleared to ratepayers if the Dawn Gateway pipeline proceeds. In this context the submissions Union made in the Market Review Consultative make it abundantly clear that there is no doubt that the Dawn Gateway line will proceed; the only question is when it will be constructed. In that submission Union stated as follows;

"Market participants have chosen to support Dawn Gateway as the preferred economic and routing option. The Dawn Gateway Pipeline will link DTE's Belle River Mills and Dawn. The Dawn Gateway project was approved by the Board in March 2010 and is currently on hold waiting for the market dynamics to provide additional support. When in service this pipeline will further add to Dawn liquidity by providing linkages as noted above. Dawn Gateway will benefit the Ontario natural gas market by adding additional supply to Dawn at a time of declining WSCB deliveries to Ontario and enhancing market liquidity at the Dawn Hub"

Those statements amount to an unequivocal acknowledgement by Union that the pipeline will proceed.

I disagree with the statement in your letter to the effect that ratepayers are not being prejudiced by Union's failure to clear the credit balances in account 179-121 now. They are. Their 2001 rates are too high by \$6.4 M plus accrued interest.

On the other hand Union will not be prejudiced by clearing the balance in that account now as a condition to the postponement you are proposing because if Union does move to set aside the orders that gave rise to that account it can if so advised request a claw back of the monies. Based on the acknowledgements made in the Market review submission the possibility of Union bringing such a Motion is extremely remote.

These circumstances along with the others that will be outlined in my letter call for the imposition of terms to the proposal to adjourn the Dec. hearing. The terms that we will be asking the Board to impose are to the following effect:

1. The credit balance in account 179-121 of about \$6.4 M plus accrued interest to Dec. 31, 2009 will be cleared to ratepayers and reflected in Union's Rates effective Jan. 1, 2011.
2. The deadline within which Union can initiate and file evidence to support a Motion to effectively set aside the Board Orders establishing deferral accounts 179-121 and 179-122 will be extended to Jan 15, 2011. [This keeps the door open until the current DGLP open season concludes which is what I understand Union is seeking]
3. If any such Motion Union can, if so advised, seek a claw back from ratepayers of the balances cleared from Account 179-121.
4. If Union initiates and files evidence to support such a Motion by Jan. 15, 2011, then the parties will co-operate to establish a pre-hearing and hearing schedule that contemplates a hearing of the matter on or before Mar. 31, 2010.

Please let me know whether Union can accept these conditions. When you shake it all down, what we are proposing, compared to what you are proposing, is that the ratepayers enjoy lower rates until such time as the Orders giving rise to those ratepayer benefits are set aside. Depriving them of these benefits beyond Dec. 31 2010, even is unreasonable.

I hope this helps you understand our position. Call me if you have any questions.

Peter T



Peter C.P. Thompson, Q.C.

Counsel

T (613) 787-3528 | F (613) 230-8842 | pthompson@blg.com

World Exchange Plaza, 100 Queen Street, Suite 1100, Ottawa, ON, Canada K1P 1J9

19/11/2010

Borden Ladner Gervais LLP | It begins with service
 Calgary | Montréal | Ottawa | Toronto | Vancouver | Waterloo Region
blg.com

Please note that our addresses have changed and now end in blg.com. Please update your address book. You may also have noticed that we have recently changed our logo. This evolution represents our increased commitment to service and achieving the best results for our clients and serves as a constant reminder of our commitment and dedication to professional and service excellence in everything we do.



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From: Kitchen, Mark [<mailto:MKitchen@uniongas.com>]
Sent: November 18, 2010 5:05 PM
To: Thompson, Peter C. P.
Cc: Smith, Crawford; Ripley, Chris
Subject: RE: Response to CME letter dated November 9, 2010

Peter,

Have you reviewed our response to your letter regarding the proposed adjournment of the December 6th ☐ 7th hearing on the disposition of the deferrals related to the sale of the St. Clair line.

I would like to get either a letter indicating that we would like to adjourn the hearing until late February and that the intervenors are supportive (or at the very least not opposed) or our motion, with supporting evidence, to the Board tomorrow to give them sufficient time to react. I also understand that Board is interested in know how this will proceed.

I have only spoken to Ian and Julie who are not opposed to the adjournment. We will follow up with others tomorrow.

Let me know.

Mark Kitchen
 Director, Regulatory Affairs
 Union Gas Limited | A Spectra Energy Company
 50 Keil Drive North | Chatham, ON N7M 5M1
 Tel: 519-436-5275
 Cell: 519-365-0320

One of Canada's Top 100 Employers



From: Kitchen, Mark
Sent: November 15, 2010 6:58 PM
To: 'Thompson, Peter C. P.'

19/11/2010

Cc: Aiken, Randy; Alexander, Basil; Bartlett, James; Berge, Nadine; Buonaguro, Michael; Cass, Fred; Clipsham, Paul; DeRose, Vincent J.; Desai, Hima; Forster, Ric; Gibbons, Jack; Gruenbauer, James; Kerr, Paul; Killeen, Bill; Klippenstein, Murray; MacIntosh, David; Mondrow, Ian; Nadeau, Eric; Newton, Murray; Petruzzella, Nick; Quinn, Dwayne; Reuber, Barbara; Ripley, Chris; Ross, Murray; Ruzycki, Nola; Ryckman, Norm; Ryder, J. Alick; Sebalj, Kristi; Smith, Crawford; Stacey, Jason; Wightman, James; Young, Valerie

Subject: Response to CME letter dated November 9, 2010

Peter,

Please find attached Union's response to your letter dated November 9, 2010 related to Union's proposal to adjourn the hearing of matters related to deferral accounts 179-121 and 179-122 until February 2011. I have also attached the Dawn Gateway open season which was released late today.

Please call me if you have any follow up questions.

Mark Kitchen

Director, Regulatory Affairs

Union Gas Limited | A Spectra Energy Company

50 Keil Drive North | Chatham, ON N7M 5M1

Tel: 519-436-5275

Cell: 519-365-0320

One of Canada's Top 100 Employers



This is Exhibit 22 to the Affidavit of
Jack Hughes, sworn before me this
29 day of November, 2010.



A Commissioner etc.

PETER C.P. THOMPSON, Q.C.
T (613) 787-3528
F (613) 230-8842
pthompson@blg.com

Borden Ladner Gervais LLP
World Exchange Plaza
100 Queen St, Suite 1100
Ottawa, ON Canada K1P 1J9
T (613) 237-5160
F (613) 230-8842
blg.com



By E-mail

November 19, 2010

Mark Kitchen
Director, Regulatory Affairs
Union Gas Limited
50 Keil Drive North
Chatham, ON N7M 5M1

Dear Mr. Kitchen

**Adjournment of Union's December Proceeding to Address the Balances in
the Deferral Accounts Related to the Sale of the St. Clair Line**

Your File: EB-2010-0148

Our File: 339583-000087

Introduction

This letter is further to my emails, of last night and this morning, pertaining to your letter of November 15, 2010 (the "Letter") clarifying Union's rationale for a proposal to delay the December 6 and 7, 2010 hearing pertaining to balances in deferral accounts 179-121 and 179-122.

The Letter states that Union proposes to delay the hearing to allow Dawn Gateway Limited Partnership ("DGLP") "to finalize negotiations" resulting from a recent DGLP Open Season. The Letter indicates that Union will file the necessary materials to support its proposal to delay the December hearing unless we consent to Union's adjournment proposal by November 18, 2010.

For reasons that follow, we are of the view that acknowledgments contained in the Letter, and in Union's November 2, 2010 Submissions in the Board's 2010 Natural Gas Market Review Consultative (EB-2010-0199) (the "Market Review Submissions"), raise a threshold question of whether there is now any factual basis for Union's proposal to refrain from clearing the two deferral accounts, in a timely manner, on grounds that the Dawn Gateway Pipeline Project might not proceed. It is Union's proposal to this effect, made in evidence several months ago, that gave rise to the need for the hearing currently scheduled for December 6 and 7, 2010.

There is now no factual basis for Union's proposal to refrain from clearing the deferral accounts in a timely manner

In the last paragraph on page 2 of the Letter, Union acknowledges that the credit balances in deferral Accounts 179-121 and 179-122 should be disposed of in favour of ratepayers if the Dawn Gateway Project proceeds.

In its Market Review Submissions of November 2, 2010, Union unequivocally acknowledges that the Dawn Gateway Pipeline Project will proceed because it is a critical component of Union's plan to maintain and enhance liquidity at Dawn. At page 9 of its Market Review Submissions, Union refers to all of the pipeline projects that were in competition with the Dawn Gateway Project. According to Union, other pipeline companies were competing for the opportunity to:

“take advantage of the development of the Rockies Express Pipeline (a new pipeline that brings new supply from the U.S. Rockies basin to markets in the mid west U.S., Northeast U.S. and the Great Lakes region in general), and the need for greater access to emerging shale supply in the Gulf area, and increased access to Michigan storage [...].

Union's Market Review Submissions then states as follows:

“Market participants have chosen to support Dawn Gateway as the preferred economic and routing option. The Dawn Gateway Pipeline will link DTE's Belle River Mills and Dawn. The Dawn Gateway project was approved by the Board in March of 2010 and is currently on hold waiting for the market dynamics to provide additional support. When in service this pipeline will further add to Dawn liquidity by providing linkages as noted above. Dawn Gateway will benefit the Ontario natural gas market by adding additional supply to Dawn at a time of declining WCSB deliveries to Ontario, and enhancing market liquidity at the Dawn Hub.” (emphasis added)

Having regard to these submissions, Union can no longer credibly assert that the Dawn Gateway Project is unlikely to proceed. In the face of this clear acknowledgment from Union that the project will proceed, we now need to step back and ask ourselves what were the circumstances that prompted the need for the hearing on December 6 and 7, 2010. To answer this question, one needs to refer back to the evidence Union filed on April 22, 2010 in the EB-2010-0039 proceedings.

Union's evidence in that proceeding, at Exhibit A, Tab 1, at pages 21 to 24, contained its proposal to delay the clearance to ratepayers of the credit balances in deferral Accounts 179-121 and 179-122 on grounds that the Dawn Gateway Project might not proceed at all; and that if it did not proceed, then Union would file a motion to effectively obtain an Order setting aside the Orders establishing those deferral accounts and requiring that the amounts recorded therein be remitted to Union.

The need for the December hearing was premised on Union's assertion that the Dawn Gateway Project might not proceed. Having regard to its submissions in the Market Review Consultative, Union can no longer credibly assert that this contingency is realistic. Union's factual rationale for delaying the clearance of the deferral accounts, in a timely manner, that forms the primary basis for the December hearing, has now disappeared.

Our reasons for requiring a fixed date in December, for a hearing to deal with matters pertaining to Union's deferral account clearance delay proposal, stem from Union's assertion that the project might not proceed. We contend that the possibility that the Dawn Gateway Project might not proceed has no bearing on the ratepayers' entitlement to the credit balances recorded in the deferral accounts.

Our position, in this regard, was based on facts and arguments that can be summarized as follows:

- (a) In the early months of 2010, Union and DGLP emphasized that the issuance, by early March 2010, of approvals pertaining to the Ontario aspects of the Dawn Gateway

Pipeline was essential for it to meet its obligations to the five shippers that made long-term commitments for 80% of the capacity of the pipeline. Union and DGLP stated that, without these prompt approvals, the project would not proceed. The Board responded by granting the requested approvals promptly, and before the deadline established by Union and DGLP.

- (b) As a result, Union was in a position, as of mid-March 2010, to insist that DGLP complete its purchase of the St. Clair Line. For the purposes of rate regulation in Ontario, all conditions precedent pertaining to that sale transaction had been satisfied; and Union so stated in its 2009 Annual Report released in March 2010.
- (c) The issue is not whether Union can force DGLP shippers to proceed with the project, as the Letter suggests. The issue is whether, for regulatory purposes in Ontario, Union can possibly succeed on a motion to vary and set aside the Orders the Board made establishing these deferral accounts when Union has been in a position, since the spring of 2009, to insist that DGLP complete its purchase of the St. Clair Line.
- (d) Moreover, on the basis of its initial agreements with its five long-term shippers (the largest of which is Union), DGLP was, in fact, empowered to proceed with the project for an in-service date of November 1, 2010. Under these agreements, DGLP was entitled to recover substantial demand charges from those shippers over the entire duration of the long-term agreements, whether or not the shippers use the facilities to transport any gas. These long-term demand charge obligations that the shippers owed to DGLP were more than sufficient to cover all of the costs DGLP expected to incur to construct the pipeline, including the costs of acquiring the St. Clair Line from Union. It matters not whether DGLP can force its shippers to proceed, as the Letter suggests. The point is that, with the protection of the benefits to which it was entitled under its initial long-term contracts, there is no justification for DGLP's failure to complete the purchase of the St. Clair Line in the spring of 2010.
- (e) Union's willingness to tolerate DGLP's failure to complete its purchase of the line in the spring of 2010 constitutes a breach of the obligations it owes to its utility ratepayers. Any utility acting at arm's length from DGLP would not tolerate DGLP's failure to complete the transaction. By acting as it did, Union chose to prefer the non-arm's length interests of DGLP and its own interests as a shipper on DGLP over the interests of its ratepayers.
- (f) The facts that DGLP decided, apparently with Union's concurrence, to delay the completion of that transaction and to modify its initial arrangements with its shippers have no bearing on Union's obligation to clear the credit balances in the deferral accounts in a timely manner.

CME wished to have these issues determined before December 31, 2010 so that the deferral account credit balance of about \$6.4M in Account 179-121 could be cleared to ratepayers and brought into account to reduce Union's rates to be effective January 1, 2011. The balances in this account relate to the Board's derivation of the firm market value of the St. Clair Line from estimates of the burden on ratepayers of the unutilized capacity of that line from 2003 to March 1, 2010.

Contrary to the statements made in the Letter, ratepayers are in fact being prejudiced by Union's failure to clear the credit balance in this account in a timely manner. Ratepayers are being deprived of the lower rates that will result from a timely realization of the benefit of these funds.

If the Board holds Union to the unequivocal acknowledgments in its Market Review Submissions that the Dawn Gateway Pipeline will proceed, then it is no longer necessary for the Board to hear and determine any of the issues CME wishes to have decided. These acknowledgments establish that there is no longer any credible basis for accepting the contention upon which Union's proposal to re-schedule the December hearing is based, namely that the Dawn Gateway Pipeline might not proceed.

All of the issues CME raises will be moot if the Board agrees with our submissions and finds that there is no credible basis upon which Union can continue to assert that the Dawn Gateway Line is unlikely to proceed.

Appropriate Relief

In urging the Board to find that there is now no credible basis upon which Union can continue to assert that the Dawn Gateway Line is unlikely to proceed, we will be pointing to the inconsistencies in Union's evidence, over the period January 2010 to date, relating to the need for the Dawn Gateway Pipeline. In that connection, the following facts are germane.

- (a) In the early months of 2010, we were told by Union and DGLP that the pipeline must be approved by early March in order to enable DGLP to meet its commitments to its five long-term shippers, including Union, who subscribed for 80% of the pipeline capacity. The Board responded by granting the requisite approvals for the pipeline in early March.
- (b) Within two months, and by late April 2010, the evidence pertaining to the need for the pipeline changed. We were then told that, because of changing market dynamics, the project might not proceed and, because of this, the deferral account balances should not be credited to ratepayers in a timely manner.
- (c) By November 2, 2010, the evidence changed again. We were then told that market participants chose to support the Dawn Gateway Pipeline as the preferred economic and routing option for bringing gas supply to Dawn from the U.S. Rockies basin and the emerging shale supply in the Gulf area. We were told that the Dawn Gateway Pipeline is critical to enhancing market liquidity at the Dawn hub.
- (d) By November 15, 2010, the evidence appears to change again. The Letter suggests that there is some uncertainty about the Dawn Gateway Pipeline, and that whether or not it proceeds will not be known until the conclusion of Dawn Gateway's recent Open Season pertaining to the 80,000 GJs of uncommitted capacity on the pipeline. This suggestion in the Letter is incompatible with the statements made in the Market Review Submissions.

These inconsistencies discredit Union's current position. These inconsistencies justify the finding that we will be urging the Board to make, namely, that there is now no longer any credible basis for Union's contention that the Dawn Gateway Pipeline might not proceed. If the Board makes this finding, then Union's motion to adjourn the December hearing is inappropriate since the factual basis upon which the December hearing was premised has disappeared.

Rather than postponing the December hearing, we suggest that the Board should simply order Union to clear the credit balance in Account 179-121 of about \$6.4M, plus accrued interest to December 31, 2010 now, and direct Union to revise the draft rates it circulated yesterday to reflect the credit balance in Account 179-121 in the rates that are to be effective January 1, 2011.

If the Board holds Union to the statements it made in its Market Review Submissions, and makes the finding we propose, then Union should also be directed to clear the balances in Account 179-122 as December 31, 2010 when Union brings forward its other 2010 deferral account balances for clearance in 2011.

Summary

For all of these reasons, we invite Union to adhere to the statements about the need for the Dawn Gateway Pipeline contained in its Market Review Submissions; acknowledge that the Dawn Gateway Project will proceed; and agree to the disposition of the deferral accounts in accordance with those acknowledgments.

Please contact me if you have any questions, or if you wish to discuss our proposal.

Yours very truly,



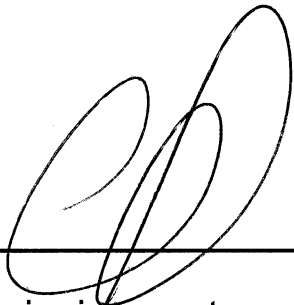
Peter C.P. Thompson, Q.C.

PCT/kt

c. Crawford Smith (Torys)
Chris Ripley (Union)
Intervenors EB-2010-0148
Paul Clipsham

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This is Exhibit 23 to the Affidavit of
Jack Hughes, sworn before me this
29 day of November, 2010.

A handwritten signature, possibly reading "JP", is written over a horizontal line.

A Commissioner etc.

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By E-mail

November 19, 2010

Mark Kitchen
Director, Regulatory Affairs
Union Gas Limited
50 Keil Drive North
Chatham, ON N7M 5M1

Dear Mr. Kitchen

**Adjournment of Union's December Proceeding to Address the Balances in
the Deferral Accounts Related to the Sale of the St. Clair Line**

Your File: EB-2010-0148

Our File: 339583-000087

Introduction

This letter is further to my emails, of last night and this morning, pertaining to your letter of November 15, 2010 (the "Letter") clarifying Union's rationale for a proposal to delay the December 6 and 7, 2010 hearing pertaining to balances in deferral accounts 179-121 and 179-122.

The Letter states that Union proposes to delay the hearing to allow Dawn Gateway Limited Partnership ("DGLP") "to finalize negotiations" resulting from a recent DGLP Open Season. The Letter indicates that Union will file the necessary materials to support its proposal to delay the December hearing unless we consent to Union's adjournment proposal by November 18, 2010.

For reasons that follow, we are of the view that acknowledgments contained in the Letter, and in Union's November 2, 2010 Submissions in the Board's 2010 Natural Gas Market Review Consultative (EB-2010-0199) (the "Market Review Submissions"), raise a threshold question of whether there is now any factual basis for Union's proposal to refrain from clearing the two deferral accounts, in a timely manner, on grounds that the Dawn Gateway Pipeline Project might not proceed. It is Union's proposal to this effect, made in evidence several months ago, that gave rise to the need for the hearing currently scheduled for December 6 and 7, 2010.

There is now no factual basis for Union's proposal to refrain from clearing the deferral accounts in a timely manner

In the last paragraph on page 2 of the Letter, Union acknowledges that the credit balances in deferral Accounts 179-121 and 179-122 should be disposed of in favour of ratepayers if the Dawn Gateway Project proceeds.

In its Market Review Submissions of November 2, 2010, Union unequivocally acknowledges that the Dawn Gateway Pipeline Project will proceed because it is a critical component of Union's plan to maintain and enhance liquidity at Dawn. At page 9 of its Market Review Submissions, Union refers to all of the pipeline projects that were in competition with the Dawn Gateway Project. According to Union, other pipeline companies were competing for the opportunity to:

“take advantage of the development of the Rockies Express Pipeline (a new pipeline that brings new supply from the U.S. Rockies basin to markets in the mid west U.S., Northeast U.S. and the Great Lakes region in general), and the need for greater access to emerging shale supply in the Gulf area, and increased access to Michigan storage [...].

Union's Market Review Submissions then states as follows:

“Market participants have chosen to support Dawn Gateway as the preferred economic and routing option. The Dawn Gateway Pipeline will link DTE's Belle River Mills and Dawn. The Dawn Gateway project was approved by the Board in March of 2010 and is currently on hold waiting for the market dynamics to provide additional support. When in service this pipeline will further add to Dawn liquidity by providing linkages as noted above. Dawn Gateway will benefit the Ontario natural gas market by adding additional supply to Dawn at a time of declining WCSB deliveries to Ontario, and enhancing market liquidity at the Dawn Hub.” (emphasis added)

Having regard to these submissions, Union can no longer credibly assert that the Dawn Gateway Project is unlikely to proceed. In the face of this clear acknowledgment from Union that the project will proceed, we now need to step back and ask ourselves what were the circumstances that prompted the need for the hearing on December 6 and 7, 2010. To answer this question, one needs to refer back to the evidence Union filed on April 22, 2010 in the EB-2010-0039 proceedings.

Union's evidence in that proceeding, at Exhibit A, Tab 1, at pages 21 to 24, contained its proposal to delay the clearance to ratepayers of the credit balances in deferral Accounts 179-121 and 179-122 on grounds that the Dawn Gateway Project might not proceed at all; and that if it did not proceed, then Union would file a motion to effectively obtain an Order setting aside the Orders establishing those deferral accounts and requiring that the amounts recorded therein be remitted to Union.

The need for the December hearing was premised on Union's assertion that the Dawn Gateway Project might not proceed. Having regard to its submissions in the Market Review Consultative, Union can no longer credibly assert that this contingency is realistic. Union's factual rationale for delaying the clearance of the deferral accounts, in a timely manner, that forms the primary basis for the December hearing, has now disappeared.

Our reasons for requiring a fixed date in December, for a hearing to deal with matters pertaining to Union's deferral account clearance delay proposal, stem from Union's assertion that the project might not proceed. We contend that the possibility that the Dawn Gateway Project might not proceed has no bearing on the ratepayers' entitlement to the credit balances recorded in the deferral accounts.

Our position, in this regard, was based on facts and arguments that can be summarized as follows:

- (a) In the early months of 2010, Union and DGLP emphasized that the issuance, by early March 2010, of approvals pertaining to the Ontario aspects of the Dawn Gateway

Pipeline was essential for it to meet its obligations to the five shippers that made long-term commitments for 80% of the capacity of the pipeline. Union and DGLP stated that, without these prompt approvals, the project would not proceed. The Board responded by granting the requested approvals promptly, and before the deadline established by Union and DGLP.

- (b) As a result, Union was in a position, as of mid-March 2010, to insist that DGLP complete its purchase of the St. Clair Line. For the purposes of rate regulation in Ontario, all conditions precedent pertaining to that sale transaction had been satisfied; and Union so stated in its 2009 Annual Report released in March 2010.
- (c) The issue is not whether Union can force DGLP shippers to proceed with the project, as the Letter suggests. The issue is whether, for regulatory purposes in Ontario, Union can possibly succeed on a motion to vary and set aside the Orders the Board made establishing these deferral accounts when Union has been in a position, since the spring of 2009, to insist that DGLP complete its purchase of the St. Clair Line.
- (d) Moreover, on the basis of its initial agreements with its five long-term shippers (the largest of which is Union), DGLP was, in fact, empowered to proceed with the project for an in-service date of November 1, 2010. Under these agreements, DGLP was entitled to recover substantial demand charges from those shippers over the entire duration of the long-term agreements, whether or not the shippers use the facilities to transport any gas. These long-term demand charge obligations that the shippers owed to DGLP were more than sufficient to cover all of the costs DGLP expected to incur to construct the pipeline, including the costs of acquiring the St. Clair Line from Union. It matters not whether DGLP can force its shippers to proceed, as the Letter suggests. The point is that, with the protection of the benefits to which it was entitled under its initial long-term contracts, there is no justification for DGLP's failure to complete the purchase of the St. Clair Line in the spring of 2010.
- (e) Union's willingness to tolerate DGLP's failure to complete its purchase of the line in the spring of 2010 constitutes a breach of the obligations it owes to its utility ratepayers. Any utility acting at arm's length from DGLP would not tolerate DGLP's failure to complete the transaction. By acting as it did, Union chose to prefer the non-arm's length interests of DGLP and its own interests as a shipper on DGLP over the interests of its ratepayers.
- (f) The facts that DGLP decided, apparently with Union's concurrence, to delay the completion of that transaction and to modify its initial arrangements with its shippers have no bearing on Union's obligation to clear the credit balances in the deferral accounts in a timely manner.

CME wished to have these issues determined before December 31, 2010 so that the deferral account credit balance of about \$6.4M in Account 179-121 could be cleared to ratepayers and brought into account to reduce Union's rates to be effective January 1, 2011. The balances in this account relate to the Board's derivation of the firm market value of the St. Clair Line from estimates of the burden on ratepayers of the unutilized capacity of that line from 2003 to March 1, 2010.

Contrary to the statements made in the Letter, ratepayers are in fact being prejudiced by Union's failure to clear the credit balance in this account in a timely manner. Ratepayers are being deprived of the lower rates that will result from a timely realization of the benefit of these funds.

If the Board holds Union to the unequivocal acknowledgments in its Market Review Submissions that the Dawn Gateway Pipeline will proceed, then it is no longer necessary for the Board to hear and determine any of the issues CME wishes to have decided. These acknowledgments establish that there is no longer any credible basis for accepting the contention upon which Union's proposal to re-schedule the December hearing is based, namely that the Dawn Gateway Pipeline might not proceed.

All of the issues CME raises will be moot if the Board agrees with our submissions and finds that there is no credible basis upon which Union can continue to assert that the Dawn Gateway Line is unlikely to proceed.

Appropriate Relief

In urging the Board to find that there is now no credible basis upon which Union can continue to assert that the Dawn Gateway Line is unlikely to proceed, we will be pointing to the inconsistencies in Union's evidence, over the period January 2010 to date, relating to the need for the Dawn Gateway Pipeline. In that connection, the following facts are germane.

- (a) In the early months of 2010, we were told by Union and DGLP that the pipeline must be approved by early March in order to enable DGLP to meet its commitments to its five long-term shippers, including Union, who subscribed for 80% of the pipeline capacity. The Board responded by granting the requisite approvals for the pipeline in early March.
- (b) Within two months, and by late April 2010, the evidence pertaining to the need for the pipeline changed. We were then told that, because of changing market dynamics, the project might not proceed and, because of this, the deferral account balances should not be credited to ratepayers in a timely manner.
- (c) By November 2, 2010, the evidence changed again. We were then told that market participants chose to support the Dawn Gateway Pipeline as the preferred economic and routing option for bringing gas supply to Dawn from the U.S. Rockies basin and the emerging shale supply in the Gulf area. We were told that the Dawn Gateway Pipeline is critical to enhancing market liquidity at the Dawn hub.
- (d) By November 15, 2010, the evidence appears to change again. The Letter suggests that there is some uncertainty about the Dawn Gateway Pipeline, and that whether or not it proceeds will not be known until the conclusion of Dawn Gateway's recent Open Season pertaining to the 80,000 GJs of uncommitted capacity on the pipeline. This suggestion in the Letter is incompatible with the statements made in the Market Review Submissions.

These inconsistencies discredit Union's current position. These inconsistencies justify the finding that we will be urging the Board to make, namely, that there is now no longer any credible basis for Union's contention that the Dawn Gateway Pipeline might not proceed. If the Board makes this finding, then Union's motion to adjourn the December hearing is inappropriate since the factual basis upon which the December hearing was premised has disappeared.

Rather than postponing the December hearing, we suggest that the Board should simply order Union to clear the credit balance in Account 179-121 of about \$6.4M, plus accrued interest to December 31, 2010 now, and direct Union to revise the draft rates it circulated yesterday to reflect the credit balance in Account 179-121 in the rates that are to be effective January 1, 2011.

If the Board holds Union to the statements it made in its Market Review Submissions, and makes the finding we propose, then Union should also be directed to clear the balances in Account 179-122 as December 31, 2010 when Union brings forward its other 2010 deferral account balances for clearance in 2011.

Summary

For all of these reasons, we invite Union to adhere to the statements about the need for the Dawn Gateway Pipeline contained in its Market Review Submissions; acknowledge that the Dawn Gateway Project will proceed; and agree to the disposition of the deferral accounts in accordance with those acknowledgments.

Please contact me if you have any questions, or if you wish to discuss our proposal.

Yours very truly,



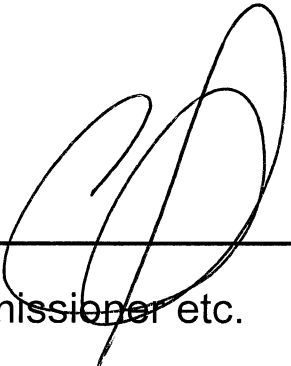
Peter C.P. Thompson, Q.C.

PCT/kt

c. Crawford Smith (Torys)
Chris Ripley (Union)
Intervenors EB-2010-0148
Paul Clipsham

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This is Exhibit 24 to the Affidavit of
Jack Hughes, sworn before me this
29 day of November, 2010.



A Commissioner etc.

November 26, 2010

EMAIL

Mr. Peter C.P. Thompson, Q.C.
Borden Ladner Gervais LLP
World Exchange Plaza
100 Queen Street, Suite 1100
Ottawa, ON K1P 1J9

Dear Mr. Thompson:

Re: EB-2010-0039 - Motion to Adjourn

We are writing in response to your letter dated November 25, 2010. Set out below are the answers to your questions:

- (a) Paragraph 5 of Mr. Kitchen's affidavit refers to a number of conditions precedent contained in the Purchase and Sale Agreement. The information set out in that paragraph was publicly disclosed to you in a letter dated July 23, 2010 from Mr. Ripley relating to certain information provided at the Technical Conference in this matter. The Agreement of Purchase and Sale itself remains confidential.
- (b) We will send to you by email copies of the confidential documents that were filed in EB-2008-0411 as requested. These should similarly be afforded confidential treatment in this proceeding.
- (c) The documents referred to in your paragraph (c) were provided to Union and, subsequently, intervenors, on condition of confidentiality and it is a term of the settlement agreement that they remain so.
- (d) By email dated November 25, 2010, we have corrected the referenced error in the exhibits to Mr. Kitchen's affidavit.

As requested, attached is a schedule which sets out the anticipated balances in the deferral account as at December 31, 2010 with an approximate allocation of that balance to various rate classes. If it were unsuccessful, Union would clear the balance at its next available opportunity.

Yours truly,

[signed by Crawford Smith]

Crawford Smith

Tel 416.865.8209
csmith@torys.com

CS/slk

Encl.

UNION GAS LIMITED
Deferral Account 179-121
Allocation of Cumulative Under-recovery of
St. Clair Transmission Line Amounts to Rate Classes

Line No.	Rate Class	Rate Class Allocator (1) (10 ³ m ³ /day) (a)	Deferral Amount (\$000's) (b)
1	M1	3,763	1,600
2	M2	1,231	524
3	M4	532	226
4	M5 Firm	103	44
5	M5 Interruptible	-	-
6	M7 Firm	389	165
7	M7 Interruptible	-	-
8	M9 Large Wholesale	-	-
9	M10 Small Wholesale	-	-
10	T1 Firm	7,866	3,344
11	T1 Interruptible	-	-
12	T3 Wholesale	-	-
13	M12	-	-
14	C1	1,023	435
15	M13	-	-
16	M16	279	119
17	Rate 01	-	-
18	Rate 10	-	-
19	Rate 20	-	-
20	Rate 100	-	-
21	Rate 25	-	-
22	Rate 77	-	-
23	Total	15,187	6,456 (2)

Notes:

- (1) Ojibway/St. Clair Demand as per EB-2005-0520, Exhibit G3, Tab 5, Schedule 24, page 5, Updated for EB-2005-0520 Decision.
- (2) Cumulative balance including interest to December 31, 2010.