

**Union Gas Limited  
Closure of St. Clair Line Related Deferral Accounts**

**Building Owners and Managers Association, Greater Toronto ("BOMA")  
Submissions**

1. In a letter to the Board dated January 30, 2012, Union requested approval to close deferral accounts 179-121 and 179-122, related to the proposed sale of the St. Clair Line. Union had applied to the Board for leave to construct the St. Clair Line in 1988 (E.B.L.O. 226 and 226A). At the time, Union said that the purpose of the line was to allow Union to have access to other gas suppliers, other than through the Great Lakes Pipeline, and thus purchase gas from producers other than Western Gas Marketing Limited (both Great Lakes and Western Gas were affiliates of TransCanada). Contrary to Union's expectations at the time, the St. Clair Line has not been a success. It has operated at only a fraction of its total capacity from its inception, ranging from 2.5% in 2006 to 39.4% in 2011. In seven of the nine years from 2003 to 2011, capacity utilization has been less than 20%.
2. In 2008, Union and its parent company, Spectra, along with DTE and its subsidiary, MichCon, conceived the idea of the sale of the St. Clair Line to a joint venture (the Dawn Gateway Project), owned by subsidiaries, of Spectra and DTE, which, they assumed, would be a federally regulated pipeline. They requested OEB approval for the sale in EB-2008-0411 on December 23, 2008. In its decision in that case, the OEB decided that

it would regulate the Dawn Gateway Line and it approved the sale. It also found that the sale would result in harm to ratepayers. It stated that:

"The harm is the inability of the ratepayers to recover the cumulative past subsidy since 2003 through future revenues. The harm arises because Union intends to do outside the utility what it originally intended to do within the utility" (page 23).

The Board further found that:

"the harm can be mitigated through an appropriate allocation to ratepayers of a share of the proceeds of the sale upon completion of the transaction based on a fair market value for the asset" (page 24).

Union proposed to transfer the St. Clair Line asset to its affiliate (see EB-2009-0422, page 10), the Gateway Joint Venture at its Net Book Value of approximately \$5.2 million (EB-2008-0411, page 20) effective March 1, 2010. A Valuation Report filed by Union indicated that the value of the line in "its present state" was between \$1.6 million and \$2.0 million. Union's valuator noted that:

"the line is of limited value in its current state, that is without the expansion portion and without the co-operation of MichCon" (page 28).

However, the Board disagreed. The Board noted that:

"The value of the line is in its ability to facilitate the overall project" (ibid, page 28).

The Board concluded the Valuation Report was deficient, given other evidence in the case about need for transportation services in the area and five firm precedent Agreements held by Gateway. The Board also noted that the proposed transaction was not to an arms-length buyer, and that Union would never sell the St. Clair Line to an arms-length buyer for its net book value.

The Board decided to approve the transaction:

"conditional upon ratepayers being allocated a portion of the deemed net gain equivalent to the cumulative under-recovery as of the date of the transaction" (page 31).

Using replacement cost of the line as the best measure of market value, the Board estimated the net gain to Gateway of the transaction, which it characterized as the excess of the replacement cost for the pipeline, which the Board estimated at \$13 million to \$18 million, over the transfer price (book value of existing line of \$5.3 million), to be between \$8 million and \$13 million.

The Board also directed that a deferral account be established to capture the amount of the allocation (to ratepayers) as of the date of the transaction.

In a second decision in the EB-2008-0411 proceeding dated March 2, 2010, the Board determined the replacement cost of the St. Clair Line to be \$13.17 million and the net gain to be \$7.97 million.

The Board also determined that the Union cumulative under-recovery on (subsidy to) the St. Clair Line, from January 1, 2003 to March 1, 2010 (the transaction date for regulatory purposes) was \$6.54 million.

Finally, the Board decided that the St. Clair Line should be removed from rate base on March 1, 2010; and that the resulting reduction in revenue requirement (if any) going forward be captured in a deferral account, for later disposition to ratepayers (our emphasis).

The Board directed the establishment of the two deferral accounts 179-121 and 179 122 (the latter for the impact of removing the St. Clair Transmission Line from rates), effective March 1, 2010.

Union filed an application on April 22, 2010 (EB-2010-0039) to address, inter alia, the disposition of the 2009 deferral accounts, including 179-121 and 179-122.

In that case, the Board concluded that the deferral accounts did not need to be cleared because the sale had not yet taken place. The Board noted that:

"If the sale does not occur, Union shall close the cited deferral accounts and place the St. Clair Line back into ratebase" (page 10).

However, the Board did not stipulate the amount at which the St. Clair Line should be put back into rate base.

With respect to the under-recovery from the St. Clair Line, the Board stated that:

"Nothing in this Decision shall be construed so as to prevent or inhibit parties from asserting that some remedy or consideration arising from the underutilization of the assets may be considered by the Board in subsequent cost of service rate proceedings. Neither should this decision be construed so as to be predictive, in any manner or degree as to how the Board may view or consider such assertions" (page 11).

BOMA notes that the Board, in the first Decision in EB-2008-0411, defined the harm to ratepayers as them being deprived of the opportunity to earn revenues from the St. Clair Line in future years to offset the Board-determined under-recovery of the Line over the period January 1, 2003 to March 1, 2010.

The corollary of that proposition is that, unless there is some realistic prospect of the substantial revenue from the St. Clair Line, which is allocable to Union ratepayers over

the pipeline's remaining life, the harm to ratepayers of the under-recovery continues. How long do ratepayers have to wait to have compensation?

In the meantime, in this case, Union is declining to forecast revenues for the St. Clair Line, lumping its revenue together with revenue from the BlueWater Line. Oddly enough, the St. Clair Line revenues in 2011 increased to \$1.455 million, leading to a small over-recovery from St. Clair of \$259 K.

### Conclusions

- (a) In BOMA's view, it is critical that Union file, on a going forward basis, a forecast revenue/cost forecast for the St. Clair Line in the form of Ex. A.2.2 (Attachment). The actuals for each year should also be provided, as available, as part of the information filed in its rebasing case, and in annual submission, during the next IRM period.

The Board and intervenors should take from Union's statement at A.1.5(b) that Union agrees that the appropriateness of compensation for the under-utilization of the St. Clair Line will be an issue in the 2013 rebasing rates case. The Board should confirm that is its understanding.

- (b) With respect to the transfer of the St. Clair Line back into rate base on December 31, 2012, the amount should be the net book value of the asset as at the date of transfer in, as if it had been in ratebase during the years when it was taken out. Union stated that it removed the St. Clair Line from ratebase and into an account entitled "Assets Held for Future Sale", on which depreciation was not taken. However, the Uniform System of Accounts for Class A Gas Utilities do not contain that account. Moreover, even if Union

created such an account for financial reporting purposes, the asset was still losing value each year in economic terms, so it is appropriate for regulatory purposes to continue to record that depreciation in its book value, and to accept the asset back into ratebase at its depreciated amount. Union should not be permitted to write up the asset's value.

While the amount returned to rate base should be the amount at which it was taken out, less accumulated depreciation for the years 2010, 2011, and 2012 (assuming the asset is being returned to rate base on December 31, 2012), the cumulative related OM&A costs, including returns, taxes and O&M, etc. should not be refunded to the utility. Union should not be entitled to return the St. Clair Line to rate base at value of \$5.2 million. In other words, the benefits provided to ratepayers shown in 2010, 2011, shown in A.1.2(e), page 4, should not be recaptured.

The fairness of this solution is reinforced by the history of the Dawn Gateway Project and the conduct of Union, its parent, and its partner. Spectra, Union and DTE entered into the transaction to transfer value from Union's ratepayers to their shareholders via transferring the St. Clair pipeline from the regulated utility to an affiliate once it became clear to them that the demand for service on St. Clair was about to increase (see Board Decision in EB-2009-0422, page 10). They proposed a unique regulatory scheme (for an Ontario utility) which permitted them to negotiate tolls based on what the traffic would bear, with very high caps. None of the revenues were to accrue to Union ratepayers. This transaction, as proposed, was not fair to Union ratepayers. It was sharp dealing to say the least. Given that the rationale for the deal has apparently collapsed, Union now wishes to start the clock over again and have the ratepayers pay for the depreciation of the line for the

period when it had been held outside the ratebase, as an asset held for sale. Union should not now be able to require the ratepayers to retrospectively cover that cost.

- (c) Finally, without further information, it is difficult to accept Union's numbers in A.3.4(e). How can the differential be so low when the interrogatory posits a reduction of the transfer value of the line by more than two-thirds?

**ALL OF WHICH IS RESPECTFULLY SUBMITTED** on March 7, 2012.



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John Thomas Brett, Counsel for BOMA