



**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 between the St. Clair Valve Site and Bickford Compressor Site in the Township of St. Clair, all in the Province of Ontario.

## **ISSUES DECISION AND ORDER**

### **Application**

On December 23, 2008, Union Gas Limited ("Union Gas" or the "Applicant") filed an application with the Ontario Energy Board (the "OEB") under section 43(1) of the *Ontario Energy Board Act, 1998* ("the Act"). The application seeks an order from the Board granting leave to sell 11.7 kilometers of 24 inch diameter steel natural gas pipeline running between the St. Clair Valve Site and Bickford Compressor Site in the Township of St. Clair. The Board assigned file No. EB-2008-0411 to this application.

A Notice of Application and Hearing dated February 3, 2009, was served and published by Union Gas as directed by the Board.

Union Gas proposes to sell the pipeline to Dawn Gateway LP, a yet to be created limited partnership. Dawn Gateway LP will be owned jointly by Spectra Energy Corp. ("Spectra") and DTE Pipeline Company ("DTE") through various affiliates.

Spectra and DTE are proposing to form a joint venture (the “Dawn Gateway JV”) to develop a new dedicated 34 km NPS 24 natural gas transmission pipeline (the “Dawn Gateway Line”). It is intended that the Dawn Gateway Line will commence at the Belle River Mills natural gas storage facility in Michigan that is owned by DTE’s subsidiary, Michigan Consolidated Gas Company, and will terminate at the Dawn Compressor Site in Ontario, that is owned by Union Gas, which is a subsidiary of Spectra. The existing St. Clair Line is intended to form a portion of the Dawn Gateway Line.

### **Procedural Order No.1 and Draft Issues List**

Procedural Order No. 1 was issued on March 16, 2009 and contained a draft issues list. Submissions were received from the following parties on the proposed issues list:

- Federation of Rental-housing Providers of Ontario (“FPRO”)
- GAPLO-Union, the Canadian Alliance of Pipeline Landowners’ Association (CAPLA), and certain landowners who are affected directly by the current application (“GAPLO”)
- Dawn Gateway Pipeline Limited Partnership (“Dawn Gateway LP”)
- Union Gas Limited (“Union Gas”)

The Board has considered these submissions in establishing a final issues list which is attached as Appendix A to this Decision. The requested changes and clarifications from the parties on the proposed issues list are reviewed below along with the Board’s rationale in addressing each of these requests.

### **Jurisdiction (Draft Issues 1.1 and 1.2)**

#### Position of Union Gas

Union Gas in its March 26, 2009 submission requested that the Jurisdiction Issues, and in particular Issue 1.2, be removed from the Issues List.

Regarding draft issue 1.1, Union Gas indicated that its application “is for leave to transfer the St. Clair Line in the future, once the Dawn Gateway JV has completed all other steps necessary to put the Dawn Gateway Line into service”. At that time, the jurisdictional issue can be considered. In the meantime, Union Gas intends to continue

owning and operating the St. Clair Line until the sale actually takes place, and acknowledges that the St. Clair Line will continue to be under OEB jurisdiction.

In regards to draft issue 1.2, Union Gas submitted that it is not relevant, as the application is predicated on the National Energy Board (“NEB”), granting approvals. If the NEB approvals are not obtained, then the sale to Dawn Gateway JV will not occur. Union Gas suggested that questions about the NEB’s jurisdiction can be addressed when the Dawn Gateway JV applies to the NEB regarding the Dawn Gateway Line.

In addition Union Gas questioned whether the OEB has jurisdiction to make a ruling on the future regulatory status of the Dawn Gateway Line in this application, given that the Dawn Gateway JV is not an applicant and is not seeking any approvals from the OEB.

#### Position of GAPLO

GAPLO submitted that the elimination of the jurisdiction issues may serve to deny the opportunity of the landowners to address their concerns about the Union Gas proposal to the OEB. GAPLO disagreed with Union Gas’s view that jurisdictional issues can be more appropriately addressed as part of Dawn Gateway JV’s future NEB proceedings regarding the Dawn Gateway Line.

#### Position of Dawn Gateway L.P.<sup>1</sup>

In a submission dated March 27, 2009 Dawn Gateway L.P. agreed with Union Gas that no jurisdictional issues arise in connection with the Union Gas application. Accordingly, it was Dawn Gateway L.P.’s submission that Issues 1.1 and 1.2 should be deleted.

Dawn-Gateway L.P. also indicated that it anticipates filing applications before the NEB shortly seeking approval to construct and operate a federal pipeline. One of those applications will request NEB approval to purchase the Union Gas St. Clair Line thereby incorporating it into the new international pipeline connecting Michigan and the Dawn Hub.

---

<sup>1</sup> Spectra Energy Corporation and DTE Pipeline Company, on behalf of the soon to be formed Dawn Gateway Pipeline Limited Partnership (“Dawn Gateway Pipeline L.P”).

## Board Finding

Union Gas' application is for approval of the sale of the St. Clair Line. The ultimate purpose of the sale is to allow Dawn Gateway L.P. to create a new international pipeline, of which the St. Clair Line will form one portion. The St. Clair Line is currently under OEB jurisdiction and is considered integral to Union Gas' transmission and distribution provincial pipeline system. If ultimately successful, Union Gas indicated that the end result will be that the St. Clair Line will be subsumed into the proposed Dawn Gateway JV, and shift from provincial (i.e. OEB) jurisdiction to NEB jurisdiction. Although this ultimate shift in jurisdiction would happen later and be the subject of an NEB proceeding, the Board is convinced that these issues have relevance to the current proceeding. The Board has certain current responsibilities with regard to the St. Clair Line, and it will allow questions and submissions on the jurisdictional issues in this proceeding.

The Board therefore concludes that draft issues 1.1 and 1.2 will form part of the final Issues List, with two minor edits as follows:

- 1.1 If the proposed sale is approved, ~~will~~ should the St. Clair Line be under the jurisdiction of the Ontario Energy Board ("OEB") or the National Energy Board ("NEB")?
  
- 1.2 If the proposed Dawn Gateway Line is ultimately completed, ~~will~~ should it be under the jurisdiction of the OEB or the NEB?

## **Land Matters (Draft Issue 3.1)**

### Position of GAPLO

GAPLO expressed concerns related to the "regulatory oversight" aspect of draft issue 3.1, which deals with Land Matters. In particular, GAPLO identified two problems with waiting until Dawn Gateway JV chooses to initiate proceedings before the NEB :

- (1) it is the OEB that determined that the construction and operation of the St. Clair pipeline was in the public interest, taking into consideration landowner impacts. To the extent that these impacts will change as a result of the project, it should

be for the determination of the OEB and not the NEB as to whether the changes are in the public interest of Ontario and Ontario landowners; and

- (2) directly affected landowners will have no recourse to cost recovery in NEB processes e.g., proposed transfer of jurisdiction or even with respect to the approval of any new pipeline facilities.

GAPLO concluded that the Draft Jurisdictional Issues are relevant to the Board's consideration of the public interest on this application, and that draft issue 3.1 should be amended as follows:

- 3.1 How would a change in ownership and regulatory oversight impact the landowners' interests including any land use restrictions, rights under existing agreements, abandonment obligations, and availability of costs awards related to regulatory proceedings?

#### Union Gas Position

Union Gas responded to GAPLO's submission, indicating that the OEB can consider the implications for the landowners of the transfer of the St. Clair Line to an NEB regulated entity. Union Gas indicated however, that this can be done without the OEB ruling on whether the NEB will in fact have jurisdiction.

#### Board Finding

The Board agrees with GAPLO that draft issue 3.1 should be modified as stated, and notes that Union Gas was not opposed to the proposed revision.

#### **Union Gas Proposed No Harm Test**

#### Position of Union Gas

Union Gas proposed that a new issue be added, "No Harm Test", as follows:

#### 5.0 No Harm Test

Will the proposed transaction have an adverse effect on balance relative to the status quo in relation to the Board's statutory objectives?

Union Gas indicated that this test is relevant for regulated entities in making an application for leave to sell assets.

### Position of FPRO

In regard to the No Harm Test, FPRO submitted that the Issue should be the broader public interest.

FPRO, suggested to include two sub-issues to the proposed issue 5.0 No Harm Test, to address the policy and precedent implications of the proposed project. The two sub-issues are:

- 5.1 What are the impacts of a four-year option provided to a utility affiliate on the rational expansion and development of transmission and storage in the market?
- 5.2 What are the rate impacts of moving assets between affiliates depending upon their rate of return?

### Reply Submission of Union Gas

Union Gas disagreed with FRPO's concern that the No Harm Test would fetter the OEB's ability to consider the public interest. Union Gas stated that the "No Harm Test" will promote regulatory efficiency without unduly fettering OEB's discretion to consider all relevant matters.

Union Gas described the wording of the two questions proposed by FPRO as inappropriate because they are too generic. Union Gas agreed however that the issues raised by FRPO in those questions as they relate to this application specifically would be acceptable.

### Board Finding

The Board agrees that the issue to be addressed is whether the proposed transaction will have an adverse effect on balance relative to the status quo in relation to the Board's statutory objectives. However, the Board also believes it is appropriate to consider whether the no harm test is the appropriate one in these circumstances. The

Board finds that the issue should be titled the “Appropriate Test” rather than the “No Harm Test” and is revised as follows:

Appropriate Test

- 5.1 Will the proposed transaction have an adverse effect on balance relative to the status quo in relation to the Board’s statutory objectives?
- 5.2 What is the appropriate test to be applied by the Board in this application?

Although the issues raised by FRPO’s proposed sub-issue 5.1 and 5.2 are relevant to this proceeding, in the Board’s view these issues are subsumed under issues 2.1, 2.2 and 2.3 and more generally under issue 5. The Board therefore considers it unnecessary to add sub-issues 5.1 and 5.2.

**Other Issues**

The Board received no submissions on any of the other issues in the Draft Issues List.

**THE BOARD THEREFORE ORDERS THAT:**

- 1. The Board approved Final Issues List shown as Appendix A to this order, be used by intervenors of record and Union Gas Limited in all phases of this proceeding.

**ISSUED** at Toronto, April 6, 2009

ONTARIO ENERGY BOARD

*Original signed by*

Kirsten Walli  
Board Secretary

**APPENDIX A**

**LEAVE TO SELL APPLICATION BY UNION GAS LIMITED**

**EB-2008-0411**

**FINAL ISSUES LIST**



## **Final Issues List**

### **Union Gas Limited**

#### **Leave to Sell 11.7 kilometers Natural Gas Pipeline (EB-2008-0411)**

##### **1.0 Jurisdiction**

- 1.1 If the proposed sale is approved, should the St. Clair Line be under the jurisdiction of the Ontario Energy Board (“OEB”) or the National Energy Board (“NEB”)?
- 1.2 If the proposed Dawn Gateway Line is ultimately completed, should it be under the jurisdiction of the OEB or the NEB?

##### **2.0 Impact on Union’s Transmission and Distribution Systems and Union’s Customers**

- 2.1 What impact would the proposed change in the ownership and operating control of the St. Clair Line have on the integrity, reliability, and operational flexibility of Union’s transmission and distribution systems?
- 2.2 How would the proposed sale of the St. Clair Line impact Union’s ability to connect future customers that are in proximity to the St. Clair Line?
- 2.3 How would the proposed sale impact Union’s ability to provide services to its existing customers, and what would be the impact on its rates? How should the proceeds of the proposed sale be treated for future rate making purposes?

##### **3.0 Land Matters**

- 3.1 How would a change in ownership and regulatory oversight impact the landowners’ interests including any land use restrictions, rights under existing agreements, abandonment obligations, and availability of costs awards related to regulatory proceedings?

##### **4.0 First Nation Consultations**

- 4.1 Have all Aboriginal Peoples whose existing or asserted Aboriginal or treaty rights may be affected by the proposed sale been identified, have appropriate consultations been conducted with these groups, and if necessary, have appropriate accommodations been made with these groups?

##### **5.0 Appropriate Test**

- 5.1 Will the proposed transaction have an adverse effect on balance relative to the status quo in relation to the Board’s statutory objectives?
- 5.2 What is the appropriate test to be applied by the Board in this application?