



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

DECISION AND ORDER

[1] On November 27, 2009, the Ontario Energy Board issued a Decision¹ 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”). 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 ratepayers 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.

[2] On March 2, 2010, the Board issued a second Decision² finding that the deemed sale price of the St. Clair Line for ratemaking purposes is \$13.17 million and that the deemed net gain on the sale of the St. Clair Line is \$7.97 million. The Decision also found that the cumulative under-recovery of the St. Clair line for the period 2003 to March 1, 2010 was \$6.402 million and that the entire cumulative under-recovery amount should be credited to ratepayers.

[3] On December 23, 2009, Dawn Gateway Pipeline Limited Partnership (“Dawn Gateway”) filed an application with the Board under sections 36 and 90 of the *Ontario Energy Board Act*, 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.

[4] The Board granted intervenor status to Canadian Manufacturers and Exporters (“CME”); Enbridge Gas Distribution Inc. (“Enbridge”); Federation of Rental-Housing Providers of Ontario (“FRPO”); GAPLO – Union (a group of landowners), the Canadian Association of Energy and Pipeline Landowner Associations and certain landowners who are affected directly by the proposed Dawn Gateway project (collectively “GAPLO/CAEPLA”); Industrial Gas Users Association (“IGUA”); and TransCanada Pipelines Limited (“TransCanada”). The Board granted cost eligibility status to CME, FRPO, IGUA and GAPLO/CAEPLA. The Board also established a final issues list which is attached as Appendix A to this Decision.

[5] For the reasons set out below, the Board approves the leave to construct application subject to the Conditions of Approval set out in Appendix B. The Board also

² March 2, 2010 – EB-2008-0411

approves the application for the regulatory framework subject to the conditions set out in Appendix C.

The Application

[6] Dawn Gateway has applied for an Order or Orders:

- a) pursuant to section 36(1) of the *Ontario Energy Board Act, 1998*, 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.

[7] This application arises out of Union's application 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.

[8] As a result of the Board's Decision in EB-2008-0411, Dawn Gateway Pipeline Limited Partnership has withdrawn its application to the National Energy Board ("NEB") and brings this application to the Board for approval of a new regulatory framework and for leave to construct.

The Regulatory Framework

[9] Dawn Gateway seeks approval from the Board for a regulatory framework 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 is filing for Board approval. This approach is based on Group 2 regulation as practiced by the NEB.

[10] In the Board's EB-2008-0411 Decision and Order at paragraph 124, the Board stated:

In this proceeding the Board is also prepared to hear submissions regarding the form of rate setting the Board should apply to the new proposed service. The new service involves a limited number of sophisticated commercial Customers who arguably do not require the cost of service protection that the Board has traditionally provided to end-use consumers. The Board is also always mindful of the need to introduce efficiency to the rate setting process that will accommodate the needs of both the customers and the utilities. The Board also recognizes the importance of this new investment and its ability to increase the efficiency of the St. Clair Line and also increase the liquidity of the Dawn Hub, an important objective the Board recognized in the NGEIR decision.

[11] Pipeline companies regulated by the NEB are divided into two groups. Group 1 companies are generally those with extensive systems and many shippers, and they are regulated on a cost of service basis. Those with smaller operations and fewer customers are usually designated as Group 2 companies. The financial regulation of Group 2 companies is normally carried out on a complaints basis, with limited financial reporting requirements.

[12] The NEB has allowed Group 2 companies to be regulated on a complaints basis since at least November 1990 when the NEB issued a Memorandum of Guidance on the regulation of Group 2 Companies. The 1990 Guideline was updated and replaced with the NEB's 1995 Memorandum of Guidance. On November 17, 2009, the NEB again issued new guidelines in a letter entitled "Financial Regulation of Pipelines under the Board's Jurisdiction."

[13] Dawn Gateway Pipeline is similar in size and operating characteristics to many NEB pipelines currently regulated as Group 2 companies. The Ontario section of the Dawn Gateway Pipeline is less than 30 km in length and NPS 24. This size is comparable to other NEB Group 2 companies. The Canadian portion of Vector is an NPS 42 pipeline of roughly the same length and throughput as the Ontario portion of the Dawn Gateway Pipeline. Dawn Gateway submits that it should receive regulatory treatment similar to Group 2 pipelines regulated by the NEB, particularly those pipelines, such as Vector, that also serve the Dawn Hub.

[14] In support of the request for a regulatory framework equivalent to NEB Group 2, Dawn Gateway has filed: i) standard contracts for firm and interruptible service, ii) general terms and conditions, and iii) firm and interruptible toll schedules. Transportation services will be offered to shippers using the general terms and conditions and toll schedules. The toll schedules set out the maximum tariffs which will apply to the service.

The Complaint Procedure

[15] As indicated, Dawn Gateway is seeking OEB approval of a regulatory framework that is equivalent to the NEB's Group 2 regulation. Specifically, Dawn Gateway is requesting that the Board regulate its tariff and tolls on a complaints basis.

[16] Dawn Gateway proposes to work directly with shippers to resolve any future disputes that may arise. In the event that Dawn Gateway is unable to resolve a dispute to the satisfaction of an existing or prospective shipper, that shipper will have the right to file a complaint directly with the Board. Upon receiving the written complaint, the Board, at its discretion, may take whatever action it deems necessary to address the complaint. The right of shippers to formally complain to the Board is included in the Dawn Gateway proposed tariff at Article 21 of the General Terms and Conditions:

These General Terms and Conditions, Toll Schedules, Statement of Tolls and service agreements which comprise the Tariff are subject to the provisions of the Ontario Energy Board Act, 1998. The tolls of the Transporter are regulated by the OEB on a complaint basis. The Transporter is required to make copies of tariffs and supporting financial information available to Interested Persons. Persons who cannot resolve traffic, toll or Tariff issues with Transporter may file a complaint with the OEB. In the absence of a complaint, the OEB does not typically undertake a detailed examination of the Transporter's tolls.

[17] DTE and Spectra held a non-binding open season for the Dawn Gateway Pipeline in September/October 2008, and entered into Precedent Agreements with five shippers for multi-year transportation contracts. Of the five Precedent Agreements, three are for 5 years, one is for 7 years, and one is for 10 years.

[18] Based on the bids received, DTE and Spectra determined that there was sufficient interest to justify proceeding with the project. Under the open season

methodology, all shippers were afforded an equal opportunity to bid on available capacity at prices they believed to be fair. This approach allowed shippers to fix the price of their transportation service over the term of their respective contracts, meeting their need for price certainty. According to Dawn Gateway, these shippers are sophisticated market participants with the required knowledge to freely enter into commercial arrangements that meet their business needs.

[19] Dawn Gateway has indicated that it is willing to assume risks not typically undertaken in a traditional cost of service model of regulation. Dawn Gateway is assuming all project risks, including construction, exchange rate, operating costs, inflation, credit, un-contracted capacity, and capacity renewal risks. All economic risks associated with operating and managing the pipeline or changes in the number of shippers would have no effect on the tolls shippers have negotiated for the term of their respective contracts.

[20] Under traditional cost of service regulation, a pipeline company is generally not able to enter into long-term fixed price contracts with shippers. Dawn Gateway argues that without long-term contractual commitments from shippers, Dawn Gateway is not able to make a long-term commitment to invest the capital needed to develop the Dawn Gateway Pipeline.

Board Findings

[21] The complaint procedure is the basis of the NEB's regulation of Group 2 companies. The NEB's letter of November 17, 2009, updates its Memorandum of Guidance of December 6, 1995 and contains the language included in Dawn Gateway's General Terms and Conditions, but provides the following additional language;

It is the responsibility of a Group 2 company to provide its shippers and interested parties with sufficient information to enable them to determine whether a complaint is warranted. Upon receipt of a written complaint, an application under Part IV of the NEB Act or on its own initiative, the Board may decide to examine a toll and to make the toll interim, pending completion of this examination. In this circumstance, the Board may request additional information including some or all of the information specified in Part X of the Guidelines.

[22] The Board concludes that this additional language provides important clarity regarding the potential scope of the Board's enquiry in response to a shipper complaint. The Board will require that similar language be incorporated in Article 21 of Dawn Gateway's General Terms and Conditions. This requirement appears as Condition 4 of the Conditions of Approval set out in Appendix C of this Decision.

Financial Reporting

[23] With respect to reporting requirements, Dawn Gateway proposes to file its audited annual financial statements prepared in accordance with GAAP with the Board within 120 days of the end of Dawn Gateway's fiscal year.

[24] This financial reporting mirrors the requirement of the NEB as set out in its November 2009 letter. The provision states:

The Board only requires that Group 2 companies maintain separate books of account in Canada in accordance with generally-accepted accounting principles and file audited financial statements within 120 days after the end of each fiscal year. Such statements should provide details of revenue and costs associated with the regulated pipeline. Where a Group 2 company operates a joint venture pipeline, it is required to disclose in its audited financial statements its beneficial share of revenue and costs associated with the regulated pipeline and to file a gross operating statement for the joint venture pipeline indicating whether, and if so by whom this statement has been audited.

Board Findings

[25] Dawn Gateway originally proposed that the annual financial reporting be done on a confidential basis, but later agreed to file its audited financial statements publicly. The Board agrees that these statements should be filed on a public basis and notes that this is consistent with the NEB's requirements for Group 2 companies. This requirement is reflected in Condition 3 of the Conditions of Approval set out in Appendix C.

The Application of STAR

[26] A number of parties, including Board staff, argued that if Dawn Gateway is to receive the complaint based regulatory framework that it requests its operations should be subject to the Board's Storage and Transportation Access Rule ("STAR"). Initially,

Dawn Gateway opposed this. During the course of the hearing Dawn Gateway agreed to accept compliance with STAR as a condition of approval but sought exemptions from Sections 4.1.1 (ii), 4.1.4, 4.1.6, 4.3.1. Those sections all relate to posting operationally-available capacity.

[27] The reason for Dawn Gateway's position is that the DTE Pipeline Company which is the company that will be accepting nominations on behalf of Dawn Gateway does not provide for the four NAESB nominations windows on its own system and the upstream operator, MichCon, also does not provide those windows. Dawn Gateway also argues that the shippers would find this information to be of limited value in any event as Dawn Gateway will only offer service on a reasonable efforts basis after the first nomination window.

[28] During the course of the hearing, Dawn Gateway agreed to post on its website the available capacity after the first nomination window each day. This available capacity would be calculated by deducting from the name plate capacity of 360,000 Dthd all of the capacity that had been nominated in the first nomination window. Dawn Gateway is willing to make that posting a condition of approval but still requests an exemption from the specified sections of STAR because those sections go beyond what Dawn Gateway is proposing. Dawn Gateway says that for all practical purposes it will only have one nomination window and not four windows, although interruptible capacity may be sold from time to time beyond the first window.

[29] The response of the intervenors is that there is a material distinction between posting operationally-available capacity and posting capacity that is calculated by deducting the nominations from the name plate capacity.

Board Findings

[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.

The Application of ARC

[31] A number of parties, including Board staff, argued that the relationship between Dawn Gateway and Union should be subject to the Board's Affiliate Relationships Code for Gas Utilities ("ARC"). They note that Dawn Gateway has no employees and that it will be contracting for services from Union and DTE. There are agreements in place or being negotiated related to those services and Union proposes to allocate the relevant costs to its unregulated business. The parties identified two specific concerns: the use of Union personnel may allow for the inappropriate sharing of non-public information and the financial arrangements may allow for inappropriate transfer pricing.

[32] Dawn Gateway provides two reasons why ARC should not apply. First it is argued that Dawn Gateway does not fall within the legal definition of those bound by ARC. That is, that the Dawn Gateway partnership is not an affiliate of Union, as affiliate is defined under the *Business Corporations Act*, because each partner, DTE and Spectra, only has a 50% voting interest and neither party controls. Therefore, it is argued that the entities are not affiliates under the relevant definition and the Code does not apply.

[33] Dawn Gateway recognizes the concerns the Board has with respect to preferential access to the pipeline or the possibility of cross-subsidy between Union and Dawn Gateway. Dawn Gateway proposed a Code of Conduct which deals with preferential treatment, related-party transactions, confidential information, and a complaint mechanism. Dawn Gateway also filed with the Board the codes of conduct that relate to the employees of Spectra and DTE. Finally, Dawn Gateway argues that there are practical reasons why it is unlikely that Spectra or DTE will be able to gain preferential access to the system. They argue that because this is a 50/50 partnership neither party would want the other party to be able to use information to gain preferential access to the disadvantage of the other partner. Dawn Gateway also advised that Union would allocate the costs of providing services to Dawn Gateway to its unregulated business consistent with the way it allocates costs to its unregulated storage business in accordance with the Board's decision in Natural Gas Electricity Interface Review ("NGEIR").

Board Findings

[34] The Board acknowledges the efforts of Dawn Gateway to address the issue of preferential access and potential cross-subsidy by developing a Code of Conduct and proposing that adherence to it be a condition of approval. The Board will accept this proposal and will reflect this requirement in the Conditions of Approval. The Board will also amend the Code of Conduct to include a provision that Dawn Gateway will inform the Board of any complaints received. While the Code of Conduct addresses the issues of concern to the Board, it is not sufficiently comprehensive to completely alleviate the Board's concerns with respect to interactions between Dawn Gateway and Union.

[35] In the circumstances, the Board concludes that the provisions of the Board's Affiliate Relationships Code for Gas Utilities form a necessary part of the approved regulatory framework for Dawn Gateway in terms of the relationship between Union and Dawn Gateway. For example, Dawn Gateway has explained that the costs incurred by Union to provide service to Dawn Gateway will be accounted for on the same basis as Union allocates costs to its unregulated storage business. The Board finds that this is not sufficient. Union will be providing services to a separate and related company; this is not simply a cost allocation exercise within Union. The Board concludes that article 2.3.9 of the ARC, in particular, is relevant in this respect. In addition, Union and Dawn Gateway may each have access to non-public information. The Board concludes that article 2.2 of the ARC is relevant in this respect. For purposes of Union's compliance with ARC, effective June 1, 2010, the Board will deem Dawn Gateway to be an affiliate of Union. Union will be required to provide written assurance to the Board that Union will treat Dawn Gateway as an affiliate for purposes of the ARC.

Reasonableness of the Caps

[36] The regulatory treatment being proposed by Dawn Gateway consists of negotiated rates for both Firm Transportation and Interruptible Transportation subject to maximum amounts or caps in both cases. The proposed tariffs have been filed. For Firm Transportation the Reservation Rate is capped at \$30 USD per Dth per month, the Usage Rate is capped at \$1 USD per Dth per day and the Authorized Overrun Charge is capped at \$1 USD per Dth per day. In the case of Interruptible Transportation, there

is no usage reservation rate but the usage rate is capped at \$2 USD per Dth per day and the Authorized Overrun Charge is capped at \$2 USD per Dth per day³.

[37] CME argues that the caps are too high and that the Reservation Rate of \$30 USD per Dth per month should be about \$4.50 USD per Dth per month. In the case of the Usage Rate and the Authorized Overrun Charge, CME says it should be \$0.15 USD per Dth per day and not the \$1 USD per Dth per day proposed by Dawn Gateway.

[38] The benchmark that CME is using for these calculations is a cost of service approach. CME also referenced the National Energy Board Decision of March 1999 in the *Vector Pipeline* case.⁴

[39] Exhibit K1.13 is a letter of October 16, 2009 from the President of Vector Pipelines to the Acting Secretary of the National Energy Board setting out its tolls pursuant to Decision GH-598 indicating that for firm transportation service for a term of less than 10 years the maximum negotiated toll for the service is capped at 300% of the stated maximum 15 year Firm Transportation service toll. In the case of Interruptible Transportation service, the maximum negotiated toll for the service is capped at 300% of the stated maximum 15 year Firm Transportation service toll. CME claimed the 15 year fixed toll was cost-based.

[40] Dawn Gateway responds that the relatively high caps it has proposed are designed to allow the pipeline to capture market opportunities to offset the risks it faces; they are not intended to be cost-based. Dawn Gateway argued that most of the time the prices which it will negotiate for its service will be lower than the cap, as the value of the service is constrained by the basis differential between Dawn and Michigan, which is usually within a narrow range and generally about \$0.15. Dawn Gateway also argues that the Vector caps do not represent an accurate comparison in that they represent the charges only for the Canadian portion of the Vector Line. It is argued that the US portion which runs from Chicago to the Canadian border is much higher.

Board Findings

³ Exhibit K1.5 – Section 4 – Schedule 3 pg. 35

⁴ National Energy Board, Reasons for Decision, Vector Pipeline Limited Partnership. GH-5-98, March 1999.

[41] CME has argued that the Group 2 form of regulation practiced by the NEB is linked or anchored to a cost of service analysis and that the cap for Dawn Gateway should be based on a form of cost of service analysis. The Board does not agree. The NEB's framework identifies that cost of service analysis could be used to determine the reasonableness of rates in the event that there is a complaint. However, the examples that were put before the Board show Group 2 tolls that are based on negotiations with shippers and not necessarily cost of service principles. There are also examples of tolls which are not fixed but rather are range tolls or maximum tolls. In the case of Dawn Gateway, there are no captive customers, and Dawn Gateway is fully at risk with respect to the long term viability of the project. The value of the service is governed by the basis differential between Michigan and Dawn. No wholesale shippers have expressed any objections to the proposal. The Board concludes that cost of service analysis is not warranted or required for purposes of establishing a just and reasonable maximum tariff for Dawn Gateway.

[42] The Board notes that range rates, or maximum rates, have been approved by the Board before. The Board has authorized a range rate for Union's C1 interruptible and C1 short-term firm transportation service up to a maximum of \$75 per GJ, which is also a high cap. When a shipper enters into a contract with Union for that service, the shipper negotiates a fixed price based on the market conditions existing at the time. While each shipper has a fixed price for its own contract, Union is not required to post the prices paid by shippers under Union's C1 range rate.

[43] The Board concludes that a similar approach is also appropriate for Dawn Gateway. Dawn Gateway is fully at risk, and shippers will have adequate protection through the operation of STAR, the Code of Conduct, ARC, and the complaint process. It may be, as CME alleges, that if the pipeline capacity is sold out completely the owners will enjoy substantial returns. At the same time we must recognize that the shareholder is bearing all of the risk. The Board concludes that the complaint procedure provides adequate protection to shippers and that firm and interruptible tolls which are flexible up to a maximum rate are just and reasonable in the circumstances.

[44] In the Board's view, this pipeline is a welcome addition to the Ontario capacity. There is a reason why 78% of the pipeline's capacity has been sold even before construction. The Board in its previous Decision identified the benefits of the line in terms of increased capacity and increased liquidity at Dawn. We do not believe that in

embarking upon a Cost of Service analysis to determine the reasonableness of the caps will be a useful exercise at this time.

The Reporting of Tolls

[45] This hearing ended with a dispute between the applicant and Board Staff as to whether the NEB requires Group 2 companies to file their actual tolls. Reference was made to the documents on the NEB's website and the NEB Decisions in *AEC Suffield Gas Pipeline Inc.*⁵ and *Pipestone Pipeline Inc.*⁶

[46] Board Staff argues that the NEB's normal practice for Group 2 companies is to require that the tolls be filed. The applicant disputes this. Board staff states at page 5 of the Sur Reply Argument;

Dawn Gateway is seeking that this Board approve the estimated, maximum rates set out in its application (e.g., the maximum rate of \$1.00 USD per Dth (per day) for firm transportation).⁷ However, in the absence of price disclosure (i.e., the actual tolls), it is difficult to determine whether the rates are 'just and reasonable' in order for the Board to approve the tolls in accordance with section 36 of the *OEB Act*.

Board Findings

[47] The Board does not intend to determine whether each and every price in each and every contract is just and reasonable. Rather, the Board is being asked to approve maximum rates. The Board concludes that it is not necessary for the Board to see each rate in each contract and to make a determination that they are just and reasonable. Rather, the Board is relying on a complaint system just as the NEB does. Nor does the NEB make an Order relating to each rate in each contract.

[48] Both Board staff and CME have argued that Dawn Gateway should file individual shipper contracts with the Board and that the pricing in the contracts should be public.

⁵ National Energy Board, Reasons for Decision, AEC Suffield Gas Pipeline Inc. GH-2-98, July 1998.

⁶ National Energy Board, Reasons for Decision, Pipestone Pipelines Ltd. OHW-1-99, February 2000.

⁷ Section 4, page 11, paragraph 29 and Section 4 – Schedule 3 – Statement of Tolls – Firm Transportation Service Tolls

Dawn Gateway opposes this step. Both CME and Dawn Gateway through counsel filed late submissions on March 4, 2010 responding to the Sur Reply filed by Board staff following the last day of Oral Hearing. In most cases there is reference to unsubstantiated third-party information either in support or against this proposition.

[49] All would agree that the record is unclear. One point that is clear is that NEB Guidelines clearly state "it is the responsibility of a Group 2 company to provide its shippers and interested parties with sufficient information to enable them to determine whether a complaint is warranted." Any shipper will know whether its contract price is below the cap. What the shipper will not know, is whether other shippers are receiving more favourable terms for essentially the same service.

[50] What may or may not constitute unjust discrimination or whether that contravenes the statutes is not something that needs to be determined here. But that situation may unfold and the shippers are entitled to argue it as they wish. The question is what information are they entitled to.

[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.

The Leave to Construct

[52] Dawn Gateway 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. Dawn Gateway plans to construct the pipeline during the 2010 construction season for service to customers effective November 1, 2010.

The Proponent

[53] Dawn Gateway explained that Union will oversee the construction and maintenance of the pipeline. Dawn Gateway submitted that DTE and Spectra have the financial capability to construct and operate the Dawn Gateway Pipeline in accordance with all legislative and regulatory requirements.

[54] No parties disputed Dawn Gateway's fitness to construct and operate the pipeline. The Dawn Gateway partners are well established in the sector and have the necessary expertise and financial resources to undertake the project. The Board finds that there are no additional conditions of approval required in the circumstances to address this issue.

Environmental Impact

[55] 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 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.

[56] None of the intervenors raised any environmental concerns. The Board accepts the evidence that the pipeline will have no adverse long-term environmental effects provided Dawn Gateway adheres to the recommendations in the ER. The Board's approval is conditional on Dawn Gateway implementing the recommendations in the ER and this is reflected in the Conditions of Approval set out in Appendix B.

The Need for the Pipeline

[57] The proposed Dawn Gateway Pipeline will provide shippers with an 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 103m³/d) between MichCon's Belle River Mills Compressor Station and Union's Dawn Hub on a firm basis, and its capacity could be expanded in the future. The Dawn Gateway Pipeline will also provide shippers with 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.

[58] 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.

[59] As outlined above, five shippers entered into binding Precedent Agreements to subscribe for a total of 280,000 Dthd (295,459 GJ/d, 7,932 103m³/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.

[60] In EB-2008-0411, the Board found that there were clear benefits from the proposed Dawn Gateway Pipeline:

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 rate base and rates. This benefit is small; the estimated rate impact is less than \$1 per year for residential customers in the Southern Operations Area.

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.

[61] None of the parties to this proceeding questioned that there is a need for this pipeline. As indicated, the Board has already addressed this issue in EB-2008-0411. The Board therefore accepts that the Applicant has established the need for the pipeline.

Landowner Issues

[62] On February 12, 2010, GAPLO/CAEPLA advised the Board that it and Dawn Gateway had resolved the landowner issues in the application in accordance with the Minutes of Settlement which have been filed with the Board. As a result, GAPLO/CAEPLA withdrew from further participation in the proceedings.

[63] None of the other parties raised landowner issues. In these circumstances, the Board accepts that there are no outstanding landowner issues and approves the form of easement filed as part of the Minutes of Settlement. This is reflected in the Conditions of Approval.

Cost Awards

[64] The Board may grant cost awards to eligible stakeholders pursuant to its power under section 30 of the *Ontario Energy Board Act, 1998*. 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.

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

THEREFORE THE BOARD ORDERS THAT:

1. Dawn Gateway Pipeline Limited Partnership is, pursuant to Section 90(1) of the *Ontario Energy Board Act*, granted Leave to Construct approximately 17km of NPS 24 pipeline from the existing Bickford Compressor Station located at 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, subject to the Conditions of Approval set out in Appendix B of this Decision.
2. The Board pursuant to Section 36(1) of *Ontario Energy Board Act* approves the Regulatory Framework and the Tariffs for the Ontario portion of the Dawn Gateway Pipeline contained in the application, as amended during the hearing, and subject to the Conditions of Approval set out in Appendix C of this Decision.
3. Dawn Gateway will file a draft Rate Order within 10 days of the date of this Decision. The draft Rate Order will include the General Terms and Conditions, and the Toll Schedules, Agreements and Statements of Tolls for Firm Transportation service and Interruptible Transportation service and will incorporate the conditions of approval contained in Appendix C of this Decision.
4. Upon receipt of the Draft Rate Order, Intervenor and Board staff shall have 5 working days to respond to Dawn Gateway's Draft Order. Dawn Gateway shall respond within 3 working days to any comments submitted by the intervenors and Board staff.
5. Intervenor shall file with the Board and forward their respective cost claims for the proceeding by March 29, 2010.
6. Dawn Gateway shall file with the Board and forward to the applicable intervenor any objections to the claimed costs by April 12, 2010.
7. The applicable intervenor shall file with the Board and forward to Dawn Gateway any responses to any objections for cost claims by April 26, 2010.

All filings to the Board must quote the file number, EB-2009-0422, 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 9, 2010.

ONTARIO ENERGY BOARD

Original Signed By

Kirsten Walli
Board Secretary

APPENDIX A

Decision and Order

EB-2009-0422

DATED March 9, 2010

Appendix A

Dawn Gateway Pipelines Limited Partnership

EB-2009-0422

Final Issues List

Regulatory Framework

1. Is the regulatory framework proposed in the Application appropriate?
2. Should the Ontario Energy Board's Storage and Transmission Access Rule apply to the Ontario portion of the Dawn Gateway Pipeline?
3. How are the provisions of the Ontario Energy Board's Affiliate Relationship Code satisfied by Dawn Gateway LLP and its affiliates in the proposed regulatory framework?

Leave to Construct the Bickford Dawn Pipeline

4. Is the Applicant a capable prospective pipeline operator in terms of technical and financial capabilities to develop and operate the proposed pipeline facilities?
5. Is there a need for the proposed pipeline?
6. What are the environmental impacts associated with construction of the proposed pipeline and are they acceptable?
7. Are there any outstanding landowner matters for the proposed pipeline routing and construction?

APPENDIX B

Decision and Order

EB-2009-0422

DATED March 9, 2010

Appendix B

Dawn Gateway Pipelines Limited Partnership

EB-2009-0422

Conditions of Approval Leave to Construct

1 General Requirements

- 1.1 Dawn Gateway Limited Partnership (“Dawn Gateway LP”) shall construct the facilities and restore the land in accordance with its application and the evidence filed in EB-2009-0422 except as modified by this Order and these Conditions of Approval.
- 1.2 Unless otherwise ordered by the Board, authorization for Leave to Construct shall terminate December 31, 2011, unless construction has commenced prior to that date.
- 1.3 Dawn Gateway LP shall implement all the recommendations of the Environmental Report filed in the pre-filed evidence, and all the recommendations and directives identified by the Ontario Pipeline Coordinating Committee (“OPCC”) review.
- 1.4 Dawn Gateway LP shall advise the Board's designated representative of any proposed material change in construction or restoration procedures and, except in an emergency, Dawn Gateway LP shall not make such change without prior approval of the Board or its designated representative. In the event of an emergency, the Board shall be informed immediately after the fact.

2 Project and Communications Requirements

- 2.1 The Board's designated representative for the purpose of these Conditions of Approval shall be the Manager, Natural Gas Applications.
- 2.2 Dawn Gateway LP shall designate a person as project engineer and shall provide the name of the individual to the Board's designated representative. The project engineer will be responsible for the fulfillment of the Conditions of Approval on the construction site. Dawn Gateway LP shall provide a copy of the Order and Conditions of Approval to the project engineer, within seven days of the Board's Order being issued.

- 2.3 Dawn Gateway LP shall give the Board's designated representative and the Chair of the OPCC ten days written notice in advance of the commencement of the construction.
- 2.4 Dawn Gateway LP shall furnish the Board's designated representative with all reasonable assistance for ascertaining whether the work is being or has been performed in accordance with the Board's Order.
- 2.5 Dawn Gateway LP shall file with the Board's designated representative notice of the date on which the installed pipelines were tested, within one month after the final test date.
- 2.6 Dawn Gateway LP shall furnish the Board's designated representative with five copies of written confirmation of the completion of construction. A copy of the confirmation shall be provided to the Chair of the OPCC.

3 Monitoring and Reporting Requirements

- 3.1 Both during and after construction, Dawn Gateway LP shall monitor the impacts of construction, and shall file four copies of both an interim and a final monitoring report with the Board. The interim monitoring report shall be filed within six months of the in-service date, and the final monitoring report shall be filed within fifteen months of the in-service date. Dawn Gateway LP shall attach a log of all complaints that have been received to the interim and final monitoring reports. The log shall record the times of all complaints received, the substance of each complaint, the actions taken in response, and the reasons underlying such actions.
- 3.2 The interim monitoring report shall confirm Dawn Gateway LP's adherence to Condition 1.1 and shall include a description of the impacts noted during construction and the actions taken or to be taken to prevent or mitigate the long-term effects of the impacts of construction. This report shall describe any outstanding concerns identified during construction.
- 3.3 The final monitoring report shall describe the condition of any rehabilitated land and the effectiveness of any mitigation measures undertaken. The results of the monitoring programs and analysis shall be included and recommendations made as appropriate. Any deficiency in compliance with any of the Conditions of Approval shall be explained.

4 Easement Agreements

- 4.1 Dawn Gateway LP shall offer the form of agreement approved by the Board, as filed as part of Exhibit K1.4 (the Minutes of Settlement), to each landowner, as may be required, along the route of the proposed work.

5 Other Approvals and Agreements

- 5.1 Dawn Gateway LP shall obtain all other approvals, permits, licences, and certificates required to construct, operate and maintain the proposed project, shall provide a list thereof, and shall provide copies of all such written approvals, permits, licences, and certificates upon the Board's request.

APPENDIX C

Decision and Order

EB-2009-0422

DATED March 9, 2010

Appendix C

Dawn Gateway Pipelines Limited Partnership

EB-2009-0422

Conditions of Approval Regulatory Framework

- 1) Dawn Gateway will comply with the Code of Conduct attached as Schedule 1 to this Order.
- 2) For purposes of Union Gas Limited's compliance with the Board's Affiliate Relationships Code for Gas Utilities ("ARC"), effective June 1, 2010, Dawn Gateway will be deemed to be an affiliate of Union Gas Limited. Union Gas Limited will provide written assurance to the Board that Union will treat Dawn Gateway as an affiliate for purposes of ARC.
- 3) Dawn Gateway will comply with the Board's Storage and Transportation Access Rule ("STAR"). For the purposes of section 4.1.1(ii) and related sections 4.1.4, 4.1.6, and 4.3.1 of STAR, Dawn Gateway is only required to post the operationally-available transportation capacity once each day. The Board will review this provision on an annual basis and determine whether further daily postings are necessary depending on the extent to which Dawn Gateway offers those services.
- 4) 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.
- 5) Article 21 of the Dawn Gateway General Terms and Conditions shall be amended to read as follows;

These General Terms and Conditions, Toll Schedules, Statement of Tolls and Service Agreements which comprise the Tariff are subject to the provisions of the *Ontario Energy Board 1998*, including the Transporter's Code of Conduct, the Board's Affiliate Relationships Code for Gas Utilities and the Board's Storage and Transportation Access Rule . The tolls of the Transporter are regulated by the OEB on a complaints basis.

The Transporter is required to make copies of Tariffs and supporting financial information readily available to interested parties. Interested persons who can not resolve traffic toll and traffic issues with the Transporter may file a complaint with the Board. In absence of a complaint, the Board does not normally undertake a detailed examination of the company's tolls.

It is the responsibility of the Transporter to provide its Shippers and interested parties with sufficient information to enable them to determine whether a complaint is warranted. Upon receipt of a written complaint, or the Board on its own initiative, the Board may decide to examine a toll and to make the toll interim, pending completion of the examination. In this circumstance, the Board may request additional information including any information that the Board would ordinarily obtain from regulated pipelines in a Cost of Service proceeding.

- 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.

SCHEDULE 1

Decision and Order

EB-2009-0422

DATED March 9, 2010

Dawn Gateway Pipeline Limited Partnership Code of Conduct

General

This Code of Conduct will govern the relationship between Dawn Gateway Pipeline Limited Partnership (“DG”) and all shippers or potential shippers on its transportation system (“Shippers”) and each of the following parties (each being a “Related Party”): (i) any of DG’s partners (a “Partner”); (ii) any corporation, company, partnership or other entity that directly or indirectly owns a majority voting interest in a Partner (a “Parent”); and (iii) any corporation, company, partnership or other entity that is controlled by a Parent including Union Gas Limited and Michigan Consolidated Gas Company. DG is committed to ensuring the long-term viability of its transportation system (the “System”) through the efficient and cost effective maximization of System utilization.

No Preferential Treatment

In the administration of DG’s tariff, contracts and operations and including the provision of information in a timely manner to all Shippers, DG will at all times treat its Shippers equally. DG will not give preferential access to the System to any Related Party, or to any Shipper on the System. DG will process all similar requests for service in a uniform manner.

Related Party Transactions

DG will post the names of any Related Party with whom it contracts to provide transportation services. DG will not participate in any agreement whereby the provision of transportation services on the System by DG is conditional upon Shippers entering into an agreement with a Related Party for other services.

Information Kept Confidential

DG will not use any information or data that is disclosed to DG by third parties for System purposes to advance the activities of a Related Party unless that information or data is also available generally to third parties or has been given to DG on the express written understanding that it may also be used in connection with the activities of Related Parties.

Reporting

DG shall provide to the Ontario Energy Board (OEB), annually, by the last day of the fourth month after the financial year end, a statement signed by both of its Co-Presidents certifying that they are satisfied that DG and the DG Representatives (as defined below) have complied with this Code of Conduct with any exceptions noted.

Compliance

DG will, at the commencement of employment of personnel and the engagement of any Related Party to provide services to DG (collectively, the “DG Representatives”) and at least once annually, formally communicate to DG Representatives the principles set forth in this Code of Conduct and the expectation that DG Representatives conduct themselves at all times in a manner consistent with those principles. Appropriate action will be taken promptly in response to any material breach of this Code of Conduct.

Complaint Mechanism

Any complaint respecting the application of this Code of Conduct shall be referred in writing to either Co-President of Dawn Gateway Pipeline General Partner Inc. The Co-President shall respond to the complainant within 30 working days of its receipt. The response shall include a description of the complaint and DG’s response to all issues of contention raised within the complaint. A record of all complaints and responses of DG shall be maintained for a period of 2 years. If a complaint is not resolved to the satisfaction of the complainant, the complaint may be referred to the OEB. DG will advise the OEB of any complaints received.

Periodic Review

This Code of Conduct shall be subject to periodic review by DG and its Shippers and modifications may be implemented as warranted.