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November 14, 2016

VIA ELECTRONIC FILING

Attention: Kirsten Walli, Board Secretary

Ontario Energy Board
2300 Yonge Street
27th Floor
Toronto, ON M4P 1E4

Dear Madam Secretary:

**RE: Union Gas Ltd. – Panhandle Reinforcement Project – OEB File No. EB-2016-0186
CAEPLA-PLC Responses to Interrogatories from Board Staff, Union and IGUA
Our File No. 18162**

We are the lawyers for CAEPLA-PLC in this proceeding. Please find enclosed CAEPLA-PLC's responses to the interrogatories submitted by Board Staff, Union and IGUA.

We trust this is satisfactory. If you require any further information, please let us know.

Yours truly,

SCOTT PETRIE LLP
LAW FIRM



John D. Goudy

Encl.

c.c.: Parties to EB-2016-0186

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) thereof;

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

AND IN THE MATTER OF an Application by Union Gas Limited for an Order or Orders granting leave to construct natural gas pipelines and ancillary facilities in the Township of Dawn Euphemia, Township of St. Clair and the Municipality of Chatham-Kent;

AND IN THE MATTER OF an Application by Union Gas Limited for an Order or Orders for approval of recovery of the cost consequences of all facilities associated with the development of the proposed Panhandle Reinforcement Pipeline Project.

CAEPLA-PLC RESPONSES TO INTERROGATORIES

November 14, 2016

BOARD STAFF INTERROGATORIES

1. **References:** CAEPLA-PLC Written Evidence Statement, October 21, 2016, pages 1-9 and page 11 paragraph 28 a.
- Preamble:** CAEPLA-PLC proposes amendments to the Letter of Understanding for the Panhandle Reinforcement Project (LOU). The proposed changes are mainly related to: pipeline construction and remediation techniques on agricultural lands and compensation for construction caused damages to agricultural landowners. CAEPLA-PLC stated it would ask the OEB to impose LOU related conditions of approval as follows: i) that the LOU for the Project be amended as proposed by CAEPLA-PLC or ii) that amendments proposed by CAEPLA-PLC be stand-alone conditions.
- Request:**
- a) Please describe the progress to date and prospects of negotiations between CAEPLA-PLC and Union with respect to the proposed amendments of the LOU?
 - b) Is CAEPLA-PLC's understanding that the LOU is a stand-alone agreement, not an addendum to the form of easement agreement Union submitted for approval? Please elaborate.
 - c) In CAEPLA-PLC's view, is the LOU to be applicable to construction along the entire 40 kilometres of the proposed pipeline route? Please explain.

Responses: a) Discussions between CAEPLA-PLC and Union with respect to the terms of the LOU are ongoing. CAEPLA-PLC is optimistic that most, if not all, outstanding items can be agreed upon by CAEPLA-PLC and Union within the context of an overall settlement regarding the project.

b) The LOU is drafted in a stand-alone form that is signed by landowners in addition to the easement or temporary land use agreements. It has not traditionally been registered on title to properties as an addendum to the easement or temporary land use agreements. However, the LOU contains many important provisions that CAEPLA-PLC members would otherwise require to be made part of the easement or temporary land use agreements (directly and/or as part of an addendum or addenda) if Union's compliance with the LOU were not in some form made a condition of approval of its project.

c) The LOU provisions, and the changes proposed by CAEPLA-PLC, are designed to mitigate negative environmental and socio-economic impacts of the project. CAEPLA-PLC's view is that LOU mitigation measures would benefit all agricultural properties affected by the project, but CAEPLA-PLC does not purport to speak for affected landowners who are not members of CAEPLA-PLC.

2. References: CAEPLA-PLC Written Evidence Statement, October 21, 2016, page 11 paragraph 26 and paragraph 28 b.

Preamble: CAEPLA-PLC asked the OEB to require that Union's existing easement agreements along the route of the Panhandle Reinforcement Project that were acquired in the 1950's (1950's agreements) "...be updated to reflect current standards and protections for landowners and to ensure consistency for properties affected by the project". CAEPLA-PLC stated it would ask that the OEB impose a condition of approval of the Panhandle Reinforcement Project as follows: that Union will offer to PLC landowners who have 1950's agreements an updated easement agreement that reflects the form of the easement agreement Union filed with the OEB for approval in this proceeding. This form of easement agreement can be found in Union's response to CAEPLA-PLC Interrogatory No. 5, Attachment 1, pages 11-15.

Request: a) Have there been any discussions or communication with Union about CAEPLA-PLC's request that the existing 1950's agreements be updated or amended? If so, please provide copies of communications with Union.

b) What is CAEPLA-PLC's understanding of Union's position regarding this request?

Responses: a) and b) There have been limited discussions to date between CAEPLA-PLC (and landowner members) and Union regarding the form of easement agreement. CAEPLA-PLC's understanding of

Union's position is that Union relies upon existing easement agreements and is not prepared to extend the terms of its new easement agreement to CAEPLA-PLC landowners except in respect of lands where Union requires additional permanent easement.

UNION GAS LIMITED INTERROGATORIES

- 1. References:** CAEPLA-PLC Written Evidence Statement, Page 8, Paragraph 15.
Exhibit B. CAEPLA-PLC.5, Attachment 1, Page 26, Section 7.
- Preamble:** "Union is proposing to construct the pipeline with a minimum depth of cover of 1.2 metres in non-rock agricultural areas."
- Request:**
- i) Please confirm that CSA Z662-15 adopted by the Technical Standards Safety Association, ("TSSA") is the code which governs the required depth of cover for the pipeline and which is the code that Union's construction of the pipeline must comply with.
 - ii) Please confirm that TSSA requires the pipeline to be constructed to a depth of cover of 0.6 meters in agricultural areas.
- Responses:**
- i) CAEPLA-PLC confirms that Union's construction of the pipeline must comply with the CSA Z662-15 code as adopted by TSSA, subject to any additional applicable regulatory requirements and to conditions of approval imposed by the Board.
 - ii) CAEPLA-PLC confirms that the CSA Z662-15 code requires a minimum depth of cover of 0.6 metres in agricultural areas. CAEPLA-PLC submits that the minimum depth permitted by the code is insufficient to ensure safety and to avoid interference with present and future agricultural operations, especially in conjunction with the use of thinner walled pipe permitted in agricultural areas. CAEPLA-PLC has requested that the replacement pipeline be installed at a depth of 1.5 metres, and that depth of cover be maintained at no less than 1.2 metres following construction.
- 2. References:** CAEPLA-PLC Written Evidence Statement Page 9-10, Paragraphs 21-23;
Page 11, Paragraph 28 (b). Exhibit A, Tab 11, Page 1
- Preamble:** Union is proposing, where applicable, to use existing easements for the Proposed Facilities.
- Request:** Please confirm that the easements held by Union which are registered against the title to the landowner's property permit Union to remove the existing NPS 16 pipeline and install the new NPS 36 pipeline.
- Responses:** Once the NPS 16 pipeline is removed from the ground, the rights granted by the easement agreements registered against title to the

landowner's property cease. Also, the agreements grant to Union the right to "renew" the existing NPS 16 pipeline. CAEPLA-PLC submits that the replacement of the existing NPS 16 pipeline with a much larger NPS 36 pipeline does not constitute a "renewal" as described in the form of agreement.

- 3. References:** CAEPLA-PLC Written Evidence Statement, Page 4, Paragraph 12 (b).
Exhibit B.CAEPLA-PLC.5, Attachment 1, Page 26, Section 5.
- Preamble:** CAEPLA-PLC has requested Union modify how it stakes the workspace to construct the Proposed Facilities.
- Request:** Please confirm that the stakes referred to in this paragraph are the stakes on the outside edge of the topsoil storage areas, not the stakes delineating the easement boundary.

If confirmed, please explain what additional stakes would be required that are not identified in paragraph 5 of Union's Letter of Understanding ("LOU").
- Responses:** The changes to Section 5 of the LOU proposed by CAEPLA-PLC are intended to restore protections provided in the EB-2005-0550 Strathroy-Lobo LOU. CAEPLA-PLC understands Union's interrogatory to relate to the proposal that stakes not be removed during stripping operations where topsoil is stored off-easement (as it will be in this project). CAEPLA-PLC's position is that, wherever possible, stakes delineating the easement and TLU areas where topsoil is being stripped should be kept in place to maintain proper boundaries and to assist in focusing as much of the equipment travel as possible on the trench area. Stakes delineating the outside boundary of the topsoil storage areas should be kept in place at all times during stripping to ensure that the boundaries are respected.
- 4. References:** CAEPLA-PLC Written Evidence Statement Page 4, Paragraph 12 (g).
CAEPLA-PLC Written Evidence Statement Attachment 11, Page 12.
Exhibit B.CAEPLA-PLC.5, Attachment 1, Page 26, Section 6.
- Preamble:** CAEPLA-PLC has requested Union separately strip previously disturbed topsoil from virgin topsoil contrary to Union's standard practice of giving the landowner the right to determine how topsoil would be stripped on their property.
- Request:** In the Jane Sadler Richards report at page 12 it states that the "proposal to separately strip and pile topsoil previously disturbed by pipeline construction away from virgin topsoil is reasonable but this action may not be required across the entire pipeline".

Please explain the rationale for CAEPLA-PLC requesting this practice on all properties rather than those properties where it is requested by the landowner or recommended by the soil specialist.

- Responses:** CAEPLA-PLC's concern is with preservation of previously undisturbed topsoil. Union's original pipeline constructions on the affected properties were undertaken with little or no regard for the separation of topsoil and subsoil and the protection of topsoil, and resulted in damage to many locations. To the extent that Union can protect previously undisturbed locations in the proposed construction, CAEPLA-PLC submits that Union should do so.
- Separate stripping of disturbed and undisturbed topsoil will only be necessary where there is undisturbed topsoil present (as determined by pre-construction soil testing). Therefore, it may not be required on all properties. And CAEPLA-PLC can agree to modify its proposed LOU language to provide that separate topsoil stripping would not be required where the landowner requests that it not be done.
- CAEPLA-PLC notes that Union did not address in its application the need to protect previously undisturbed topsoil from mixing with soils damaged by past Union projects in spite of the cumulative effects assessment requirements in the Board's *Environmental Guidelines for the Location, Construction and Operation of Hydrocarbon Pipelines in Ontario* (pages 42 and following in the current edition).
- 5. References:** CAEPLA-PLC Written Evidence Statement, Page 5, Paragraph 12 (I).
- CAEPLA-PLC Written Evidence Statement, Attachment 11, Page 16.
Exhibit B.CAEPLA-PLC.5, Attachment 1, Page 27, Section 9.
- Preamble:** CAEPLA-PLC has requested that Union pick stones to a diameter of 50 mm (2 inches). This is contrary to Union's standard practice of picking stones consistent with the surrounding area.
- Request:** In the Jane Sadler Richards report at page 16, she states that "both parties agree to pick stones to a size and quantity consistent with the adjacent field". She also offers her opinion on the size of stones to be picked - "In the authors opinion, when it comes to minimum size of stone to pick there is not a 'one size fits all' threshold. In this situation (and unlike the situation discussed earlier for depth of cover over the pipe), choosing a minimum diameter size of stone threshold can lead to absurd conditions for crews picking stones in the field, especially when the conditions are inherently gravelly".
- Please explain why CAEPLA-PLC does not accept Jane Sadler Richard's position on stone picking.
- Responses:** CAEPLA-PLC's position is that Union should have to pick stones such that the condition of the project area is consistent with the condition of the adjacent areas. Although it has been required to pick stones down to 2" in diameter where necessary in the EB-2005-0550 Strathroy-Lobo project and in the 2014-0261 Hamilton to Milton project, Union proposes to limit stone picking to stones no less than 4" in diameter in the current project irrespective of field conditions. In

CAEPLA-PLC's view, Union's proposed limitation may prevent appropriate remediation (consistent conditions on and off the project areas).

- 6. References:** CAEPLA-PLC Written Evidence Statement, Page 5, Paragraph 12 (o).
- Preamble:** CAEPLA-PLC has requested that Union limit the amount of open trench at any one time to 6 kms.
- Request:**
- i) Please confirm that in the Strathroy-Lobo LOU, Union agreed to only open 6 kilometers of trench at any one time for a pipeline that was approximately 18 kilometres in length.
 - ii) Please explain CAEPLA-PLC's position on why this length should not be increased for a project that is more than twice the length of the Strathroy-Lobo pipeline.
- Responses:**
- i) CAEPLA-PLC confirms that the length of the Strathroy-Lobo NPS 48 pipeline expansion was approximately 18 km.
 - ii) CAEPLA-PLC proposes that the length of trench to be opened at any one time be limited to 6 km in order to limit the amount of damage that would be caused by potential trench erosion, subsidence and collapse in wet weather conditions. Opening more trench at one time creates a risk of greater overall damage. If Union proposes to open more than 6 km of trench at one time for the current project, it should only do so if there are multiple construction crews working on multiple spreads. No more than 6 km of trench should be opened at any one time on a single construction spread.
- 7. References:** CAEPLA-PLC Written Evidence Statement, Page 6, Paragraph 12 (v).
Exhibit B.CAEPLA-PLC.5, Attachment 1, Page 34, Section 30.
- Preamble:** Union's integrity dig agreement was developed to deal with integrity issues. CAEPLA-PLC has recommended that other activities be conducted following the integrity dig agreement. Union's standard practice is to negotiate individual site specific arrangements with landowners to deal with these other activities.
- Request:** Please explain CAEPLA-PLC's rationale for not allowing individual landowners to negotiate how maintenance and repair issues are addressed on their property.
- Responses:** Like the LOU, the Pipeline System Integrity Dig Agreement contains provisions designed to mitigate negative environmental and socio-economic impacts of Union's integrity and maintenance operations after the pipeline is constructed. CAEPLA-PLC has proposed that the agreement apply not only to integrity digs, but also to drainage repair and depth of cover remediation operations because the impacts of those operations can be similar to the impacts of digs. CAEPLA-PLC does not have any objection to landowners

negotiating more favourable terms with Union if Union is prepared to do so. CAEPLA-PLC is concerned that at least the minimum standards set by the Integrity Dig Agreement be available to all landowners on this project for all maintenance operations on both the new pipeline and the existing NPS 20 pipeline.

That said, while CAEPLA-PLC's view is that application of the Integrity Dig Agreement as proposed would benefit all agricultural properties affected by the project, CAEPLA-PLC does not purport to speak for affected landowners who are not members of CAEPLA-PLC.

- 8. References:** CAEPLA-PLC Written Evidence Statement, Page 6, Paragraph 12 (x).
- Preamble:** CAEPLA-PLC has requested that all landowner representatives on a joint committee are members of CAEPLA-PLC. The joint committee for the Strathroy-Lobo project included one GAPLO representative and one non-GAPLO representative.
- Request:** Please explain CAEPLA-PLC's rationale that it should hold both landowner positions on the joint committee when CAEPLA-PLC represents less than half of the affected properties along the Proposed Project. Would CAEPLA agree to having one member and the other member being offered to a non CAEPLA landowner?
- Responses:** CAEPLA-PLC has no objection to the appointment of a non-CAEPLA landowner to the Joint Committee. However, CAEPLA-PLC will need no less than two landowner members on the Joint Committee to ensure adequate representation across the 50 CAEPLA-PLC member properties. One single CAEPLA-PLC committee member will not have sufficient time to deal effectively with all 50 CAEPLA-PLC member properties.
- 9. References:** CAEPLA-PLC Written Evidence Statement, Page 7, Paragraph 12 (gg).
Exhibit B.CAEPLA-PLC.5, Attachment 1, Page 34, Section 26.
- Preamble:** CAEPLA-PLC has requested changes to Union's standard liability clause in the LOU.
- Request:** Please explain why CAEPLA-PLC cannot accept the liability clause that GAPLO agreed to in the Strathroy-Lobo and Hamilton-Milton Pipeline projects.
- Responses:** CAEPLA-PLC has proposed that the liability clause from Union's proposed easement and temporary land use agreements for the project be incorporated into the LOU. In both the Strathroy-Lobo and Hamilton-Milton Pipeline projects, Union proposed new permanent easement agreements to landowners containing a liability clause covering Union's operations. For the proposed Panhandle Reinforcement Project, CAEPLA-PLC understands that Union proposes to rely upon its 1950 form of easement agreement, which

contains no similar indemnity clause. CAEPLA-PLC landowners should have the benefit of Union's updated liability clause for all lands affected by the proposed project.

- 10. References:** CAEPLA-PLC Written Evidence Statement, Page 8, Paragraph 16. Exhibit B.CAEPLA-PLC.5, Attachment 1, Page 2.

Preamble:

Request: Please confirm that the changes identified in paragraph 16 of CAEPLA-PLC pre-filed evidence were made at the request of Rick Kraayenbrink and documented in Union's response to Exhibit B.CAEPLA-PLC.5, Attachment 1.

Responses: Rick Kraayenbrink does not recall requesting the deletion of the depth of cover restoration provision referenced in paragraph 16 of CAEPLA-PLC's written evidence (which was already part of the EB-2005-0550 Strathroy-Lobo LOU and part of the EB-2014-0261 Hamilton to Milton LOU). He advises that any such request, if communicated, would have been unintended and an error.

INDUSTRIAL GAS USERS ASSOCIATION ("IGUA") INTERROGATORIES

- 1. References:** CAEPLA-PLC Evidence

Preamble:

Request: Can CAEPLA-PLC or its expert (Ms. Sadler Richards) provide any assessment of the incremental costs of the measures that CAEPLA-PLC proposes Union adopt to address landowner concerns? If so, please provide it. Please include in the response an indication of which measures drive significant incremental costs and provide an estimate of how much each such measure will cost.

Responses: Neither CAEPLA-PLC nor Dr. Sadler Richards can provide the requested assessment of the incremental costs of the measures proposed by CAEPLA-PLC. In the absence of a detailed breakdown of the project costs disclosed by Union in its application, it is likely that only Union is in a position to provide such an assessment. CAEPLA-PLC would note that most of the measures requested were previously implemented by Union in the EB-2005-0550 Strathroy-Lobo project.