

December 2, 2016

**BY RESS, EMAIL & COURIER**

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

Attention: Ms. K. Walli, Board Secretary:

**Re: Union Gas Limited (“Union”) – EB-2016-0186 Panhandle Reinforcement Project – Settlement Agreement Regarding Landowner Matters**

This letter is further to the November 10, 2016 letter from the Ontario Energy Board (the “Board”) regarding settlement discussions on landowner matters between Union Gas Limited (“Union”) and CAEPLA-PLC. In that letter, the Board cancelled a settlement conference that was scheduled for November 21, 2016 and noted that Union and CAEPLA-PLC were free to engage in settlement discussions outside of the OEB process. Union is pleased to advise the Board that it pursued such discussions and reached a comprehensive settlement with CAEPLA-PLC’s negotiating committee on November 18, 2016, which settlement was subsequently ratified by the CAEPLA-PLC membership on November 24, 2016 (the “Settlement Agreement”).

The issues addressed by the Settlement Agreement were settled by the parties as a package, whereby compromises were made by the parties with respect to various matters to arrive at a comprehensive agreement and, as such, the agreed terms are intricately interrelated. The settlement of any particular issue and the positions of the parties in the Settlement Agreement are without prejudice to the rights of the parties to raise the same issue and/or to take any position thereon in any other unrelated proceeding, whether or not Union or CAEPLA is a party to such other unrelated proceeding.

As a condition of the Settlement Agreement, the parties agreed that CAEPLA-PLC would withdraw from the proceeding. Accordingly, concurrent with this letter CAEPLA-PLC is filing a letter with the Board to make this request.

A consolidated summary of the landowner issues settled by the parties, excluding compensation matters, is attached hereto for information purposes as Schedule ‘A’.

Yours truly,



*for* Jonathan Myers

cc: Zora Crnojacki, Board staff  
Mark Kitchen and Vanessa Innis, Union Gas  
Charles Keizer, Torys LLP  
EB-2016-0186 (2016 Rates) Intervenors

**SCHEDULE 'A'**

**SUMMARY OF LANDOWNER ISSUES SETTLED WITH CAEPLA-PLC**

<b>A. EASEMENT OPTION AGREEMENT</b>
<b>The following will be added to Clause 4:</b>  “The Transferee shall make to the Transferor (or the person or persons entitled thereto) due compensation for any damages resulting from the exercise of the Transferee’s rights granted herein and, if the compensation is not agreed upon, it shall be determined in the manner prescribed by the <i>Expropriations Act</i> , R.S.O. 1990, Chapter E-26 or any Act passed in amendment thereof or substitution therefor.”
<b>Clause 6(b) will be replaced with the following:</b>  “The Option will be deemed exercised on the date (“Exercise Date”) such notice is personally served on the Transferor, delivered by courier, or five business days from the date it is deposited in the post office”.
<b>The following will be added to Clause 7:</b>  “The Transferee agrees that it shall be responsible to pay any and all costs associated with the transfer of the Easement, including, but not limited to, costs of registration and costs related to the removal, remedy or satisfaction of encumbrances as required by Clause 8 below, in the event the Transferee requests the same.”
<b>B. EASEMENT AGREEMENT</b>
Where Union relies on an existing easement agreement, Union and the landowner shall enter into an addendum to the easement agreement in the form attached hereto as <i>Appendix 1</i> ;
Union shall register a partial surrender of any blanket easement that has not previously been partially surrendered, down to strip 50 feet in width.
<b>C. TEMPORARY LAND USE OPTION AGREEMENT</b>
<b>The following will be added to Clause 3:</b>  “The Transferee shall make to the Transferor (or the person or persons entitled thereto) due compensation for any damages resulting from the exercise of the Transferee’s rights granted herein and, if the compensation is not agreed upon, it shall be determined in the manner prescribed by the <i>Expropriations Act</i> , R.S.O. 1990, Chapter E-26 or any Act passed in amendment thereof or substitution therefor.”
<b>D. TEMPORARY LAND USE AGREEMENT</b>

Granting clause to define easement with reference to easement agreement(s), and reference to “proposed NPS gas pipeline” should be specified as “proposed Panhandle Reinforcement NPS 36 gas pipeline”.

**E. LETTER OF UNDERSTANDING<sup>1</sup>**

**Insert italicized words into Clause 2 as follows:**

“. . . the Company, *in consultation with the Joint Committee and Landowner*, will work with OMAFRA . . .”

**The following will be added to Clause 2:**

Soil testing will be carried out at the Landowner’s request for other nematodes, pests and diseases including sugar beet nematode, with protocol to be developed and implemented where other nematodes, pests or diseases are present;

**Insert italicized words into Clause 5 as follows:**

The Company agrees to stake the outside boundary of the workspace necessary for the construction of this Project which may include an easement and temporary land use area.

*Where topsoil is to be stored off easement, the stakes will not be removed during the stripping operation.*

The stakes will be located at 30 metre (98.4 foot) intervals prior to construction *and will be spray painted or otherwise marked in red*. The intervals or distance between stakes may decrease as deemed necessary in order to maintain sight-lines and easement boundaries in areas of sight obstructions, rolling terrain or stream and road crossings.

*The Company will re-stake the easement limit for post construction tile work at the request of the landowner.*

**Insert italicized words into Clause 6 as follows:**

“. . . The topsoil and subsoil will be piled separately *with one metre separation* and the Company will exercise due diligence to ensure that topsoil and subsoil are not mixed. If requested by the Landowner, topsoil will be ploughed before being stripped to a depth as specified by the Landowner.

The Company will strip topsoil across the entire width of the easement (at the request of the Landowner), provided also that a temporary right to use any necessary land for topsoil storage outside the easement is granted by the Landowner.

*On areas where topsoil is to be stripped, the Company will undertake soil testing to identify any areas where topsoil that has not previously been disturbed by pipeline construction*

<sup>1</sup> Changes indicated are relative to Letter of Understanding filed in Exhibit B.CAEPLA-PLC.5, Attachment 1.

*activities can be kept separate from previously undisturbed topsoil. Where such areas are identified, the Company will strip and pile previously disturbed and previously undisturbed topsoil separately.*

If requested by the Landowner the Company will not strip topsoil. The topsoil/subsoil mix will be placed on the easement on top of the existing topsoil.

*At the request of the Landowner, a mulch layer will be provided between the existing topsoil and stripped topsoil. Where a sufficient crop is present the standing crop will be used as the mulch layer. Otherwise, Union will provide straw as a mulch layer.*

*At the landowners request separation of distinct subsoil horizons such as blue and yellow clays shall be performed. Blue clays will be removed from the easement lands.*

At the recommendation of the Company's Soils Consultant . . .”

**Insert italicized words into Clause 7 as follows:**

“ . . . that it is necessary to increase the depth of the Pipeline to accommodate *facilities such as drainage and/or* processes such as deep tillage . . .”

**Insert italicized words into Clause 9 as follows:**

“ . . . If agreed to by the parties, the Company will return in the year following construction and will cultivate, *chisel plough and/or deep till* the easement area. When necessary, to accommodate planting schedules, the Landowner should perform *tillage* themselves, at the Company's expense . . .”

**Insert italicized word into Clause 10 as follows:**

“ . . . The Company will retain the services of a qualified independent drainage Consultant. The Consultant will work with each Landowner prior *to*, during and after construction . . .”

**Insert italicized words into Clause 14 as follows:**

“ . . . The Company will warrant such trees for a period of *three years* following planting, provided the Landowner waters the trees as appropriate after planting.”

**Add the following new covenants to Clause 15:**

The Company will not open more than 6.0 continuous kilometers of trench per construction spread at a time.

The Company shall consult with the Landowner and/or the Landowner's agent(s) with respect to the existing farm biosecurity protocols and requirements in effect on the Lands (including those protocols and requirements designed to prevent the transmission of pests and diseases and those designed to preserve the integrity of organic or specialty agricultural production).

Whenever present on the Lands, the Company will conduct activities in a manner that respects required existing farm biosecurity protocols and requirements in effect.

The Company agrees to implement one joint committee for the project under the terms of reference agreed to in Schedule [X] hereof.

The Company shall consult with the Landowner prior to any removal of an object from in or on the Temporary Land Use area pursuant to the Temporary Land Use Agreement.

**Insert the italicized words into Clause 15(xiv) as follows:**

“If there is greater than 50% crop loss after five years, at the request of the Landowner, the Company will retain an independent soils Consultant satisfactory to both parties to develop a prescription to rectify the problem, *which will be implemented at the cost of the Company.*”

**Insert the following words at the end of Clause 15(xvi):**

“The Company will provide the results of testing to the Landowner.”

**Replace the covenant in Clause 15(xviii) with the following:**

“To implement the Union Gas Limited – GAPLO Integrity Dig Agreement for all integrity and maintenance operations on the pipeline.”

**Replace the covenant in Clause 15(xix) with the following:**

“At the request of the Landowner, the Company shall undertake a depth of cover survey of the pipeline and shall provide its findings to the Landowner. In agricultural areas, where it is determined that cover over the pipeline is less than 0.9 metres, the Company shall, unless the Landowner agrees otherwise, restore depth of cover to a minimum of 0.9 metres with the importation of topsoil or by lowering the pipe. In areas where the top of the pipe is at or below bedrock, the Company will ensure a minimum of 0.6 metres of cover over the pipeline.”

**Insert the italicized words into Clause 15 under “Landowner Covenants” as follows:**

“ i) To execute a *Clean-up Acknowledgement* when he/she is satisfied . . .”

“ iv) To only access the work area when accompanied by the Company’s designated representative. *The Company will facilitate the Landowner’s access to the work area upon request.*”

**Insert the following immediately before the last paragraph of Clause 16:**

“In addition, in the event that a dispute arises between the Landowner and the Company and such dispute cannot be resolved to the mutual satisfaction of the parties through discussion or referral to the joint committee established pursuant to Para. \_ and Schedule \_ hereof, the Company may retain a mutually satisfactory independent consultant to assist in the resolution of the particular dispute.”

**Insert the italicized words into Clause 22 as follows:**

*“The Company will assess the woodlot or hedgerow area(s) to be affected by the project and will provide a report to the Landowner identifying the trees that will be affected.*

With respect to compensation for damage to woodlots, the Landowner will have the following two options:

Option 1:

Woodlots and hedgerow trees will be cut and appraised by a qualified forester retained by the Company *and satisfactory to the Landowner, acting reasonably*. Evaluation of trees in woodlots will be based on the practice as outlined on Schedule 3 . . .”

**Clause 23 is replaced with the following:**

“The Company agrees to pay the Landowner 100% of crop loss on the gored land. Gored land is defined as land rendered inaccessible or unusable for agricultural purposes during the Project. At the Landowner’s request, the Company will plant a cover crop on gored land.”

**Clause 26 is replaced with the following:**

“The Company shall assume all liability and obligations for any and all loss, damage or injury, (including death) to person(s) or property that would not have happened but for the Project and this Agreement or anything done or maintained by the Company hereunder or intended so to be and the Company shall at all times indemnify and save harmless the Landowner from and against all such loss, damage or injury and all actions, suits, proceedings, costs, charges, damages, expenses, claims or demands arising therefrom or connected therewith provided that the Company shall not be liable to the extent to which such loss, damage or injury is caused or contributed to by the gross negligence or wilful misconduct of the Landowner.”

Clause 28, which refers to Schedule 2, is used to identify size specific issues requiring mitigation and/or compensation. The parties reached agreement on site specific issues for certain CAEPLA-PLC members.

**A new Clause entitled “Independent Construction Monitor” is to be added immediately before Clause 30 and shall state:**

The Company agrees to the appointment of an independent construction monitor for construction on agricultural lands for this project. The construction monitor will be chosen by a committee consisting of one representative from each of Union, the OEB and CAEPLA-PLC. The monitor shall be on site continuously to monitor construction with respect to all issues of concern to the landowners and the Company at all times.

The scope of work for the construction monitor will be:

1. To observe impacts of construction on the land, including right-of-way preparation, trenching, backfill and clean-up operations as well as wet soil shutdown events;

2. To review construction activities for compliance with the OEB Conditions of Approval, Letters of Understanding (“LOU”) agreed to between landowners and Union;
3. To review all specific construction commitments included in Union’s construction contract;
4. To respond to specific requests by landowners and the committee within 24 hours while maintaining limited contact with landowners on a day-to-day basis; and
5. To prepare and deliver a series of activity reports in a timely manner to the appropriate persons.

Union further agrees to file interim and final reports of the construction monitor with the OEB and provide copies to CAEPLA-PLC. The Company’s agreement is without prejudice to any position it may take in a future proceeding with respect to the appointment of an independent construction monitor.

The Company shall provide the construction monitor with a schedule of planned construction activities and not less than 24 hours’ notice of any clearing, topsoil stripping, grading, and/or reclamation activities and the construction monitor shall be provided free access, subject to safety requirements, to all construction activities.

**Insert the italicized words into the Schedule entitled “Wet Soils Shutdown” as follows:**

The following sets out the Wet Soils Shutdown practice of Union Gas Limited for pipeline construction, repair and maintenance on agricultural lands.

*Wet soils shutdown issues shall be decided by the Joint Committee with the assistance of the construction monitor as required.*

While constructing the Company’s pipeline the Company’s senior inspectors inspect right-of-way conditions each day before construction activities commence for that day. *If, in the judgment of these inspectors, or other Company representatives and other members of the Joint Committee with assistance of the construction monitor, the right-of-way conditions on agricultural lands are such that construction would have an adverse effect on the soils due to wet soils conditions, the contractor is prohibited from starting construction activities. The inspectors and other Company representatives and other members of the Joint Committee, with the assistance of the construction monitor, shall consider the extent of surface ponding, extent and depth of rutting, surface extent and location of potential rutting and compaction (i.e., whether traffic be re-routed within the easement lands around wet area(s)) and the type of equipment and nature of construction proposed for that day. The wet soil shutdown restriction would be in effect until, in the judgment of the Company representatives and other members of the Joint Committee, with assistance of the construction monitor, the soils would have sufficiently dried to the extent that commencing construction activities would have no adverse effects on the soils.*

Wet soils shutdown is a routine part of Union's normal management process for pipeline construction activities. In recognition of this, Union budgets for and includes in contract documents, provisions for payment to the pipeline contractors for wet soils shutdown thereby removing any potential incentive for the contractor to work in wet conditions.

In addition, Union's inspection staff *and the Joint Committee, with the assistance of the construction monitor*, are responsible for ensuring that construction activities do not occur during wet soils shutdown. This would include shutting down construction activities if soils became wet during the day.

It should, however, be recognized that there may be situations when construction activities cannot be carried out during the normal construction period due to delays in project timing and it may become necessary to work in wet conditions in the spring or fall of the year. Where construction activities are undertaken by the Company in wet soil conditions, as determined by the Construction Monitor, additional mitigation measures may be put in place to minimize resulting damages. Mitigation measures may, where appropriate, be developed by Union on a site specific basis and may include avoiding certain areas, full easement stripping, geotextile roads, the use of swamp mats, or the use of other specialized equipment where deemed appropriate by Union. Union will authorize work in wet soils conditions only when all other reasonable alternatives have been exhausted.

*Where construction activities are undertaken by the Company in wet soil conditions (as determined by the construction monitor), the Company shall pay to the landowner 150% of disturbance and crop loss damage compensation on the area affected by the activities (area also to be determined by the construction monitor). The 150% payment applies only once to any one area; on areas where the 150% payment is applied, the Landowner forfeits the right to top-up of crop loss payments under this agreement. The 150% payment does not affect the Landowner's right to topsoil replacement where crop loss exceeds 50% in the fifth year following construction.*

**A new Schedule entitled "Landowner Relations and Terms of Reference for Joint Committee" is added and states as follows:**

Committee Make-Up:

- i) Members shall be affected landowners, and appropriate representatives of the Company. The Joint Committee shall be composed of one CAEPLA-PLC landowner representative, one non-CAEPLA-PLC landowner representative, and three representatives of the Company. CAEPLA-PLC shall have the right to appoint a primary and alternate representative.

In addition to Wet Soils Shutdown issues, the Joint Committee's purpose is to:

- i) provide a mechanism to address issues/concerns that arise during and following construction including concerns related to wet soil shutdown decisions made by the Company;

ii) provide a brief overview of issues/concerns raised during and following construction; and,

iii) consider which items should be included in a Post Construction Report.

The objective of the Joint Committee is:

i) to provide a vehicle to address issues/concerns which arise during and following construction;

ii) to deal with any unforeseen circumstances which may arise during or following construction; and,

iii) to provide an opportunity for landowners to comment on how the Company might improve future construction practices.

In reviewing the foregoing, the types of issues which may be addressed are as follows:

i) landowner concerns that arise during and following construction;

ii) unusual or unanticipated impacts of the construction process which show up only after construction is completed;

iii) methods of anticipating and avoiding these circumstances in the future; and,

iv) review of ongoing construction practices and procedures which might be improved in future construction.

Duration of the Joint Committee:

i) The Joint Committee shall be formed during the year of construction in advance and prior to the commencement of construction. CAEPLA-PLC shall be responsible for recruiting the CAEPLA-PLC landowner members and advising the Company thereof. The Committee shall continue for a period of two (2) years from the date of commencement of construction and so long thereafter as the Committee determines is necessary.

Payment to Landowner Members:

i) The Company will pay to each landowner member of the Joint Committee ■ as an honorarium for their participation on the committee.

**Appendix 1**

**Form of Easement Addendum Agreement**



## ADDENDUM TO EASEMENT AGREEMENT

(Hereinafter called "the Addendum")

BETWEEN

■  
(hereinafter called the "Owner")

and

**UNION GAS LIMITED**  
(hereinafter called the "Company")

WHEREAS the Owner is the owner in fee simple of those lands and premises more particularly described as:

PIN:

Legal Description:

(hereinafter called the "Owner's Lands").

AND WHEREAS by Agreement dated \_\_\_\_, 1950 and registered in the Land Registry Office for the Land Titles Division of \_\_ as Instrument No. \_\_\_\_ (hereinafter called the "Easement Agreement"), and subject to the Partial Surrender of Right-of-Way or Easement dated \_\_\_\_ and registered as Instrument No. \_\_\_\_ (hereinafter called the "Partial Surrender"), the Company holds a right-of-way or easement for the purposes and upon the conditions set forth in the Easement Agreement on, over, in and/or through the strip of the Owner's Lands set forth in Schedule "A" to the Partial Surrender (hereinafter called the "Easement Lands").

NOW, THEREFORE, in consideration of the sum of Twenty-five Thousand XX/100 Dollars (\$25,000.00) payable by the Company to the Owner within 30 days of the signing of this Addendum, and in consideration of the mutual covenants and agreements set out herein, the Owner and the Company agree as follows:

1. The Owner hereby acknowledges and agrees that the Company may, pursuant to the Easement Agreement, use the Easement Lands for the Panhandle Reinforcement Project (Ontario Energy Board File No. EB-2016-0186).

2. The Company agrees that, where the NPS 36 Pipeline for the transmission of Pipeline quality natural gas as defined in the *Ontario Energy Board Act*, S.O. 1998 to be installed as part of the Panhandle Reinforcement Project (hereinafter called the "Pipeline") has been abandoned, the Company shall remove the Pipeline at the Owner's option and, upon any removal of the Pipeline (at the option of the Owner or of the Company) or upon any abandonment of the Pipeline without removal, shall remove all debris as may have resulted from the Company's use of the Easement Lands and in all respects restore the Easement Lands to its previous productivity and fertility so far

as is reasonably possible. The Pipeline shall be deemed to be abandoned where: (a) corrosion protection is no longer applied to the Pipeline, or, (b) the Pipeline becomes unfit for service in accordance with Ontario standards. The Company shall, within 60 days of either of these events occurring, provide the Owner with notice of the event. Upon removal of the Pipeline and restoration of the Easement Lands as required by this Addendum, the Owner shall release the Company from further obligations in respect of restoration.

3. The Company shall make to the Owner (or the person or persons entitled thereto) due compensation for any damages to the Easement Lands resulting from the exercise of any of the rights granted in this Addendum or in the Easement Agreement, and if the compensation is not agreed upon by the Transferee and the Transferor, it shall be determined by arbitration in the manner prescribed by the *Expropriations Act*, R.S.O. 1990, Chapter E-26 or any Act passed in amendment thereof or substitution therefore. Any gates, fences, tile drains, curbs, gutters, asphalt paving, lockstone, and patio tiles interfered with by the Company shall be restored by the Company at its expense as closely as reasonably possible to the condition and function in which they existed immediately prior to such interference by the Company and in the case of tile drains, such restoration shall be performed in accordance with good drainage practice and applicable government regulations.

4. The Company agrees to make reasonable efforts to accommodate the planning and installation of future tile drainage systems following installation of the Pipeline so as not to obstruct or interfere with such tile installation. In the event there is a change in the use of all, or a portion of, the Owner's Lands adjacent to the Easement Lands which results in the Pipeline no longer being in compliance with the pipeline design class location requirements, then the Transferee shall be responsible for any costs associated with any changes to the Pipeline required to ensure compliance with the class location requirements.

5. As soon as reasonably possible after the construction of the Pipeline, the Company shall level the Easement Lands and unless otherwise agreed to by the Owner, shall remove all debris as may have resulted from the Company's use of the Easement Lands therefrom and in all respects restore the Easement Lands to its previous productivity and fertility so far as is reasonably possible, save and except for items in respect of which compensation is due under Clause 3 of this Addendum.

6. The Company shall assume all liability and obligations for any and all loss, damage or injury, (including death) to persons or property that would not have happened but for this Addendum and/or the Easement Agreement or anything done or maintained by the Company hereunder and/or thereunder or intended so to be and the Company shall at all times indemnify and save harmless the Owner from and against all such loss, damage or injury and all actions, suits, proceedings, costs, charges, damages, expenses, claims or demands arising therefrom or connected therewith provided that the Company shall not be liable under the clause to the extent to which such loss, damage or injury is caused or contributed to by the gross negligence or wilful misconduct of the Owner.

7. In the event that the Company fails to comply with any of the requirements set out in Clauses 3, 4, or 5 hereof within a reasonable time of the receipt of notice in writing from the Owner setting forth the failure complained of, the Company shall compensate the Owner (or the person or persons entitled thereto) for any damage, if any, necessarily resulting from such failure and the reasonable costs if any, incurred in the recovery of those damages.

8. The covenants and agreements set out in this Addendum are and shall be of the same force and effect as a covenant running with the Owner's Land and shall extend to, be binding upon and enure to the benefit of the heirs, executors, administrators, successors and assigns of the Parties hereto respectively; and, wherever the singular or masculine is used it shall, where necessary, be construed as if the plural, or feminine or neuter had been used, as the case may be.

IN WITNESS WHEREOF the parties hereto have executed and delivered this Addendum as of the

day of \_\_\_\_\_, 2016.

\_\_\_\_\_  
Signature (Owner)

\_\_\_\_\_  
Print Name(s) (and position held if applicable)

\_\_\_\_\_  
Address (Transferor)

\_\_\_\_\_  
Signature (Owner)

\_\_\_\_\_  
Print Name(s) (and position held if applicable)

\_\_\_\_\_  
Address (Transferor)

**UNION GAS LIMITED**

\_\_\_\_\_  
Signature (Company)

Mervyn Weishar, Senior Land Specialist  
Name & Title (Union Gas Limited)

I have authority to bind the Corporation.

1-800-571-8446 x5002760  
Telephone Number (Union Gas Limited)