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March 27, 2009

*Via Electronic Filing*

Attention: Kirsten Walli, Board Secretary  
Ontario Energy Board  
PO Box 2319  
2300 Yonge St.  
Toronto, ON M4P 1E4

Dear Madam Secretary:

**RE: GAPLO-Union (Dawn Gateway) / CAPLA  
Reply Submissions re Union Gas letter dated March 26, 2009  
Union Gas Application for Leave to Sell Natural Gas Pipeline  
EB-2008-0411**

The following is GAPLO-Union's reply to the submissions of Union Gas in its letter dated March 26, 2009.

On March 19, 2009, Union Gas asked the Board to add new issue 5.0 No Harm Test to the draft issues list, but otherwise stated that it had no comment with respect to the other draft issues. In its letter of March 26, 2009, Union Gas now opposes the inclusion of draft issues 1.1 and 1.2. It makes no comment, however, with respect to draft issue 3.1 or to the amendment to draft issue 3.1 as proposed by GAPLO-Union in its submission dated March 23, 2009:

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

Given that neither Union Gas nor any other party to this proceeding has objected to the proposed amendment to draft issue 3.1, we ask again that the Board approve this amendment.

However, while Union Gas has not taken issue specifically with draft issue 3.1, we do note that the jurisdictional questions in draft issues 1.1 and 1.2 may be viewed as related to the “regulatory oversight” aspect of draft issue 3.1. We are concerned that the elimination of the jurisdiction issues in draft issue 1.0 may serve to deny the opportunity of directly affected landowners to address their concerns about the Union Gas proposal to the Ontario Energy Board. Instead, Union Gas contemplates in its March 26, 2009 letter that questions about jurisdiction “can be more appropriately addressed in the Dawn Gateway JV’s future NEB proceedings regarding the Dawn Gateway Line.”

We can identify at least two problems with waiting until Dawn Gateway JV chooses to initiate proceedings before the NEB to address issues of landowner impacts of the proposed sale and transfer of jurisdiction of the St. Clair and Dawn Gateway pipelines. First, it is the Ontario Energy Board which determined that the construction and operation of the St. Clair pipeline was in public interest, taking into consideration landowner impacts. To the extent that these impacts will change as a result of business decisions being made by Union Gas and the Dawn Gateway Pipeline LP, it should be for the determination of the Ontario regulator and not the NEB as to whether the changes are in the public interest of Ontario and Ontario landowners.

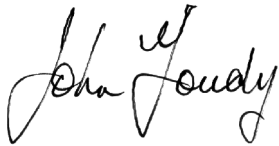
Second, directly affected landowners will have no recourse to cost recovery in NEB processes related to any proposed transfer of jurisdiction or even with respect to the approval of any new pipeline facilities. Effectively, Union Gas is proposing to transfer the St. Clair pipeline to a jurisdiction where there is no authority to award landowners their reasonably incurred costs of regulatory proceedings, and asks that the very determination of whether this transfer should take place be made in the jurisdiction where no cost recovery is available and landowners must participate fully at their own expense.

Union Gas made the jurisdictional transfer and the implications of that transfer for landowners issues in this application. It specifically states at paragraph 5 of its Application to the Board that the purpose of the proposed sale of the St. Clair pipeline to Dawn Gateway Pipeline LP is to incorporate the line into a new NEB-regulated international pipeline system. In support of the application, Union Gas states further at paragraph 10 that the sale of the St. Clair line “for use as part of the Dawn Gateway line” will be in the public interest. It should not be open to Union Gas to ask that the Board determine its application in a vacuum without being free to investigate the implications of the stated purpose for the application.

It is GAPLO-Union's submission that the sub-issues identified by the Board in draft issue 1.0 are relevant to the Board's consideration of the public interest on this application, and will serve to inform its consideration of the other issues in the proceeding, including what is now draft issue 3.1. On this basis, GAPLO-Union asks that the draft issues list as proposed in the Board's Procedural Order No. 1 be made final with the addition of the changes proposed by GAPLO-Union to issue 3.1.

Yours very truly,

**COHEN HIGHLEY** LLP

A handwritten signature in black ink, reading "John D. Goudy". The signature is written in a cursive style with a large, stylized "J" and "G".

John D. Goudy

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