



uniongas

A Spectra Energy Company

May 11, 2009

By RESS & Courier

Ms. Kirsten Walli, Board Secretary
Ontario Energy Board
27th Floor, 2300 Yonge Street,
Toronto, Ontario.
M4P 1E4

Dear Ms. Walli:

**Re: Union Gas Limited ("Union")
Application for Leave to sell 11.7 km natural gas pipeline to
a limited partnership being created between Spectra Energy Corp.
and DTE Pipeline Company
EB-2008-0411**

Further to the Board's Procedural Order No. 1, please find enclosed Union's Interrogatories relating to the Intervenor's filed evidence.

Sincerely,

Mark Murray
Manager, Regulatory Projects and Lands Acquisitions
Encl.
:mjp

cc. Nabih Mikhail, Project Advisor, Facilities
Lillian Ing, Case Administrator
All Intervenors EB-2008-0411

Union Gas Limited
Leave to Sell 11.7 kilometers Natural Gas Pipeline

1. **Reference:** CAEPLA Written Evidence Statement May 4, 2009-05-06
("CAEPLA Evidence")

Preamble

Attached to the CAEPLA Evidence, prepared by David Core, are three attachments (Attachment 1, 2 & 4) prepared by CAPLA as part of their response material to the Land Matters Consultation Initiative (LMCI) which has been undertaken by the National Energy Board (NEB). Subsequent to the CAPLA submissions, the NEB released a number of documents including the draft Final Report (LMCI Report) and an NEB letter, dated February 2 2009, regarding clarification of the nature of the NEB's jurisdiction over and its approach to abandonment of pipelines, copies of which are attached as Attachments 1 & 2 respectively.

Question

- (i) Please confirm that CAEPLA, under its previous name of CAPLA, was a participant in the NEB's LMCI process and that it received copies of Attachments 1 and 2 shortly after they were issued by the NEB on December 16, 2008 and February 2, 2009 respectively.
- (ii) Does CAEPLA and GAPLO-Union agree with the NEB's position, as stated in the NEB's February 2, 2009 letter (Attachment 2), that if the NEB places a condition of approval in a pipeline abandonment order that must be complied with before the order can come into effect, the NEB retains jurisdiction over the pipeline until the abandonment conditions have been met?
- (iii) Does CAEPLA and GAPLO-Union agree that Section 4 (Further Action by Companies and Landowner Representatives) and Action item 1.2 (Develop additional guidance on crossing to support safety and security of pipelines) of the LMCI Report deal with issues related to Section 112 of the NEB Act, and that the NEB is encouraging interested groups to work together to develop standards to address issues related to Section 112 of the NEB Act, such as blanket crossing agreements that would provide pre-approval for normal farm equipment crossing the pipeline right-of-way.

2. **Reference:** GAPLO-UNION (Dawn Gateway) (“Gaplo”) Written Evidence Statement May 4, 2009 (“GAPLO Evidence”)

Preamble

In the GAPLO Evidence in the sections titled “New Land Use Restrictions” and “Prohibition on use of farm equipment without consent”, and in section 2 of the evidence of Dr. George L. Brinkman titled “Summary of Differences in Provincial and Federal Regulations”, it is implied that there are currently no restrictions placed on landowners on pipelines regulated by the Ontario Energy Board.

Question

- (i) CAEPLA, GAPLO-Union and Dr. Brinkman are asked to confirm that private landowners on the St. Clair Line with the standard Union Gas easement agreement (as can be found at Attachment 1, Schedule 12, of the GAPLO Evidence) are subject to section 7 of the easement agreement which restricts their activities as follows:

7. The Grantor shall have the right to fully use and enjoy the said lands except as may be necessary for any of the purposes hereby granted to the Grantee, provided that without the prior written consent of the Grantee, the Grantor shall not excavate, drill, install, erect or permit to be excavated, drilled, installed or erected in, on, over or through the said lands any pit, well, foundation, pavement, building or other structure or installation. Notwithstanding the foregoing, the Grantee upon request shall consent to the Grantor erecting or repairing fences, constructing or repairing his tile drains and domestic sewer pipes, water pipes and utility pipes and constructing or repairing his lanes, roads, driveways, pathways, and walks across, on and in the said lands or any portion or portions thereof, provided that before commencing any of the work referred to in this sentence the Grantor shall (a) give the Grantee at least five (5) clear days notice in writing pointing out the work desired so as to enable the Grantee to have a representative inspect the site and/or be present at any time or times during the performance of the work, (b) shall follow the instructions of such representative as to the performance of such work without damage to the said pipe line, (c) shall exercise a high degree of care in carrying out any such work and, (d) shall perform any such work in such a manner as not to endanger or damage the said pipe line.

- (ii) Does CAEPLA, GAPLO-Union and Dr. Brinkman agree that the activities which landowners can currently undertake in the vicinity of the St. Clair Line are also subject to sections 9 and 10 of Ontario Regulation 210/01 made pursuant to the *Technical Standards and Safety Act* which state:

9.(1) No person shall dig, bore, trench, grade, excavate or break ground with mechanical equipment or explosives without first ascertaining from the licence holder the location of any pipeline that may be interfered with. O. Reg. 210/01, s. 9 (1).

9.(2) The licence holder shall provide as accurate information as possible on the location of any pipeline within a reasonable time in all the circumstances. O. Reg. 210/01, s. 9 (2).

10. No person shall interfere with or damage any pipeline without authority to do so.

3. **Reference:** GAPLO-UNION (Dawn Gateway) ("Gaplo") Written Evidence Statement May 4, 2009 ("GAPLO's Evidence")

Preamble

In GAPLO's Evidence paragraphs 19 to 29 and attachments 3 to 6, Mr. Rick Kraayenbrink provides information on dealings he had with TCPL in 2001 with respect to crossing the TCPL pipeline with farm equipment. Paragraph 39 of GAPLO's Evidence also states that Mr. Kraayenbrink is one of the people who assisted with the preparation of the evidence.

Question

- (i) Please ask Mr. Rick Kraayenbrink to confirm that he is the president of a corporation, J. Rink Farms Ltd., that owns farm property that is subject to an easement in favour of Vector Pipelines which is an NEB regulated pipeline, and if so, provide the date on which Vector Pipelines acquired that easement.
- (ii) Please provide copies of all requests that Mr. Kraayenbrink and/or J. Rink Farms Ltd. has made to Vector Pipelines requesting permission and or consent to cross the Vector Pipeline. With respect to each request made, advise as to whether he received consent and how long it took to receive consent.
- (iii) Please advise whether Mr. Kraayenbrink and/or J. Rink Farms Ltd. has ever had to make an application to the NEB under Section 112 of the NEB Act for leave to

conduct any farming operations as a result of having a TCPL or Vector pipeline on their property.

4. **Reference:** Report of George L. Brinkman, dated May 4, 2009 (“Brinkman Report”), filed by CAEPLA and GAPLO-Union

Preamble

Paragraph 12 of the Brinkman Report refers to a 30 meter control zone on each side of a pipeline easement or right-of-way which is imposed by Section 112 of the NEB Act.

GAPLO’s Evidence alleges that Union has failed to provide a plan for dealing with the perceived negative impacts that landowners will encounter if they become subject to the control zone requirements.

In the LMCI Report (Attachment 1 hereto), section 4, the NEB states:

“Under the NEB Act, permission to move vehicles or mobile equipment across the right of way is provided by the pipeline company. Developing industry/landowner standards relating to blanket crossing agreements, definition of ‘normal farming operations’ and ‘normal farm equipment’, depth of cover and company response times for crossing requests would provide clear expectations for landowners and would support safe and efficient pipeline and agricultural operations. The Board is of the view that clearer expectations in this regard will contribute to the overall safety and security of pipeline companies’ and landowners’ operations on rights of way.

The NEB is strongly encouraging interested groups to work together to develop standards to address this matter.”

Questions

- (i) GAPLO-Union is asked to confirm that representatives of Union, as agent for Dawn Gateway LP, have met with the landowner members of the GAPLO-Union Steering Committee listed in paragraph 39 of GAPLO’s Evidence to discuss Dawn Gateway LP’s proposal to provide landowners with blanket approvals to address control zone issues. Please advise as to the date or dates on which these discussions took place.
- (ii) Please confirm that Dawn Gateway LP has advised the members of the GAPLO-Union Steering Committee that Dawn Gateway LP is willing to provide blanket

pre-approval for affected landowners to undertake the following activities within the control zone without having to obtain additional consent from Dawn Gateway LP:

- Tiling and tile repair
- Farming activities such as tilling, ploughing and manure injection
- Crossing the pipeline with agricultural and other farming equipment
- Fence Construction
- Tree cutting and stump removal

5. **Reference:** Report of George L. Brinkman, dated May 4, 2009 (“Brinkman Report”), filed by CAEPLA and GAPLO-Union

Preamble

Section 3.6 of the Brinkman Report discusses liability and the penalties that may be incurred for non compliance by landowner with provisions of the NEB Act.

Questions

- (i) Paragraph 30 of the Brinkman Report states that the NEB Act specifies liability levels of a maximum of \$1 million in fines per day or 5 years in jail if the farmer continues with practices which have been ordered stopped by a NEB inspector.
 - (a) Ask Dr. Brinkman to confirm that the section of the NEB Act that he is referring to, as providing penalties, is Section 51.4. If not, advise what section of the Act Dr. Brinkman believes provides for these penalties.
 - (b) Ask Dr. Brinkman, to confirm that although Section 51.4 of the NEB Act provides for a potential a maximum fine of \$1 million on conviction, the section does not stipulate that the fine is payable for each day that the violation occurred.
- (ii) In Union’s response to Board Staff Interrogatory 9, Union filed a copy of a Question and Answer document prepared by the NEB to provide landowners with information regarding NEB regulation. In the answer to Question 8 in that document, the NEB advised that there is no penalty prescribed for contravening the NEB crossing regulations.
 - (a) CAEPLA, GAPLO-Union and Dr. Brinkman are asked to confirm that under the NEB Act there is no penalty for a violation of Section 112 of the NEB Act, nor the regulations under Section 112.
 - (b) CAEPLA, GAPLO-Union and Dr. Brinkman are asked to confirm that a penalty can only be issued if an NEB inspector issues an order related to

an activity and a person who has received written notice of the order violates that order.

6. **Reference:** Report of George L. Brinkman, dated May 4, 2009 (“Brinkman Report”), filed by CAEPLA and GAPLO-Union

Preamble

Paragraph 17 of the Brinkman Report states that municipalities may refuse building permits in the control zone thereby imposing a complete embargo on construction, and Attachment 2 to the Brinkman Report is page 80 from the Town of Laurentian Hills Zoning By-Law 11-05 which contains a by-law prohibiting construction of dwellings within 30 m of the TransCanada Pipeline.

Paragraph 17 of the Brinkman Report also asserts that the expansion of the control zone encroaches in some cases on land that previously could have been used for development, thereby restricting the farmer’s right to sell his land for development.

Question

- (i) Attached to these interrogatories, as Attachment 3, is page 79 from the Town of Laurentian Hills Zoning By-Law 11-05. CAEPLA, GAPLO-Union and Dr. Brinkman are asked to confirm that the Town of Laurentian Hills has also passed a zoning by-law prohibiting construction of dwellings within 30 m of a *provincially* regulated electricity transmission corridor, as noted in paragraph (b) on p. 79 of the By-Law.
- (ii) CAEPLA, GAPLO-Union and Dr. Brinkman are asked to confirm that it is within the zoning authority of all municipalities under Section 34 of the *Planning Act* to prohibit construction within any area under its jurisdiction, including areas adjacent to provincially regulated pipelines.
- (iii) CAEPLA, GAPLO and Dr. Brinkman are asked to confirm that the NEB control zone regulations do not prohibit construction or development in the control zone, rather construction can take place within the control zone with the consent of the pipeline company.



Canada

Final Report - Draft

December 2008

National Energy
Board



Office national
de l'énergie

Land Matters Consultation Initiative Final Report - Draft

Table of Contents

1.	Introduction.....	1
2.	Summary of Input Received	1
3.	The NEB's Response.....	3
4.	Further Action by Companies and Landowner Representatives	4
5.	LMCI Information for Natural Resources Canada.....	5
6.	Conclusion	6
	Appendix 1	7
	Appendix 2	13

NEB Land Matters Consultation Initiative: Final Report - Draft

1. Introduction

In the fall of 2007, the National Energy Board (the Board or the NEB) announced that, as part of its review of key land issues, the Land Matters Consultation Initiative (LMCI) would be established. The decision resulted from the Board's desire to support continual improvement related to land matters, and confirmed the Board's belief that constructively engaging interested people and organizations would be an effective approach. On 25 February 2008, the Board identified outcomes to be achieved through the LMCI so that land matters could be more appropriately and effectively included in the Board's public interest considerations and also to foster and maintain effective working relationships between companies and landowners.

The Board considered the LMCI topics in four streams:

1. Company Interactions with Landowners;
2. Improving the Accessibility of NEB Processes;
3. Pipeline Abandonment – Financial Issues; and
4. Pipeline Abandonment – Physical Issues.

In February and March 2008, Discussion Papers were released for each stream. In March 2008, Hearing Order RH-2-2008 was issued for Stream 3: Pipeline Abandonment – Financial Issues. The hearing is currently scheduled to commence in January 2009. For Streams 1, 2 and 4, the Board held meetings and workshops in 25 communities across Canada. At those consultation sessions, the Board provided information about the LMCI and the three topic areas. Participants were invited to clarify the issues to be resolved and to offer ideas for improvement. Over 400 people participated in the meetings including landowners, pipeline company representatives, representatives from towns and municipalities, Aboriginal groups, regulators and representatives from various government departments. In addition to the input received at the meetings and workshops, 13 groups and individuals made written submissions to the Board.

Discussion Papers, Hearing Order RH-2-2008, meeting summaries, written submissions and Summaries of Consultations are available on the Board's website at www.neb-one.gc.ca under Land Matters Consultation Initiative on the right-hand side of the home page.

2. Summary of Input Received

The key issues that were raised during the LMCI are highlighted below. For additional information about the input received from parties and all the issues raised, please refer to the Summaries of Consultations, meeting summaries and the written submissions on the Board's website (www.neb-one.gc.ca).

Stream 1 – Company Interactions with Landowners

- Landowners expressed a desire for more respectful, consistent and transparent interactions with company representatives.

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- Companies are seeking clarity on NEB expectations for notification and consultation programs.
- Landowners and companies see value in an increased community presence for the NEB throughout the facility lifecycle, and particularly in the project planning phase and during operations.
- Landowners requested the development of standard easement agreements to build confidence that landowners are being treated consistently.
- Landowners are seeking clear, consistent and straightforward practices with respect to crossing pipeline rights of way with farming equipment.
- Landowners also questioned the NEB's knowledge of and sensitivity to agricultural issues.

Stream 2 – Increasing the Accessibility of NEB Processes

- Many contributors indicated that the lack of participant funding for certain NEB regulatory hearing processes is a significant barrier to being able to participate effectively.
- In addition to participant funding, offering process advisory services and more electronic and print materials in plain language would go some way to make it easier to be involved in NEB processes.
- Landowners and companies see value in the early resolution of issues and would support the NEB in developing processes to support this objective.
- Company representatives indicated that regulatory processes are fundamentally sound and expressed interest in exploring options to share expert research rather than assuming that each party should develop their own expert advice; company representatives also requested increased clarity and consistency in NEB activities, particularly related to inspections of company operations.
- Landowners requested an increased oversight role for the NEB in monitoring company field operations.

Stream 4 – Pipeline Abandonment – Physical Issues

- The uncertainty of regulatory jurisdiction of pipelines after abandonment and the potential for landowner liability is a primary concern for landowners.
- A number of environmental concerns were expressed about the end-state of land; industry representatives requested that objective, consistent and predictable criteria be used as guiding principles for abandonment planning.
- Many landowners requested that pipelines be removed upon abandonment; industry representatives focused on developing an objective, risk-based set of criteria to establish appropriate abandonment methodologies.
- Several groups identified additional issues for further study and expressed interest in participating in a future study group.

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3. The NEB's Response

The LMCI has confirmed that there is scope for continual improvement in how the Board, landowners and industry deal with land matters. The Board has found all parties to be willing to work towards improved outcomes in all areas of the Board's land responsibilities.

A **roadmap for change** has been developed from the LMCI and the Board believes it will result in measurable improvements for the issues raised relating to company interactions with landowners, accessibility of NEB processes and physical issues of abandonment. As a result of the LMCI, the Board is committed to the following:

- Extending the Board's current regulatory approach that is in place for other aspects of the NEB's mandate, such as safety, security and protecting the environment, to encompass respecting the rights and interests of those affected by NEB-regulated facilities and activities. This goal-oriented, risk-based program for the full lifecycle of facilities will be a cornerstone for making improvements related to land matters, and will include:
 1. through regulations, setting expectations for company performance related to respecting the rights and interests of those affected; and,
 2. extending the Board's audit and inspection program in order to verify that companies are operating consistently with Board expectations in the area of respecting rights and interests.¹
- Continuing to work proactively toward the vision where landowners' concerns are addressed early and effectively through constructive dialogue.
- Continuing to work with Natural Resources Canada (NRCan) to identify opportunities to develop and implement a more complete participant funding program for NEB hearings related to facilities.
- Following through on all of the actions identified in Appendix 1 of this document.
- Clarifying the NEB's regulatory approach to abandonment.

With these commitments, landowners and others affected by NEB-regulated facilities can expect:

- An increase in NEB outreach to provide more information about the NEB and about the rights and responsibilities of landowners and companies;
- On-going process assistance from Board staff to make it easier to participate in NEB hearings;
- Increased monitoring of company performance through inspections and audits related to consultation and issue resolution programs; and,

¹ Respecting the rights and interests of those affected by NEB-regulated facilities and activities is a key component of regulating in the public interest. Other key components include safety, protecting the environment and working toward efficiently functioning energy markets. See Appendix 2 for an overview of the Board's approach to regulating throughout the full lifecycle of a project.

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- Over time, increasing clarity on the steps that will be followed and the criteria that will be considered when a pipeline is proposed to be abandoned.

Pipeline companies and proponents for pipeline projects can expect:

- Additional direction from the Board on the expected elements of company programs related to respecting the rights and interests of those affected by NEB-regulated facilities and activities;
- Consistent Board practices for audits and inspections focused on safety, integrity, security, the environment, and matters respecting the rights and interests of those affected;
- Increased NEB monitoring of company performance related to respecting the rights and interests of those affected;
- Audits, inspections and other regulatory actions to increase or decrease over time depending on the company's track record for achieving the expected results; and,
- An on-going commitment to effective, efficient and predictable processes to support the responsible development of Canada's energy infrastructure.

4. Further Action by Companies and Landowner Representatives

From the outset of the LMCI, the Board has worked closely with the Canadian Energy Pipeline Association, the Canadian Alliance of Pipeline Landowners' Associations, l' Union des producteurs agricoles and the Canadian Association of Petroleum Producers. Regular discussions with representatives of these groups have helped to improve both the process of the LMCI and the quality of the input received from others. The Board observed and appreciated a desire on the part of all of these groups to continue to work together collaboratively on key issues whenever possible.

The Board is encouraging the interested associations to find solutions to the concerns expressed through the LMCI related to minimum standards or best practices for easement agreements and vehicle crossings of pipeline rights of way. The groups have indicated a willingness to meet and to explore common ground for these issues, described as follows:

- *Develop additional guidance on the land acquisition process and easement agreements.*

Landowners expressed concerns about the lack of information available to them at the time they are asked to commit to an easement agreement. While the NEB Act sets out minimum requirements for easement agreements, the specific agreements are private contracts between the landowner and the company. The NEB has limited authority to specify the expected content for the agreements. A standard easement agreement or best practices for easement agreements developed between industry and landowners could be a very helpful tool to increase the efficiency and effectiveness of future negotiations. Upon request, the Board would be pleased to assist in these discussions.

- *Develop additional guidance for vehicles crossing pipeline rights of way.*

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Under the NEB Act, permission to move vehicles or mobile equipment across the right of way is provided by the pipeline company. Developing industry/landowner standards related to blanket crossing agreements, definition of “normal farming operations” and “normal farm equipment”, depth of cover and company response times for crossing requests would provide clear expectations for landowners and would support safe and efficient pipeline and agricultural operations. The Board is of the view that clearer expectations in this regard will contribute to the overall safety and security of pipeline companies’ and landowners’ operations on rights of way.

The NEB is strongly encouraging interested groups to work together to develop standards to address this matter. In parallel, as described in Action 1.2 in Appendix 1, the Board intends to incorporate the requirement for companies to have a program to manage the movement of vehicles and mobile equipment in the Board’s Damage Prevention Regulations. The result of discussions among interested groups will be incorporated in the guidance notes to the Damage Prevention Regulations.

Upon request, the Board would be pleased to assist in these discussions as well. If resolution or significant progress toward standards is not achieved by December 2009, the Board will take further steps to address any outstanding issues to promote safety and security in the area of crossings.

5. LMCI Information for Natural Resources Canada

Input was received through the LMCI relating to policy matters within the mandate of NRCan. The NEB is providing an overview of the information that could be helpful to NRCan if it were to consider policy changes in these areas. If NRCan decided to examine one or more of these policy areas, the NEB would be pleased to work with NRCan to assess and, if appropriate, implement any changes.

Following are the issues raised through the LMCI that relate to NRCan policy matters:

- *Participant funding*

Participant funding is considered by many to be a prerequisite to enable members of the public to effectively participate in regulatory hearings. Landowners, Aboriginal groups and non-government organizations consistently noted that broader participant funding should be provided to support effective participation in NEB hearings.

The objective would be to complement funding already available through the NEB Act for Detailed Route Hearings and section 46 matters, and through the Canadian Environmental Assessment Agency for review panels and comprehensive studies. NEB public hearings involve a wide range of stakeholders affected by energy infrastructure. Legislative changes would be required for the NEB to implement a participant funding program for facilities hearings.

- *Consider developing guidance material and assessing possible changes to NRCan processes for negotiation and arbitration related to compensation matters (Pipeline Arbitration Secretariat).*

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Stakeholders suggested that additional guidance material should be available directly from NRCan and written in plain language to help parties understand the process so that they can make informed decisions about their potential participation. There was a desire for the material to include information on the process for appointing negotiators and arbitrators, the existing compensation mechanisms for negotiation and arbitration, any information that could be provided about past arbitration decisions and expected timelines for the negotiation and arbitration processes.

Participants also suggested that a review be undertaken on the negotiation and arbitration processes.

- *Arbitration and negotiation processes when a pipeline is abandoned.*

It is unclear whether the remedies provided to landowners to negotiate and arbitrate compensation matters contemplate the complete lifecycle of an energy infrastructure project (e.g., abandonment). Landowners requested clarification of the processes that would be available to them to determine compensation related to pipeline abandonment.

6. Conclusion

The Board has a mandate to make decisions that balance the interests of all Canadians. It is the Board's view that the roadmap for change developed through the LMCI will bring about concrete improvements which will achieve an appropriate balance among landowners, project proponents and others impacted by infrastructure development. The Board looks forward to continuing the constructive and collaborative approaches that have been established through the LMCI so that there can be continual improvement in the Board's regulatory approaches to land matters for the benefit of Canadians.

NEB Land Matters Consultation Initiative:
Final Report - Draft

Appendix 1

LMCI Actions Table

Stream 1 Actions

Action	Objective	Implementation Approach	Tentative Timing to complete the action ²
<p>1.1 Extend the Board's current regulatory approach that is in place for other aspects of the NEB's mandate such as safety, security and protecting the environment to encompass respecting the rights and interests of those affected by NEB-regulated facilities and activities. In order to extend its regulatory approach, the Board will:</p> <ul style="list-style-type: none"> • Set expectations for companies • Develop audit and inspections approaches to verify compliance with expectations • Develop enforcement mechanisms <p>Refer to Appendix 2 for more information about the NEB's Regulatory Approach and the regulatory program related to respecting the rights and interests of those affected.</p>	<p>Establish a more systematic program approach to respecting the rights and interests of those affected by NEB-regulated facilities and activities</p>	<p>Develop a NEB plan to support the expansion of the Board's current regulatory approach. This plan will include:</p> <ul style="list-style-type: none"> • a framework to assess the risks associated with NEB-regulated companies related to respecting the rights and interests of those affected; and • a training program for NEB staff. 	Spring 2009
		Issue Notice of Proposed Regulatory Change related to the plan identified above.	Spring 2009
		Consult on the proposed change.	Spring / Summer 2009
		Issue Proposed Regulatory Change.	Fall 2009
		Pilot the program.	2010-2011

2 The timing for the Actions will be confirmed in the Final LMCI Report following further assessment of the resource requirements for each of the Actions.

**NEB Land Matters Consultation Initiative:
Final Report - Draft**

Action	Objective	Implementation Approach	Tentative Timing to complete the action²
1.2 Develop additional guidance on crossings to support safety and security of pipelines	Improve the understanding of rights and responsibilities of all parties within the NEB mandate	<p>Provide additional guidance on NEB expectations regarding crossings (i.e., incorporate the requirement for company programs to manage the movement of vehicle and mobile equipment into the Damage Prevention Regulations and associated guidance notes).</p> <p>As noted in section 4 of the LMC1 Report, the Board is also encouraging interested groups to work together to develop standards of crossing related issues such as blanket crossing agreements, definitions of "normal farming operations" and "normal farm equipment", depth of cover and company response times for crossing requests.</p> <p>If resolution or significant progress toward standards is not achieved by December 2009, the Board will take further steps to address any outstanding issues to promote safety and security in the area of crossings.</p>	2010
1.3 Develop a standard landowner information package	Improve the understanding of existing rights and responsibilities of all parties within the NEB mandate	Provide additional guidance for landowners (e.g., a standard landowner letter that includes contact information for the NEB, an offer to talk directly with an NEB representative, information about the NEB regulatory approach, information on landowner rights and responsibilities, an explanation of NEB processes).	Fall 2009
1.4 Improve NEB understanding of agricultural issues	Address the perceived gap that the NEB has limited capacity with respect to agricultural issues	Improve communications to ensure that the Board's awareness of and expertise in agricultural matters are clearly demonstrated.	2010

NEB Land Matters Consultation Initiative: Final Report - Draft

Stream 2 Actions

Action	Objective	Implementation Approach	Tentative Timing to complete the action
2.1 Apply the NEB's existing Appropriate Dispute Resolution (ADR) program more extensively in the pre-hearing phase to resolve conflicts between parties	Facilitate negotiated agreements among parties	Engage stakeholders on program design for voluntary ADR services to facilitate the early resolution of issues (i.e., clarify expectations, roles and responsibilities; define scope of the program; determine performance measures; discuss timing and funding issues).	Spring 2009
		Communicate program design and expectations to stakeholders.	Fall 2009
		Pilot program on 2+ proposed facilities.	Fall/Winter 2009-2010 (depends on hearings)
		Monitor and report on performance measures for pilot projects; adjust program; finalize program and communicate changes to stakeholders.	Winter/Spring 2010
2.2 Develop and implement a broader participant funding program for facilities hearings to complement existing funding mechanisms in the NEB Act and CEA Act	Complement funding already available through the NEB Act for Detailed Route Hearings and section 46 matters and through the Canadian Environmental Assessment Agency for review panels and comprehensive studies	If NRCan decided to examine this policy area, the NEB would work with NRCan to assess, and if appropriate, implement any changes.	N/A
2.3 Provide additional process support to non-industry intervenors	Increase the capacity of non-industry intervenors to participate in NEB hearing processes	Develop "intervenors' guide" or similar documentation.	Spring-Fall 2009
		Develop samples of past standard hearing documents or templates to be accessed by intervenors.	Spring-Fall 2009
		Formalize the role of "process advisor" for intervenors and train NEB staff to perform the role.	Spring-Fall 2009
		Develop training modules for intervenors on process (i.e., "how to be an intervenor 101" training) and assess effectiveness of training.	Spring 2009

**NEB Land Matters Consultation Initiative:
Final Report - Draft**

Action	Objective	Implementation Approach	Tentative Timing to complete the action
		Deliver intervenor process training sessions on a pilot basis for 2 hearings.	Fall 2009, or when hearing opportunity arises.
		Measure and report effectiveness of training; adjust program.	Fall-Winter 2009/2010
		Finalize program and communicate to stakeholders.	Winter 2010
2.4 Make changes to the hearing process to improve accessibility	Enable intervenors to more effectively participate in NEB hearings	Identify where to use existing hearing tools more extensively: <ul style="list-style-type: none"> e.g., as appropriate, use technical conferences more frequently to facilitate less formal exchanges between intervenors. 	Spring 2009
		Identify where to design and implement new hearing tools: <ul style="list-style-type: none"> e.g., assess the possibility of the hiring third-party experts to provide information on technical matters to all hearing participants. 	Spring 2009
2.5 Expand the NEB's outreach efforts to provide more information about the NEB's role and processes	Increase the capacity of affected stakeholders to understand and access NEB processes by more actively engaging parties on an ongoing basis	Identify opportunities to disseminate information about the NEB and its role and to expand the NEB's engagement program throughout the life span of regulated facilities. <ul style="list-style-type: none"> e.g., continue to develop strategic relationships with Aboriginal organizations, landowner associations and other groups. 	Spring 2009
		Review NEB publications and identify opportunities to write documents in plain language. Identify where new publications are required to assist the public in understanding the NEB's processes (e.g., see previous reference to "intervenors' guide").	Summer-Fall 2009

NEB Land Matters Consultation Initiative: Final Report - Draft

Action	Objective	Implementation Approach	Tentative Timing to complete the action
		Review the NEB website and identify opportunities to improve its functionality (e.g., make it easier to search for information about facilities, past and present applications, etc.).	Fall 2009
2.6 Clarify and expand the NEB's existing inspection program and role during the construction and operations phase of a facility	Increase affected stakeholders' understanding of the NEB's role throughout the life of a facility; create opportunities to more effectively engage parties; and identify and resolve conflicts before they escalate	Identify appropriate opportunities within existing inspection programs to: <ul style="list-style-type: none"> engage landowners during inspections; do pre- and post-construction inspections in agricultural areas. 	Spring 2009
		Identify opportunities to participate on local liaison committees as a means to identify and resolve conflicts before they escalate (i.e., partner this action with previous action on expanding engagement services).	Spring-Fall 2009

Stream 4 Actions

There were a number of physical issues of abandonment raised during consultations on Stream 4 which in the Board's view require further research and a multi-stakeholder approach to resolve. The Board also noted key non-physical issues with respect to the Board's jurisdiction post-abandonment and landowner concern for potential liability. The NEB is of the view that the outcomes from the Stream 4 actions should help to mitigate this concern. Further explanation of this approach will be provided in an advisory letter contemplated in action 4.2.

Action	Objective	Implementation Approach	Tentative Timing to complete the action
4.1 Develop principles for the end-state of land post-abandonment	Provide guidance for abandonment planning	Draft principles to be released for comment, final principles to be published as an amendment to the Guidance Notes that accompany the <i>Onshore Pipeline Regulations</i> and a reference placed in the Filing Manual.	Draft – January 2009 Final – April 2009
4.2 Clarify the nature of the Board's jurisdiction post-abandonment and outline the Board's	Provide clarity to address the concerns of stakeholders	Advisory letter to parties.	January 2009

NEB Land Matters Consultation Initiative: Final Report - Draft

Action	Objective	Implementation Approach	Tentative Timing to complete the action
regulatory approach to abandonment			
4.3 Develop verification and compliance processes for the abandonment phase	Address the need for development of performance measures and compliance monitoring in the abandonment phase	Use existing audit, inspection and enforcement tools to develop an approach to measuring performance of abandonment plans in the abandonment phase	2010
4.4 Initiate discussions with stakeholders to develop a multi-stakeholder study group	Address knowledge gaps on the physical issues of abandonment	Develop terms of reference and seek support and participation from stakeholders	2009
4.5 Seek inter-jurisdictional agreements for the abandonment phase and the transition of residual property	Address lack of certainty with respect to transition of residual property post-abandonment	Initiate discussions with industry and other jurisdictions to determine the need for agreements and protocols. Participate as required to ensure efficient outcomes.	2009
4.6 Assess outcomes of Stream 3 and announce Board intentions for further action if required	Address concerns of liability, to the extent that the Board can, post-abandonment	Assess and respond, as appropriate, after outcomes of Stream 3 are released	December 2009 (subject to timing of Stream 3)

Additional LMCI Action

In addition to the actions noted above from Streams 1, 2 and 4 of the LMCI, the Board is proposing an additional action related to building partnerships related to land matters. New relationships have been established and existing relationships strengthened through the LMCI process. Maintaining and continuing to build those relationships will enable the Board to be an active, effective and knowledgeable partner in the responsible development of Canada's energy sector for the benefit of Canadians.

Action	Objective	Implementation Approach	Timing
Establish a working group with representatives of groups impacted by pipeline development to meet regularly with Board staff on land matters. (Proposed pilot project for 1 year)	Develop effective working relationships so that issues and opportunities can be addressed collaboratively with Board staff and among parties.	Develop Terms of Reference with interested groups Proceed according to the Terms of Reference	Spring 2009 Summer 2009

**NEB Land Matters Consultation Initiative:
Final Report - Draft**

Appendix 2

The NEB's Approach to Regulating Pipeline Facilities

The Board's purpose is to 'promote safety and security, environmental protection and economic efficiency in the Canadian public interest within the mandate set by Parliament in the regulation of pipeline, energy development and trade.' The NEB has 5 goals that were developed to ensure delivery of the Board's purpose. The goals are:

Goal 1 – NEB-regulated facilities are safe and secure, and are perceived to be so.

Goal 2 – NEB-regulated facilities are built and operated in a manner that protects the environment and respects the rights of those affected.

Goal 3 – Canadians benefit from efficient energy infrastructure and markets.

Goal 4 – The NEB fulfills its mandate with the benefit of effective public engagement.

Goal 5 – The NEB delivers quality outcomes through innovative leadership and effective support processes.

By setting its goals, the NEB identifies public interest areas that would be well-served by regulatory oversight and develops consistent regulatory programs for each interest area. In broad terms, a regulatory program includes setting and communicating expectations for regulated companies, following up with regulated companies to verify compliance with the expectations, notably through audits of companies' management systems and their implementation, and taking action to correct any non-compliance.

With the goal-oriented regulatory strategy, the NEB identifies performance goals that companies must meet. Regulated companies are responsible to meet the performance goals and are permitted to develop the specific means and the procedures that are adequate and effective for their own unique circumstances and operations.

The following principles guide the NEB in its development of regulatory programs to ensure clarity and consistency across the programs:

- The NEB sets the public interest areas for which companies will be subject to regulatory oversight.
- For each public interest area identified, the NEB:
 - Affirms goal-oriented outcomes through regulations, guidance notes or other means that require companies to design and implement adequate and effective programs to encompass each stage of the facility lifecycle; and
 - Develops a set of compliance verification and enforcement processes to ensure satisfactory company performance.

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- The NEB designs its compliance processes to test whether or not regulated companies have developed and implemented appropriate management practices and to assess the adequacy and effectiveness of their programs.
- The NEB uses risk-based decision-making to:
 - identify and prioritize issues; and
 - evaluate company and public interest circumstances and identify the corresponding degree of NEB oversight.
- The NEB compliance processes recognize when a company has demonstrated the adequacy of its program design, full program implementation, and acceptable results, by adjusting regulatory intervention accordingly. In other words, the NEB focuses less on the companies with a good track record for meeting the goals and more on companies that are not meeting the goals.
- The NEB supports the use of best practices within each identified interest area.

Table 1 illustrates the public interest areas the NEB has identified to date and the consistent 'program' approach to regulating impacts for each interest area throughout the pipeline facility lifecycle.

Table 1

NEB Regulatory Framework					
	Public Interest Areas	Lifecycle Focus			
		Design	Build	Operate	Abandon
Safety	Safety	●	●	●	●
	Integrity	●	●	●	●
	Emergency Response	●	●	●	●
	Security	●	●	●	●
Environment	Environment	●	●	●	●
Financial	Tolls & Tariffs	●	●	●	●
	Markets	●	●	●	●
Rights & Interests	Consultation	●	●	●	●
	Issue Resolution	●	●	●	●

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One of the Board's public interest areas is "the rights and interests of those affected". This has been part of the Board's public interest considerations for many years, and as previously discussed in the NEB Stream 1 Discussion Paper (dated 26 February 2008), the Board is in the process of developing a goal-oriented, risk-based program related to respecting the rights and interests of those affected by NEB-regulated facilities and activities. This program will be consistent with the Board's established program approach for public interest areas (i.e., safety, security, environment and financial) and will enable the Board to take a more systematic approach to respecting the rights and interests of those affected by NEB-regulated facilities and activities. The LMCI actions arising from Streams 1 and 2 will support the development and implementation of this program.

Outcomes from the Stream 3 hearing (RH-2-2008) on the financial aspects of pipeline abandonment will be assessed and consideration will be given to whether or not additional actions should be taken to provide further clarity on the Board's regulatory approach for financial matters.

As an outcome of Stream 4 of the LMCI, the Board intends to clarify and outline the NEB's regulatory approach to the physical aspects of abandonment. The Board also intends to address knowledge gaps on the physical issues of abandonment which may warrant a further review of the Board's expectations with respect to abandonment. As well, the Board will develop verification and compliance processes for the abandonment phase.

National Energy
Board



Office national
de l'énergie

File ADV-PE-LandMC 0102
2 February 2009

To: LMCI Stream 4 Interested Parties
All Oil and Gas Pipeline Companies Under the National Energy Board's Jurisdiction and
All Interested Parties

**Clarification of the nature of the National Energy Board's (NEB or the Board)
jurisdiction and its approach to abandonment of pipelines**

On 16 December 2008, the Board released a draft Land Matters Consultation Initiative (LMCI) Final Report for comment (the Report). In this Report, the Board committed in Action 4.2 to clarifying the nature of the Board's jurisdiction post-abandonment and outlining the Board's regulatory approach to abandonment. This letter fulfills this commitment.

NEB Jurisdiction

The Board's jurisdiction over a pipeline continues until the coming into effect of the order which authorizes the abandonment of that pipeline. If an abandonment order contains conditions that must be complied with before the order can come into effect, the order will come into effect when all those conditions have been met and the Board's jurisdiction will continue until that time.

Regulatory Approach to Abandonment

It is recognized by participants in the LMCI that there are gaps in knowledge, policy and standards with respect to the physical issues of abandonment that require resolution. Through consultations, the Board understands that these gaps relate in part to the concern that abandonment plans which contemplate leaving large-diameter pipelines in the ground pose risk of liability to landowners. Certain landowners and associations suggested during LMCI consultations that the Board should require the removal of all large-diameter pipelines at the end of their life as they were of the view that this would adequately mitigate landowner liability.

Given the gaps stated above, the Board is of the view that the Canadian public would benefit from a better understanding of the physical issues of abandonment before considering whether or not to undertake a regulatory change to the effect of requiring the removal of large-diameter pipelines in agricultural lands.

.../2

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- 2 -

The Board continues to have the discretion to decide on an appropriate abandonment methodology as it hears specific abandonment applications. Section 19 of the *National Energy Board Act* provides the Board with the authority to impose conditions which suspend the coming into force of an order authorizing an abandonment application until all of those conditions are met. The Board commits to continue using section 19 appropriately such that when abandonment orders come into effect, the safety and property concerns and environmental effects are well understood and residual impacts are considered acceptable.

The Board committed to undertake a number of Stream 4 Actions in the Report. One of these Actions is to initiate a multi-stakeholder group to research the physical issues of abandonment and develop sound knowledge, standards and policies. The outcomes of this and the other Stream 4 Actions should help to mitigate the concerns which were heard through the LMCI regarding the physical issues of abandonment. Specifically, the Actions will help clarify the Board's regulatory approach to abandonment which is consistent with the Board's overall regulatory framework¹ of having regulatory programs in place for all of its public interest areas throughout the lifecycle of facilities.

On 21 January 2009, the Board also released proposed principles for the end state of land post-abandonment to fulfil Action 4.1 of the Report. Comments are invited through the comment processes which have been respectively established for the Report itself and the proposed revised principles.

Yours truly,



for
Claudine Dutil-Berry
Secretary of the Board

¹ The NEB's Approach to Regulating Pipelines Facilities and its Regulatory Framework were detailed in Appendix 2 to the Land Matters Consultation Initiative Draft Final Report issued under cover letter dated 16 December 2008.



**TOWN OF
LAURENTIAN HILLS**

Zoning By-Law 11-05



Tunnock Consulting Ltd.

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File P-1022**

April 13, 2005

(g) Veterinary Establishment or Kennel

No dwelling shall be located within 60 m (196.8 ft.) of any veterinary establishment or kennel if such has more than four outdoor runs or more than 30 m² (3,22.9 ft.²). This shall apply reciprocally to the establishment of a veterinary establishment or kennel.

(h) Septage or Communal Sewage Disposal System

No dwelling or associated well shall be erected within 200 m (656.1 ft.) of the boundary of any land zoned or proposed for septage disposal, a waste stabilization pond or wastewater treatment plant.

No new commercial, industrial or institutional development requiring a well shall be located within 75 m (246 ft.) of any land zoned or proposed for septage disposal, a waste stabilization pond or wastewater treatment plant.

No septage disposal, a waste stabilization pond or wastewater treatment plant shall be located:

- i) Within 200 m (656.1 ft.) of a dwelling or associated domestic well.
- ii) Within 150 m (492.1 ft.) of any uncased well or abandoned well or within 75 m (246 ft.) of any well with a minimum casing depth of 6 m (19.6 ft.) associated with any non-residential use.
- iii) Within 75 m (246 ft.) of any land proposed for non-residential development requiring the installation of a well.
- iv) Within 750 m (2,460 ft.) of any existing or proposed subdivision.
- v) Within 180 m (590.5 ft.) of the high water mark of any surficial water body.
- vi) Within 30 m (98.4 ft.) of the right-of-way limit of a street or road allowance.
- vii) Within 60 m (196.8 ft.) of any land used for livestock pasturing.

(b) Hydro Electric Power Transmission Corridor

No dwelling shall be erected within 30 m (98.4 ft.) of the right-of-way limit of a power transmission corridor carrying a 250 KV line or greater.

(c) TransCanada Pipeline

No dwelling shall be erected within 30 m (98.4 ft.) of the TransCanada Pipeline right-of-way limit. All other setbacks shall be a minimum of 10 m (32.8 ft.).

(d) Rail Line

No dwelling shall be erected within 15 m (1076.6 ft.) of the limit of the CP Rail right-of way.

4.24 Mobile Homes

No person shall construct or install a Mobile Home on an individual lot within the Town unless it is located in a Mobile Home Park.

4.25 Non-Conforming and Non-Complying Uses

(i) Continuance of Existing Uses

Nothing in this By-law shall apply to prevent the use of any land, building or structure for any purpose prohibited by the By-law if such land, building or structure was lawfully used for such purpose on the day of the passing of the By-law so long as it continues to be used for that purpose. The non-conforming use of any land, building or structure shall not be changed except to a use which is in conformity with the provisions of the zone in which the land, building or structure is located, without permission from the Committee of Adjustment pursuant to the *Planning Act*.

(j) Prior Building Permits

Nothing in this By-law shall prevent the erection or use of any building or structure for which a building permit has been issued under the *Building Code Act* prior to the passing of this By-law, so long as the building or structure when erected is used and continues to be used for the purpose for which it was erected and provided the permit has not been revoked under the *Building Code Act*.

(k) Accessory Buildings

Nothing in this By-law shall prevent the use of any land, building or structure accessory to an existing legal non-conforming use provided that such accessory building or structure complies with all other relevant provisions of this By-law.