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*** Certified by the Law
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May 19, 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) / CAEPLA
Responses to Union Gas Interrogatories
Union Gas Application for Leave to Sell Natural Gas Pipeline
EB-2008-0411**

Further to the Board's Procedural Order No. 1, please find enclosed the responses of GAPLO-Union (Dawn Gateway), CAEPLA and directly affected landowners to the interrogatories submitted by Union Gas on May 11, 2009.

Yours very truly,

COHEN HIGHLEY^{LLP}

John D. Goudy
email: goudy@cohenhighley.com

Encl.

ONTARIO ENERGY BOARD

IN THE MATTER OF The Ontario Energy Board Act, 1998, S.O. 1998, c.15, Schedule B, and in particular, s.43(1) thereof;

AND IN THE MATTER OF an Application by Union Gas Limited (“Union”) for an Order granting leave to sell 11.7 kilometres of 24 inch diameter steel natural gas pipeline running between the St. Clair Valve Site and Bickford Compressor Site in the Township of St. Clair.

**RESPONSES TO WRITTEN INTERROGATORIES
FROM UNION GAS LIMITED
SUBMITTED BY
GAPLO-UNION (Dawn Gateway)**

May 19, 2009

1. Reference	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	<p>(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.</p> <p>(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?</p> <p>(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.</p>
Responses	<p>(i) CAEPLA, under its previous name of CAPLA, was a participant in the NEB’s LMCI process and received copies of Attachments 1 and 2.</p> <p>(ii) This question refers to a legal position adopted by the NEB. CAEPLA and GAPLO-Union have no information to support or dispute the NEB’s legal position.</p> <p>However, it should be noted that conditions of approval that may attach to an abandonment order are decided solely by the NEB within the context of an abandonment application made by a pipeline company. In that application, the pipeline</p>

company puts forward its own information in support of the order it is seeking and may recover its costs of the application as part of its regulated tolls. Landowners must participate in proceedings involving abandonment applications, if at all, at their own cost. This places landowners at a severe disadvantage with respect to the ability to put evidence before the NEB that may support the imposition of conditions of approval. There is no guarantee that any conditions would be imposed, leaving landowners at risk of future post-abandonment liabilities with no regulator in place to address these liabilities.

In addition, should the NEB permit abandonment in place and any conditions of approval be satisfied, the NEB is then without jurisdiction and landowners bear the risk of post-abandonment liabilities and costs with respect to the abandoned pipeline with no regulatory recourse.

- (iii) CAEPLA and GAPLO-Union agree that in Section 4 and Action item 1.2 the NEB discusses issues related to Section 112 of the *NEB Act*, and that the NEB states that it is “encouraging interested groups to work together to develop standards of crossing”. However, it should be noted that CAPLA proposed to the NEB in the LMCI process the implementation of regulatory minimum easement agreement requirements and Filing Manual “performance measures” to deal with landowner concerns about regulatory restrictions on agricultural operations (see Attachment 1 to CAEPLA Evidence Statement). Although these initiatives are within the regulation-making powers of the NEB, the NEB has instead left it to landowners to expend their own time and money in trying to convince companies to address their concerns. In other words, the NEB has answered the call of landowners for regulatory change (intended to get beyond the past unwillingness of pipeline companies to address these issues) with the status quo.

The blanket approval proposed by Dawn Gateway LP in its pending NEB application (see GAPLO response to Union interrogatory #4 (ii) below) does not satisfactorily address landowner concerns raised in this proceeding with respect to increased regulatory restrictions on their agricultural operations – it leaves with landowners the regulatory risk of determining what constitutes “standard agricultural activities”.

In March, 2009, CAPLA/CAEPLA wrote to the NEB to express its frustration with the LMCI process, including the NEB’s complete failure to address the issue of landowner recovery of costs for participation in regulatory processes

(including, ironically, the LMCI process itself). A copy of this letter is attached to this response as **Attachment 1**.

- 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.

Responses

- (i) CAEPLA, GAPLO-Union and Dr. Brinkman confirm that Union Gas' standard easement agreement for the St. Clair-Bickford line includes the clause set out in the question and that the clause provides generally that:
- a. Prior written consent of the Grantee is required for the excavation, drilling, installation or erection of any pit, well, foundation, pavement, building or other structure or installation in, on, over or through the easement;
 - b. The Grantee **shall** consent to the erection or repair of fences, construction or repair of tile drains and domestic sewer pipes, water pipes and utility pipes and construction or repair of lanes, roads, driveways, pathways and walks, provided that five clear days' notice in writing of the work is provided to the Grantee.

The clause does not restrict cultivation of the easement, which is specifically protected elsewhere in the agreement, or the use of farm equipment on the easement, and does not restrict any activity outside the boundary of the easement.

- (ii) The application of these sections of Ontario Regulation 210/01 appears to be dependent upon there being a potential for interference with the pipeline from the enumerated operations. Therefore, CAEPLA, GAPLO-Union and Dr. Brinkman do not agree that these sections apply generally to the activities which landowners can currently undertake in the vicinity of the St. Clair-Bickford line.

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	<p>(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.</p> <p>(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.</p> <p>(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.</p>
Responses	<p>(i) Confirmed. Vector Pipelines acquired an easement from J. Rink Farms Ltd. on August 5, 1999.</p> <p>(ii) No request has been made to Vector by Mr. Kraayenbrink or J. Rink Farms Ltd. for permission and/or consent to cross the Vector Pipeline..</p> <p>(iii) Neither Mr. Kraayenbrink nor J. Rink Farms Ltd. has made an application to the NEB under s.112 for leave to conduct farming operations as a result of having a TCPL or Vector pipeline on their property.</p>

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.”

Question

(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

Responses

(i) and (ii) Representatives of GAPLO-Union have met with Union representatives for the purpose of discussing outstanding landowner issues expressly on a without prejudice basis. GAPLO-Union will not, therefore, provide the confirmations requested in the context of this proceeding.

GAPLO-Union notes that Dawn Gateway fails to propose or commit to any specific mitigation measures related to the control zone in its Certificate of Public Convenience and Necessity application to the NEB (including in the proposed form of easement agreement, in the proposed Letter of Understanding or in its ESAs). Reference is made generally by the authors of the ESAs to “blanket approvals for all standard agricultural activities within the Safety Zone, on a landowner specific basis” (see **Attachment 2** – excerpt from St. Clair to Bickford section ESA; and see **Attachment 3** – excerpt from Bickford to Dawn section ESA). This proposed blanket approval does not satisfactorily address landowner concerns raised in this proceeding with respect to increased regulatory restrictions on their agricultural operations – it leaves with landowners the regulatory risk of determining what constitutes “standard agricultural activities”.

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.
Question	<p>(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.</p> <p>(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.</p> <p>(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.</p> <p>(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.</p> <p>(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.</p> <p>(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.</p>
Responses	<p>(i) (a) and (b) Dr. Brinkman’s reference to penalties in paragraph 30 of his report is based on s.51(4) of the <i>NEB Act</i>. Section 51.4(3) provides, by incorporation of s.121(4) of the Act, that where an offence is committed on more than one day, “it shall be deemed to be a separate offence for each day on which the offence is committed or continued.”</p> <p>(ii) (a) CAEPLA, GAPLO-Union and Dr. Brinkman confirm that the <i>NEB Act</i> provides no direct regulatory penalty for the</p>

violation of s.112 or the regulations under section 112. They note, however, that contravention of s.112 and/or the regulations may result in civil liability including attempts by pipeline companies and regulatory agencies to recoup from landowners costs of inspections and investigations.

(b) A response to this question requires a legal interpretation of the statute, which CAEPLA, GAPLO-Union and Dr. Brinkman are not able to provide. It is not clear on the face of the statute that only a person who has received written notice of an order may be in violation of 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.

Responses

- (i) CAEPLA, GAPLO-Union and Dr. Brinkman 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. No similar prohibition applies to provincially regulated pipelines.
- (ii) A response to this question requires a legal interpretation of the statute, which CAEPLA, GAPLO-Union and Dr. Brinkman are not able to provide.
- (iii) Under the *NEB Act* and the *Pipeline Crossing Regulations*, landowners are obliged either to make an application for leave of the NEB or to obtain consent from the pipeline company before excavating in the control zone using power-operated equipment below a depth of 30 cm (1 foot). As most construction or development requires such excavation, landowners will either require company consent to undertake the construction or development under the *Pipeline Crossing Regulations* or will be forced to make an application to the NEB for leave, resulting in the same operational delays and limitations as apply to any excavation or cultivation below a depth of 1 foot in the control zone.

ATTACHMENT 1

CAPLA/CAEPLA

P.O. Box 13
New Brigidon, Alberta T0J 2G0
403.992.4124

"Working to benefit all Canadians by promoting the responsible use of our lands and resources"

3122 Douglas Street
Camlachie, Ontario N0N 1E0
519.869.4124

Ms. Claudine Dutil-Berry
Secretary of the Board
National Energy Board
444 Seventh Avenue SW
Calgary, Alberta
T2P 0X8

Via Electronic Mail

March 18, 2009

Dear Ms Dutil-Berry:

**Re: Proposed Damage Prevention Regulations and Draft Guidance Notes, February 2009
The Draft Final Land Matters Consultation Initiative Report
Participation in Future LMCI Processes**

In light of the fact that we are a voluntary non-profit association that operates with very limited resources, I regret to say that we have arrived at the place where we can no longer participate in ongoing consultations within you, in the LMCI activities, nor will we be able to respond to the proposed Damage Prevention Regulations.

In the past, we have written to the NEB concerning the Proposed Damage Prevention Regulations. We have identified our concerns, and further stated that without participant funding we could not respond in an effective manner.

We have endeavored through the courts, the regulatory processes, and by means of the LMCI consultations to persuade the NEB, and the government, to recognize and act on the many issues we have raised. In the past five or six years we have spent over 2 million dollars to try to effect these changes. These are voluntary after tax dollars that we have had to raise, and our capacity to do this is not unlimited.

The LMCI has clearly identified that "the lack of participant funding for certain NEB regulatory hearing processes is a significant barrier to being able to participate effectively".

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Canadian Association of Energy & Pipeline Landowner Associations
Canadian Alliance of Pipeline Landowner Associations

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NEB/ONE

Your NEB draft final LMCI report proposes "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."

We are reminded that such conclusions have been reached before, and were not acted upon then. Now that participant funding is again identified as a major issue, it would appear the NEB and NRCan are unable to find funds for landowner participation, while in the midst of a program that is ostensibly designed to identify and address landowner issues.

Over the past many months, we created documents that clearly identify the pertinent issues and set out appropriate solutions. We delivered this material to your employees. These documents and our thorough participation in the Stream 3 Abandonment Hearing have cost us dearly. As you know, pipelines are forced onto our properties. Their impacts create liabilities and costs to landowners. We do not profit from them. As such, participation in any of your consultations represents a further and ongoing financial burden that we have engaged in without participatory costs.

You also are aware of the fact that outside of any consultation process, the NEB enacted regulatory changes that made void existing covenants in pipeline easement agreements. At the time, you left us with no option but to seek redress of our legitimate grievances by initiating a class action lawsuit. One of these legitimate grievances concerned restrictions that were enacted under section 112 of the NEB Act—the provision that enacted the 30 metre control zone, empowers pipeline companies to restrict pipeline crossing and limit the depth at which landowners can work the soil.

Now, the NEB has recognized that crossing restrictions are a very significant issue. From the LMCI Draft Report I quote: "Landowners are seeking clear, consistent and straightforward practices with respect to crossing pipeline right-of-way with farm equipment... the Board strongly encourages interested groups to work together to develop standards to address this matter."

In other words, we are now being asked to participate in a dialogue process, without funding, to determine an issue that we were earlier forced to sue over, and that both the NEB and CEPA members previously affirmed as a non-issue.

To further complicate the financial considerations for CAEPLA, this week we received a demand notice to pay \$180,000 to a member of CEPA, because we earlier contested the very problem that the NEB itself was responsible for creating, and that the NEB now identifies as a priority issue to resolve. I have attached copies of the demands for payment.

Surely you see the irony in all this, and how that which is unfolding puts your request for our participation without funding in a whole new light.

When the NEB is ready to cover the costs of our participation, please let us know. Until then we will be directing our limited resources toward opportunities that we believe will more effectively expand our movement and advance our cause.



Sincerely

David R. Core
President & CEO
3122 Douglas Street
Camlachie, Ontario
N0N 1T0

c.c. Right Hon. Stephen Harper, Prime Minister
c.c. Hon. Lisa Raitt, Minister of Natural Resources
c.c. Hon. Jim Prentice, Minister of the Environment
c.c. Hon. Gerry Ritz, Minister of Agriculture
c.c. Bev Shipley, MP
c.c. Sheila Fraser, Auditor General
c.c. Canadian Energy Pipeline Association
c.c. Hon. Michael Ignatieff, Leader of the Liberal Party of Canada
c.c. Hon. Jack Layton, Leader of the NDP Party of Canada
c.c. Gilles Duceppe, Leader of the Bloc Quebecois
c.c. Dave Mackenzie, MP
c.c. Merv Tweed, MP
c.c. Brian Pallister, MP
c.c. Karla Reesor, NEB
c.c. Canadian Pipeline Landowners
c.c. Paul Vogel, Cohen Highley

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**FRASER MILNER CASGRAIN LLP**

Matthew Fleming
(416) 863-4634
matthew.fleming@fmc-law.com

March 13, 2009

VIA FACSIMILE

Mr. Paul Vogel and Mr. John D. Goudy
Cohen Highley LLP
Lawyers
One London Place
255 Queens Avenue, 11th Floor
London, ON N6A 5R8

Dear Messrs. Vogel and Goudy:

**Re: Canadian Alliance of Pipeline Landowners' Associations et al. v. Enbridge
Pipelines Inc. and TransCanada Pipelines Limited
Court File No.: C-46460/C-46582**

Please find enclosed a draft Order in connection with the Court of Appeal's decision in the above-referenced matter. Kindly advise the undersigned whether you agree as to the form and content of the Order so that it may be issued and entered with the Court. By copy of this letter to Messrs. Underwood and Ferguson, we ask that they do the same.

In accordance with the enclosed draft Order and the Order of the Honourable Justice Macdonald dated April 29, 2008, we look forward to receiving funds in the amount of \$90,000 representing the outstanding costs awards. Should your clients fail to satisfy the costs awards by April 13, 2009, we have been instructed to enforce same.

Yours truly,

FRASER MILNER CASGRAIN LLP

Matthew Fleming

MTAF/elb

cc: Harry Underwood
Darryl Ferguson
J.L. McDougall, Q.C.

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1 First Canadian Place, 100 King Street West Toronto ON Canada M5X 1B2 Telephone (416) 863-4311 Fax (416) 863-4592 www.fmc-law.com
Montréal Ottawa Toronto Edmonton Calgary Vancouver New York

03/13/2009 FRI 16:58 [JOB NO. 7330] 002

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Court File No.: C-46460
C-46582**COURT OF APPEAL FOR ONTARIO**

THE HONOURABLE ASSOCIATE)	THURSDAY, THE 3 rd DAY
CHIEF JUSTICE OF ONTARIO)	
)	OF APRIL, 2008
THE HONOURABLE JUSTICE ROSENBERG)	
)	
THE HONOURABLE JUSTICE FELDMAN)	

B E T W E E N:

**CANADIAN ALLIANCE OF PIPELINE LANDOWNERS' ASSOCIATIONS,
488796 ONTARIO LIMITED and RONALD KERR**

Plaintiffs
(Appellants)

- and -

ENBRIDGE PIPELINES INC. and TRANSCANADA PIPELINES LIMITED

Defendants
(Respondents)

Proceedings under the *Class Proceedings Act, 1992, S.O. 1992, c.6*

ORDER

THESE APPEALS, by the Plaintiffs (Appellants) for: (i) an Order setting aside the Order of the Honourable Justice Macdonald dated November 20, 2006, dismissing the plaintiffs' motion for a determination that their action satisfies the requirements of section 5(1)(a) of the *Class Proceedings Act, 1992, S.O. 1992, c.6*; and (ii) for an Order setting aside the Judgment issued by the Honourable Justice Macdonald dated November

RCP-E 59A (July 1, 2007)

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2.

20, 2006, dismissing the plaintiffs' claims, was heard the 18th day of December, 2007 at Osgoode Hall, 130 Queen Street West, Toronto, Ontario.

ON READING the Exhibit Books, the Appeal Book and Compendium, the Appellants' Amended Factum and Book of Authorities, the Joint Compendium and Joint Book of Authorities of the Respondents, the Factum of the Respondent, Enbridge Pipelines Inc. ("Enbridge") and the Factum of the Respondent, TransCanada Pipelines Limited ("TransCanada"), and on hearing the submissions of the lawyers for the Appellants, the lawyers for Enbridge and the lawyers for TransCanada,

1. **THIS COURT ORDERS THAT** the Appeals be and are hereby dismissed.
2. **THIS COURT ORDERS THAT** the Plaintiffs (Appellants) pay to Enbridge its costs of the appeals fixed in the amount of \$15,000 inclusive of disbursements and GST.
3. **THIS COURT ORDERS THAT** the Plaintiffs (Appellants) pay to TransCanada its costs of the appeals fixed in the amount of \$15,000 inclusive of disbursements and GST.

THIS ORDER BEARS INTEREST at the rate of 6% per cent per year commencing on April 3, 2008.

RCP-E 59A (July 1, 2007)

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03/13/2009 FRI 16:58 [JOB NO. 7330] 004

Mar-13-09 04:53pm From-fraser Milner Casgrain LLP_#4 +4168634592 T-383 P.005 F-647

Court File No. C-46460
C-46582

-and- ENBRIDGE PIPELINES INC. ET AL.
Defendants (Respondents)

CANADIAN ALLIANCE OF PIPELINE LANDOWNERS' ASSOCIATIONS ET AL.
Plaintiffs (Appellants)

COURT OF APPEAL FOR ONTARIO
PROCEEDING COMMENCED AT TORONTO

ORDER

FRASER MILNER CASGRAIN LLP
1 First Canadian Place
Toronto, ON M5X 1B2

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RCP-E4C (November 1, 2005)

Mar-16-09 02:25pm From: MC TET SERVICES

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T-064 P.002/002 F-370

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March 16, 2009

VIA FACSIMILE

Paul G. Vogel, Esq.
Cohen Highley LLP
Barristers and Solicitors
One London Place
11th Floor - 255 Queens Avenue
London, ON N6A 5R8

Dear Mr. Vogel:

**Re: Enbridge Pipelines Inc. ats Canadian Alliance of
Pipeline Landowners' Associations**

Please provide payment of our client's awarded and outstanding costs in this matter, which total \$90,000.

We look forward to receiving your cheque by no later than April 13, 2009.

Yours very truly,

McCarthy Tétrault LLP

*H. Underwood*Harry Underwood
HU/nz
#4395592

c. Matthew Fleming (Fraser Milner Casgrain LLP)

Vancouver, Calgary, Toronto, Ottawa, Montréal, Québec, and London, UK

03/16/2009 MON 14:27 [JOB NO. 7379] 002

NEB/ONE

2009 MAR 23 A 8:22

MAIL ROOM
SALLE DE COURRIER

Provided that the mitigation and preventative measures are properly implemented, adverse residual effects are expected to be of low magnitude and site-specific, but for the duration of the operational life of the existing pipelines. Adverse residual effects are not anticipated to be significant.

5.2.11 Traditional Land and Resource Use

Potential Effects

The Study Area is located on lands traditionally used by First Nations groups. The Study Area is within the Chenail Ecarté Reserve (lands comprising the former Sombra Township), for which a claim by the Walpole Island First Nation has been made against the government of Canada. The operation of the pipeline therefore has the potential to affect lands claimed by First Nations, and lands traditionally used by First Nation peoples.

Mitigation and Protective Measures

There will be no new construction or lands used as a result of the Project. Therefore, affected lands traditionally used by First Nations groups are limited to the pipeline rights-of-way, which are found in mostly agricultural and aquatic areas. In addition, Walpole Island First Nation indicated that the traditional ecological knowledge study did not need to address the existing pipelines, but rather only the proposed Bickford to Dawn pipeline (addressed under a separate ESA Report).

Residual Effects

Provided that the mitigation and protective measures are implemented, adverse residual effects are expected to be of low magnitude and site-specific for the operational life of the existing pipelines, and therefore are not anticipated to be significant.

5.2.12 Social and Cultural Well-Being

Potential Effects

Numerous rural residents are present within the vicinity of the existing pipelines, and the Union St. Clair Line traverses private agricultural land. The well-being of these areas may relate to a variety of factors, including disruptions to rural lifestyle, and nuisance and safety concerns during operation and maintenance (see **Sections 5.2.13** and **5.2.16**, respectively).

NEB regulations include a Safety Zone extending 30 metres on either side of the pipeline right-of-way. Excavation using mechanical equipment or explosives within this zone will require approval from Dawn Gateway. A landowner or tenant will need to contact Dawn Gateway to get written approval for a number of different activities on the pipeline right-of-way, including:

- Operating vehicles or mobile equipment over the right-of-way where a roadway does not exist;
- Ploughing below 30 cm; and,
- Installing drainage systems, auguring, and/or fencing.

The change in jurisdiction of the Union St. Clair Line will therefore have an effect on landowners/tenants, as the above approvals required from Dawn Gateway related to land management practices may cause some inconvenience to landowners.

Mitigation and Protective Measures

The potential inconvenience to landowners related to land management practices are related to specific activities and not the general rural lifestyle of the area. Dawn Gateway plans to seek blanket approvals for all standard agricultural activities within the Safety Zone, on a landowner-specific basis.

Nuisance and safety mitigation measures are outlined in **Sections 5.2.13** and **5.2.16**, respectively.

Residual Effects

Given that the inconvenience to landowners related to land management practices will be long-term (for the operating life of the Union St. Clair Line), but will be site-specific and related only to specific activities, and given the expedited approval process proposed by Dawn Gateway, adverse residual effects on social and cultural well-being related to disruptions to rural lifestyle are not anticipated to be significant.

5.2.13 Human Health and Aesthetics

Potential Effects

Environmental elements that may be related to human health include water quality, air quality, the generation of waste materials, and the acoustic environment. The effects assessment of these elements, including those related to potential human health effects, are presented in **Sections 5.2.4, 5.2.8, 5.2.14, and 5.2.9**, respectively. The effects assessment for safety is presented in **Section 5.2.16**. Human health may also be affected through nuisance effects. Pipeline operational activities may also temporarily affect the aesthetics of the local landscape.

Mitigation and Protective Measures

Maintenance activity effects will be mitigated to the extent possible through mitigation measures outlined for water quality (**Section 5.2.4**), air quality (**Section 5.2.8**), generation of waste materials (**Section 5.2.14**), and the acoustic environment (**Section 5.2.10**).

There is variability in the level of operation and maintenance activities which landowners may consider a nuisance. Operational activities are anticipated to be largely non-intrusive and of short duration. Financial compensation provided to landowners is based, in part, on compensation for nuisance effects. In addition, any nuisance concerns relating to pipeline operation and/or maintenance may be brought to the attention of Dawn Gateway through their Landowner and Community Relations Program (**Section 7.1**). Under this program, Dawn Gateway will have an obligation to address complaints regarding activities perceived as a nuisance.

DAWN GATEWAY PIPELINE PROJECT – BICKFORD TO DAWN PIPELINE**ENVIRONMENTAL AND SOCIO-ECONOMIC ASSESSMENT REPORT**

Environmental and Socio-Economic Effects Assessment

March 2009

(Section 6.2.12). Where appropriate, measures to address the issues in the traditional ecological knowledge study will be outlined in the Environmental Protection Plan to be completed prior to construction. Dawn Gateway should continue to work closely with the Walpole Island First Nation.

Residual Effects

Provided that the mitigation and protective measures are implemented, and that continued engagement occurs with the Walpole Island First Nation and other First Nations, adverse residual effects from the construction and operation of the pipeline are expected to be of low magnitude and site-specific for the operational life of the pipeline, and therefore are not anticipated to be significant.

6.2.14 Social and Cultural Well-Being**Potential Effects**

The Study Area for the Project contains the community of Wilkesport, and the Preferred Corridor for the Project consists of numerous rural residents. The well-being of these areas may relate to a variety of factors influenced by construction and operation activities, including disruptions to community life, and nuisance and safety concerns.

NEB regulations include a Safety Zone extending 30 metres on either side of the pipeline right-of-way. Excavation using mechanical equipment or explosives within this zone will require approval from Dawn Gateway. A landowner or tenant will need to contact Dawn Gateway to get written approval for a number of different activities on the pipeline right-of-way, including:

- Operating vehicles or mobile equipment over the right-of-way where a roadway does not exist;
- Ploughing below 30 cm; and,
- Installing drainage systems, auguring, and/or fencing.

The above approvals required from Dawn Gateway related to land management practices may cause some inconvenience to landowners.

Mitigation and Protective Measures

The potential inconvenience to landowners related to land management practices are related to specific activities and not the general rural lifestyle of the area. Dawn Gateway plans to seek blanket approvals for all standard agricultural activities within the Safety Zone, on a landowner-specific basis.

Nuisance and safety mitigation measures are outlined in **Sections 6.2.15 and 6.2.18**, respectively.

Residual Effects

Given that the inconvenience to landowners related to land management practices will be long-term (for the operating life of the Bickford to Dawn pipeline), but will be site-specific and related only to specific activities, and given the expedited approval process proposed by Dawn Gateway, adverse residual effects on social and cultural well-being related to disruptions to rural lifestyle are not anticipated to be significant.

6.2.15 Human Health and Aesthetics

Potential Effects

Environmental elements that may be related to human health include water quality, air quality, the generation of waste materials, and the acoustic environment. The effects assessments of these elements, including those related to potential human health, are presented in **Sections 6.2.4, 6.2.9, 6.2.16, and 6.2.10**, respectively. The effects assessment for safety is presented in **Section 6.2.18**. Human health may also be impacted through nuisance effects. Pipeline construction and operational activities may also temporarily affect the aesthetics of the local landscape.

Mitigation and Protective Measures

Construction and operation effects will be mitigated to the extent possible through mitigation measures outlined for water quality (**Section 6.2.4**), air quality (**Section 6.2.9**), generation of waste (**Section 6.2.16**) and the acoustic environment (**Section 6.2.10**).

There is variability in the level of construction and operation activities which landowners may consider a nuisance. Activities are anticipated to be largely non-intrusive and of short duration. Financial compensation provided to landowners is based, in part, on compensation for nuisance effects. In addition, any nuisance concerns relating to pipeline construction and/or operation may be brought to the attention of Dawn Gateway through their Landowner and Community Relations Program (**Section 8**). Under this program, Dawn Gateway will have an obligation to address complaints regarding activities perceived as nuisance.

Similar to nuisance effects, aesthetic effects are subjective. While pipeline construction activities and machinery has the potential to temporarily affect the local viewscape, restoration of the site will leave few visible indicators that a natural gas pipeline exists, aside from post-mounted signs identifying the pipeline at roadways traversed by the right-of-way. To minimize aesthetic impacts during construction and maintenance, activities should be confined to specified workspace areas. The construction and maintenance schedule should also be conducted as expeditiously as possible, to minimize length of activities. Vegetative buffers at watercourse and road crossings should be restored to reduce visual impacts and discourage access to the right-of-way. Provided that the measures outlined above are implemented, no residual effects are anticipated, and consequently no evaluation of significance is required.