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*Via facsimile at: (403) 292-5503*

Ms. Anne-Marie Erickson, Acting Secretary  
National Energy Board  
444 Seventh Avenue SW  
Calgary, Alberta T2P 0X8

Dear Madam Secretary:

**Re: Dawn Gateway GP Applications Pursuant to Section 58 of the National  
Energy Board Act  
GAPLO/CAEPLA Participation in Jurisdiction Question**

We are counsel to GAPLO-Union (Dawn Gateway) (“GAPLO”), the Canadian Association of Energy and Pipeline Landowner Associations (“CAEPLA”) and directly affected landowners with respect to the proposed Dawn Gateway Pipeline project. We are writing in response to the Board’s letter dated October 22, 2009 requiring that any person wishing to participate in the Jurisdiction Question shall indicate this by today’s date. GAPLO and CAEPLA wish to participate in the Jurisdiction Question and ask to be added to the Board’s list of parties.

GAPLO/CAEPLA has reviewed the Board’s direction with respect to the process proposed by the Board for the resolution of the jurisdiction issue and have a number of concerns. These concerns include:

- the Board has failed to provide to the parties the usual procedural measures necessary to ensure a sufficient evidentiary record for the determination of this issue; and
- the proposed timeline for this process does not allow for consideration by the NEB of the consequences of the OEB’s anticipated determination of the same jurisdictional issue.

In considering a similar jurisdictional issue in TCPL’s application last year with respect to its NOVA Alberta System pipelines in GH-5-2008, the process adopted by the Board for the resolution of this issue included the usual provision for exchange of information requests and the opportunity to cross-examine on written evidence filed

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by the parties on the jurisdiction issue. The Board's current direction in the above-noted matter contains no similar provision. As a result, the parties have no assurance that the Board will have before it the complete evidentiary record required for argument and necessary for the Board's determination of this issue.

As the Board will be aware, the evidentiary record upon which the OEB is presently considering this issue includes not only the written evidence of the parties but also information and documents provided through interrogatory responses and cross-examination transcripts from the oral hearing completed last June. It is not GAPLO/CAEPLA's intention to recreate this record in this proceeding by filing this material as its written evidence, or to repeat the submissions it has already made on this record before the OEB. With respect, to do so would be to participate in exactly the kind of duplicitous, parallel proceedings which the courts have cautioned regulators such as the NEB must avoid.

Of equal concern is the timeline established by the Board for completion of this process. In its apparent attempt to expedite resolution of the jurisdiction issue, the Board has not allowed for completion of the OEB process and rendering of the OEB's decision on the same jurisdictional issue now pending before this Board. Accordingly, the parties similarly have no assurance that the OEB's decision will be included in the evidentiary record upon which the Board proposes to decide this issue and in respect of which GAPLO/CAEPLA certainly is entitled to make submissions. While the Board has noted in its recent decision on GAPLO/CAEPLA's stay motion that "it cannot be bound by the OEB's decision", it is clear that Dawn Gateway as a party to the OEB proceeding will be bound by that decision. At the appropriate time (following issue of the OEB's decision), GAPLO/CAEPLA will provide its submission with respect to the significance of the OEB's determination of the jurisdiction issue to this Board's consideration of the same issue.

Yours very truly,

**COHEN HIGHLEY LP**

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