

VIA E-MAIL (RESS & COURIER)

January 7, 2010

Ontario Energy Board  
Attn: Kirsten Walli, Board Secretary  
P.O. Box 2319  
27<sup>th</sup> Floor  
2300 Yonge Street  
Toronto ON  
M4P 1E4

**RE: EB-2008-0411 FRPO Submissions on Cumulative Under-Recovery**

In the Board's Decision in the Leave to Sell St. Clair Line proceeding, EB-2008-0411, the Board ordered Union Gas to submit evidence for the estimation of Under-recovery of the pipeline in recent years. The Board provided intervenors with the opportunity to comment on Union's estimation. The following are the submissions of the Federation of Rental-housing Providers of Ontario (FRPO) in this matter.

At the outset, FRPO would like to acknowledge the submissions of Canadian Manufacturers & Exporters ("CME") and its lead Counsel Mr. Thompson. Having had the benefit of collaborating with Mr. Thompson and reviewing CME's submissions in this matter, FRPO fully supports those submissions. Therefore, FRPO will only provide some additional submissions for Board consideration to enhance as opposed to repeat the well articulated positions of CME.

1) Summary of Errors in Union's Calculation

We support CME in their call for correction of the estimate in the three key areas of Date of Transaction, St. Clair River Crossing and Interest for the reasons provided in their submissions. To provide a numeric estimation of the Under-recovery, FRPO has modified Appendix B of Union's Dec. 23, 2009 submitted evidence to include the respective corrections in the three key areas<sup>1</sup>. This table can be found at Appendix A of this submission.

While FRPO has followed Union's approach in displaying the steps in the calculation, the changes in the estimate to address the key areas were affected by:

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<sup>1</sup> FRPO used the numeric figures provided in Union's submission and refined the calculations to incorporate the corrections requested.

- a) **Date of Transaction:** Union's estimate for 2010 was extrapolated using a simple factoring up of the revenues and costs that account for a full year of service as opposed to the two month's estimated in Union's submission.
- b) **St. Clair River Crossing:** Appendix A eliminates the removal of the cost of the St. Clair line over the period of estimation.
- c) **Interest:** Upon determination of the individual years' under-recoveries, Appendix A estimates the impact of accounting for interest. FRPO relied on the Board's methodology to prescribe interest rates for the approved regulatory accounts under the Uniform System of Accounts for natural gas utilities and electricity distributors determined in EB-2006-0117 for the periods available on the Board website<sup>2</sup>. The prior period rates were calculated as a simple annual average of the Bankers' Acceptances – 3 months from the Bank of Canada website<sup>3</sup> plus 0.25% consistent with Board Prescribed Interest Rate Methodology.

Upon estimation of the Annual Under-recovery, an interest increment of one-half of one year's interest was used to account for the intra-period use of funds. The Cumulative Under-Recovery calculation used the current year's interest rate times the previous year's Cumulative Under-Recovery balance before summing the product with that year's Estimated Annual Under-Recovery with Interest.

The resulting Estimated Cumulative Under-Recovery totals \$8.101M<sup>4</sup>. It is this amount that we believe should be recorded in the requested deferral account as a compensation for harm.

2) Other Ratemaking Consequences to be Considered in Union's Next Rate Case

FRPO supports CME's positions on the ratemaking implications.

3) Implications for 2009 Earnings Sharing

While FRPO supports CME's position that the implications on 2009 Earnings Sharing can be determined in that proceeding, FRPO would like to emphasize its call to the Board to assist the

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<sup>2</sup> Link to Prescribed Interest Rates used in Appendix A.

<http://www.oeb.gov.on.ca/OEB/Industry/Rules+and+Requirements/Rules+Codes+Guidelines+and+Forms/Prescribed+Interest+Rates>

<sup>3</sup> Link to Bank of Canada postings for 2003-2006, <http://www.bankofcanada.ca/en/rates/interest-look.html>

<sup>4</sup> It is noted that this number varies from the CME figure of \$8.277M, however, it is recognized that CME used some simplifying assumptions to present its submission in totality while referencing FRPO's submission as the more precise calculation of Cumulative Under-Recovery using the same methodology.

process by its final decision on the compensation from the determined harm in this proceeding. In its November 27, 2009 decision, the Board stated:

“[122] The Board further concludes that in order to mitigate the harm of the transaction, ratepayers should be allocated an amount equivalent to the cumulative under-recovery of the asset since 2003 from the proceeds of a sale based on fair market value as determined by replacement cost. The Board estimates that the cumulative subsidy since 2003 is approximately \$5 million. Therefore, the “net gain” is clearly in excess of the cumulative subsidy and the allocation to ratepayers will likely be in the range of 35%-65%.

[123] The Board will approve the transaction conditional on the ratepayers being allocated a portion of the deemed net gain equivalent to the cumulative under-recovery as of the date of the transaction. The Board directs Union to file the necessary evidence to substantiate the cumulative under-recovery of the assets since 2003. Given the Board expects the net gain, calculated as the difference between replacement cost and net book value, will be well in excess of this cumulative under recovery, it will not be necessary for Union to file evidence on the replacement cost, unless it chooses to do so. The Board will then fix the amount to be allocated to ratepayers to compensate for the harm arising from the transaction. This amount will only vary depending upon the timing of the actual transaction. **The determination of the relevant amount will be made as part of this proceeding so as to provide certainty to the parties.”<sup>5</sup> (emphasis added)**

FRPO understands the Board’s decision to be clear in this area. The Board has determined an approach to mitigating harm through ratepayer compensation. The Board has recognized that it is allocating to ratepayers “a portion of the deemed gain”. Union’s evidence infers that this amount would potentially serve to reduce the sharing available to ratepayers for the 2009 period.

The amount of the cumulative under-recovery will form part of Union’s 2009 regulated earnings for the purpose of calculating any earnings sharing under the incentive regulation framework.<sup>6</sup>

It is FRPO’s respectful submission that the Board has decided to compensate ratepayers for harm in approving the Leave to Sell. For Union to recover part of the deemed harm by having ratepayers co-fund the compensation in the Earnings Sharing proceeding would be, in our view,

<sup>5</sup> Ontario Energy Board EB-2008-0411 Decision and Order dated November 27, 2009 paragraphs 122 and 123 (in part)

<sup>6</sup> Union Gas Evidence EB-2008-0411 Calculation of Under-recovery dated December 23, 2009, page 4 lines 3 to 5

unfair and against the intent of the Board decision in this matter. Therefore, FRPO would urge the Board to provide explicit direction in its decision on compensation to reduce ratepayer risk or even the prospect of risk that this compensation be used in negotiation of an equitable settlement of Earnings Sharing in 2009.

4) Regulatory Framework and Leave to Construct Issues

The Board provided Union the discretion to “file submissions regarding its view of the appropriate regulatory framework for the service proposed for the new line”.<sup>7</sup> As those views were not part of the Union’s evidence of December 23, 2009 but the referred to in the cover letter as being part of a Dawn-Gateway Pipeline Limited Partnership (DGLP), FRPO will respectfully reserve its position at this time.

FRPO has not received the DGLP submission at this time and will trust that the Board will determine appropriate process for the distribution and determination of issues for that application. FRPO would respectfully request being included in the distribution of the notice of proceeding, as FRPO will be supportive of the construction of the new pipeline, as it has been from the outset. However, FRPO will reserve its position on the form of regulatory framework and other matters arising from the DGLP application.

Respectfully Submitted on Behalf of FRPO,



Dwayne R. Quinn  
Principal  
DR QUINN & ASSOCIATES LTD.

cc: C. Ripley – Union Gas  
V. Brescia - FRPO  
EB-2008-0411 Intervenors and Parties to the Proceeding

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<sup>7</sup> Ontario Energy Board EB-2008-0411 Decision and Order dated November 27, 2009, page 37, paragraph 4.

EB-2008-0411 INTERVENORS' ESTIMATION  
Estimated Cumulative Under-recovery - January 1, 2003 to December 31, 2010

Filed: 2010-01-06

Appendix A

Line No.	Particulars (\$000's)	2003 (a)	2004 (b)	2005 (c)	2006 (d)	2007 (e)	2008 (f)	2009 (g)	2010 (1) (h)	Total (i)
1	Net Revenue	400	836	642	297	120	510	707	180	3,692
2	Net Depreciated Value (St. Clair Line)	6,961	6,710	6,433	6,155	5,877	5,738	5,461	5,414	
3	Working Capital - Linepack	64	64	64	64	64	64	64	64	
4	Total Rate Base (line 2 + line 3)	7,025	6,774	6,497	6,219	5,941	5,802	5,525	5,478	
5	Return and Taxes	886	824	794	759	657	622	595	564	5,701
6	Depreciation Expense	275	277	278	278	278	276	278	276	2,216
	<u>Operating Expenses</u>									
7	St. Clair River Crossing - Toll	342	342	342	342	342	342	342	342	2,736
8	Operating and Maintenance	35	36	37	39	40	40	41	42	310
9	Total Operating Expenses (line 7 + line 8 )	(2) 377	378	379	381	382	382	383	384	
10	Estimated Actual Cost of Service (line 5 + line 6 + line 9)	1,538	1,479	1,451	1,418	1,317	1,280	1,256	1,224	10,963
11	Estimated Annual Under-recovery (line 1 - line 10)	(1,138)	(643)	(809)	(1,121)	(1,197)	(770)	(549)	(1,044)	(7,271)
12	Estimated Annual Interest Rate	(3), (4) 3.22%	2.55%	3.04%	4.34%	4.73%	3.98%	1.14%	0.55%	(5)
13	Estimated Annual Under-recovery with Interest	(6) (1,156)	(651)	(821)	(1,145)	(1,225)	(785)	(552)	(1,047)	
14	Estimated Cumulative Under-recovery with Interest	(7) (1,156)	(1,837)	(2,714)	(3,977)	(5,391)	(6,391)	(7,016)	(8,101)	

**Notes:**

All numbers are per Union Gas Appendix B Filed 2009-12-23 except where noted

(1) The estimates for 2010 are factored up to include an entire year per proposed year-end transaction date (can be modified to reflect actual upon Board decision)

(2) Total Operating Expenses including Cost of St. Clair River Crossing

(3) Estimated Annual Interest Rate is an annual average of the Board Prescribed Bankers' Acceptances-3 months Plus 0.25 Spread for Deferral Accounts

(4) Annual values are averaged from OEB site for Q2 2006 to Q1 2010 - prior periods were simple average of daily rates posted by the Bank of Canada for the period

(5) 2010 Rates are estimated by a simple extension of the Q1 2010 rate posted by OEB

(6) Estimated intra-period interest multiplies estimated annual under-recovery by the estimated annual rate and divide by 2

(7) Estimated Cumulative Under-Recovery equals Annual Under-recovery with Interest plus Previous Year balance with Annual Interest calculated at the current year's rate