

VIA E-MAIL & RESS

January 18, 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 – Union Reply on Calculation of Under-Recovery**

The purpose of this letter is to submit FRPO's concerns with Union's apparent abuse of the discretion afforded by the Board in its Order requiring due process for the determination of the harm in the Leave to Sell proceeding.

In its decision, the Board provided, with reasons, its view on a methodology to determine the recent under-recovery of the pipeline and provided a schedule for submissions by the utility and intervenors. As part of that decision, the Board had considered the replacement cost of the line and stated as part of its order "Union at its discretion may file its estimate of the replacement cost of the line."<sup>1</sup> We respectfully submit that the Board intended that the discretion referred to a choice on preparing and submitting the replacement cost estimate in its initial filings and not a discretion on when to file said estimate.

We submit that there is no reason why Union could not have provided the replacement estimate as part of its December 23, 2009 filings. From detail gleaned from the Confidential Schedule, the changes to prices due to steel costs and inflation should have been available at the then current rates in December and Union had the change in contractor costs for months. It can only be concluded that Union chose to submit the replacement estimate after intervenors would have opportunity for input. We believe this approach does not honour the Board's intent in providing Union discretion and represents the submission of new evidence during reply argument.

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<sup>1</sup> EB-2008-0411 Decision and Order, page 37, paragraph 1 (c).

Therefore, we would request that the Board disallow the submission of this new evidence under Union Gas Reply – Under Recovery Section 4 entitled **Other Considerations - Cost of Building Replacement Line.**<sup>2</sup>

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>2</sup> EB-2008-0411 Reply Submissions of Union Gas filed January 15, 2009