

VIA E-MAIL (RESS & COURIER)

January 29, 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 Submission2 – Union Reply, Calculation of Under-Recovery**

The following letter is the response of the Federation of Rental-housing Providers of Ontario (FRPO) to the Board's Procedural Order No. 6, paragraph 1, dated January 22, 2010 in the above-noted issue of the proceeding. As noted in FRPO's letter to the Board of January 18, 2010, our primary objection to Union's Reply argument was our concern with the timing of the submission of additional evidence and its effect in inhibiting intervenor comment. This additional evidence changed the methodology and inputs for the calculation of the cost of rebuilding the replacement line and we submitted that the opportunity to provide that information was the initial December 23, 2009 estimate. We accept that the Board has deemed the new evidence relevant and appreciate the Board's consideration for due process and will limit our submissions to the content of Union's reply.

Further, having collaborated with CME's counsel Mr. Thompson and being privy to his submissions in this matter, FRPO will provide its support for those submissions and not repeat their content.

**Transaction Date**

From the outset of the leave to sell proceeding, Union Gas recognized that it may take several years to put all the steps in place to complete the sale and asked the Board to provide a Leave to Sell that extended until December 31, 2013<sup>1</sup>. In their Reply – Under

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<sup>1</sup> Application by Union Gas Limited for an order granting Union leave to sell 11.7 km of NPS 24 pipeline running from Union's St. Clair Valve site to the Bickford Compressor Site and related measurement and control equipment, Page 3, line 12.

Recovery, Union now indicates, “it is unlikely that the transaction will proceed if DGLP does not receive approval in the requested time frame”.<sup>2</sup> The statement that conjectures the transaction is at risk if early approvals are not granted is not supported by evidence in this proceeding. This evidence review includes the additional information provided confidentially to the Board and qualified intervenors on October 20, 2009.

However, the “sooner than expected” date is based upon ordering materials for an in service date of November 1, 2010.<sup>3</sup> We submit that if the deemed date of transaction is only approval that is outstanding for the ordering of materials, the Board could approve the Sale with the determined harm being calculated to a date certain that need not necessarily be the transaction date. Whatever the Board decides, it can be made clear that the Board’s determination of harm is not inextricably linked to the date that DGLP is given leave to construct. This separation would allow DGLP’s ability to proceed with other aspects of the project including the ordering of materials. We submit that given that the 2010 rates are set and there is no evidence that the pipeline will not continue to under-recover until Dawn-Gateway goes into service, the most equitable date for the purposes of calculated harm is December 31, 2010.

#### Interest

FRPO supports the submissions of CME on this issue.

#### St. Clair Crossing

We continue to support the January 4<sup>th</sup> submissions of CME on this issue.

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<sup>2</sup> EB-2008-0411 Union Gas Reply – Under Recovery, Page 1, lines 16-18.

<sup>3</sup> EB-2009-0422 Dawn Gateway Pipeline Limited Partnership, Application for Leave to Construct and Regulatory Framework, Page 2, Para. 8.

Other Considerations – Cost of Rebuilding Replacement Line

We support the submissions of CME on this issue including the confidential letter of January 19, 2010.

In addition, we would submit that Union's proposed methodology for calculating the cost of a hypothetical straight shot pipeline from the St. Clair River crossing to Dawn is flawed. As gleaned from Union Gas evidence in this proceeding and Dawn Gateway evidence in their Leave to Construct Proceeding, the Bickford to Dawn replacement line is proposed to run substantially through previously acquired easements of Union Gas. Given the advanced work of the 1993 proposed pipeline, the land, easement and consultant costs used in the Bickford to Dawn estimate would in no way reflect the costs that would have to be incurred to run a pipe parallel to third party pipe (Vector). In the paralleling Vector alternative, no running has been previously developed and approved as in the case of the Bickford to Dawn line. It is our submission that this fact alone would substantially increase the per km cost. Without the opportunity to further test the applicability of the unit cost of Bickford to Dawn, the Board ought to consider this estimate flawed, low-end and with limited applicability.

Implications for Earnings Sharing Mechanism

Union's reply states "Union agrees with FRPO and CME that the matters should be determined at its next rate case".<sup>4</sup> We submit that Union has not properly stated FRPO's position in the matter as submitted in our reply of January 8, 2010. Without restating the entire position, FRPO will simply include the last paragraph of that submission for the Board's consideration of Union's agreement with our position.

***"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, 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 to be used in negotiation of an equitable settlement of Earnings Sharing in 2009."***

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<sup>4</sup> EB-2008-0411 Union Gas Reply – Under Recovery, Page 7, lines 11-12.

Conclusion

We thank the Board for considering a just approach to this entire matter of the determination of harm and trust that these submissions will be helpful in making a decision in the public interest. As such, we respectfully request that FRPO be awarded its reasonably incurred costs in this aspect of the proceeding.

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