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March 11, 2015

*VIA RESS ELECTRONIC FILING*

**Attention: Kirsten Walli, Board Secretary**
Ontario Energy Board
2300 Yonge Street
27th Floor
Toronto, ON M4P 1E4

Dear Madam Secretary:

**RE: Union Gas Ltd. – Dawn Parkway 2016 Expansion Project – OEB File No. EB-2014-0261**
**GAPLO Written Argument and Brief of Authorities**

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We are the lawyers for the Gas Pipeline Landowners of Ontario ("GAPLO") in the above noted proceeding. Please find enclosed GAPLO's final written argument and brief of authorities.

We trust this is satisfactory.

Yours truly,
SCOTT PETRIE LLP
LAW FIRM

**John D. Goudy**

Encl.

**EB-2014-0261**

# ONTARIO ENERGY BOARD

**IN THE MATTER OF** the *Ontario Energy Board Act, 1998*, S.O. 1998, c. 15, Schedule B, and in particular, S.36 thereof;

**AND IN THE MATTER OF** the *Ontario Energy Board Act, 1998*, S.O. 1998, c. 15, Schedule B, and in particular, S.90(1) thereof;

**AND IN THE MATTER OF** the *Ontario Energy Board Act, 1998*, S.O. 1998, c. 15, Schedule B, and in particular, S.91 thereof;

**AND IN THE MATTER OF** an Application by Union Gas Limited for an Order or Orders for approval of recovery of the cost consequences of all facilities associated with the development of the proposed Lobo C Compressor/Hamilton-Milton Pipeline project;

**AND IN THE MATTER OF** an Application by Union Gas Limited for an Order or Orders granting leave to construct natural gas pipelines and ancillary facilities in the City of Hamilton, City of Burlington, and the Town of Milton, and leave to construct a compressor and ancillary facilities in the Municipality of Middlesex Centre.

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# GAPLO WRITTEN ARGUMENT
# March 11, 2015

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1. The Gas Pipeline Landowners of Ontario ("GAPLO") has intervened in this proceeding in order to hold Union Gas Limited ("Union") to the highest and best standard in its construction of the proposed Hamilton to Milton pipeline, not only on behalf of GAPLO's directly affected landowner member, Karen Hewitt, but also on behalf of all affected landowners.

2. GAPLO is an organization that has been involved in a number of projects over many years and has worked with Union Gas to help improve its construction practices and its form of easement agreement (see Union Gas response to GAPLO IR 1.5, Attachment 1; see also Transcript, Volume 1, page 65, line 21 to page 66, line 2) .

3. A number of important improvements to Union's easement agreement and construction practices were made in the context of Union's NPS 48 Strathroy to Lobo project (EB-2005-0550), but it appears that Union is backtracking on a number of those improvements in this project.

4. Of the concerns and issues raised by GAPLO in this proceeding, only two main issues remain to be decided by the Board:

(a) the abandonment language contained in Clause 1 of the proposed form of easement agreement (Board Issue 7); and,

(b) a series of construction methodology items contained within the Letter of Understanding proposed by Union Gas for this project (Board Issue 6).

**Board Issue 7: Form of Easement Agreement**

5. Pursuant to Section 97 of the *Ontario Energy Board Act*, leave to construct cannot be granted to Union for this project until it has satisfied the Board that it has offered or will offer to each owner of land affected by the approved route or location an agreement in a form approved by the Board.

6. In practical terms, this requires the Board to approve a form of easement agreement as part of its decision on the application for leave to construct. In its issues list, the Board has set the issue as whether the form of easement agreement offered by Union or that will be offered by Union is "appropriate".

7. The Board's Filing Requirements for Electricity Transmission Applications, Chapter 4 (GAPLO Brief of Authorities, **TAB 1**) is instructive in determining what may be appropriate

for an easement agreement on a project such as the proposed Hamilton to Milton pipeline. With respect to its authority under Section 97, the Board states:

(a) "Section 97 operates as a condition precedent to the exercise of the Board's power to grant a leave to construct order pursuant to Section 92 of the Act. Under Section 97, the Board exercises discretion to approve the form of agreements that an applicant may offer to an Ontario landowner in relation to the approved route of the proposed transmission or distribution line." (page 15);

(b) "Appendix A sets out the types of clauses which must be included in an agreement. An applicant must provide this form of agreement to the land owner's attention and it is expected that this form of agreement will be the initial starting point for a negotiation between a landowner and a utility." (page 16); and,

(c) "Please note that adhering to this form of agreement does not limit the Board's discretion to either approve or not approve a form of agreement submitted in a proceeding." (page 28).

8. One of the required clauses set out in Appendix A to the Filing Requirements deals with the decommissioning of utility projects: "A decommission clause should set out that the energy company will be responsible to cover the cost of decommissioning the facilities and restoring any damage done to the easement lands. This clause should also have specific procedures for the decommissioning process." (page 29)

9. While the Board's Filing Requirements do not specifically apply to pipelines, GAPLO submits that the Board should have those requirements in mind when dealing with pipelines. There is no reason why the Board's duty to approve or not to approve the form of landowner agreement should be different for pipeline leave to construct applications than it would be for electricity transmission or distribution project applications.

10. Union has proposed a specific form of easement agreement in this proceeding (subject to the modifications set out in the settlement agreement between the parties) for approval by the Board on the basis that it is "appropriate". GAPLO takes issue with one particular component of the proposed agreement and submits that the form of agreement as proposed with that component is not appropriate.

11. GAPLO requests that the Board approve the form of easement agreement proposed by Union subject to the replacement of the last sentence of Clause 1 with the language from the EB-2005-0550 Strathroy-Lobo easement agreement as follows:

> Replace the sentence:
>
> "*Transferor and Transferee hereby agree that nothing herein shall oblige Transferee to remove the Pipeline from the Lands as part of the Transferee's obligation to restore the lands*."
>
> with the sentence:
>
> "*As part of the Transferee's obligation to restore the Lands upon surrender of its easement, the Transferee agrees at the option of the Transferor to remove the Pipeline from the Lands. The Transferee and the Transferor shall surrender the easement and the Transferee shall remove the Pipeline at the Transferor's option where the Pipeline has been abandoned. The Pipeline shall be deemed to be abandoned where: a) corrosion protection is no longer applied to the Pipeline, or, b) the Pipeline becomes unfit for service in accordance with Ontario standards. The Transferee shall, within 60 days of either of these events occurring, provide the Transferor with notice of the event. Upon removal of the Pipeline and restoration of the Lands as required by this agreement, the Transferor shall release the Transferee from further obligations in respect of restoration. This provision shall apply with respect to all Pipelines in the Dawn-Trafalgar system on the Transferor's Lands*."

12. GAPLO submits that the language it has proposed for Clause 1 of the easement agreement is appropriate. It comes directly from the EB-2005-0550 Strathroy to Lobo project. The language provides an option to the landowner to require Union Gas to remove its pipeline(s) from the landowner's property where Union Gas chooses to abandon the pipeline.

13. Union submitted to the Board in the EB-2005-0550 proceeding that that language was appropriate, and the Board approved that language as part of its decision to approve the form of easement agreement for that project (GAPLO Brief of Authorities, **TAB 2)**.

14. Union Gas again submitted to the Board in the EB-2007-0633 proceeding that that language was appropriate, and the Board approved that language as part of its decision to

approve the form of easement agreement for that project (GAPLO Brief of Authorities, **TAB 3**; see also GAPLO Written Evidence, Attachment 4).

15. Very similar language was also approved by the Board as appropriate in the EB-2009-0422 proceeding for the Dawn Gateway project (Board Decision and Order at GAPLO Brief of Authorities, **TAB 4**; Exhibit K1.4 Minutes of Settlement at GAPLO Brief of Authorities, **TAB 5**). Union was a party to this settlement and the abandonment provision (which made pipeline removal mandatory on abandonment) applied to Union's pipelines on affected properties.

16. Thus, on two previous occasions Union has submitted to the Board that the abandonment language proposed by GAPLO in this proceeding is appropriate and on both of those occasions the Board has agreed and has approved the abandonment language. In a third case, Union has proposed and the Board has approved even stronger abandonment language. What GAPLO is proposing in this proceeding is nothing new.

17. GAPLO is proposing that the Board impose a requirement that landowners have the option to require the removal of Union's pipelines upon abandonment. This option is vitally important for pipeline landowners because Ontario has effectively no regulation respecting pipeline abandonment.

18. In Ontario, the Technical Standards and Safety Authority ("TSSA") is responsible for the oversight of pipeline operations. Through the *Technical Standards and Safety Act, 2000* pipeline companies in Ontario are obligated to meet the requirements of the CSA Standard as modified by the code adoption document in place at the relevant time.

19. However, the CSA standard does not prescribe any specific requirements for pipeline abandonment. The standard in place currently (Z662-11) only requires that a company undertake an assessment that is to include consideration of various factors (see GAPLO Written Evidence Statement, para. 10).

20. There is no requirement to obtain the approval of the Government of Ontario, the TSSA, the Board, or any other regulatory body. So long as a company undertakes an assessment prior to abandonment, it is the company's decision as to how a pipeline will be abandoned.

21. There is no public hearing process required prior to abandonment. There is no obligation on the company to consult with landowners prior to abandonment. As it stands, landowners have no authority over or part in the decision-making process relating to

pipeline abandonment on their properties outside of any authority specified in the easement agreements (or expropriation orders) that are approved by the Board as part of its leave to construct decisions.

22. The new draft CSA standard reviewed by Union's witnesses at the oral hearing in this proceeding makes very little difference to the current regulatory situation in Ontario. If adopted, the draft CSA standard would require only that there be a "documented" abandonment plan produced by the company.

23. While that abandonment plan is to include landowner consultation, there would still be no requirement for a company to implement any landowner proposals concerning abandonment. There would still be no approval required by a company from landowners or any regulatory authority prior to abandonment. There would still be no public hearing process or any forum in which landowners would have the right to make submissions about how abandonment of a pipeline on their property was to take place.

24. There is no evidence that pipeline landowners have had any part in the creation of the draft CSA standard. Union's witness that was involved in the review of the standard confirmed that there were no landowner's involved in his committee (see Transcript, Volume 1, page 53, lines 7-14).

25. GAPLO disagrees with Union's submission that the CSA standard is any indication that TSSA has the jurisdiction over abandonment and is intending to exercise it or will be "making a decision" (see Transcript, Volume 1, page 162, line 25 to page 163, line 17). Union referred to the TSSA developing appropriate committees and suggested that the TSSA is going to work on the issue of abandonment (see Transcript, Volume 1, page 165, lines 6 to 14), but there is no evidence of any action on the part of the TSSA. There is only some evidence of the CSA's process to update its code for pipelines.

26. In any event, the TSSA does not have exclusive jurisdiction over pipeline abandonment that would preclude the OEB from addressing the issue of pipeline abandonment ("decommissioning" as used in the Board's Filing Requirements referenced above) as part of the easement agreement in this proceeding as it has done in at least three previous proceedings (EB-2005-0550, EB-2007-0633 and EB-2009-0422).

27. The regulatory void in Ontario contrasts sharply with the situation applicable to federally regulated pipelines, including federally regulated pipelines located in Ontario. Under the *National Energy Board Act*, a company must apply for approval of pipeline

abandonment and the National Energy Board ("NEB") must hold a public hearing (see Sections 24 and 74, GAPLO Brief of Authorities, **TAB 6**). The determination of how a pipeline is to be abandoned will be decided as a result of that hearing process, with landowners having the opportunity to participate in the decision-making process. The decisions about pipeline abandonment are made by the regulator, not the company.

28. There is also nothing in Ontario that specifies that any regulatory body retains jurisdiction over abandoned pipelines. The TSSA regulates the operation of pipelines, but once a pipeline is abandoned there is no longer any regulation of the pipeline.

29. This further regulatory void poses additional problems for landowners in Ontario. The company chooses how to abandon its pipeline and then, following abandonment, there is no regulatory oversight for the abandoned pipeline. Where a pipeline is abandoned in place, landowners facing negative impacts such as subsidence, collapse, creation of water conduits and residual contamination have only the company to look to for the resolution of problems (see GAPLO Written Evidence, Attachments 5 and 6).

30. However, if the company is insolvent, no longer exists, or even resists rectifying deficiencies, Ontario landowners will have no effective recourse. Union's stated practice of not surrendering the easement while the pipe remains in place does not address this concern (see Transcript, Volume 1, page 59, lines 7-8). The absence of regulation of pipeline abandonment in Ontario puts landowners at risk for the effects of pipelines abandoned in place.

31. This again contrasts with the situation in the federal context. While the NEB has previously taken the position that it loses jurisdiction once the pipeline is abandoned, the NEB still has the authority to impose conditions at the time that it approves the abandonment of a pipeline. Through these conditions, the NEB may extend its regulatory oversight into the future.

32. The federal government has also introduced Bill C-46, the *Pipeline Safety Act*, which would clarify that the NEB does retain jurisdiction over pipelines that are abandoned in place (GAPLO Brief of Authorities, **TAB 7**). This bill has now unanimously passed second reading in the House of Commons (GAPLO Brief of Authorities, **TAB 8**).

33. Although Union has previously submitted to the Board that a landowner option to require removal of an abandoned pipeline is an appropriate component of the easement agreement (EB-2005-0550 and EB-2007-0633), it now takes the position that the

agreement should not create the possibility that landowners could require Union to remove its pipeline on abandonment.

34. Union has suggested that it will comply with all applicable codes and regulations when it abandons its pipelines. As noted above, there are no codes and regulations in place in Ontario currently that prescribe how a pipeline must be abandoned. Union, therefore, is only committing to follow its own decision about how to abandon its pipelines. This does nothing to answer the concerns of pipeline landowners about the effects of abandonment in place and the regulatory void in Ontario.

35. Union has also suggested that it would be inappropriate to provide landowners with the option to require the removal of abandoned pipelines because that option may conflict with future regulatory requirements that may exist. However, should regulations or regulatory decisions be made in the future that would not allow the removal of an abandoned pipeline at the landowner's option, the result would simply be to frustrate the landowner option under the agreement and to excuse Union Gas from compliance with that provision (see *Canadian Alliance of Pipeline Landowners' Assn*. v. *Enbridge Pipelines Inc*., 2006 CarswellOnt 7980 at para. 38, GAPLO Brief of Authorities, **TAB 9**).

36. To the extent that there is a conflict (as speculated by Union), the conflict will be resolved in favour of the regulatory requirements. The agreement would not, as Union's witness put it, "circumvent that process" (see Transcript, Volume 1, page 57, lines 10-12).

37. In the absence of regulation of pipeline abandonment in Ontario, and in the absence of a venue in which landowners will have the opportunity to take part in the decision-making process for pipeline abandonment on their properties, GAPLO submits that landowners must have the option to require the removal of the pipeline on abandonment. The Board should approve Union's proposed form of easement agreement only with the change requested by GAPLO.

38. In the alternative, should the Board determine that it will not hold Union to the same standard as was met in EB-2005-0550, EB-2007-0633 and EB-2009-0422, then GAPLO asks that the Board at the very least require the removal of the last sentence of Clause 1 as proposed by Union ("*Transferor and Transferee hereby agree that nothing herein shall oblige Transferee to remove the Pipeline from the Lands as part of the Transferee's obligation to restore the lands*.") as a condition of approval under Section 97.

39. Union Gas takes the position that the easement agreement should not limit its options for abandonment in the future. Union suggests that abandonment will not come for many years and that the agreement with landowners at this time should not prescribe how a pipeline may be abandoned in the future.

40. Yet, the clause proposed by Union Gas will have the effect of circumscribing a landowner's options in the future with respect to pipeline abandonment. Should a landowner in the future have the opportunity to participate in the decision-making process concerning the abandonment of a pipeline on his or her property (an opportunity that does not currently exist), that landowner will be restricted in what position he or she may take as a result of the last sentence of Clause 1 as proposed by Union.

41. The last sentence of Clause 1 states that the landowner agrees that nothing in the agreement creates an obligation on the part of Union to remove its pipeline on abandonment. As the agreement requires Union to remove all debris and to restore the easement in all respects to its previous productivity and fertility, the last sentence means that the landowner is agreeing that Union will have completely restored the easement and carried out all of its reclamation obligations under the agreement without having removed the pipeline.

42. In the future, the landowner will be exposed to the argument that he or she has already agreed that the pipeline does not need to be removed from the easement in order for Union to carry out its restoration of the surface of the lands in accordance with the easement agreement. The landowner will effectively be precluded from asking any applicable regulatory authority to require Union to remove its pipeline on abandonment.

43. Thus, while Union argues against defining the scope of pipeline abandonment activities in the easement agreement, its proposed form of easement agreement does just that. The proposed form of easement agreement sets the stage for leaving the pipeline in place at the time of abandonment.

44. And if Union's submission is that the intent of the last sentence of Clause 1 is not to limit the landowner's options in the future, then the question is what purpose the sentence serves at all. At a minimum, the Board should require the removal of that sentence as a condition of granting approval of the form of easement agreement proposed by Union for this project.

45. If the Board chooses to agree with Union that a landowner option for pipeline abandonment will is not appropriate and that the method of abandonment must be left open for determination, then the Board should leave the issue truly open for both parties.

**Board Issue 6: Construction Methodology**

46. The other orders sought by GAPLO in this proceeding relate to Union's construction methodology for the pipeline project. All of the items being requested by GAPLO can be incorporated into the Letter of Understanding that Union has committed to offering to landowners in the Settlement Agreement, and GAPLO would propose that the Board order specific changes to be made to the Letter of Understanding. This could be done through a condition of approval that Union offer to landowners the Letter of Understanding in the form appended to the Settlement Agreement in this proceeding but incorporating any additional changes ordered by the Board.

47. Although the construction methodology items requested by GAPLO could be ordered by the Board as individual conditions of approval, GAPLO submits that the items will be more effectively instituted through amendments to the Letter of Understanding. The items proposed by GAPLO belong in the Letter of Understanding and will be communicated to landowners more effectively through the Letter of Understanding than they would be as stand-alone conditions of approval appended to the Board's decision in this proceeding.

48. In advance of the oral hearing, GAPLO filed a table setting out the changes it is requesting to the Letter of Understanding items (Exhibit K1.3). During the oral hearing, Union agreed to some of the proposed changes and GAPLO indicated that it would be withdrawing some of the requests for specific items.

49. GAPLO has attached as **Schedule "A"** to these submissions a listing of the construction methodology items it is now requesting from the Board. For completeness, GAPLO has also included in Schedule "A" the commitments made by Union Gas during the oral hearing that GAPLO would propose should be addressed through revisions to the Letter of Understanding. Schedule "A" does not include other commitments confirmed by Union's witnesses during the oral hearing that do not affect the Letter of Understanding.

50. The changes that GAPLO is requesting that the Board order are reflective of construction methodology items taken directly from EB-2005-0550 (see GAPLO Written Evidence, Attachment 12), EB-2007-0633 (see GAPLO Written Evidence, Attachment 4) and EB-2009-0422 (see GAPLO Brief of Authorities, **TAB 5**). In fact, with few exceptions,

the wording proposed is taken directly from the Letters of Understanding applicable to those three projects.

51. As noted above, Union is backtracking from several important commitments that it has made to landowners on previous pipeline projects, including on the Strathroy to Lobo section of the same transmission system to which the Hamilton to Milton section belongs. For the most part, the changes made by Union Gas to the Letter of Understanding for Hamilton to Milton with which GAPLO takes issue are changes that take away landowner choice in how construction will take place on the landowner's property.

52. GAPLO does not submit that the landowner should direct and control Union's construction of its pipeline, but GAPLO does submit that the landowner should play a role in certain aspects of the protection of soils in the areas affected by construction. Each of the items proposed by GAPLO (as set out in Schedule "A") concerns the protection of soil during construction and the restoration of soil following construction:

(a) Provision for a mulch layer between existing topsoil and the stripped topsoil pile where there is no crop present (i.e. where no buffer already exists);

(b) Overwintering of stripped topsoil at the request of the landowner;

(c) Where topsoil is overwintered, restoration of identifiable subsidence in excess of 2 inches with the importation of topsoil;

(d) Stone-picking by hand and/or with a mechanical stone-picker of stones down to a size of 2 inches or larger in the first two years following construction and thereafter where there is a demonstrable need;

(e) Landowner approval of the source of any topsoil to be imported by Union to the landowner's property; and,

(f) Application of a penalty or deterrent where Union conducts construction activities in wet soil conditions.

53. In GAPLO's submission, the items it has requested are of sufficient importance for landowners and the protection of their agricultural lands that they should not be left to Union's preference alone.

54. In their evidence, Union's witnesses at the oral hearing suggested that Union consults with landowners on soils issues and referred to the dispute resolution mechanism available to landowners where there is disagreement with Union over construction

practices. However, neither consultation nor a dispute resolution mechanism provides assurance to landowners that the soils on their properties will protected to the level required by the landowner.

55. Again, GAPLO is not proposing blanket landowner approval of Union's construction practices, but GAPLO is proposing landowner participation in decision-making concerning certain soils-related construction practices. And what GAPLO is proposing is nothing more than the same rights of participation that landowners on other Union projects have enjoyed.

56. With respect to GAPLO's proposal for the landowner option for a mulch layer to protect virgin topsoil:

(a) Union suggests that the equipment operators moving topsoil during construction are skilled, but acknowledges that a mulch layer can be a benefit to assure that the operator does not take virgin topsoil when removing the stripped topsoil pile (see Transcript, Volume 1, page 122, lines 4-15);

(b) Union acknowledged that where it had applied a mulch layer between virgin topsoil and a stripped topsoil pile, the mulch layer remained in place at the time the stripped topsoil pile was removed (see Transcript, Volume 1, page 95, lines 7-8 and page 120, lines 17-25);

(c) Union acknowledged that a mulch layer could also assist in preventing the sticking together of the stripped topsoil and the virgin topsoil (see Transcript, Volume 1, page 122, lines 16-19; see also Transcript, Volume 1, page 150, lines 3-13);

(d) Union acknowledged that the addition of a mulch layer would act as a buffer or protection against possible equipment operator error in moving topsoil (see Transcript, Volume 1, page 123, lines 8-12);

(e) GAPLO submits that landowners should have the option of requiring a mulch layer to minimize, if not eliminate the risk of disturbance of virgin topsoil beneath stripped topsoil piles. Landowners should not have to rely in all cases on Union's confidence in the skill of its construction contractor's equipment operators.

57. With respect to GAPLO's proposal for overwintering of topsoil at the request of the landowner:

(a) Union suggests that it is in the best interest of the landowner to restore stripped topsoil as soon as possible (see Transcript, Volume 1, page 80, lines 2-4);

(b) Union says that it does not want to leave it to the landowner to slow down the process of returning the land back to productivity (see Transcript, Volume 1, page 80, lines 10-13);

(c) However, Union acknowledges that if a landowner exercised the option to have topsoil overwintered on the landowner's property, it would be the landowner's choice to extend the presence of the construction operation on the property for an additional year (see Transcript, Volume 1, page 114, lines 7-15);

(d) In spite of Union's reference generally to landowner consultation concerning construction issues (see Transcript, Volume 1, page 104, lines 9-13), Union acknowledges that its preference is not to overwinter topsoil unless required because of improper soil conditions in the year of construction and that landowners can expect that preference to extend to Union's soil consultant (see Transcript, Volume 1, page 119, line 26 to page 120, line 11);

(e) The result is that, irrespective of the reasons a landowner may have for preferring the overwintering of stripped topsoil on the landowner's property, Union is likely to force the replacement of stripped topsoil in the year of construction;

(f) This was particularly evident in Union's submissions in which it was suggested for the first time that Union's reason for avoiding the overwintering of stripped topsoil on one property was because it might affect Union's construction activities on adjacent properties (see Transcript, Volume 1, page 168, lines 18-27);

(g) There are a number of reasons why landowners might want to have stripped topsoil overwintered by Union rather than replaced in the year of construction even where soil conditions would allow replacement in the year of construction, including:

(i) the ability to address subsidence and/or crowning (negative-subsidence) prior to topsoil replacement when the subsidence and/or crowning is easily visible (see Transcript, Volume 1, page 120, lines 13-23);

(ii) the minimization of subsidence and/or crowning (see Transcript, Volume 1, page 148, lines 17-22);

(iii) to allow settlement of subsoil prior to topsoil replacement sufficient to avoid conditions of loose soil that affects the workability of the soil and contributes to the risk of erosion following topsoil replacements (see Transcript, Volume 1, page 146, line 20 to page 147, line 4);

(h) For a landowner whose property is being disassembled by Union for the construction of a pipeline, the ability to choose whether stripped topsoil will be overwintered is important and is the least that the landowner deserves;

(i) Overwintering of topsoil has been the option of landowners on past Union projects and Union acknowledges that it can have benefits for the land. However, Union's refusal to allow the landowner option in this project virtually guarantees that overwintering of stripped topsoil will not take place unless required by adverse soil conditions in the year of construction;

(j) GAPLO submits that the Board should provide the option to landowners to require overwintering of stripped topsoil so that landowners are assured an effective part in the decision-making process related to a vital aspect of the landowner's property.

58. With respect to GAPLO's proposal for the remediation of subsidence in excess of 2 inches where topsoil has been overwintered:

(a) Union acknowledges that the effect of subsidence on possible mixing of topsoil and subsoil will depend on the depth of topsoil on the property (see Transcript, Volume 1, page 85, lines 17-22);

(b) However, Union's proposal to remediate subsidence only in excess of 4 inches (except where drainage is affected) is not dependent on topsoil depth or on any other soil conditions or agricultural practices;

(c) Union's proposal suggests that subsidence of between 2 inches and 4 inches following construction is acceptable;

(d) GAPLO submits that subsidence of greater than 2 inches is not acceptable and requests that the Board require remediation of such subsidence, which is the standard that was applied in Union's projects in EB-2005-0550 and in EB-2007-0633.

59. With respect to GAPLO's proposal for stone-picking of stones 2 inches in diameter and larger in the two years following construction and thereafter where demonstrably necessary:

(a) Union suggests that if a landowner removes stones of 4 inches and larger off lands adjacent to the construction area, then it is appropriate for Union to do the same on the construction area (see Transcript, Volume 1, page 88, lines 14-20);

(b) Although it agreed to do so in the Strathroy-Lobo construction (and in the EB-2007-0633 project as well), Union now takes the position that it will not agree to pick stones down to a size of 2 inches on the construction area to bring that area into consistency with the lands adjacent to the construction area;

(c) Union refers to the potential problem of removing topsoil through the use of mechanical stone-picking equipment as a reason not to pick stones to a size of 2 inches in diameter (see Transcript, Volume 1, page 89, lines 1-6);

(d) However, the Strathroy to Lobo Letter of Understanding provides for stone-picking either by hand or by using mechanical equipment. Union's stated concern about the removal of soil through use of mechanical equipment is already addressed in the Strathroy to Lobo Letter of Understanding and in GAPLO's proposal in this proceeding through the option to pick stones by hand;

(e) GAPLO also requests that Union be required to return to pick stones beyond two years after construction where there is a demonstrable need. This was a commitment in the Strathroy to Lobo Letter of Understanding and, although Union appears to be committed to doing so for this project, Union does not want to include the commitment in the Letter of Understanding (see

Transcript, Volume 1, page 91, lines 3 to 7). GAPLO submits that the commitment should be communicated upfront to landowners in the Letter of Understanding.

60. With respect to GAPLO's proposal that any topsoil to be imported to a landowner's property must be from a source approved by the landowner:

(a) Union acknowledges that it wants to work with the landowner to ensure the landowner is comfortable with the topsoil imported by Union to the landowners property, that the property is the landowner's property, and that it is the landowner who will need to work the topsoil in the future (see Transcript, Volume 1, page 104, lines 20-25);

(b) Yet, at the end of the day, Union is not prepared to commit that it will not import topsoil to a landowner's property against the wishes of the landowner;

(c) GAPLO submits that it is reasonable that a landowner should have a say in the source of soil to be imported to the landowner's property as a result of Union's pipeline construction, and requests that the Board require that topsoil imported by Union be from a source approved by the landowner.

61. With respect to GAPLO's proposal that Union apply the damages penalty in respect of construction activities conducted in wet soil conditions:

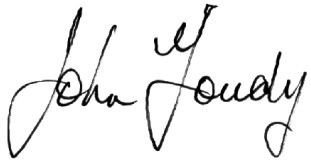
(a) Union acknowledges that the penalty provision is part of the Integrity Dig Agreement that applies to maintenance operations on the properties affected by the Hamilton to Milton pipeline (see Transcript, Volume 1, page 111, lines 3-8; see also GAPLO Written Evidence, Attachment 11, GAPLO-Union Gas Limited Pipeline System Integrity Dig Agreement, Addendum D-2, page GAPLO 252);

(b) However, Union is not prepared to submit to the same deterrence mechanism on its pipeline construction.

(c) The penalty proposed by GAPLO has been used in the past by Union in EB-2005-0550 and EB-2007-0633. The removal of the penalty in this project will only serve to increase the potential for construction activities in wet soil conditions. In GAPLO's submission, this would be a step backwards that should be prevented by the Board.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED.**

Dated at London, Ontario this 11th day of March, 2015.



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| **2. Testing For Soybean Cyst Nematode**<br>In consultation with the Landowner, the Company agrees to sample all agricultural easements along the pipeline route of this Project, before construction, and any soils imported to the easement lands for the presence of soybean cyst nematode (SCN) and provide a report of test results to the Landowner. In the event the report indicates the presence of SCN, the Company will work with OMAFRA to develop the most current best practice at the time of construction. The Company will also test for SCN whenever it is conducting post-construction soil tests. | Union Commitment – **CHANGE TO:** "the Company will work with OMAFRA to develop a best practices protocol to handle SCN when detected and will employ the most current best practice at the time of construction." (see Transcript, Volume 1, p. 73, line 25 to p. 74, line 6) |
| **4. Water Wells**<br>To ensure that the quality and quantity (i.e. static water levels) of well water and/or the well itself is maintained, a monitoring program will be implemented for all dug or drilled wells within 100 metres of the proposed pipeline and for any other wells recommended by the Company's hydrogeology Consultant. All samples will be taken by the Company's environmental personnel and analyzed by an independent laboratory. Results of testing will be summarized in a letter and will be provided to the Landowner.<br><br>Should well water (quantity and/or quality) or the well itself, be damaged from pipeline installation/operations, a potable water supply will be provided and the water well shall be restored or replaced as may be required. | Union Commitment – **ADD:** "Lab testing results will be made available to the Landowner on request." (see Transcript, Volume 1, p. 74, lines 7-15) |
| **6. Topsoil Stripping**<br>Prior to installing the pipeline in agricultural areas, the Company will strip topsoil from over the pipeline trench and adjacent subsoil storage area. All topsoil stripped will be piled adjacent to the easement and temporary land use areas in an area approximately 10 metres (33') in width. The topsoil and subsoil will be piled separately and the Company will exercise due diligence to ensure that topsoil and subsoil are not mixed. If requested by the Landowner, topsoil will be ploughed before being stripped to | GAPLO Proposal – **ADD:** "At the request of a landowner a mulch layer will be provided between the existing topsoil and the stripped topsoil pile in situations where a crop is not present." (see GAPLO Written Evidence, Attachment 12, Strathroy-Lobo LOU, para. 1(a), page GAPLO 255) |

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| a depth as specified by the Landowner.<br><br>The Company will strip topsoil across the entire width of the easement (at the request of the Landowner), provided also that a temporary right to use any necessary land for topsoil storage outside the easement is granted by the Landowner.<br><br>If requested by the Landowner the Company will not strip topsoil. The topsoil/subsoil mix will be placed on the easement on top of the existing topsoil.<br><br>At the recommendation of the Company's Soils Consultant, topsoil will be over-wintered and replaced the following year. In these circumstances the Company will replace the topsoil such that the easement lands are returned to surrounding grade. | GAPLO Proposal – **CHANGE TO:** "At the recommendation of the Company's Soils Consultant and/or at the request of the landowner topsoil will be over-wintered and replaced the following year." (see GAPLO Written Evidence, Attachment 12, Strathroy-Lobo LOU, para. 1(h), page GAPLO 256) |
| **8. Levelling of Pipe Trench**<br>During trench backfilling the Company will remove any excess material after provision is made for normal trench subsidence. The Landowner shall have the right of first refusal on any such excess material. The Company's representative will consult with the Landowner prior to the removal of any excess material.<br><br>If topsoil is replaced in the year of construction and trench subsidence occurs the year following construction, the following guidelines will be observed:<br>i) 0 to 4 inches - no additional work or compensation.<br>ii) Greater than 4 inches - the Company will either:<br>(a) Strip topsoil, fill the depression with subsoil and replace topsoil, or<br>(b) Repair the settlement by filling it with additional topsoil.<br><br>If topsoil is replaced during the year of construction and mounding over the trench persists the year following construction, the following guidelines will be observed by the | |

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| Company:<br>i) 0 to 4 inches - no additional work or compensation;<br>ii) Greater than 4 inches the Company will strip topsoil, remove the excess subsoil and replace the stripped topsoil;<br>iii) Should adequate topsoil depth be available, the mound can be levelled with the approval of the Landowner.<br><br>If the topsoil is over wintered and subsidence occurs in the year following top soil replacement the following guidelines will be observed:<br>i) 0 to 4 inches - no additional work or compensation.<br>ii) Greater than 4 inches - the Company will repair the settlement by filling it with additional topsoil.<br><br>If the construction of the pipeline causes a restriction of the natural surface flow of water, due to too much or not enough subsidence, irrespective of the 4 inches level stated above, the Company will remove the restriction by one of the methods described above. | GAPLO Proposal – **CHANGE TO:** "If following over-wintering of the topsoil, return to grade and the establishment of a cover crop, there is identifiable subsidence in excess of 2 inches the Company will restore the affected area to grade with the importation of topsoil." (see GAPLO Written Evidence, Attachment 12, Strathroy-Lobo LOU, para. 1(j), page GAPLO 256) |
| **9. Topsoil Replacement, Compaction Removal and Stone Picking**<br><br>The subsoil will be worked with a subsoiling implement, as agreed by the Company and Landowner.<br><br>Unless there is an agreement to the contrary, the Company will remediate any residual compaction in the subsoil prior to return of topsoil.<br><br>The Company will pick stones prior to topsoil replacement.<br><br>Stone picking will be completed, by hand or by mechanical stone picker to a size and quantity consistent with the adjacent field, but not less than stones 100 mm (4 inches) in diameter. After topsoil replacement, the topsoil will be tilled with an implement(s) as agreed by the | |

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| Company and Landowners.<br><br>After cultivation, the Company will pick stones again.<br><br>The Company will perform compaction testing on and off the easement before and after topsoil replacement and provide the results to the Landowner, upon request.<br><br>If agreed to by the parties, the Company will return in the year following construction and will cultivate the easement area. When necessary, to accommodate planting schedules, the Landowner should perform cultivation themselves, at the Company's expense (see Schedule of Rates attached as Schedule 3).<br><br>The Company shall, at a time satisfactory to the Landowner, return to pick stones 100 mm (4 inches) or larger in the following two years after construction, where there is a demonstrable need. | GAPLO Proposal – **CHANGE TO:** "The Company shall, at a time satisfactory to the landowner, pick stones 50 mm (2") or larger in diameter by hand/or with a mechanical stone picker in each of the first two years following construction. The Company shall, at a time satisfactory to the landowner, return to pick stones 50 mm (2") or larger in the following years where there is a demonstrable need." (see GAPLO Written Evidence, Attachment 12, Strathroy-Lobo LOU, para. 6.5, page GAPLO 267) |
| **12. Access Across the Trench**<br>Where requested by the Landowner, the Company will leave plugs for access across the trench to the remainder of the Landowner's property during construction. Following installation of the pipe and backfill, if soft ground conditions persist that prevent the Landowner from crossing the trench line with farm equipment, the Company will improve crossing conditions either by further replacement and/or compaction of subsoil at the previous plug locations.<br><br>Should conditions still prevent Landowner crossing, the Company will create a gravel base on filter fabric across the trench line at the previous plug locations and remove same at the further request of the landowner. | Union Commitment - **ADD:** "Following construction, the Company shall ensure that the landowner shall have access across the former trench area and easement." (see Transcript, Volume 1, p. 98, line 13 to p. 99, line 25; see also GAPLO Written Evidence, Attachment 12, Strathroy-Lobo LOU, para. 1(u), page GAPLO 259) |

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| **15. Covenants**<br><br>Company covenants as follows:<br><br>xx) Any imported topsoil shall be natural, free of SCN and shall have attributes consistent with the topsoil of adjacent lands as determined by the Company's Consultant. | GAPLO Proposal - **ADD:** "and be from a source approved by the landowner" (see GAPLO Written Evidence, Attachment 12, Strathroy-Lobo LOU, para. 1(bb), page GAPLO 260) |
| **SCHEDULE 6**<br>**Wet Soils Shutdown**<br><br>*The following sets out the Wet Soils Shutdown practice of Union Gas Limited for pipeline construction, repair and maintenance on agricultural lands.*<br><br>While constructing the Company's pipeline the Company's senior inspectors inspect right-of-way conditions each day before construction activities commence for that day. If, in the judgment of these inspectors, the right-of-way conditions on agricultural lands are such that construction would have an adverse affect on the soils due to wet soils conditions, the contractor is prohibited from starting construction activities. The inspectors shall consider the extent of surface ponding, extent and depth of rutting, surface extent and location of potential rutting and compaction (i.e., can traffic be re-routed within the easement lands around wet area(s) and the type of equipment and nature of construction proposed for that day. The wet soil shutdown restriction would be in effect until, in the judgment of the Company representatives, the soils would have sufficiently dried to the extent that commencing construction activities would have no adverse affects on the soils.<br><br>Wet soils shutdown is a routine part of Union's normal management process for pipeline construction activities. In recognition of this, Union budgets for and includes in contract documents, provisions for payment to the pipeline contractors for wet soils shutdown thereby removing any potential incentive for the contractor to work in wet conditions. | |

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| In addition, Union's inspection staff is responsible for ensuring that construction activities do not occur during wet soils shutdown. This would include shutting down construction activities if soils became wet during the day.<br><br>It should, however, be recognized that there may be situations when construction activities cannot be carried out during the normal construction period due to delays in project timing and it may become necessary to work in wet conditions in the spring or fall of the year. Where construction activities are undertaken by the Company in wet soil conditions, additional mitigation measures may be put in place to minimize resulting damages. Mitigation measures may, where appropriate, be developed by Union on a site specific basis and may include avoiding certain areas, full easement stripping, geotextile roads, the use of swamp mats, or the use of other specialized equipment where deemed appropriate by Union. Union will authorize work in wet soils conditions only when all other reasonable alternatives have been exhausted. | GAPLO proposal – **ADD:** "Where construction activities are undertaken by the Company in wet soil conditions (as determined by the monitor), the Company shall pay to the landowner 150 % of disturbance and crop loss damage compensation on the area affected by the activities (area also to be determined by the construction monitor). The 150 % payment applies only once to any one area; on areas where the 150 % payment is applied, the landowner forfeits the right to top-up of crop loss damages under the L.O.U. The 150 % payment does not affect the landowner's right to request an independent soils consultant where crop loss exceeds 50 % in the fifth year following construction." (see GAPLO Written Evidence, Attachment 12, Strathroy-Lobo LOU, Schedule 5, page GAPLO 275) |