

ONTARIO ENERGY BOARD

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| FILE NO.: | EB‑2014-0261 |  |
| VOLUME:DATE:BEFORE: | 1March 5, 2015Marika HareEllen Fry | Presiding MemberMember |

**EB-2014-0261**

THE ONTARIO ENERGY BOARD

IN THE MATTER OF the Ontario Energy Board Act, 1998, S.O. 1998, c. 15, Schedule B (the "Act");

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, the City of Burlington, and the Town of Milton;

AND IN THE MATTER OF an application by Union Gas Limited for an order or orders granting leave to construct a compressor

station in the Municipality of Middlesex Centre;

AND IN THE MATTER OF an application by Union Gas Limited for an order or orders for pre-approval of recovery of the cost consequences of all facilities associated with the development of natural gas pipelines and ancillary facilities and the compressor station.

Hearing held at 2300 Yonge Street,

25th Floor, Toronto, Ontario,

on Thursday, March 5th, 2015,

commencing at 9:38 a.m.

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VOLUME 1

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BEFORE:

MARIKA HARE Presiding Member

ELLEN FRY Member

 A P P E A R A N C E S

LJUBA DJURDJEVIC Board Counsel

ZORA CRNOJACKI Board Staff

PASCALE DUGUAY

CRAWFORD SMITH Union Gas Limited

KAREN HOCKIN

MARK KITCHEN

MARK MURRAY

JOHN GOUDY Gas Pipeline Landowners of

 Ontario (GAPLO)

MARK RUBENSTEIN School Energy Coalition (SEC)

VIA TELECONFERENCE:

JOANNA KYRIAZIS Association of Power Producers of Ontario (APPrO)

EMMA BLANCHARD Canadian Manufacturers & Exporters (CME)

--- Upon commencing at 9:38 a.m. 1

APPEARANCES 2

SUBMISSIONS BY MR. SMITH 5

SUBMISSIONS BY MR. JOHN GOUDY 26

UNION GAS LIMITED - PANEL 1 31

S. Walker, R. Piett, W. Wachsmuth, A. Vadlja, D. Wesenger

EXAMINATION-IN-CHIEF BY MR. SMITH 31

QUESTIONS BY THE BOARD 44

--- Recess taken at 10:52 a.m. 45

--- Upon resuming at 11:18 a.m. 45

CROSS-EXAMINATION BY MR. JOHN GOUDY 45

--- Luncheon recess taken at 12:40 p.m. 93

--- Upon resuming at 1:51 p.m. 93

PRELIMINARY MATTERS 93

CROSS-EXAMINATION BY MR. JOHN GOUDY (cont'd) 98

QUESTIONS BY MS. DJURDJEVIC 125

QUESTIONS BY THE BOARD 135

--- Recess taken at 3:17 p.m. 142

--- Upon resuming at 3:43 p.m. 142

GAPLO – PANEL 1 143

I. Goudy, R. Kraayenbrink

EXAMINATION-IN-CHIEF BY MR. JOHN GOUDY 143

CROSS-EXAMINATION BY MS. DJURDJEVIC 155

SUBMISSIONS BY MR. SMITH 157

--- Whereupon the hearing adjourned at 4:52 p.m. 173

EXHIBIT NO. K1.1: WITNESS PANEL CVs. 36

EXHIBIT NO. K1.2: CANADIAN STANDARDS ASSOCIATION

DRAFT STANDARD Z662. 41

EXHIBIT NO. K1.3: GAPLO TABLE. 71

EXHIBIT NO. K1.4: TECHNICAL STANDARDS AND SAFETY

ACT, 2000, Ontario Regulation 210/01. 158

EXHIBIT NO. K1.5: TECHNICAL STANDARDS AND SAFETY

ACT, 2000. 158

EXHIBIT NO. K1.6: DECISION IN EB-2006-0305. 158

EXHIBIT NO. K1.7: SECTION 72 FROM THE NATIONAL

ENERGY BOARD ACT. 158

No UNDERTAKINGS WERE FILED IN THE COURSE OF THIS PROCEEDING.

 Thursday, March 5, 2015

### --- Upon commencing at 9:38 a.m.

MS. HARE: Please be seated.

 Good morning. My name is Marika Hare, and I will be the presiding member today in the matter of an application brought by Union Gas. With me on the panel is Board Member Ellen Fry.

 The application brought by Union Gas sought approval for approval to construct approximately 20 kilometres of pipeline and associated facilities from the Hamilton valve site to the Milton valve site, leave to construct a new compressor and associated facilities at the existing Lobo compressor station, the recovery of the cost consequences of all facilities associated with the development of the proposed Dawn-Parkway expansion project, and approval of an accounting order to establish the Dawn-Parkway expansion project deferral account, which will include all of the facilities associated with the pipeline and compressor station.

 This application was assigned docket number EB-2014-0261. Following a settlement conference between the applicant and a number of parties, a settlement agreement was filed with the OEB on February 27th, 2015. This is a partial settlement, in that, of the 11 issues on the Issues List, eight have been completely settled and three remain unsettled.

 The purpose of today's hearing is for this Panel to review the settlement agreement and to hear the matters not settled, all of which relate to land matters. It is our understanding that the only party with an interest in pursuing these issues is the Gas Pipeline Landowners of Ontario.

 May I have appearances, please?

 **APPEARANCES:**

 MR. SMITH: Good morning, members of the Board. My name is Crawford Smith. I appear as counsel for Union Gas in this matter. And with me to my left are Karen Hockin and Mark Kitchen from Union Gas, and to my right Mark Murray, also from Union Gas. MS. HARE: Thank you.

 MR. JOHN GOUDY: John Goudy, counsel for the Gas Pipeline Landowners of Ontario, GAPLO.

And also here from GAPLO are Ian Goudy and Rick Kraayenbrink.

 MS. HARE: Thank you.

 MR. JOHN GOUDY: Thank you.

 MR. RUBENSTEIN: Good morning, Panel. Mark Rubenstein, counsel for the School Energy Coalition.

 MS. DJURDJEVIC: Good morning, Ljuba Djurdjevic, counsel for Board Staff, and with me on behalf of Board Staff are Zora Crnojacki and Pascale Duguay.

 MS. HARE: Thank you.

And I understand there are some people on the telephone, on the teleconference?

 MS. BLANCHARD: Good morning, Madam Chair. It's Emma Blanchard on behalf of Canadian Manufacturers & Exporters.

MS. HARE: Thank you, Ms. Blanchard.

Anyone else? Yes?

 MS. KYRIAZIS: Hi, I am Joanna Kyriazis. I am here on

behalf of APPrO.

 MS. HARE: APPrO? Thank you.

 Then Ms. Blanchard will -- Ms. Djurdjevic, will Ms. Blanchard be able to send an e-mail to you in the event she has any questions?

 MS. DJURDJEVIC: Yes, she will.

 MS. HARE: Thank you.

 Mr. Smith, then, the Panel would like to provide you a short overview -- we'd like you to provide us a short overview of the settled issues, and the settled issues we would like to hear first, but -- well, you look like you want to say something.

 MR. SMITH: I can't help it. That is always what I look like. Why don't I let you finish, and then I will maybe --

 MS. HARE: Thank you. So first I would like to let you know that the Panel found the settlement agreement to be lacking in content in some important matters. It is not a standalone document that is understandable without the benefit of going back into the evidence, so more content would have been helpful.

 Now, as it turns out, the Board Staff's submission does provide the detail that was missing on three issues where we felt there was a lack of sufficient explanation, and I will go through each of these with you.

 The settlement agreement on Issue No. 2, dealing with the project economics, is incomplete, as the indication is that the project is at a profitability index of 0.39. The Staff's submission explains in detail that there are three stages of analysis, and that when the stage 3 analysis is considered, the project showed a positive net present value.

 Issue No. 3 in the Board Staff's submission provides additional information on the issue of short-term and long-term rates, and in particular the concern over contingency costs and capacity turnback.

 Issue No. 10 in the Board Staff's submission provides greater clarity on the caveat about parties being able to take any position with respect to the adjustment to the deferral account balance.

 And lastly, Issue No. 5 in the settlement agreement requires some additional wording. I don't think there is a problem there, but the issue as worded is whether the facilities appropriately address the OEB environmental guidelines for hydrocarbon pipelines, but the settlement agreement only comments on the commitment to undertake a post-construction comparative crop yield study.

 So I bring these matters to your attention so that your overview of the settlement agreement can incorporate Union's thoughts on these matters. If consistent with the Board Staff's submission, please state this for the completeness of the record or elaborate to ensure our understanding of what is being proposed.

 So I ask you now to present the settlement agreement with those comments in mind.

 MR. SMITH: I will do that. Thank you very much. That is extremely helpful to receive that guidance from the Board.

 The only observation I was going to make is I know from the hearing plan that the next item is to identify those issues which remain outstanding, and I think, subject to the Board's thoughts, that the easiest way to do that might be, as we go through the settlement agreement, I can just highlight them and we can circle back with those if necessary.

 But why don't I go through the settlement agreement as you have proposed and touch on the points that you have raised?

 MS. HARE: Thank you.

 **SUBMISSIONS BY MR. SMITH:**

 MR. SMITH: So the settlement agreement, as indicated by the Board at the outset, it is a partial settlement and properly characterized as such, but on the non-GAPLO-related issues it is, I think, fairly characterized as a complete or full settlement, and even on the GAPLO issues, as we will come to, those issues which are outstanding, even in respect of those we have a partial -- a partial settlement.

 So the project as identified is an expansion project of Union's Dawn-Parkway system, and it involved really two major types of facilities, 20 kilometres of pipeline and changes to the Lobo station, the addition of a 44,500-horsepower compressor, and some changes that needed to be made to the Lobo A and B compressors in order to maximize the capacity bringing -- that is facilitated by this expansion project.

 By way of overview, the project is being driven by demands that have been contracted for, M12 demands, and are really the result of changes to the natural gas market in North America, which the Board will be well familiar with from its recent Natural Gas Market Review and also from previous Union Gas applications dating back to the Brantford-Kirkwall project and the Parkway D project that the Board heard, I guess, now a couple of years ago.

 So really what we are talking about is an expansion project intended to meet contracted demands and which are facilitating access to short-haul transportation coming from primarily Marcellus shale in the upper northeast United States. And so that is the context and the dynamic and the reason why this project is so important, and it is part and parcel of a series of projects that the Board has been hearing a lot about from Union and, frankly, that the NEB is hearing -- has heard a lot about out in Calgary.

 So let me just go through the settlement agreement.

Item 1 here, no issue, I think, at all. The facilities are needed to meet the forecasted demands, which are reflected in the application, so I don't think that there is any issue with respect to that issue.

 Item 2, which relates to the economic tests as outlined in the filing guidelines, and this was an issue that the Board had identified, and you are quite right. I thought you might raise this issue when you saw this settlement agreement.

Let me cut to it; we agree with the Board Staff's submission. I think it was helpful in pointing out what I would have pointed out, which is the stage 1 analysis results in the profitability index that you see. But of course the economic guidelines also contemplate stages 2 and 3, and those stages are detailed in the evidence and they arrive at the conclusions that Board Staff has set out.

One reason you see the stage 1 analysis where it is, one obvious reason, the profitability or the NPV of the project is calculated based upon existing rates looking at depreciated facilities. So you have existing rates which are based upon the existing Dawn-Parkway system, which, in the main, is now older and depreciated.

What you have here is a new rate which will come about as a result of the inclusion of these new facilities, and an increase in those rates. And the ratepayers who bear primary responsibility for those increases -- i.e. the M12 shippers -- have agreed to the rate increases.

So I think that provides you with the additional information. If not, no doubt you will let me know. But we agree with Board Staff's submission.

This brings me to the next issue, which is Issue 3, and I have talked about the rate impacts already. There are rates for M12 shippers which are going up, and there are some rate decreases because of the way the cost allocation works out on the other side for smaller-volume customers.

Let me say, with respect to the items that are addressed here, there are two things.

The first is contingency. The contingency that you see associated with the application is a little bit larger than you see in some other Union projects; in fact, I think every other Union project.

The reason for that increase is because this project requires approval from the Niagara Escarpment Commission, which is obviously an unknown. We believe it is going to happen, but it is an unknown and it is an additional hurdle that doesn't come up in most applications. And so that reflects the larger contingency.

Ultimately, where the parties landed on this is that they would reduce the contingency by 25 million, which results in a reduction in rates. But there is, as the Board will have seen, a deferral account contemplated by the application.

There is nothing exceptional about that deferral account. The settlement agreement that overarches Union's IRM framework provides for a capital pass-through mechanism, and deferral accounts to track over- and under-spending, which of course itself would be subject to a

prudence review.

So what the parties have agreed to here is that,

consistent with the deferral account, that will reduce the

contingency by the $25 million. It will be spread out between Lobo and the pipeline costs.

Parties are free to take whatever position they want to take when that deferral account comes to clearing. I obviously don't know what that number is going to be, but it is all without prejudice to people's position as to the prudence of the way in which Union undertook the project.

 MS. HARE: So can you confirm that the reduction represents a return to what a norm would be for contingency percentage of a project?

 MR. SMITH: There isn't a single level of contingency, so it's not -- it's not quite as direct as saying a 25 percent reduction takes you to this level of contingency and this level of contingency is consistent across all Union projects.

What I can say is that the reduction of contingency brings you within the range of other Union projects. I don't have the specific percentage off the top of my head, but it would be -- they are not all the same, but it would be in that normal range.

 MS. HARE: Okay. Thank you.

 MR. SMITH: Let me just turn to capacity, because the

capacity turnback was an issue. There was some evidence filed on behalf of certain of the intervenors relating to capacity turnback.

Obviously, one of the things that is happening as a

result of the changing dynamics is that people are using the Dawn-Parkway system and Dawn-Kirkwall loops a little bit differently than they may have in the past. There is identified in Mr. Rosenkranz's evidence and in the evidence from ICF that Union filed affirmatively in its case, comments with respect to capacity turnback and the potential. In a nutshell, there is a disagreement, or was identified in the evidence a potential disagreement with respect to the risk associated with potential capacity turnback.

 Now, this is a tricky issue because the parties also have in place the Parkway delivery obligation settlement, and you might recall that there is an obligation to deliver gas to Parkway and the parties reached a comprehensive settlement approved by the Board to, over time, reduce that commitment if -- in part, if turnback becomes available, or it may be that other ways need to be found to reduce that obligation.

So there are a number of moving parts here. The long and the short of it was that parties are comfortable, as

reflected in the settlement, that whatever the risk is, it's not going to materialize during the IRM term.

And so there is going to be a rebasing in 2019. The proceeding will probably be a bit before that, but Union is going to have to rebase in 2019 and this is -- we will all have a better view, presumably, of where this is headed at that time.

And this is all to protect intervenors and anybody else, including Union, with respect to the position they may want to take as to how to manage that turnback risk. And there are proposals in Mr. Rosenkranz's evidence, I'm sure, that will evolve and Union may take a position down the road. But that is what that is intended to deal with.

 Item number 4, this is an issue of facilities. There were a number of facilities and non-facilities alternatives discussed at some length in Union's prefiled evidence, and those have been adequately addressed.

Let me turn to item number 5. Here, again, we agree with the Board Staff's submission. So I don't think I have anything to add. It may have been -- and I obviously accept full responsibility for this -- that this is drafted too narrowly, because this really zeroes in on a GAPLO issue, and it zeroes in on the issue of crop yield and the impact of the project on crop yield over time. And so Union has agreed to undertake a post-construction

crop yield study.

 And then the next issue is here we have a complete settlement on it, but it is -– sorry, when I say the next issue -- the next sentence is the letter of understanding. Union has agreed to offer the letter of understanding that is attached to the settlement agreement to all affected landowners.

You will hear about this in evidence, but the letter of understanding deals with a number of things, but it deals with, essentially, Union's construction practices in the field, and it deals also with the issue of compensation.

 Now, compensation is not an issue for the Board in these matters; unlike storage, it is not an issue for the Board in transmission projects. But the letter of understanding does deal with that.

Let me turn to item 6. This is an item on which you are going to be hearing evidence today. There is no issue with respect to the pipeline route itself. The issue relates to construction -- essentially to construction matters, and let me just summarize it this way.

As I understand it, in GAPLO's evidence it raises a number of issues with respect to construction. One of the things that it had sought was the appointment of an independent construction monitor, and it is that issue that is, in fact, fully settled.

 So Union has agreed -- the parties have agreed to the appointment of an independent construction monitor, and the parameters of that appointment are specified in paragraph -- or in Issue 6. There will be other things you hear today about other construction practices, whether they fit into the letter of understanding or otherwise, which are not in agreement, and that is what you are going to hear about.

 Item 7, the form of easement agreement offered by Union, or that will be offered, this is a partial settlement, and the wording here is a little bit inelegant, so let me just help you.

There is a form of agreement that is a form of easement agreement that is attached or included in Union's prefiled evidence. My understanding is there is no concern with respect to that form of easement, with two exceptions, one of which I believe has been resolved. So the first issue was relating to a future use, what would happen in the event there is a change in the future use of the property adjacent to the pipeline easement, which can have an impact on the classification, amongst other things, of the pipeline. And so you see in the settlement agreement under item 7 that we have been able to work out specific wording to address that issue.

 Where we had no luck is on the issue of pipeline abandonment, so the question of what happens down the road in the event of pipeline abandonment. And that is an issue that you are going to be hearing issue and argument about. So that is what is captured in item 7.

 MS. HARE: Okay. Thank you. But let me ask a question.

 MR. SMITH: Yes.

 MS. HARE: In the text that you provided that you say is settled, can you explain what is meant by the phrase:

"... provided that the Transferee may leave the Pipeline exposed in crossing a ditch, stream, gorge or similar object where approval has been obtained from the Ontario Energy Board or other Provincial Board or authority having jurisdiction in the premises."

Can you please explain for us what that means?

 MR. SMITH: I will give you the example of where this could arise. I mean, it may be that the pipeline has to cross a ditch or a gully or some other water-crossing area, and it would be the case in that instance that you would need, for example, approval from the Niagara Escarpment Commission for that exposure. And so the parties are recognizing that if that, it turns out, is necessary, that it is acceptable to the landowner provided the requisite approval is obtained.

 It is -- I think it is fair to say it is reflected here in the future use agreement, but it is -- in effect, it may not be driven by future use, necessarily. It could simply be that that routing is necessary, and it could be that there is a ditch that needs to be crossed, and the parties are recognizing that that is okay, providing you get the requisite approval to do that.

 MS. HARE: But I don't understand. The pipeline will be exposed permanently? Or if there is some other work contemplated, say, five years from now?

 MR. SMITH: It could be permanent.

 MS. HARE: And so what is the reference to the Ontario

Energy Board approval? In approving the route at this point, I don't know which parts are exposed or not, so what exactly am I being asked to approve?

 So let me ask another question before you answer the first.

 MR. SMITH: Sorry. Sorry, yes.

 MS. HARE: Which is: The standard is for the pipeline to be underground with a certain amount of cover?

 MR. SMITH: Yes, yes.

 MS. HARE: At whose request is this, that in a ditch or crossing, whatever, it would be exposed?

 MR. SMITH: It would be the Minister of Transportation or the Niagara Escarpment Commission in this case.

 MS. HARE: Has that happened before?

 MR. SMITH: No. I see -- it appears that there have been instances where Union has attached the pipe to the underside of a bridge crossing a gully --

 MS. HARE: Yes, I understand that, so is that what is meant by this?

 MR. SMITH: Yes. And that has happened, and approval from the MTO has had to have been obtained, and that approval has been obtained. So that is what is contemplated here.

 MS. HARE: Okay. Thank you.

 MS. FRY: Just to follow on, so can you just follow that thought along and explain, if that were to occur, sort of how would you contemplate the process of seeking whatever type of approval from the Ontario Energy Board?

 MR. SMITH: Let me answer the question this way. It is not envisioned that approval of that would be either necessary or sought from the Ontario Energy Board. The Board, when it grants leave to construct, generally approves the route, but this specific -- this specific approval to attach it to a bridge or leave it exposed is not something that we are asking this Board to approve, and I don't think -- thus it is not contemplated that we would be coming back to the Board for that.

 So I think it may be a good question that I think about whether or not the words "Ontario Energy Board," which have historically been included in this clause, really ought to be there, and I don't --

 MS. FRY: Is that something --

 MR. SMITH: -- have the answer to that. I might I need --

 MS. FRY: -- is that something that --

 MR. SMITH: -- a couple minutes to think about --

 MS. FRY: -- you can think about and get back to us later?

 MR. SMITH: Yes. Yeah. Just -- and this is a clause that has found itself in previous agreements, but I think you have identified a good point.

 MS. HARE: Okay. Thank you.

 MR. SMITH: Item 8, here again we have a complete settlement. There isn't an issue with respect to the current technical and -- current technical and safety requirements, and there is again a further reference to offering the letter of understanding attached to the settlement agreement.

 MS. HARE: Well, that actually confused me a bit, because that is the same agreement that in Issue 6 has clearly not been accepted, and here -- you know, maybe if I had looked at the words a bit longer, but the implication is that that is in agreement. Maybe it should say that it -- maybe it should say something that it is the sections of appendix 4 that deal with the technical and safety requirements that are not in dispute.

 MR. SMITH: It could say that. I think that the focus here is that Union will offer, at a minimum, the Hamilton-to-Milton letter of understanding. So I think what we are -- today there is no dispute that, at a minimum, we are going to offer what has been appended.

What we are going to have a dispute about is should that letter of understanding include additional items. So there is no proposal to take anything out.

 MS. HARE: Okay. Thank you.

 MR. SMITH: Adequate consultation with other potentially affected parties, everyone is in agreement that there has been adequate consultation.

 Item 10, the parties agree that this meets the IRM capital pass-through mechanism. And as I was reflecting on this, there is one other item I just wanted to draw specifically to your attention.

It is not in dispute, but the application seeks

approval of the deferral account that I have mentioned already. There is no specific paragraph in the settlement agreement that says the parties agree to the establishment of the deferral account. What it says instead is that the parties agree that the deferral account will capture the over/under-spending identified.

I just wanted to draw to your attention that that will be an item that we will be seeking Board approval in relation to.

 MS. HARE: Okay. Thank you.

 MR. SMITH: And then item 11, here we have a partial settlement, and so we have the parties acknowledging the condition of approval in appendix E of the Board's Decision and Order regarding the Brantford-Kirkwall pipeline. So that is unaffected by this settlement.

 MS. HARE: Yes, but I didn't understand what that paragraph meant.

 MR. SMITH: Well, my understanding of the intention of the paragraph is the following. The Brantford-Kirkwall condition of approval -- that condition of approval in relation to the Brantford-Kirkwall project is, in a nutshell, that Union will not commence construction of that project until the NEB has done a number of things, and TransCanada has given notice to Union that it intends to proceed with the Kings North project.

I think parties wanted, for greater certainty, confirmation that this project going ahead and receiving approval from this Board would in no way impact that prior condition of approval.

If it's of assistance, I don't think it does, because the prior condition of approval is a standalone condition and a standalone Board decision, but --

 MS. HARE: Well, that was my confusion, because I am familiar with that condition and I couldn't see the relevance of it here. But maybe the wording isn't clear. It assumes a level of understanding --

 MR. SMITH: Okay. We can spell it out further -- or if Mr. Rubenstein wants to say something about it. It wasn't his proposal, but it was full belt-and-suspenders, and I don't even think appropriate in the circumstances, necessarily, because you did have the prior condition of approval which was very explicit about what is going to happen and when in relation to Kings North.

 I mean, it was specifically -- well, it may be that APPrO wants to speak to this if the Board has any questions in relation to it -- or, alternatively, since we are going to be thinking about the other item at the break, I can have an offline discussion and see whether either this is necessary or, if it's necessary, we can put in just some additional wording the way I have articulated, so that it is perfectly clear what is intended.

 MS. HARE: Okay. Thank you.

 MR. RUBENSTEIN: If I can just add one thing, I think it is important that this section be read in conjunction with the wording with respect to Issue 10.

My understanding was because a similar condition was not put in place with respect to the Vaughan loop, some parties wanted to ensure that just -- while the fact that there is no explicit condition that construction cannot

start before those downstream facilities come into effect

with respect to this project, that this wouldn't affect the

conditions that were put in place in the Brantford-Kirkwall with respect to the Kings North project.

 MS. FRY: One other question on the conditions of approval. You are talking about the standard conditions of approval.

 Now, in the IR responses, there was an indication that at that point, Union was seeking an extra year to start construction beyond what would normally be standard.

I just want to clarify. Does the settlement of Issue 11 mean that Union is no longer seeking the extra year?

 MR. SMITH: No, it is the opposite. We are still seeking the extra year, and we understand that parties don't have any objection to that.

 MS. FRY: Okay, but it's not included in the settlement?

 MR. SMITH: No, we will have to reflect that.

 MS. FRY: Well, you know, if it is in effect an addition to the settlement, obviously the Board would want confirmation that all the other parties to the settlement agree to that.

 MR. SMITH: For sure.

 MS. HARE: Thank you. Does that conclude your presentation of the settled issues?

 MR. SMITH: Only if it is of assistance to identify for the Board that there is this reference back to the GAPLO issues in Issues 6 and 7. I think I touched on those already, but I think this will be of assistance.

 The GAPLO issues can be dealt with, I think, in one of two ways -- and Mr. Goudy will obviously speak to this if he disagrees. But I think they can be dealt with in one of two ways.

 Possibility one is as a condition of approval. Possibility two is by inclusion in the letter of understanding.

And it doesn't much matter which way you go, but the reason why I draw this to your attention is -- and this was addressed when Union put in a letter at the time the Board was settling the Issues List.

The Board has previously addressed the issue of approving a form of letter of understanding, and the inclusion of that on the Issues List. And the Board declined to do so because the letter of understanding addresses compensation in part, and that is not an area in which the Board has jurisdiction as it relates to

transmission facilities.

So that is why I say it is -- we are not trying to raise any technical impediment, but it is important to understand that the letter of understanding deals with things the Board squarely has within its jurisdiction, i.e. construction and some other things that are dealt with in the statute differently.

So that is why I say you could either deal with this by -- if you were to agree with Mr. Goudy, as conditions of approval, or you could deal with it and just make it explicit in your Decision that you were incorporating them into the letter of understanding, you know, as those matters relate to non-compensation issues.

 MS. FRY: So that is helpful essentially as a preview of what you are going to cover in your closing argument when all the parties are -- I assume.

 MR. SMITH: Yes. I mean, I don't think Mr. Goudy is going to be saying -- as I understand the issues that are going to be in dispute, I don't think Mr. Goudy is going to be saying: Here are some compensation-related issues I would like you to approve. And indeed, his correspondence says exactly the opposite; he says we are not addressing compensation-related issues.

It just technically comes to your approval. Do you want to put -- if you were to agree with him, and we are obviously going to suggest you shouldn't. But if you were to agree with him, you could either put it as a condition of approval, which is -- you can attach it as a condition of approval, or you can say explicitly you are going to be offering the letter of understanding and you should include it in the letter of understanding, bearing in mind that our decision as it relates to the letter of understanding does not address compensation-related matters.

 MS. FRY: We do appreciate the preview. But obviously you will want to deal with this fulsomely, as will the other counsel, in closing argument.

 MR. SMITH: Yes, yes.

 MS. HARE: Just give us a minute, please.

So on the issue of the matters being raised by GAPLO, we would like to hear the substance of the issues and we will hear, then, argument about whether or not any of those will be handled through conditions of approval or the letter of understanding in final argument.

So what we want to concentrate on today is what is the issue that is being raised, so things like why -- why does Union object. That is what we want to talk about, and we will then determine whether or not it will be captured through conditions or the letter of understanding.

 MR. SMITH: Absolutely. Do you want me to deal with that now or -- because I think that was what was going to be the subject of the oral evidence and my friend's cross-examination and then argument. But I can tell you, if this is helpful, so that you know where this is headed, that there are -- I would characterize them as falling into two buckets.

Bucket number one is abandonment, and that is the one issue, what is going to happen on abandonment should the Board say something about that today.

And then the bucket number two is Mr. Goudy circulated -- and I am sure he will be marking this as an exhibit -- yesterday or the day before a table that compares certain sections of the Hamilton-to-Milton letter of understanding on the left-hand side and then has on the right-hand side -- it is up on the screen -- has on the right-hand side "proposed changes."

 So what you are going to be hearing today is the existing letter of understanding and the proposed changes that Mr. Goudy's clients would like. And then obviously we will deal with the -- I can tell you our position now or we can go through the evidentiary portion and then have argument about why Union objects. So I am in your hands how you'd like me to do it.

 But in terms of identifying what I expect you are going to be hearing and what the issues are in dispute, the issues in dispute are abandonment and the specific clauses that GAPLO would like included in the letter of understanding.

 MS. HARE: Right, but what we wanted to do today was not focus on the wording but on the issue of soybean nematodes, why is that an issue, why is Union not agreeing to it, the issue of well water testing results being available or not, and then we will figure out where it is placed.

 MR. SMITH: I agree entirely. I don't think this is a forum, nor do I think it is a productive use of your time, to be going through a drafting exercise, and that is not what is intended. Union's position is that the letter of understanding -- and you are going to hear evidence of this -- Union's position is the letter of understanding, which is the same letter of understanding that was offered to all 28 landowners and accepted by all of them except for Mr. Fagundes -- who was ultimately expropriated, as the Board will be familiar. And that letter of understanding that we are proposing in this case is the letter of understanding that they offered most recently in Brantford-Kirkwall and was accepted.

 As to why the specific changes have not been approved, it is safe to say -- and I will be calling this evidence -- I anticipate you will be hearing that the letter of understanding is the result of many years of -- it started -- it started decades ago. It was a very short document, and it was sort of a: Here is how we are going to deal with landowners. And it developed over time through settlements and agreements and what have you, and it became essentially an unworkable document, not particularly intelligible, not user-friendly, that didn't reflect -- from Union's perspective, anyway -- its existing construction practices and best industry practices.

 It went back to the drawing board, created the letter of understanding that ultimately it offered in the first Brantford-Kirkwall project, and that is what it would like to use going forward.

 Now, the Board has said in other cases when it comes to form -- approving the form of agreement it is -- all you are doing is approving the form of agreement, and specific negotiation may take place down the road. And nobody is saying that isn't going to happen, but when it comes to the form of agreement we think, from a drafting perspective and a substantive perspective, this is the best form of agreement.

 And I expect my friend is going to ask questions about soybean nematodes, and we have a witness panel who can speak directly to that issue much more effectively than I can. That is for sure.

 So I have confirmed with my friend that he intends to put the sections to the witnesses, and they are -- they will give you their answer as to why we think it is not appropriate, and obviously you will ultimately make a decision on that.

 But it is not a drafting exercise. We hope it is a substantive exercise. We hope we have a substantive position for you.

 MS. HARE: Okay. Thank you.

 Okay. I would like to hear comments from other parties on the settlement agreement, then. Let's leave GAPLO to last.

 Mr. Rubenstein, any comments?

 MR. RUBENSTEIN: No additional comments to what Mr. Smith --

 MS. HARE: Ms. Kyriazis?

 MS. KYRIAZIS: I don't have any additional comments either.

 MS. HARE: Thank you.

Ms. Blanchard, on the telephone?

 MS. BLANCHARD: None, thank you, Madam Chair.

 MS. HARE: Thank you. Board Staff?

 MS. DJURDJEVIC: Board Staff is satisfied with the responses given by the applicant in respect of these submissions that were made in Board Staff's submission.

 MS. HARE: Okay. Thank you.

 Mr. Goudy?

 **SUBMISSIONS BY MR. JOHN GOUDY:**

 MR. JOHN GOUDY: Thank you.

 On Issue 5, Madam Chair, that is the issue dealing with the environmental guidelines for hydrocarbon pipelines. So as set out in GAPLO's written evidence, there was a specific concern raised by GAPLO about whether or not Union had satisfied the environmental guidelines. So GAPLO has agreed with Union to resolve that specific concern on the basis of the changes that are set out in the settlement agreement.

 GAPLO doesn't take any position with respect to whether Union has otherwise satisfied the environmental guidelines. That is for the Board to determine, and GAPLO doesn't take any position on that.

 On Issue 8 -- I think this follows on from the discussion that you just had with my friend -- GAPLO is proposing specific, substantive changes. The changes are proposed to the letter of understanding, but -- and this will be dealt with in argument, but it could be done through the letter of understanding or it could be done through conditions of approval.

 They are construction methodology items that are within the Board's jurisdiction, and GAPLO is requesting specific items to be required of Union Gas.

 So Issue 8 deals with -- again, it was a specific aspect of the technical and safety requirements. I believe -- I believe it was depth of cover. Union agreed that it would offer to the landowners the entire letter of understanding that is proposed, at a minimum.

 For the purpose of this issue, GAPLO was interested in particular in only certain items of the letter of understanding. GAPLO wanted assurance that Union would be offering certain provisions dealing with depth of coverage to the landowners, and Union has agreed to that.

 So it is the case that for this particular issue GAPLO's concern was with specific parts of the letter of understanding, but I am not sure that it needs to be spelled out more specifically in this.

 I mean, GAPLO did seek, at a minimum, that the entire letter of understanding as proposed would be offered to landowners, subject to the individual issues that we will be raising today.

 MS. HARE: Okay. Thank you.

 MR. JOHN GOUDY: In terms of -- in terms of how -- to the extent that the Board decides to make or require any of the changes that GAPLO is proposing, I agree with my friend that clearly there are two categories. One is the

abandonment clause in the easement agreement, and one is the letter of understanding issues, or the construction methodology issues.

We can leave the question of how the Board deals with the construction methodology issues for argument.

As far as the easement goes, it's one particular clause that GAPLO is concerned with, and that, I would suggest, simply falls within the Board's responsibility to make an order under section 97.

So it's not -- it's not necessarily a condition of approval. I suppose it would end up being a condition of approval, but the Board will need to make an order either rejecting or approving with modifications the form of easement that has been offered or is to be offered to landowners.

I guess that, generally, that does fall -- that is covered by a condition of approval, that Union shall offer to landowners the form of agreement that was approved by

the Board. GAPLO is going to be suggesting a specific change to the form approved the Board.

 Those are all of my comments.

 MS. HARE: Thank you.

Mr. Smith, has Union started offering that easement agreement, and have any landowners signed the easement at this point?

 MR. SMITH: It's been offered; we don't have signatures yet.

 MS. HARE: Okay. Thank you. So, Mr. Smith, there have been a couple areas where some changes to the settlement agreement should be made. I think they are minor.

It would be the Issue 7, with the reference to the Ontario Energy Board, and perhaps rewording of Issue 11, that second paragraph. I think that was it.

 MS. FRY: Also the clarification of this construction start date issue.

 MS. HARE: Right. Right, absolutely.

 MR. SMITH: Yes.

 MS. FRY: Also, if I might add, there were certain

clarifications in accordance with Board Staff's submission.

 MR. SMITH: Yes.

 MS. FRY: And I don't think we have quite all the

intervenors who said: Yea verily, we agree with that.

 MS. HARE: That is what I was going to get to, Ms. Fry --

 MS. FRY: Okay. Sorry.

 MS. HARE: -- which is that I don't know if you will be able to do that over the break today. But at some point, I think you would have to contact the other parties to the settlement agreement to ensure that they are still in agreement with the settlement as per the changes that we've discussed.

I think they are minor, from what you've said, and I think the other parties here don't have a problem. But in fairness, I think the ones that aren't here should have an opportunity --

 MR. SMITH: No, no, I do not disagree. I was just pausing over, in my own mind, how quickly I could do that administratively, get an e-mail out.

Maybe I will get a response today, but I can't guarantee that is where I end up.

 MS. HARE: Okay. That's fine. Mr. Smith, could you please bring your panel forward, introduce them, and we will have them affirmed?

 MR. SMITH: Thank you very much. Yes, I would like to do that.

So if I can please ask the panel to come forward and be seated, I will introduce them. And if they can be affirmed, that would be great.

 MR. RUBENSTEIN: With the Panel's permission, I will take my leave.

 MS. HARE: Thank you.

 MS. BLANCHARD: I will as well, Madam Chair. It is Emma Blanchard on the line.

 MS. HARE: Thank you, Ms. Blanchard. You are going to leave as well, Ms. Kyriazis?

 MS. KYRIAZIS: Yes.

MS. HARE: Thank you.

 MR. SMITH: So we have with us today from my –- closest to me is Mr. Scott Walker. To his left is Roger Piett. To his left, William "Billy" Wachsmuth. To his left, Tony Vadlja. And then to his left Dave Wesenger of Stantec.

And if I could please ask them to be affirmed by the Board, that would be appreciated.

**UNION GAS LIMITED - PANEL 1**

 **Scott Walker, Affirmed**

**Roger Piett, Affirmed**

**William Wachsmuth, Affirmed**

**Aurel "Tony" Vadlja, Affirmed**

**David Wesenger, Affirmed**

 MS. HARE: Mr. Smith, you have got examination-in-chief?

 MR. SMITH: Yes.

 MS. HARE: Thank you.

 **EXAMINATION-IN-CHIEF BY MR. SMITH:**

 MR. SMITH: Just a few questions, members of the Board.

 First, Mr. Walker, by way of introduction, I understand that you are the manager of pipeline design for Union Gas?

 MR. WALKER: That is correct.

 MR. SMITH: And you have been with Union Gas since about 1997?

 MR. WALKER: Yes, I have.

 MR. SMITH: And prior to that, you were employed by the Canadian Coast Guard?

 MR. WALKER: Yes, I was.

 MR. SMITH: And you a bachelor of applied science in civil engineering from the University of Waterloo?

 MR. WALKER: That is correct.

 MR. SMITH: And you are a professional engineer?

 MR. WALKER: Yes, I am.

 MR. SMITH: And as I understand it, you sit on the Canadian Standards Authority technical subcommittee

on operations and system integrity?

 MR. WALKER: Yes, I do.

 MR. SMITH: We will come back to that in a minute.

 Can you just describe for us, sir, briefly what your -- by way of overview, what your responsibilities are as manager of pipeline design?

 MR. WALKER: Sure. In my current role, I am responsible for all the design issues on the pipeline side of our major projects group, so all the major construction we are doing.

 MR. SMITH: And this project would fall within that category?

 MR. WALKER: Yes, it would.

 MR. SMITH: Mr. Piett, turning to you, you are the manager of projects execution at Union Gas Limited?

 MR. PIETT: That is correct.

 MR. SMITH: And you've been with Union Gas for some time?

MR. PIETT: That is very correct.

 MR. SMITH: And you have a bachelor of applied science in civil engineering, also from the University of Waterloo?

 MR. PIETT: Yes, that is right.

 MR. SMITH: Can you please tell the Board briefly what your responsibility is as the manager of projects execution?

MR. PIETT: I am responsible for all the project management and the construction management of all our major projects, and specifically for this hearing responsible for the Hamilton-to-Milton project, as well as the Lobo project.

 MR. SMITH: Mr. Wachsmuth, you are employed as the senior administrator, regulatory projects and lands?

MR. WACHSMUTH: That is correct.

MR. SMITH: And you have been with Union Gas since about 1990?

MR. WACHSMUTH: That is correct.

 MR. SMITH: And before that, you were with the Ministry of Natural Resources?

 MR. WACHSMUTH: Yes.

 MR. SMITH: And you testified before this Board on a

number of occasions?

 MR. WACHSMUTH: That is correct.

 MR. SMITH: And you have a bachelor of science, a forestry major, from the University of New Brunswick?

MR. WACHSMUTH: That is correct.

 MR. SMITH: Can you tell the Board briefly, specifically as it pertains to this hearing, your responsibility?

 MR. WACHSMUTH: I will be dealing with some of the lands issues that come up, and some of the history of the letter of understanding.

MR. SMITH: Thank you very much.

Mr. Vadlja, you are a senior environmental advisor with Union Gas?

MR. VADLJA: Correct.

MR. SMITH: And you have a bachelor of science, resource management, from Guelph University?

MR. VADLJA: That is correct.

 MR. SMITH: And you have testified both before this Board on a number of occasions, and the National Energy Board?

MR. VADLJA: That is correct.

 MR. SMITH: Can you tell the Board, by way of overview, your responsibilities as senior environmental advisor?

 MR. VADLJA: Yes. I am responsible for obtaining

environmental approvals and permits with our construction projects, and developing our environmental policies

and practices for the company with regards to construction.

 MR. SMITH: Thank you.

Lastly, you, Mr. Wesenger, I understand you are a senior principal with Stantec?

 MR. WESENGER: That is correct.

 MR. SMITH: Can you describe for me briefly the business of Stantec?

 MR. WESENGER: We're an engineering consulting firm, and the group I am in is responsible for environmental management practices.

 MR. SMITH: And for how long have you been with Stantec?

 MR. WESENGER: Since 1990.

 MR. SMITH: I understand that you, or people working under your supervision, prepared the environmental report that has been filed by Union in this proceeding?

 MR. WESENGER: That is correct.

 MR. SMITH: Members of the Board, just for the record, that report, which is voluminous, is referenced at Exhibit A, tab 12, as attachments 1 and 2.

Mr. Wesenger, I understand you have a bachelor of environmental and resource studies from the University of Waterloo?

 MR. WESENGER: Yes.

 MR. SMITH: And you have been employed by Stantec since about 1990?

MR. WESENGER: That's correct.

 MR. SMITH: And does your curriculum vitae set out accurately your project experience?

 MR. WESENGER: Yes, it does.

 MR. SMITH: And that includes comparable-type work, as I understand it, sir, on projects for Union Gas and other developers?

 MR. WESENGER: Yes.

 MR. SMITH: Members of the Board, perhaps I can -- or members of the panel, perhaps I can do this through you.

Mr. Piett, do you adopt for the purpose of testifying here today Union's prefiled evidence and interrogatory responses?

 MR. PIETT: Yes. Yes, I do.

 MR. SMITH: Members of the Board, I do have some additional questions in examination-in-chief, but I failed to mark as an exhibit, I believe, the CVs of the witnesses, which you have been provided with, and I propose to do that.

 MS. HARE: Let's do that now.

 MS. DJURDJEVIC: That will be Exhibit K1 (sic).

EXHIBIT NO. K1.1: WITNESS PANEL CVs.

 MR. SMITH: Mr. Wachsmuth, maybe I can start with you. You heard the Chair's questions of me relating to the letter of understanding, and maybe you can help the Board -- let's start with this question.

What, from Union's perspective, is the purpose of the letter of understanding?

 MR. WACHSMUTH: The letter of understanding was really developed to basically document and -- so that we could, in a very simple format -- so we could -- Union and the landowners would both know how construction would happen on their property, and also it would also include what compensation they would be paid for the work on their property.

 It really documents the general practices. It was really looked to do for the whole loop, how would we generally be doing topsoil stripping, how we'd be doing restoration, all of those general aspects of construction, so that we would be able to do it in a comprehensive -- and that everybody was treated the same.

 So we wanted to come with a document that we could use when we are talking to the landowners, to say: Here is what we are going to be doing when we are constructing on your property, and we wanted to go and do it.

Really it started out as, really, a four-, five-page document -- really back in the '80s was when the first one was done, and it has really progressed over time, but really the big thing is -- is that it really was meant to be a simple document, to document what we were going to do, and it was really the general document.

 If a landowner had special issues, there is a schedule 2 in the LOU which really can be used to document the special features on a person's property; for instance, if they had cattle and they needed to put up special fencing, or if they had a specialty crop that needed to be protected from dust. Those things were really to be identified in schedule 2.

 The LOU was really meant to be the general document, so if there was specific issues there was a specific there, and as well the LOU was really meant to be signed at the same time as the easement, so it was before construction, so there were other mechanisms in place if they're to deal with specific issues during construction through our lands relation program. And in this case in here, where we have agreed to the construction monitor, the construction monitor is also available to deal with specific issues.

 But the LOU is really meant to be a general document that talked about Union's general construction practices and the compensation they would receive.

 MR. SMITH: So let me ask you this question. The current form of the letter of understanding that the Board has before it today, when did that come into effect?

 MR. WACHSMUTH: I think, as I mentioned before, the original document was developed in the '80s, and really, every time we did a loop of the Dawn-Trafalgar pipeline and then a few of the other pipelines going to some of the storage pools or other lines, we formed a negotiating committee with the landowners. And really what it was is part of the negotiations for the committee for both the compensation and the construction practices, additional clauses were added, subtracted, changes, and what was current.

So in the early '90s we added things, and we have added things right up to 2005 with Strathroy-Lobo, but there was really -- by 2005 we realized after Strathroy-Lobo that the document was starting to get stale, it was being difficult to read, there were actually things that contradicted themselves within the document.

 So what we did after Strathroy-Lobo was we basically did a comprehensive review of the Strathroy Lobo document, and that was how we came up with the document that was offered at Brantford-Kirkwall.

 So we really looked to see what practices weren't used, so if something that was suggested back in 1990 but had never been used ever again, we took that out.

 The other thing is we looked at what happened, for instance, with the tile. The tile section was completely rewritten to basically look at what our current practices were, rather than just -- we had the standard of starting in the '90s. We just kept adding paragraphs.

 We added and developed a new comprehensive one to talk about it. It was really done just to bring it up to be a state-of-the-art document that was really easy to read. The old document had really just become difficult to read, and we wanted to do something that was simple. We wanted to do something that had Union's current practices in it, and that was why we moved forward with the document for the Brantford-Kirkwall hearing.

 MR. SMITH: All right. Well, let me ask you that. When did you first use the new document?

 MR. WACHSMUTH: We first used the new document for Brantford-Kirkwall.

 MR. SMITH: And to whom did you --

 MR. WACHSMUTH: We offered it to all of the landowners. Generally, the LOU talks a lot about practices in agricultural lands, but there are other facets of it that would be available and important to everyone, things like water wells and fencing and things like that.

 So we did offer it to everyone on the Brantford-Kirkwall, both the agricultural and others, and all but one landowner agreed to it without change, and that landowner was the subject of the expropriation hearing.

 MR. SMITH: I don't believe this is controversial, but, Mr. Wachsmuth, can you just tell us your understanding of how many landowners in the Hamilton-Milton project, how many participating landowners are there who are members of GAPLO?

 MR. WACHSMUTH: In GAPLO's prefiled evidence, they indicate that they have one landowner who's a member of GAPLO, and that landowner is on a residential property.

 MR. SMITH: And are there any agricultural participating landowners?

 MR. WACHSMUTH: Not that I am aware of.

 MR. SMITH: And are there agricultural participating landowners?

 MR. WACHSMUTH: Yes, there are some agricultural properties on the Hamilton-Milton project.

 MR. SMITH: And as part of Union's notice program with this application, were these landowners provided notice of this proceeding?

 MR. WACHSMUTH: Yes, they were.

 MR. SMITH: Mr. Walker, if I can just turn to you -- members of the Board, we circulated and you should have a copy of what's identified as draft standard Z662 by the Canadian Standards Association; do you have that?

 MS. HARE: We have that.

 MR. SMITH: And I propose to mark --

 MS. HARE: Give that an exhibit number.

 MR. SMITH: -- that as an exhibit.

 MS. DJURDJEVIC: That will be Exhibit K2 (sic).

 MS. HARE: K1.2.

EXHIBIT NO. K1.2: CANADIAN STANDARDS ASSOCIATION DRAFT STANDARD Z662.

 MS. DJURDJEVIC: 1.2? Oh, sorry, we are scheduled for more than one day in this hearing, so --

 MS. HARE: Well, we're not, but you never know.

 MS. DJURDJEVIC: All right. So we need to revise the first exhibit, the package of CVs, as K1.1.

 MR. SMITH: Not all jokes are created equally.

 All right, then. Let's move quickly.

 So, Mr. Walker, let me just turn to you, if I could. Let's start first with the Canadian Standards Association. Can you just tell us, sir, at least your understanding of the role played by the Canadian Standards Association as it relates to natural gas pipeline regulation?

 MR. WALKER: Yes. They set the code requirements as a standard across Canada.

 MR. SMITH: Okay. And how does that work relate, if at all, with the TSSA, or the Technical Safety Standards Authority?

 MR. WALKER: Well, TSSA regulates oil and gas pipelines in Ontario, including Union Gas pipelines. The way they really do it is through what they call a coded option document. That document would say oil and gas operators in Ontario must follow the CSA Z662 in its entirety, with some exceptions and additions that it includes in its coded option document.

 MR. SMITH: Okay. And so you mentioned Z662, which has been marked as K1.2. Can you just identify the document for us?

 MR. WALKER: That particular document in evidence is a cover sheet of the upcoming 2015 edition of the code, which is scheduled for publication in June of this year.

 MR. SMITH: Okay. And so this is identified as the draft standard oil and gas pipeline section, and can you tell us, if you turn to the second page, what is being discussed in this section of the draft standard?

 MR. WALKER: Yeah, the main enhancements in section 10-16-1 are that there is a new requirement for a documented abandonment plan. Part of that abandonment plan would include landowner consultation. There is also a reference to an NEB technical paper that you can see in the note there, "Pipeline Abandonment - A Discussion Paper on Technical and Environmental Issues."

It has a fairly comprehensive list of items and risk factors that you should use in your evaluation and

development of the abandonment plan.

 MR. SMITH: And can you just tell me the issue, as it

relates to abandonment? How does this draft standard address the issue of abandonment and specifically a requirement, if any, to remove a pipeline?

 MR. WALKER: Well, it will give you some guidance on

preparing the abandonment plan, and it will say that you really need to look at it at the time of abandonment based on a specific site assessment of the various sections of the pipeline, and in making a determination on the best course of action in that abandonment plan.

Sometimes it may result in removing the pipe; sometimes it may say abandon in place.

 MR. SMITH: Now, can you just tell us -– well, first of all, this draft standard is the product of which committee of the Canadian Standards Association?

 MR. WALKER: So the committee that you mentioned earlier, the operations and system integrity committee that I am on, it is responsible for sections 9.5 through to the end of section 10 of the CSA code.

So we would be responsible for reviewing any

proposed enhancements or changes to those clauses.

 MR. SMITH: And where is the standard now in the drafting process?

 MR. WALKER: It has gone through our committee, the

technical subcommittee, and it has gone through the committee above us, which is the technical committee.

So from my understanding, it is in the CSA's administration process between final approvals and publication.

 MR. SMITH: And has there been a period of public comment on this?

 MR. WALKER: Yes, the public comment period was actually even before the technical subcommittee's review. So there was a period in December, I think it started, of 2013 where it would have been posted for anyone to be able to pull up on the website and provide comments.

Those comments would have come to our technical subcommittee for evaluation as well.

 MR. SMITH: Do you have any familiarity with how the National Energy Board has dealt with the issue of abandonment?

 MR. WALKER: The National Energy Board is a little bit different, in that you would need to make an application to

abandon pipe. But a lot of the documents that form the basis of an abandonment plan would be linked to this process. In fact, it mentions the NEB document in the new code addition in that note I mentioned.

 MR. SMITH: Thank you. Those are my questions in examination in-chief.

 **QUESTIONS BY THE BOARD:**

 MS. HARE: Can I just ask you this? The draft letter talks about receiving permission from the CSA prior to using this, unless it is for standards development, which we are not doing today.

Did you receive permission from the CSA?

 MR. WALKER: Yes, I did talk to them and they said that we could discuss it and, you know, show it. But, you know, we didn't want to distribute it, because until it is published it is not a final document.

 MS. HARE: Okay. Thank you.

So your panel is ready for cross-examination?

 MR. SMITH: Yes, they are.

 MS. HARE: Okay. I think we will take our morning break now before cross-examination, so we will return at 11:15.

 MR. SMITH: Thank you.

 --- Recess taken at 10:52 a.m.

 --- Upon resuming at 11:18 a.m.

MS. HARE: Mr. Goudy, are you ready to proceed?

 MR. JOHN GOUDY: I am, Madam chair.

 MS. HARE: Okay.

 **CROSS-EXAMINATION BY MR. JOHN GOUDY:**

 MR. JOHN GOUDY: Good morning, panel. I am John Goudy. I am counsel for GAPLO, and I think I have probably dealt with Mr. Wachsmuth, at least, on other occasions. So I am going to have a series of questions for you, and they are going to basically be broken up into two categories.

Like Mr. Smith had mentioned before, one is going to be the abandonment clause in the proposed easement agreement, and the other is the construction methodology items from the letter of understanding.

 So I will start with the abandonment clause issue. And Union has proposed a form of agreement. It's at Exhibit A, tab 13, schedule 3 in the prefiled evidence.

And could you confirm for me -- sorry, given the wording of the issue that's before the Board, and that's Issue 7 -- "Is the form of easement agreement offered by Union appropriate?" -- I take it that Union's position is that the form of easement agreement that is filed in its prefiled evidence is the appropriate form of easement agreement for this project?

 MR. WACHSMUTH: I believe that it was formed -- but it was also corrected or changed as part of the settlement agreement, Mr. Goudy. So it probably should go to the settlement -- the additions that were done as part of the settlement agreement.

 MR. JOHN GOUDY: Subject to the settlement agreement?

 MR. WACHSMUTH: Yes.

 MR. JOHN GOUDY: And clause 1 of that proposed agreement deals with Union's restoration obligations on the surrender of the easement; is that -- are you familiar with the agreement? I don't know if we can get it on the screen.

 MR. WACHSMUTH: Clause 1 deals with a number of issues, including the restoration on abandonment. That is correct.

 MR. SMITH: Sorry, why don't we just give Ms. Hare just a minute to pull up the easement agreement, if you'd like, Mr. Goudy?

 MR. JOHN GOUDY: It may be easiest if we could just pull up GAPLO's written evidence statement. The excerpt from the agreement that I am going to be asking about is contained in paragraph 5 of GAPLO's written evidence at Adobe page 3.

 In the form of easement agreement as proposed by Union in this proceeding, the last sentence of clause 1 is what is set out in GAPLO's written evidence; is that correct? That's:

"The 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."

 MR. WACHSMUTH: I am sorry, which document are you looking at, Mr. Goudy?

 MR. JOHN GOUDY: I am looking at what is on the screen, paragraph 5(a), but what is intended to be reproduced there is the language, the last sentence of clause 1 in the proposed agreement filed by Union. I am just looking for confirmation that that is the language that Union is proposing, "transferor and transferee hereby agree that nothing herein shall oblige transferee"? It's tab 13, schedule 3 in your prefiled evidence.

 MR. WACHSMUTH: Yes, the first quote is in our current agreement, which we are proposing at Exhibit A, tab 13, schedule 3.

 MR. JOHN GOUDY: And so it is that language that Union is proposing is appropriate in connection with the issue on the Board's Issues List and should be approved by the Board?

MR. WACHSMUTH: That is correct.

 MR. JOHN GOUDY: But Union has proposed different language than that in other easement agreements in other projects; correct?

 MR. WACHSMUTH: That is correct.

 MR. JOHN GOUDY: And it's proposed different language about Union's obligations of restoration on surrender of the easement in different projects as appropriate. So it's proposed to the Board in those other projects that that different language was appropriate; is that correct?

 MR. WACHSMUTH: Those words were the result of a comprehensive settlement agreement, Mr. Goudy, and they were agreed to by both parties. So yes, they were proposed, but it was part of a comprehensive settlement agreement.

 MR. JOHN GOUDY: I take it you are referring to Strathroy-Lobo in particular in that response?

 MR. WACHSMUTH: For those words it was Strathroy-Lobo, but in other hearings there have been changes in the easement agreement again, which were the subject of comprehensive negotiations in the settlement agreement.

 MR. JOHN GOUDY: So you will agree that from time to time, from project to project, Union has proposed different language in its easement agreement as being appropriate?

 MR. WACHSMUTH: Yes, there have been different words proposed as a result of comprehensive negotiations between Union and the landowners.

 MR. JOHN GOUDY: And in Strathroy-Lobo, the EB-2005-0550 proceeding, Union agreed and did replace that last sentence of clause 1 that is proposed in this proceeding? It replaced it with the language that follows in GAPLO's written evidence that is on the screen?

 MR. WACHSMUTH: Yes. Again as a result of a comprehensive settlement, those were the words and some of the conditions that were agreed to.

 MS. HARE: Can we see that next page on the screen, please?

 MR. JOHN GOUDY: It may be helpful, Madam Chair, if we went to Adobe page 19, at the bottom.

 Mr. Wachsmuth, can you confirm this is a section from the settlement agreement that was reached in EB-2005-0550? On the screen, sorry.

 MR. WACHSMUTH: Sorry, did you say Adobe 19 or 20?

 MR. JOHN GOUDY: Adobe 19. Sorry, it's Adobe page 19. It says "GAPLO 18" at the top of the page. My apologies.

 MR. WACHSMUTH: Sorry, that was my...

 Yes, as you go back to page 13, this is the settlement agreement prepared to by Mr. Vogel and Mr. Leslie, or signed by Mr. Vogel and Mr. Leslie.

 MR. JOHN GOUDY: Right. And so at the bottom of the page that we are looking at now, GAPLO 18, the language -- the replacement language that was agreed to in EB-2005-0550 is set out there; correct?

 MR. WACHSMUTH: Yes, the whole comprehensive settlement is –- are these pages between 13 and 19, I believe.

 MR. JOHN GOUDY: And Union then requested approval of that agreement as part of its application in EB-2005-0550; correct?

 MR. WACHSMUTH: That's correct.

 MR. JOHN GOUDY: And Board approval was granted for that form of easement agreement?

 MR. WACHSMUTH: That's correct.

 MR. JOHN GOUDY: And Union used the same form of easement agreement again in EB-2007-0063; is that correct?

 MR. WACHSMUTH: Subject to check, yes.

 MR. JOHN GOUDY: If we could go to -- again in GAPLO's written evidence -- Adobe page 46 which is marked "GAPLO 45," Mr. Wachsmuth, can you identify this document, or simply confirm that it is an excerpt from the prefiled evidence of Union in that proceeding?

 MR. WACHSMUTH: Yes, it appears it is an excerpt; I believe it was our Dawn deliverability project.

 MR. JOHN GOUDY: And in that 36-inch pipeline project, Union proposed, as the appropriate form of easement agreement to the Board, the same form of easement agreement as in Strathroy-Lobo; is that correct?

 MR. WACHSMUTH: That is correct.

 MR. JOHN GOUDY: And it asked the Board to approve that form of agreement under section 97 of the Act?

 MR. WACHSMUTH: That is correct.

 MR. JOHN GOUDY: And the Board approved that form of

Agreement; correct?

 MR. WACHSMUTH: That is correct.

 MR. JOHN GOUDY: And that included clause 1 with the

Strathroy-Lobo language included?

 MR. WACHSMUTH: That is my understanding.

 MR. JOHN GOUDY: So for those two projects, Strathroy-Lobo and the project in EB-2007-0633, Union agreed that the

appropriate form of easement agreement was one that included the abandonment language and the landowner option for removal of the abandoned pipeline from Strathroy-Lobo?

 MR. WACHSMUTH: Again, I think in Strathroy-Lobo it was the result of the comprehensive settlement, and this was really the next hearing and we continued using that same easement.

 MR. JOHN GOUDY: But now Union has made a decision to

discontinue use of that provision?

 MR. WACHSMUTH: That is correct.

 MR. JOHN GOUDY: And it was the clause that we looked at previously, the last sentence of clause 1, that Union is proposing to the Board in this proceeding: Nothing herein shall oblige the transferee to remove the pipe?

 MR. WACHSMUTH: Without looking at the words and subject to check, yes.

 MR. JOHN GOUDY: I am paraphrasing. That language was

actually proposed by Union in the EB-2005-0550 Strathroy-

Lobo project as well? That was the language that was originally proposed by Union in that project?

 MR. WACHSMUTH: Strathroy-Lobo, it was my understanding that that was part of the comprehensive settlement, Mr. Goudy.

 MR. JOHN GOUDY: Yes, but originally when Union made its application to the Board, the form of easement agreement it was originally proposing was the one in the form that has been applied for in this project?

 MR. WACHSMUTH: I am not sure of that, Mr. Goudy, because there may have been other changes as well that happened between 2005 and today.

 MR. JOHN GOUDY: I won't belabour this; I will just deal with it in argument. But it is in the -- the settlement agreement that we looked at earlier specifies the change that was made to the agreement, so I --

 MR. WACHSMUTH: But I think there were other changes that have been made since 2005, Mr. Goudy; there were other things done.

Like, for instance, an HST change has been made between what we filed now and what we filed in 2005, and I believe there are also issues dealing with postponement.

 MR. JOHN GOUDY: Okay. The next questions I have relate to the draft standard -- CSA standard that was made Exhibit K1.2. So I think my questions are probably for Mr. Walker.

Mr. Walker, you said that you were on the committee, a committee that reviewed this document?

 MR. WALKER: That is correct.

 MR. JOHN GOUDY: But do I take it your committee wasn't the committee that drafted the document initially?

 MR. WALKER: No, it was not.

 MR. JOHN GOUDY: And did your committee make or propose changes to the document that appear in the copy that we have at this point?

 MR. WALKER: Our committee did not.

 MR. JOHN GOUDY: And can you tell me whether any pipeline landowners were involved in the creation of this -- these particular provisions in the draft standard?

 MR. WALKER: I don't know.

 MR. JOHN GOUDY: You are not aware of any landowner

involvement?

 MR. WALKER: I am not aware of the make-up of the task force that put together that wording.

 MR. JOHN GOUDY: And can you confirm whether there were any pipeline landowners involved in your committee that reviewed the document?

 MR. WALKER: There were not.

 MR. JOHN GOUDY: The draft provision, assuming that it is adopted, would require in Ontario, through the TSSA code adoption regulation -- like you had explained before, it would require that for the abandonment of a pipeline, a company would have to abandon a pipeline on the basis of a documented abandonment plan; correct?

 MR. WALKER: Correct.

 MR. JOHN GOUDY: But can you confirm there is no approval process for abandonment in Ontario?

 MR. WALKER: That would also be correct.

 MR. JOHN GOUDY: So in the absence of a regulatory approval process, this -- these proposed sections in the CSA standard only require the company to prepare a plan?

 MR. WALKER: That is correct, but the TSSA would monitor our abandonment plans. They could come in and audit it at any point in time.

 MR. JOHN GOUDY: But as you said, a company like Union would not require TSSA approval to abandon a pipeline?

 MR. WALKER: It would not.

 MR. JOHN GOUDY: At the end of the day, the decision about how to abandon a pipeline, whether in place or through a removal, is a decision made by the company?

 MR. WALKER: It would ultimately be made by the company, but it would be made based on a comprehensive abandonment plan that would have to be defended with our regulator.

 MR. JOHN GOUDY: But you have already told me that there is no approval process.

 MR. WALKER: Not pre-approval, but abandonment is a –-I'll say it's a hot topic within industry. I fully expect that if we were to prepare a large-scale abandonment, the TSSA would be very interested in it.

 MR. JOHN GOUDY: Interested, but without any regulatory place to --

 MR. WALKER: That would be correct.

 MR. JOHN GOUDY: -- to require approval?

The next line of questions I have relates to the letter of understanding. So again, it may be Mr. Wachsmuth that will end up answering the bulk of these.

 MS. FRY: Mr. Goudy, you are finished asking questions on abandonment?

 MR. JOHN GOUDY: I am finished asking questions on the CSA standard and abandonment, yes.

 MS. FRY: Okay. So since you have a number of different subject areas, maybe I could just interject a couple of questions while abandonment is still fresh in your minds.

 MR. JOHN GOUDY: Certainly.

 MS. FRY: Just to understand, I mean, what we are hearing is that the two parties have different ideas as to what the abandonment clause should say.

Can you gentlemen, whichever one is appropriate, just tell me, in operational terms, what is the difference between what the two sides want?

 MR. WALKER: I think the fundamental difference is that we feel rather strongly that an abandonment plan should be made at the time of abandonment based on codes and regulations that are in place at the time and include a detailed assessment of all the site-specific risk factors involved, and that sometimes that will say that pipe should be removed and sometimes that will say that pipes shouldn't be removed.

It is not a "one solution fits all" kind of assessment.

 MS. FRY: Okay. Does anybody else want to elaborate on that?

 MR. PIETT: Just further elaboration in that one solution doesn't fit all. We don't know now what the land use will be later on or who will own the property, so again, it is difficult to predetermine that now. Also, again, landowner definitely has some, you know, significant interest in the issue of abandonment. However, we have to take into -- consider other stakeholders that do have authority, in that it could be something like an NEC who we are dealing with now. There is a lot of other environmental agencies, and an abandonment project, especially a large one, could have a significant impact on the environment and an actual -- the option -- or the better option would be to leave it in place and abandon it properly through the checklist that we need to go through and develop that plan.

 MS. FRY: So, I mean, if I am understanding you correctly, you would always have to go through whatever that regulatory process consists of, so why does it make a difference if you agree upfront on some principles for abandonment as opposed to making the plan later on? Could you just go over that again?

 MR. WALKER: Well, what they are asking us to agree to upfront would be to say that the landowner can request removal of the pipe at their request, and there are some situations even in the filed evidence that GAPLO put in that there are some situations, environmentally sensitive areas, some of the areas that have been mentioned, where it doesn't make sense to remove the pipe.

 MS. FRY: Okay. That, I understand. I am just not quite understanding clearly why the approvals required by various agencies would complicate that.

 MR. WALKER: Part of the abandonment plan would be -- I mean, it includes landowner consultation, but it also would include consultation with environmental agencies, conservation authorities, wherever the pipe may be. It is specific to each site, but all of those agencies would be consulted during the development of that abandonment plan, so there are a number of interested parties, let's say.

 MS. FRY: You are saying that would be harder to do if you agreed on the parameters for abandonment upfront? Is that what you are saying?

 MR. WALKER: Well, to say upfront that we would automatically remove the pipe, yeah, would circumvent that process.

 MR. PIETT: Just to describe it better, to abandon, you know, like, say, the Hamilton-Milton piece in the future -- 20, 40 years, 50 years -- it would be no different and actually worse than constructing a new pipeline, because an abandonment procedure, where you are removing the pipe, we actually have to do a lot more work with the land to get the pipe out.

You actually end up filing the trench back in and retrenching it for the new pipeline to go in, so there is significant impact, and I would say it is definitely going to be a bigger impact.

So therefore all the permits that we must receive now before we build the pipeline, we are going to receive those permits to remove a pipeline and build the new pipeline, or even if we didn't build the new pipeline, at least remove it, and we are going to have significant impact, just as we do now when we would mitigate it, but we still have to go through the process to get all those permits from any stakeholder or agency that would have jurisdiction on water crossings, wetlands, et cetera.

 MS. FRY: Okay. Thanks.

 Okay. And so I want to ask you also about the draft CSA standard. So I take it this is -- is this a -- this is a standard that is much broader than abandonment situations, I take it? Yes?

 MR. WALKER: Yes, it is.

 MS. FRY: Okay. So just for my information, when Union is following the various applicable CSA standards, is it always working to the standard, or are there situations in its business generally where it might decide to actually have standards that are greater than the CSA standard?

 MR. WALKER: We would meet or exceed code.

 MS. FRY: Yes, okay. So I am asking you -- so you are saying there are situations when Union would decide to exceed code; is that correct?

 MR. WALKER: Yeah, the code may have a depth of cover requirement. Sometimes we exceed that, as an example.

 MS. FRY: Thanks.

 MS. HARE: Okay, well, since we interrupted, I will just continue.

 Is the easement always surrendered on abandonment? Or do you have situations where the pipeline is abandoned but you retain the easement in the event that in the future you want that corridor?

 MR. WACHSMUTH: If we keep -- the pipe stays in the ground, Union will retain the easement. We have to have the easement there, because it's still our pipe, so we would own the pipe, so we have to have a right to have the pipe in the ground.

 MS. HARE: Even if it's abandoned?

 MR. WACHSMUTH: Even if it's abandoned. Our practice is not to surrender the easement.

 MS. HARE: If the pipe is in the ground?

 MR. WACHSMUTH: That's correct.

 MS. HARE: Another question. The easement language talks about the proposed -- what Mr. Goudy is asking for in terms of the language used in the Strathroy-to-Lobo talks about the transferor. What if it is a new owner? Does that new owner still have the right to ask for it to be taken out of the ground?

 MR. SMITH: As a matter of law, they would be required to take -- well, the easement will be registered on title, so it runs with the land, and so you take title to the land subject to the covenants on the land as registered.

 MS. HARE: Okay. So "the transferor" doesn't refer necessarily to the person that actually signed the document?

 MR. SMITH: That's correct.

 MS. HARE: It is whoever has, then, title?

 MR. SMITH: That's correct.

 MS. HARE: Can you just explain to me why you -- you explained, well, that you made the change for those two projects because it was part of a comprehensive settlement discussion. Why is it that you do not want to offer that again? Is it just because you want to keep your options open for 30 years from now, 40 years from now?

 MR. WACHSMUTH: I guess what it was when we really went back and looked at the revisions to the easement, we went back and realized that some of the -- there was a potential here that we could end up in conflicts.

We don't know what is going to happen to the abandonment or what is going to happen to the laws and rules. We know that abandonment is a very big issue. The NEB has really had a couple of hearings -- a number of things have changed since 2005, and a lot of those have been at the NEB. They have had their lands consultation initiative, which talked about the physical abandonment of pipe, and there was also a monetary version of how they dealt with paying for abandonment of pipe. And abandonment is a big issue, and Mr. Goudy and the GAPLO evidence filed a big report where there is a number of studies that are still ongoing on abandonment.

 So, I mean, we are looking at it as a live issue, and we really just don't want to close any doors now. And as Mr. Walker stated, we think the best time to figure out how you are going to abandon a pipe is when it is going to be abandoned, not when it is going to be constructed.

 MS. HARE: Thank you. Those are my questions. Mr. Goudy, sorry for the interruption.

 MR. JOHN GOUDY: That is quite all right. I have a follow-up question for Mr. Piett.

 What experience do you and/or Union have with the abandonment of large-diameter pipelines?

 MR. PIETT: Very little, as we have never abandoned anything on the Dawn-to-Parkway stretch.

Again, those are large-diameter pipelines that we rely on for all our business, as everyone has been through, through this hearing. And again, we need the capacity and we protect the pipeline to ensure it will last forever, basically, and we have never had to abandon any of those pipelines.

 MR. JOHN GOUDY: So I take it your evidence earlier about the comparison between the effects of pipeline removal and the effects of pipeline construction are just speculation?

 MR. PIETT: No, I would say that comes from building pipelines and being on construction and knowing what it takes -- before we can initiate construction, we have to basically predetermine everything that we are going to do, and I can quite easily think about constructing a 48-inch pipeline, and then I can quite easily think about abandoning a 48-inch pipeline, all the work and effort that would take.

 We also -- we have had cases where we have had pipeline replacements, which is very similar. It hasn't had to get into abandonment -- or, you know, of -- well, in some ways it is abandonment of existing pipe, but then we install a new pipe there, and so we have gone through that exercise in smaller diameter, such as 16-inch pipe.

 MR. JOHN GOUDY: And you will agree with me that what GAPLO is proposing in terms of clause 1 in the easement agreement and what was agreed to in Strathroy-Lobo is an option for the landowner to have the pipeline removed?

 MR. WACHSMUTH: That's fair.

 MR. JOHN GOUDY: To the extent that the landowner decides that the impacts of pipeline removal would be too great, the landowner could decide not to exercise that option.

 MR. PIETT: We can't predetermine what the landowner would decide, but we do know that there would be other agencies that would, or stakeholders that we would have to consult with to determine if that, as we stated earlier, was the preferred way to abandon the pipeline.

 MR. WESENGER: If I could just add to what Mr. Piett said, with the Niagara Escarpment Commission, in developing anything across their lands, they need to know that it is essential.

I think, in this case, they would certainly challenge the environmental impact of removing a pipeline across escarpment lands, that it would be essential to remove it versus leaving it in place, because there would be much less impact to leaving it in place to the escarpment

lands itself.

 MR. JOHN GOUDY: I am going to move on to the letter of understanding issues.

As part of the settlement agreement -- and this was discussed earlier this morning -- you can confirm that Union has agreed that it will offer, as a minimum to landowners, the form of letter of understanding that was part of the settlement agreement in this proceeding?

 MR. WACHSMUTH: That is correct.

 MR. JOHN GOUDY: And that -- that letter of understanding sets out -- in one way, sets out minimum construction commitments by Union Gas to landowners; correct?

 MR. WACHSMUTH: I think, as I stated before, it talks about what our general practices are for the construction of the proposed pipeline, yes.

 MR. JOHN GOUDY: But it sets minimum standards that Union agrees that it will do on a landowner's property?

 MR. PIETT: If the landowner considers it minimum, fine. I would term it as appropriate, and runs through the history of us building pipelines and developing our construction practices and with input from all stakeholders, including landowners, that it is an appropriate approach to building the pipeline.

 MR. JOHN GOUDY: Union agrees that -- just to get back to this idea of a minimum, Union is agreeing, or committing in the letter of understanding to do at least what it says in the letter of understanding, and agreeing not to do less than what is in the letter of understanding.

 MR. WACHSMUTH: Sorry, yes. I was thinking like -- for instance, for depth of cover, we have agreed in the LOU to go 1.2 metres. But I think Mr. Walker talked earlier that the code only requires 0.6 meters.

So that is where I was having concerns with the minimum, Mr. Goudy.

MR. GOUDY: Right. It is simply -- Union has agreed it is not going to go less than what the letter of understanding says?

 MR. WACHSMUTH: That's correct.

 MR. JOHN GOUDY: And the letter of understanding, can you agree with me that it provides details about Union's construction methodology that aren't provided elsewhere in Union's prefiled evidence in this hearing process?

 MR. WACHSMUTH: That's fair.

 MR. JOHN GOUDY: GAPLO requested a copy of the letter of understanding in Interrogatory 12; do you recall that?

Perhaps we could bring that up on the screen, Union's response to GAPLO Interrogatory 12?

You have agreed with me that the letter of understanding contains details about construction methodology that weren't included in the prefiled evidence.

Can you agree with me that GAPLO requested a copy of the letter of understanding at the interrogatory stage, but Union Gas did not -- or declined to provide that document?

 MR. WACHSMUTH: That is correct.

 MR. JOHN GOUDY: So earlier it may have been Mr. Smith in his submissions, or it may have been someone on the panel that said landowners -- I think it was an answer to a question in-chief -- landowners had notice of the proceeding? Landowners along the Hamilton-to-Milton line had notice of this proceeding: correct?

 MR. WACHSMUTH: That is correct.

 MR. JOHN GOUDY: But they didn't have the letter of understanding?

 MR. WACHSMUTH: At the time -- as part of our OEB process, we were required to serve notice of all of the landowners. At that point in time, they did not have a copy of our LOU or the easement package that we were offering.

We hadn't got that far in our negotiation process when the notice went out, Mr. Goudy.

 MR. JOHN GOUDY: And the letter of understanding, it wasn't provided in this proceeding until -– well, it hasn't been filed in this proceeding until the settlement agreement, so just in the last few days; correct?

 MR. WACHSMUTH: That's correct.

 MR. JOHN GOUDY: There was a letter of understanding used by Union in the Strathroy-Lobo project; correct?

 MR. WACHSMUTH: That's correct. It was a result of a

comprehensive settlement agreement.

 MR. JOHN GOUDY: And as you explained earlier, Mr. Wachsmuth, that document and the letter of understanding document generally, it's evolved based on many projects?

 MR. WACHSMUTH: At least ten.

 MR. JOHN GOUDY: At least ten? And in a lot of cases, projects involving consultations with GAPLO?

 MR. WACHSMUTH: GAPLO was involved in some of them, yes.

 MR. JOHN GOUDY: And consultation with landowners?

 MR. WACHSMUTH: That's fair.

 MR. JOHN GOUDY: The letter of understanding in Strathroy-Lobo was filed with the Board in EB-2005-0550; is that correct?

 MR. WACHSMUTH: Yes, Union committed to doing that in the transcripts of the -- or the settlement agreement.

 MR. JOHN GOUDY: And we looked briefly at a section from EB-2007-0663. Can you confirm that Union used the same -- the same form of letter of understanding on that project as in Strathroy-Lobo?

 MR. WACHSMUTH: No, I can't right off the bat, sir.

 MR. JOHN GOUDY: Okay. Could we bring up GAPLO's evidence again at -- I believe it's Adobe page 46.

This is that excerpt, again from Union's prefiled evidence in that proceeding.

 If you look at paragraph 73 at the bottom of that page, it says:

"Union will also use a letter of understanding between Union and landowners for the project, and specifically the form of the LOU employed in the Strathroy-Lobo project."

 MR. WACHSMUTH: I don't know whether there were any changes made when they actually went out and signed the agreement with the landowners on the project. That would have been probably the form they used as a starting point.

I don't have that information with me, Mr. Goudy, and I don't know. There may not have been any changes; I just don't know.

 MR. JOHN GOUDY: But that would have been used as a starting point?

 MR. WACHSMUTH: That's fair.

 MR. JOHN GOUDY: Including all the substantive provisions in the Strathroy-Lobo document?

 MR. WACHSMUTH: That's fair.

 MR. JOHN GOUDY: On the next page in that document, at paragraph 74, Union's evidence is that the LOU, or the letter of understanding, provides a benchmark for individual negotiations for land rights.

 Do you see that statement?

 MR. WACHSMUTH: Yes, I do.

 MR. JOHN GOUDY: Would you agree with me that the letter of understanding also provides a benchmark for construction methodology?

 MR. WACHSMUTH: I think it provide a description of what our construction practices were. I think what you are talking about at paragraph 74 is really the compensation aspects in the letter of understanding.

 MR. JOHN GOUDY: Right, and I am asking you whether a

benchmark is the appropriate term for the letter of

understanding.

 MR. WACHSMUTH: It provide a general understanding of what we will do. If you want to call that a benchmark, I am not sure.

 MR. JOHN GOUDY: The letter of understanding also -- it deals with construction methodology. It also details the participation of the landowner in the decision-making process about construction; is that correct?

 MR. WACHSMUTH: I think there are a number of other things that Union does and has in place to help the landowner to deal with issues that come up during construction.

 MR. JOHN GOUDY: But the letter of understanding --included in the terms of the letter of understanding are sections where the landowner is given a role in the decision-making process.

MR. WACHSMUTH: I mean -- yes, I mean, for example, topsoil stripping, there are different opportunities, and we talk to the landowner during our pre-construction meeting to see whether -- what type of, like, topsoil he wants stripped on his easement. I mean, so if that is giving the landowner options, yes, that is correct.

 MR. JOHN GOUDY: The letter of understanding, as you described this morning, the letter of understanding proposed in this proceeding, which is the one attached to the settlement agreement, it makes changes to substantive items that were in the Strathroy-Lobo letter of understanding; correct?

 MR. WACHSMUTH: It makes changes, yes.

 MR. JOHN GOUDY: Your evidence earlier was that the Strathroy-Lobo form of letter of understanding had become unworkable?

 MR. WACHSMUTH: We think -- in my opinion, in places of it, it was unworkable.

 MR. JOHN GOUDY: Right, and so the format of the agreement has been changed?

 MR. WACHSMUTH: That's correct.

 MR. JOHN GOUDY: In order to make it, in Union's view, workable?

 MR. WACHSMUTH: That's correct.

 MR. JOHN GOUDY: But will you agree with me that not all of the changes that Union has made to the letter of understanding from the time of Strathroy-Lobo to now, not all of those changes are changes of form or structure?

 MR. WACHSMUTH: Yes.

 MR. JOHN GOUDY: There are substantive changes to individual construction methodology items; correct?

 MR. WACHSMUTH: I think the tile is probably the one where some of the biggest changes were made, Mr. Goudy. And what we did there is we basically had a person who had been -- worked with Union, and before that he worked with an engineering consulting firm who was involved in working with landowners to develop the site-specific tile plans for their properties.

 So what he did was he looked at Strathroy-Lobo, he looked at what we were currently actually doing in the field, working with the landowners to get the tile plans, to get them approved by the landowners, and then to implement those tile plans during and after construction.

And he really changed the tile to be more what we were doing rather than the words that were in the Strathroy-Lobo agreement.

 So, I mean, yes, that was probably one of the bigger changes in it, but we really just tried to do that so that it flowed better, and better reflected what was currently happening in the field.

 MR. PIETT: In addition to that, too, a lot of the changes were practical changes. Like, there were some things that -- again, going back in history, maybe the comprehensive settlement things agreed to, that practically we just could not do them in the field, and because of that then we reviewed that also and ensured that it was something that we could carry out and commit to, and that was practical. And again, if I use Brantford-to-Kirkwall, it has been all signed off by all the landowners except for the one. And again, it is a workable document. It is a good document that we the builder can live up to and the landowners can agree to.

 MR. JOHN GOUDY: Well, I will take you through, now, the specific provisions that GAPLO is looking at, the substantive changes, and perhaps you can tell me whether the changes are -- the changes which reflect -- the proposed changes from GAPLO reflect the Strathroy-Lobo letter of understanding.

Perhaps you can tell me whether any of those individual changes proposed are unworkable, because GAPLO is not proposing that the form of the letter of understanding proposed is problematic. The questions I have for you are about individual substantive construction items.

 So do you have a copy of the table that was filed by GAPLO in front of you?

 MR. PIETT: Yes, we do.

 MS. HARE: We should give that an exhibit number.

 MS. DJURDJEVIC: That will be Exhibit K1.3.

EXHIBIT NO. K1.3: GAPLO TABLE.

 MR. JOHN GOUDY: Madam Chair, I have additional copies, to the extent that there is anyone that needs an additional copy.

 MS. HARE: The Panel has copies.

 MR. SMITH: We have copies.

 MR. WACHSMUTH: We have copies.

 MS. HARE: We are fine.

 MR. JOHN GOUDY: GAPLO is the only party left, so -- okay.

 So if you have that Exhibit K1.3 in front of you, I am just going to go through the changes that GAPLO is requesting from the Board to Union's construction methodology.

 So on page 2, it's -- just to explain, this table in the left-hand column, the -- more or less the entire text of the Hamilton-to-Milton LOU is set out. In the right-hand column are the proposed additions or changes requested by GAPLO. They don't follow, necessarily, the order that they appeared in in the Strathroy-Lobo letter of understanding, but this is what GAPLO understands to be the appropriate location for dealing with those items.

 So clause 2 in the Hamilton-to-Milton LOU deals with testing for soybean nematode. Do you have that provision in front of you?

 MR. VADLJA: We do.

 MR. JOHN GOUDY: So what was in the Strathroy-Lobo letter of understanding was that Union would work with OMAFRA and the University of Guelph to develop a best-practices protocol and will employ the most current best practice at the time of construction.

 What Union has proposed in this project is only that the company will work with OMAFRA to develop the most current best practice.

 So is it -- is it that Union is committing to developing a best practice but not to implementing it?

 MR. VADLJA: No, that is not correct. Our goal is to develop a best practice and implement that best practice.

 MR. JOHN GOUDY: So I take it, then, that Union wouldn't have a problem with the language from the Strathroy-Lobo letter of understanding that clarifies that you are developing the best practice and at the time of construction employing the most current best practice?

 MR. VADLJA: No, I don't have a problem with that. No.

 MR. PIETT: However, just to step in here, the point we focused on in this paragraph was that you... University of Guelph...

 MS. HARE: Is your mic on?

 MR. PIETT: We are live. Sorry about that.

 Again, just to point out that Mr. Vadlja said yes, that that is not an issue. And hopefully we're not into wordsmithing here, but the point here that -- why we didn't accept it was University of Guelph was in this -- and again, we have reviewed that issue, and at this point in time University of Guelph doesn't offer up that expertise, so therefore why should we write that into this document?

OMAFRA does, and Mr. Vadlja and Mr. Wesenger can comment on that, but again, we are focused on two different things in that statement.

 MR. VADLJA: I think the key point here is having a discussion with the most appropriate experts, be they OMAFRA or be they the University of Guelph. I mean, I would love to go back to the University of Guelph, my old alma mater, and have a chat with them about this. And if they are the experts, we would go back to them as well, but it's -- the focus is on developing the most best practice, talking with the experts, and then implementing the practice in the field.

 MR. JOHN GOUDY: I can respond that GAPLO's concern is more with the implementation of the plan, and so -- but I think I have got your agreement that Union is committed to employing the most current best practice at the time of construction.

 MR. VADLJA: Yes, we are.

 MR. JOHN GOUDY: And perhaps this is a question for Mr. Smith, but would Union agree to a condition requiring it to employ the most current best practice at the time of construction?

 MR. SMITH: Yes, I mean, I don't -- sorry if we missed the point. I thought we had captured already that we would live up to the development of the best practice by living up to it. And the concern was that the University of Guelph, despite historic expertise, doesn't have it anymore, so I don't think that is an issue.

 MR. JOHN GOUDY: The next item is on page 3, dealing with water wells, which is section 4 in the proposed letter -- or, sorry, the Hamilton-to-Milton letter of understanding. This is not actually an item from Strathroy-Lobo. This is an additional item.

And so the question is: Will Union commit to providing the laboratory reports or results to the landowner on request?

 MR. SMITH: Yes.

 MR. JOHN GOUDY: In section 5, staking of the work space, you will see in the right-hand column two commitments that Union has taken out of the letter of understanding.

Could you -- perhaps you could explain why each of those is no longer a commitment of Union in this project.

 MR. PIETT: First of all, I believe that the wording we have adequately covers things.

But there is a couple that are actually impractical to do. I would put them in that category because actually when we lay out the easement, we will stake the easement and we also stake the outer bounds of the working area, so temporary land use.

So the first paragraph, which is asking us not to remove stakes, is just impractical because when we strip the topsoil off the easement -- so over the trench in the area where we restore subsoil -- we actually push it off the easement and store it on temporary land use which

we have paid for. And in doing so, the stakes that are laid out at 30-metre increments along the pipeline are removed.

However, when they are removed, that topsoil pile become a delineation of the easement, so we know exactly where it is. Then when we remove the subsoil from the trench line and pile it in between trench line and that topsoil pile and we ensure that isn't mixed, again

the easement edge is delineated.

So to go back in and re-stake it serves no purpose.

And in the second one, again asking for the stakes to be put in after construction for tile work, again, we all know where the easement is because that is the part that has been worked up for temporary land use.

The actual work that is done with the tile work occurs both on easement and off easement. And again, that is a

plan that we develop with the landowner, utilizing a drainage expert to lay out tiling plans that may again start on easement and end up quite a distance off easement.

 So again, to stake the easement edge serves no purpose.

 MS. HARE: So I want to understand what you are suggesting, though, because the topsoil would normally be stored on the temporary work space. But you are saying stored off easement.

So by "off easement" do you mean temporary work space, or do you mean if it's taken elsewhere and brought back later?

 MR. JOHN GOUDY: My understanding of the provision that was in the previous form of letter of understanding is that it is dealing with topsoil that is stored off of the easement, not -- I am not sure that it is necessarily called temporary work space; it may be called topsoil storage space.

But it is an area, an additional area that is open to Union's use outside of the permanent easement.

 MS. HARE: Right.

 MR. JOHN GOUDY: So it is not topsoil taken away and brought back. It is topsoil piled adjacent to the easement.

 MS. HARE: Okay.

 MR. JOHN GOUDY: On item 6 at the bottom of page 3, Union previously provided that a landowner could request a mulch layer be provided between the existing topsoil in the

topsoil storage area and the stripped topsoil pile where a crop is not present, to provide the buffer between the virgin topsoil and the stripped topsoil.

Is that something that Union is prepared to commit to again in this project?

 MR. PIETT: No. Again, I will put that in the category of it's not practical and there is no value added in it. I will ask Mr. Wesenger to maybe comment on past practice.

The other thing, too, is that we haven't had any landowners even ask for this. So, again, I am not sure if they even see the value in it as well, just the aspects of what it could do or can't do.

 MR. WESENGER: Certainly the intent there is to define the boundary between the topsoil that is stripped from the easement and the virgin topsoil off easement, as you described it, Mr. Goudy.

But that topsoil that is stripped could sit there the

for a period of four months or greater, and what could happen is that material that is laid down as a mulch layer between them could begin to decompose and begins to compost and is no longer discernible.

Once you pull that topsoil back, it doesn't aid the

equipment operator in any way to define that boundary.

The equipment operator is a highly trained operator who can define that just by the feel of his blade, that interface.

He also will be assisted by the soils inspector in monitoring that. The soils inspector is a professional agrologist certified in the inspection of sediment erosion control, and has extensive experience in overseeing this type of operation.

The other concern that we could have is the question where would the source come from that would act as that

interface between -- as the mulch layer, and it could introduce other invasive species -– noxious weeds, that sort of thing -- and that would be a concern.

 MR. JOHN GOUDY: So it's Union's evidence that this has not -- this option has not been exercised by landowners in the past?

 MR. WACHSMUTH: That is my understanding, Mr. Goudy.

 MR. JOHN GOUDY: The next item is immediately below it, and that is the commitment at the landowner's request to separate distinct subsoil horizons. Is that something Union is prepared to commit to?

 MR. PIETT: The first headline on this -- especially for these three requests near the -- the other issue here is "at the request of the landowner." So if the landowner just asks, then we have to do to live up to the LOU.

 So that is a concern to us, and that's why you will see the new language is typically "in consultation with" or "utilizing an expert to determine," and we will do that.

This one here, again, the wording is so general and includes, you know, some different things that it just wasn't specific enough for us. There are circumstances where we do separate distinct soils, but that is upon review of our topsoil inspector, as well as any expert that we would need.

So something like a blue clay, if we encounter it, we definitely will remove it, because it creates other issues for us in construction. And there is other different things again -- maybe Mr. Wesenger can talk to it and just explain why we just don't want ultimate authority being with the landowner due to the issues that might be in the subsurface.

 MR. WESENGER: Certainly. On Hamilton-to-Milton, this is not a predominant condition that would be anticipated.

There may be one or two soil types for a very, very short stretch where this could occur.

Really what you have there and we are talking about

is the subsoil, where you have undesirable subsoil which would be the clay-type material, which could be excavated in the lower part of the trench, and mixing that with the more desirable subsoil. So we would want to separate those out.

But in this case, we could certainly look at including -- where it is isolated in such short stretches, minimal stretch for 100 meters or 200 meters or so, that would be included in an environmental protection plan where the soils inspector would look out for the potential for that to happen.

If he saw that it was beginning to happen, he would recommend to the site superintendent that we have this

situation and we need to separate those materials.

 MR. JOHN GOUDY: And finally on this section, the last -- the last option from Strathroy-Lobo is that Union would over-winter topsoil prior to putting it back in place at the request of the landowner. Is that something that Union is prepared to commit to?

MR. PIETT: We will commit to over-wintering, you know, based on a recommendation of our consultant that is a soils expert, but not at the request of the landowner.

And the issue there is it in the best interest of

both us, the company as well as the landowner, to get the topsoil back as soon as possible.

 However, there are times -- especially when you are pushed into late fall construction and wet weather conditions -- that it could be detrimental to the soil itself, and a number of other issues caused by water ponding over the stripped area on easement.

 So again, we want to do the right thing, and again, we don't want to just leave it to the landowner that decides and then slows down the process of returning the land back to productivity. We would definitely use a consultant and an expert on it, and we do have examples of that, but just to leave it totally to the landowner, we want to ensure that we have input from all experts on that.

 So we have a little more background, I think, on that that we can add to it as to...

 MR. WESENGER: So the biggest factor we would be looking at is what is the likelihood that we can get that topsoil returned to the easement in workable conditions, right? So the saturation hasn't set in and it maintains to be workable for the balance of the clean-up period for that construction period.

 If the soils inspector were to review the situation and look at the specific time of year and say we are too late into the fall, it doesn't look like things are going to dry up, the decision may be made to over-winter. You know, the concern being if we do over-winter, of course, the soils, that easement left exposed creates -- I could describe it perhaps as a bathtub effect, where the water would collect, the snow would collect, and as it melts it takes a much longer period of time for that subsoil to dry out, because the water has sort of ponded over the easement. And then it could take much longer to get back on those lands the following spring or early summer to continue that clean-up, to finish the final clean-up on the easement lands.

 MR. JOHN GOUDY: To the extent that the landowner has concerns about avoiding subsidence through the over-wintering of the topsoil, so the topsoil doesn't go back on until the subsoil has had the over-winter period to subside, if it's going to subside, to the extent that that is the concern of the landowner, doesn't the proposal here in the Hamilton-to-Milton LOU eliminate the landowner ability to put forward that proposal and to have it considered and implemented by Union?

 MR. WACHSMUTH: I disagree with that, Mr. Goudy. I think what we are saying is -- I have tried to say before that this is really -- this LOU is to talk about the general practices. If a landowner has site-specific concerns, there are two or three other avenues that he has.

 As I mentioned before, in the LOU there is schedule B, which is really at this point in time -- if you turn it up, is a blank sheet. It is to deal with the special concerns of any individual landowner, as well as we mentioned here is our lands relation program. If a landowner had that, they could bring it up both to the LRA, to the person who is signing that. And again, there is our complaint tracking process, so if the landowner did not get -- if they weren't able to resolve it, that that is an escalating process right up to the senior management at Union.

 The other thing which Union has agreed to in this case is the construction monitor, and if you look at what the objectives or the roles of the construction monitor are, it is there -- he is there as well as an asset if a person wanted that.

 So again, the LOU is really just to talk about the general -- the normal practices. So if construction is done on a property in July, we try to put -- our preference is to put the topsoil back in August. Again, as Mr. Wesenger talked about, if the topsoil -- if we are into August or September/October, it probably will get left, but I mean, we're really there as -- is that we talk about what the general rules are, not necessarily all the site-specific or nuances that are there, and we would hope that our other processes, the complaint tracking, the issues dealing with the construction monitor, the pre-construction interviews and that, that those would resolve those issues.

 MR. JOHN GOUDY: But without the option in the letter of understanding, the final decision is made by Union, regardless of the landowner's preference?

 MR. WACHSMUTH: Well, I mean, there are options where he can raise it. I mean, if the construction monitor was involved and he made a recommendation, I mean, that is something that would be basically going to both Union, the Board, and to GAPLO. I mean, while it may be true you would have the final say, but, I mean, if a construction monitor recommended something, it is going to have to be awfully -- Union -- it would be difficult for Union to go and say no to something that the construction monitor found acceptable.

 MS. HARE: Can I ask a question? Is the soils consultant different from the independent environmental monitor?

 MR. WACHSMUTH: Yes.

 MS. HARE: So it's two separate people?

 MR. WACHSMUTH: Traditionally we would have a person from Mr. Wesenger's firm out as a topsoil inspector, the independent firm. And again, they filed their report as part of GAPLO's evidence, was really an engineering environment form that was a different one and completely separate.

 MS. HARE: No, but during construction you are going to have two experts? You're going to have the environmental monitor and the soils consultant? Or is that person one and the same?

 MR. WACHSMUTH: No, they are two different people.

 MS. HARE: Thank you.

 MR. JOHN GOUDY: On the next section with respect to depth of cover, section 7 of the letter of understanding, this is more or less -- the new provision is more or less what Strathroy-Lobo was, except that Union has removed the possibility of increasing the depth of cover over the pipe to accommodate drainage.

 MR. WACHSMUTH: I don't think that is quite correct. You are correct that we have taken the drainage consultant out of here. What we have done is we've tried to move all of the drainage settings to the one clause, which we will come to in a few minutes here, but aspects of drainage we thought should all be in one drain in the section dealing with drainage, not spread out throughout the document.

That was one of the reasons why we tried to do it, was to make it more consistent.

 MR. JOHN GOUDY: So it's Union's position, then, that it will consider adjustment to the depth of cover over the pipe to accommodate drainage within the provision that is proposed in the LOU?

 MR. PIETT: Yes, that is correct, and you will see it in 9 of the Hamilton-to-Milton proposal. There is adequate language in there to ensure that occurs.

 MR. JOHN GOUDY: Okay. The next item I would like to ask you about is at page 5 of the table. It has to do with the over-wintering of the topsoil. And what it appears -- perhaps you can confirm -- what Union is saying is they will address subsidence where the topsoil has been over-wintered where there is subsidence greater than 4 inches, but not at 2 inches, as had been agreed in Strathroy-Lobo.

 MR. PIETT: That is correct. The 2 inches is too restrictive, so we can put it in that category. It is just not practical. I mean, normal farming practices from cultivation, ploughing, et cetera will definitely see, you know, a 2-inch differential. However, the zero to 4 inches is reasonable.

Again, it is also consistent if you look on the left-hand side for what is proposed in the Hamilton-to-Milton LOU. It is consistent with everything that we have addressed there. So we feel it is a very reasonable way to do it.

 MR. JOHN GOUDY: Would you agree with me that the issue for landowners about correcting subsidence is one primarily about the mixing of subsoil and topsoil during tillage at the edges of the area of subsidence?

 MR. PIETT: If it's over 4 inches, yes. But if it's only a 2-inch subsidence, then normal tillage would actually just in practice remove that 2-inch.

 MR. JOHN GOUDY: But whether or not the tillage is going to affect the subsoil and mix with the topsoil is going to depend on the depth of the topsoil; isn't that correct?

 MR. PIETT: Yes, it will, but again, it will depend on how much topsoil is there to begin with. So if a natural occurrence across a whole property is 3 inches, then there's issues already about mixing if someone is chisel -- ploughing or just cultivating down past that 3-inch later.

However, if there is 12 inches of topsoil, that is probably a non-issue in the realms of 2 inches, and that hence why we have anything over 4 inches, yes, we will definitely address that, because then there could be issues -- in addition to just the subsoil mixing, it's -- drainage is the big issue there, to ensure the proper drainage.

 MR. JOHN GOUDY: But then if you look to the clause in the Hamilton-to-Milton LOU at the bottom of page 5, Union's already committed to correcting subsidence irrespective of the 4 inches where it causes drainage problems.

 MR. PIETT: Absolutely. We are committed. And again, what we found over time and practice is that from zero to 4 inches it does not benefit anybody to get in there and rework things or redo things.

 But definitely anything over 4 inches, then we will repair things.

 MR. JOHN GOUDY: And what about situations where the mixing of topsoil and subsoil might result as -- because of the depth of the topsoil on a particular property?

 MR. WACHSMUTH: Mr. Wesenger?

 MR. WESENGER: I think it would be very difficult to discern that 2-inch -– again, I understand your point. I think that with 4 inches, it is completely acceptable that that is a concern if the subsidence were to that point.

Two inches, I think it would be very, very difficult to achieve that, right? And to measure the extent of mixing that occurs. It would be very, very minimal, I would anticipate. Right?

 MR. JOHN GOUDY: There are, Madam Chair, a few items in this table that I am just going to skip over for time's sake, and I will deal with that in --

 MS. HARE: What does that mean, "skip over"? That you will deal with it in --

 MR. JOHN GOUDY: I will deal with it in argument and confirm what GAPLO's position on those specific items are.

 MS. HARE: That's fine. Mr. Smith, do you want to comment on that?

 MR. SMITH: I will just have to see what it is, because if there is a factual-based objection that Union has, I think it's beneficial to the Board to know what that is.

I am not sure that it will be readily apparent simply by way of argument, so I will just have to see what my friend does.

 MS. HARE: Okay. That's fine. Let's proceed on that basis, then.

 MR. JOHN GOUDY: Thank you.

So the bottom of page 6, I don't have any questions on that particular item.

 MS. HARE: Okay.

 MR. JOHN GOUDY: The top of page 7, I guess the second item there is stone picking. And Union had agreed and committed to landowners in Strathroy-Lobo, and on the subsequent project, to pick stones down to 2 inches in size; is that correct?

 MR. PIETT: Originally had agreed. But at this point, in the Hamilton-to-Milton, we have removed that.

 Again, this one is in that category of just not practical. And again, this goes back to, I believe -- and I will ask other panel members to maybe help me with the history, but we did try to attempt to do this on Strathroy-to-Lobo and not with success.

In fact, in the Cordner report that was written by the independent monitor in that project -- and believe it's in GAPLO's evidence, page 217 or 218, somewhere around there –- they actually said that it was too restrictive and it was not practical, and their recommendation was to be more flexible.

So what we have attempted to do in here is -- and

basically or -- wording is that we will pick stone comparable to the adjacent land. So if the landowner has 12-inch nuggets all over their property, we are not going to pick it right down to nothing just on our easement.

I mean, if that's what the landowner has chose to operate at, then fine. But if they pick their soil down to something which is practical like a 4-inch, then we will pick our easement down to 4-inch, and hence why we have set the minimum at 4-inch or 100 millimetres to pick on the right-of-way after our construction, and that is both on topsoil and subsoil.

 MR. JOHN GOUDY: But you are leaving open the possibility that Union's construction could cause a situation of 2- to 4-inch sized stoniness on the construction area that doesn't exist outside of the construction area, and that will just be left as is?

 MR. PIETT: I don't know if we can really say that. Again, how far do we want to go down? Pick pebbles?

Like, we have to set a limit.

The common practice with the equipment to get down to this, like a 4-inch, is just about all it can do. And also, too, if you keep picking away and picking away, you are eventually going to just reduce the material there, and then you would have to truck in other material to replace all the stones you took out.

I'm just saying, like, if you're in a gravel pit and you have nothing but stones and you start picking, you are not going to have a gravel pit left.

So this is just a practical approach to it, a common approach. And again, it is a consistent approach with what we have done in many other properties, and been very successful at it.

And again, I will go back to it. It is included in the Brantford-Kirkwall LOU. That is more agriculturally-based than Hamilton-to-Milton, and it has been accepted by everybody.

 MR. JOHN GOUDY: It was accepted at 2 inches in Strathroy-Lobo?

 MR. PIETT: That is correct.

 MR. JOHN GOUDY: But again, can you confirm that if

Union's construction results in stoniness on easement that

doesn't exist off easement, the landowner can expect that

he or she is going to be stuck with any stones that are less than 4 inches in size, because Union is not committing to pick them?

 MR. PIETT: What you might be starting to describe is

another one of those special circumstances whereby somewhere -- you know, buried 4 feet below the ground there is some kind of gravel strata, and in our work we have moved that to the top...

I would prefer to, again, handle that on site-specific, as Mr. Wachsmuth indicated, and work with the landowner on something like that, as opposed to carte blanche saying that we are going to pick down to 2-inch to cover a what-if that we honestly haven't seen in my history -- and help me here, but it is just like –- again, it is one of those non-practical ones, and we have tried to take a practical approach here.

 MR. JOHN GOUDY: What about the commitment in Strathroy-Lobo to pick beyond two years after construction, where there is a demonstrable need? Is that something that Union can commit to again?

 MS. HARE: I see that in the left-hand column it says two years after construction.

 MR. JOHN GOUDY: Yes. But Strathroy-Lobo, in the right-hand column, the second sentence says:

"The company shall return in following years where there is a demonstrable need."

 MS. HARE: So more than two years?

 MR. JOHN GOUDY: Yes.

 MR. WACHSMUTH: Again, that would be -- I guess, if an individual came up, we have operations people inside. Generally speaking, we would hope that after two years we wouldn't get that many coming up.

But if there was still a problem, the landowners do have our number; they are able to call the LRA. And if it was an issue we would certainly deal with it.

 MR. JOHN GOUDY: So Union is committing to come and pick rocks if there is a demonstrable need?

 MR. WACHSMUTH: If the landowner identifies an issue, we will certainly deal with it, Mr. Goudy. I don't think it needs to be put in the LOU.

 MS. HARE: What is the LRA again, please?

 MR. WACHSMUTH: The lands relation agent, which is a person assigned to the project to deal with the first contact of all of the landowners along the length of the pipeline.

 MS. HARE: Thank you. Mr. Smith knows I don't like acronyms.

 MR. SMITH: I was just going to caution you that it is helpful for the transcript if we refrain from using acronyms.

 MR. WESENGER: I was going to add just -- I can appreciate the concern with the size of rocks, and I think if a landowner or operator came and said: Look, I have a specific type of equipment that is getting harmed by these rocks up to 4 inches, Union would sit down and talk to that landowner.

But from my perspective, the concern being removing stones down to 2 inches is it's very difficult to achieve that. It take a lot of effort, and sometimes those mechanical rock pickers can start picking up clumps of topsoil and removing those from the easement, along with

the stones and the rocks.

In addition, when you start taking that much activity to remove the rocks, you start pulverizing that topsoil and breaking down its structure. So you are taking away the benefit, in some cases, to the topsoil itself by over-picking it or over-working the soil.

 MR. JOHN GOUDY: The next item here is drainage tiling, and I don't actually have any questions on that. And just to give comfort to Mr. Smith, I am not going to be proposing in argument changes to that drainage tiling section, so...

 MR. SMITH: Thank you.

 MR. JOHN GOUDY: And unfortunately I don't think that we have the time to go through that section in any detail. It is complicated.

 MS. HARE: I will tell you, Mr. Goudy, we will have to take a break a little shorter than our hearing plan -- sorry, sooner than our hearing plan indicates, maybe in about five minutes. So maybe you could propose a suitable time to stop, and then we will resume after that.

 MR. JOHN GOUDY: Sorry, you had said that it was going to be sooner than the break that was --

 MS. HARE: Well, the hearing plan suggests 1:00 o'clock, and we will need to break at 12:45, but we will let you continue after the break.

 MR. JOHN GOUDY: Sure. And I am kind of at a point where I can't finish in five minutes, but I don't have a whole lot more to do after that, but if we can just go to the break, I can continue after the break, so --

 MS. HARE: Then let's go to the break now, and we will return at 1:45.

 --- Luncheon recess taken at 12:40 p.m.

 --- Upon resuming at 1:51 p.m.

MS. HARE: Please be seated. Are there any procedural matters?

 MR. SMITH: Two minor matters, Madam Chair, that I would like to draw to your attention.

PRELIMINARY MATTERS:

MR. SMITH: The first follows on our discussion with respect to the settlement agreement this morning.

 MS. HARE: Yes.

 MR. SMITH: We are currently reaching out to parties with respect to the items we discussed. Let me just tell you with respect to the future use clause that you had identified, I can tell you what our proposal is going to be.

That clause in the easement is there for historic reasons, but it really isn't an -– it is applicable in the case of a smaller-diameter distribution pipeline, but it would not be the case that a 48-inch pipe would ever be above ground.

So we are going to propose to remove it, and we will be asking people to sign off on that. I don't expect any pushback. But that is where that is headed.

 MS. HARE: Okay.

 MR. SMITH: And the other matter is we have just proposed some changes, and we will let you know, obviously.

I expect, given the timing, it likely won't be today.

So if it is amenable to the Board, we would put in a letter as soon as we have confirmation, and if it is of assistance, we could do a black-lined version of the

settlement agreement so you can see what the changes are for your consideration.

 MS. HARE: That would be helpful, a black-lined version, and a clean one. Thank you.

 MR. SMITH: The second item was a minor transcript

correction that I just raised with Mr. Piett to make. Thank you.

 MS. HARE: Okay. Mr. Piett, please?

 MR. PIETT: Yes, during the break we had the opportunity to go back and confer, and also look at some of our history and talk to some of the people out in the field.

Actually I was incorrect in saying we had never used the mulch option when stripping topsoil, to differentiate it between the stripped topsoil and the existing topsoil.

We actually have done that before on one project, on our Sarnia industrial line, and we do have some

comments that may be helpful as to whether it was effective or not.

Mr. Wesenger?

 MR. SMITH: Mr. Wesenger?

 MR. WESENGER: Yes, based on the information, the

clarification with Mr. Piett, I took the opportunity to contact one of my employees in Guelph, Mr. Rowland, who was the soils inspector on that project. And he did confirm that the mulch was added there.

I had a follow-up discussion with him about whether

or not it did add value to provide a separation with

the interface, and his comment was no, it didn't provide any benefit whatsoever. There was some evidence that the straw remained that was there. But the operator was quite qualified, and it didn't limit his abilities whether it was there or not.

 MS. HARE: Okay. Thank you.

 MR. SMITH: Thank you.

 MS. HARE: Anything else?

 MR. JOHN GOUDY: Madam Chair, I have -- this issue could be left to the end of my planned cross-examination, but I think I should deal with it now because it would require me to go back over a few of the items I have already asked questions on of the panel.

But as a result -- or on hearing some of the evidence given by the panel, I had a request from my client representatives that they be able to respond, provide evidence, their evidence in response to that.

As I said before, at the time that GAPLO filed its written evidence, we didn't have Union's proposed letter of understanding for this project. So GAPLO wasn't aware of the particular changes that were being proposed to the Strathroy-Lobo form of agreement.

So that wasn't addressed in the written evidence, and couldn't be addressed at that time in the written evidence.

There are just, I think, three at this point -- subject to anything else that comes up in cross-examination, there are just three discrete issues that they would like to respond on, and it would be over-wintering of topsoil, the addition of the mulch or straw layer, and I suspect that they may have some evidence to provide on the landowner option for approval -– sorry, landowner approval

of the source of topsoil to be imported to the property.

That is something I haven't touched on yet in my questions, but I will be coming to that and I anticipate that that may be an area that my client's representatives would want to give evidence on.

And so I think I would like to make the request at this time that they be permitted to do that, so that I can then go back and ask any questions of the panel to cover off evidence that I anticipate my client's representatives giving, so that the panel has an opportunity to respond to that at this time.

 MS. HARE: Just before I get to you, Mr. Smith, I just want to make sure I understand what you are saying.

We will decide now whether we allow your panel to take the stand, but you want now to go back to questions, areas that you have already pursued, or after your panel is on?

 MR. JOHN GOUDY: No, at this time.

 MS. HARE: At this time? Okay. Fine.

 MR. JOHN GOUDY: There are a few points that I anticipate my client representatives giving evidence on that I haven't already touched on with the panel, and I would like -- I would ask that the Board make the decision now, so that I am able to ask those additional questions in cross-examination.

 MS. HARE: Okay. Mr. Smith, do you have any comments about the request?

 MR. SMITH: Yes. I spoke to Mr. Goudy about this. A couple of things. I mean, the first is I don't think this is going to be an issue, so let me just get that out.

It's quite right that the letter of understanding was not provided, or my friend did not have it at the time his evidence was prepared. And so I understand that.

It was provided to my friend by me on or about

February 12th, so they have had it for some time. But be that as it may, I don't have any objection to my friend calling his witnesses.

What I had indicated to him, and thus sort of the nature of his request, was that in fairness to these witnesses, if the GAPLO representatives are going to say something that we haven't had notice of, then it would be fair that that evidence, or what he anticipates the evidence is, be put to these witnesses so that they

have a fair opportunity to comment on it. And then you will have their perspective, and then you will have the GAPLO's witnesses' representatives perspective on it.

 So provided the matters that they intend to testify to are put to the Union witnesses, I don't have an objection. I understand their testimony to be relatively limited, so I don't see it as being a big problem.

 MS. HARE: Okay. Thank you.

Ms. Djurdjevic, do you have any comments?

 MS. DJURDJEVIC: Board Staff has no objection.

 MS. HARE: Yes, we are fine with what is being proposed.

 **CROSS-EXAMINATION BY MR. JOHN GOUDY (cont'd):**

 MR. JOHN GOUDY: Thank you.

So I will leave the items that I will come back to -- I will leave those for the end, and I will just continue on from where we left off in GAPLO's proposed changes to the letter of understanding.

So I am back to, again, Exhibit K1.3, and at the bottom of page 11, dealing with section 11 in the Hamilton-to-Milton letter of understanding, there has been a

change from Strathroy-Lobo in which Union no longer commits to ensuring that the landowner shall have access across the former trench area and easement.

Do you see that change that's been made from the GAPLO Union-Strathroy language?

 MR. PIETT: We actually don't read it that way, because our paragraph 11 -- our paragraph reads:

"Where requested by the landowner, the company will leave plugs of access across the trench."

 MR. JOHN GOUDY: Right. What I am asking about is the

commitment in the Strathroy-Lobo form of agreement. At the end, it said:

"Following construction, the company shall ensure

that the landowner shall have access across the former trench area and easement..."

Not just at plug locations, but the entirety of the former trench area and easement.

 MR. PIETT: And our paragraph reads:

"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 or anywhere else. Should conditions

still prevent landowner crossing the company will create a gravel base if necessary."

 MR. JOHN GOUDY: GAPLO's issue is that it doesn't say "or anywhere else." It stops at "previous plug locations."

 MR. PIETT: That is not an issue. That is standard practice, that we ensure that after we are finished construction all farming activities can occur again.

 MR. JOHN GOUDY: So then it is the commitment of Union that following construction, the company shall ensure that the landowner shall have access across the former trench and easement?

 MR. PIETT: Yes. We weren't reading it the way you were.

 MR. JOHN GOUDY: And perhaps on the next page, page 12, could you explain to me Union's rationale for no longer committing to create a gravel base on filtered fabric across plugs where the landowner requests it?

 MR. PIETT: Certainly. Again, the way this states this, it is the landowner making that request, and there is a number of other options that are available, and we have offered that up if conditions persist, but if we can do it with normal practice of backfill, compaction and returning all the material back as normal, then there is no need to go to that. And again, if you do go to that and put in gravel base and filter cloth, it does raise other issues again, removing it after the fact, and we would prefer not to jump to that conclusion if there's other methods that are available to us that we can do prior to that option.

 MR. JOHN GOUDY: Are those other methods something that is discussed with the landowner?

 MR. PIETT: Yeah, during, you know, pre-construction, during construction, after construction, at any point in time with our LRA, or lands relation agent, there is that opportunity to discuss this. Typically this comes when there is, like, wet conditions, and again, you get into fall cropping and want to go from one side to the other of the easement, and again, we will ensure that the landowner can get across the easement.

 MR. JOHN GOUDY: Thank you.

 On page 14 of the table, this is the section Roman numeral X in the Hamilton-to-Milton letter of understanding. So it's section 15, "Covenants," subsection Roman numeral X. And here Union covenants that it won't -- its construction activities won't occur outside of agreed-to areas without the written permission of the landowner. In Strathroy-Lobo that section also referred to operation activities.

 Is Union prepared to commit to provide the same covenant to landowners with respect to operation activities?

 MR. WACHSMUTH: We are prepared to do the covenant, but as I said, when we tried to revise this document we tried to really make this dealing with construction. And there are other agreements in place that deal with operation and the dig agreement, but really this is construction, so we tried to take out, where possible, anything else that didn't deal with construction.

So we recognize other agreements there will be in place to deal with that, and that is why we took it out of the LOU, letter of understanding.

 MR. JOHN GOUDY: Notwithstanding that it may not fall in the letter of understanding, then, is that a commitment that Union makes with respect to its operation of the pipeline?

 MR. WACHSMUTH: Yes.

 MR. JOHN GOUDY: I am skipping over the language at the bottom of page 14 with respect to the importation of topsoil. That's on the basis that we won't be raising that in argument.

 Mr. Wachsmuth, on page 16, adjacent to the covenant respecting the integrity dig agreement, I take it that your last response about restricting this document to construction is the answer to why that language was taken out?

 MR. WACHSMUTH: Yes, that is correct.

 MR. JOHN GOUDY: But can you also confirm that the language that was taken out from the Strathroy-Lobo agreement is something that Union is committed to outside of this letter of understanding?

 MR. WACHSMUTH: I think that that is all covered off in the dig agreement, sir, and that was filed as part of your evidence.

 MR. JOHN GOUDY: Thank you.

 At the bottom of page 16, what has been removed from the Strathroy-Lobo form of letter of understanding with respect to imported topsoil is the previous requirement that the topsoil be from a source approved by the landowner. Is that something that Union is prepared to commit to putting back into the letter of understanding?

 MR. PIETT: No, we are not. Again, the reason being here is, again, we want to rely on our specialists that have actually analyzed the topsoil to ensure that it is appropriate to bring back on that property to be consistent with the existing topsoil, and we can't, in a general term, just leave that to the landowners to always make that decision. We want to ensure that we consult with -- consult with the landowner as to what they think, but we want the decision to be left with -- based on -- or based on the recommendation of our consultant, who will do a number of different analyses to that soil before we will bring it on so that we do not impact any kind of productivity or the quality of the soil that is on that property.

 MR. JOHN GOUDY: But isn't the clause as it was stated in Strathroy-Lobo with the additional language at the end of the statement -- doesn't that create a situation where it is Union's consultant that is choosing, selecting and proposing the topsoil that is to be imported, but that selection is subject to the approval of the landowner?

 MR. PIETT: I don't have that wording right here to refer to --

 MR. JOHN GOUDY: If you look at the table, the wording that is in the Hamilton-to-Milton letter of understanding is:

"Any imported topsoil shall be natural, free of soybean cyst nematode, and shall have attributes consistent with the topsoil of adjacent lands as determined by the company's consultant."

The additional language that has been removed and that GAPLO is proposing be added back in is that "and be from a source approved by the landowner."

 Does that not -- I mean, that's what was in the Strathroy-Lobo agreement that Union used. Is that not a process whereby Union's consultant selects the soil subject only to the approval by the landowner?

 MR. PIETT: If we were to read it that way -- however, again, we weren't -- it could be, except that it offers up – there's other issues here, that if the landowner was to not accept what our consultant said, then where are we going? I mean, we do need to find the proper topsoil to bring back, so again, maybe this is just editorial and just understanding what the intent was of the original document, but that in itself is -- I mean, if we have a specialist pick the soil, then I am sure the landowner should agree to one of those, but if they don't, where are we? We have to bring soil in, and we have to replace it.

So I would prefer to stay with our wording, which I think protects the landowner, because, again, through everything else, we've been very clear that we consult with the landowner through all of this, and this is no exception.

 MR. JOHN GOUDY: But at the end of the day that sets up the situation where if, for whatever -- the landowner is -- has reasonable problems, reasonable concerns about the topsoil that's been selected by Union's consultant, the landowner is obligated to accept that soil onto his or her property without any recourse.

 MR. VADLJA: Mr. Goudy, from a practical perspective, we would work with the landowner to ensure that they are comfortable with the topsoil we are bringing onto their property. It is their property and they will need to work that topsoil in the future. We will want to make sure that topsoil is adequate for their purposes.

So the company consultant would judge the merit of

that topsoil, make sure it is appropriate for that property, discuss that with the landowner, and we would hope that the landowner would be in agreement with that.

 MR. WACHSMUTH: As well, Mr. Goudy, I think if you look in our complaint tracking program, where if the landowner did have issues with it, we do have processes in place where that complaint can be escalated up through the engineering, up to a vice president or senior management level, if there are complaints.

 As well on this project, we are proposing to have an independent monitor who would be able to have an opinion on what this is.

 MR. JOHN GOUDY: If there is not a commitment to have the source of the topsoil approved by the landowner, then what -- what is there to say that the landowner is going to be informed of the source of the topsoil that is being imported?

I mean, the landowner may have concerns, but the landowner is not going to be in a position to express any concern if he or she doesn't -- isn't told where the topsoil is coming from.

 MR. VADLJA: Perhaps the commitment that could be made then is to ensure that that consultant -- that that discussion does happen within the landowner. So if there is topsoil being brought onto a landowner's property, the commitment that could be made is that the landowner is informed about -- that a discussion around the quality of that topsoil takes place with the landowner prior to that topsoil being brought to site.

 MR. JOHN GOUDY: The quality and the source?

 MR. VADLJA: The quality and the source.

 MR. JOHN GOUDY: On page 17 in the dispute resolution section -- I won't be asking any questions on that topsoil importation. That is linked to the previous section that I had passed over.

On page 18 under section 17, "Land rights and easements," Union in this document agrees that it:

"... will not surrender or be released from any of its obligations under an easement for this project without the consent of the landowner."

In Strathroy-Lobo, the language was slightly different; it was:

"... will not surrender or be released from any of its obligations in the easement lands."

So GAPLO's question is whether Union is prepared to commit that it won't surrender or be released from

any of its obligations in the letter of understanding without the consent of the landowner.

 MR. SMITH: Sorry, Mr. Goudy, I may have misunderstood. Are you asking that the language on the right-hand side be included, or something different?

 MR. JOHN GOUDY: GAPLO's position is that the language on the right-hand side did cover the letter of understanding, and that that was the purpose of that language.

It's been removed, and so I guess either will Union commit to restoring that language, or alternatively, will Union commit that it will not surrender or be released from any of its obligations under the letter of understanding without the consent of the landowner?

 MS. HARE: Perhaps the witnesses are having the same problem that I am. I don't see the difference between one column and the other column.

 MR. JOHN GOUDY: Madam Chair, in the new agreement, its obligations under an easement for this project with reference to the easement agreement.

 MS. HARE: Right.

 MR. JOHN GOUDY: It is more general in the Strathroy-Lobo form, which was its obligations in the easement lands, which may extend beyond the easement agreement.

There are obligations that Union has undertaken on the easement lands, including the construction obligations.

 MR. WACHSMUTH: I am afraid this is something the lawyers might have to deal with, because we just can't, I am sorry.

 MR. JOHN GOUDY: I will move on. The next item is on page 23 and it takes us back briefly to the question of abandonment.

There was an additional provision in the Strathroy-Lobo agreement that said that:

"The company, in consultation with the landowner or third parties as required, will determine a reasonable and appropriate course of action to rectify any deficiencies."

Is that something that Union is prepared to commit to for this project?

 MR. WACHSMUTH: I think Mr. Walker talked this morning about the fact that abandonment plans would be prepared, and my understanding is that those abandonment plans would be comprehensive and that these things would be covered again in that future agreement and plan.

 MR. JOHN GOUDY: What is the future agreement?

 MR. WACHSMUTH: Or future plan, sorry.

 MR. JOHN GOUDY: But the future plan isn't going to be an agreement between Union and the landowner?

 MR. WACHSMUTH: There could be agreements in place if we needed additional temporary lands in order to do the abandonment, if we were pulling it out. That's just – it would be part of any future plan, Mr. Goudy.

 MR. JOHN GOUDY: But at the present time, Union is not

prepared to commit to rectifying deficiencies from pipeline

abandonment?

 MR. WACHSMUTH: I think our easement agreement requires us to do that, sir.

 MR. PIETT: And to add on that, our wording in the Hamilton-to-Milton specifically says:

"Upon abandonment, the pipeline..."

Sorry, too fast? In the wording of the Hamilton-to-Milton:

"We will return as close as possible to its prior use and condition, with no ascertainable changes in appearance or productivity, as determined by a comparison of the crop yields, with adjacent lands..."

Et cetera.

So I think it's all covered and it is in there. The fact that we're just not going to accept your wording, we believe, as stated before, that we have tried to make this simpler, cleaner, more understandable and straightforward.

So I think both the landowners and Union Gas are covered in that respect.

 MR. JOHN GOUDY: The language that's in the right-hand column was language that was part of the clause that appears in the left-hand column originally, and it has been removed by Union Gas.

If what you are telling me is that the intention -- Union's intention -- its commitment is the same as it was before, with or without that language, then tell me that.

If there is a change in intention, tell me that.

 MR. SMITH: Well, I think it is very clear that the company's obligation is as specified in the left-hand side, to return the lands as close as possible to its prior use and condition with no ascertainable change.

So I think the company's position is we were not attempting a substantive change to the wording.

 MS. FRY: Wording aside, could you also tell us about your view of the operational implications?

 MR. PIETT: Could you actually clarify what you are looking for, as far as the operational implication of abandonment?

 MS. FRY: Okay. From the point of view of what you would do operationally under the clause in the left-hand column versus the proposal to add the right-hand column, what would the difference be to your operations, if any, between the two scenarios?

 MR. PIETT: Absolutely nothing.

 MS. FRY: Thank you.

MR. JOHN GOUDY: The last item is on the last page, page 26. It's the last item I will deal with before going back to some of the soils issues.

And can you agree with me that the penalty provision that appears on the right-hand column, that is something that was developed as part of the integrity dig agreement originally?

 MR. WACHSMUTH: It is part of the integrity dig agreement, along with some other for working early or late in the year.

 MR. JOHN GOUDY: And that integrity dig agreement, as we saw before, applies to the Hamilton-to-Milton section; correct?

 MR. WACHSMUTH: That is correct.

 MR. JOHN GOUDY: And would you agree with me that the purpose of this penalty provision that was in the Strathroy-Lobo agreement but has been removed for Hamilton-to-Milton, the purpose was to deter or to act as a deterrent to working in wet soil conditions?

 MR. WACHSMUTH: Again, that paragraph was added as part of a comprehensive agreement that was reached between the landowner committee and Union.

 MR. JOHN GOUDY: It was part of Strathroy-Lobo --

 MR. WACHSMUTH: It was part of the comprehensive agreement that was settled between the two parties.

 MR. JOHN GOUDY: And it is part of the integrity dig agreement?

 MR. WACHSMUTH: That's correct.

 MR. JOHN GOUDY: And the integrity dig agreement applies to the Hamilton-to-Milton section?

 MR. WACHSMUTH: When integrity work is being done.

 MR. JOHN GOUDY: Right. But what Union's proposed letter of understanding does is to remove that as part of the construction phase.

 MR. WACHSMUTH: That is correct.

 MR. JOHN GOUDY: But I take it that it is still Union's position that working in wet soil conditions should be avoided?

 MR. PIETT: Absolutely, and hence why we have our wet weather shutdown clause that has been referred to in this -- these documents and hearing.

However, the one caveat on that is that at certain times, especially if we get pushed into fall weather and wet weather, we may have to work there and therefore take other mitigation measures to protect the soil, such as over-wintering the soil, and then also there is the damages as well that may be caused that we would want to avoid, but that could occur.

 MR. JOHN GOUDY: A penalty provision like this would serve as a deterrent to working in wet soil conditions?

 MR. PIETT: I think this is a compensation issue. We don't look at it as a penalty. I mean, we are going to build the right way under the right conditions, as we have stated, through everything else. I don't look at this clause and say: Ooh, that is a penalty. You know, I should not do this, because it is going to be this kind of a cost. We are going to do the right thing and minimize costs for everybody under any condition.

 MR. JOHN GOUDY: I am now going to go back to, I guess, three -- two -- two different soils issues that we dealt with earlier in my questions. And forgive me if I go over the same -- some of the same items before. I want to make sure that you have had an opportunity to speak to these two items fully.

 So the first -- the first item is the over-wintering of topsoil. And my recollection of your evidence from earlier is that Union's preference is not to over-winter topsoil where topsoil can be replaced in the year of construction under appropriate soil conditions.

 MR. PIETT: That is correct.

 MR. JOHN GOUDY: And has it been Union's experience in any projects that the over-wintering of topsoil is a better option than replacement in the year of construction, even where soil conditions are appropriate?

 MR. VADLJA: Our experience is that it's best to return that soil in the year of construction when the conditions are suitable. We have undertaken a number of soil and crop studies to confirm that. Our results are such that we are getting good returns to crop yield after a number of years post-construction.

 So, I mean, that's -- in our view that is the right approach to take on topsoil and returning topsoil.

 MR. WESENGER: If I can add to that response, when you do over-winter it, it will add an entire additional year on to the clean-up, so in a normal construction program when you do the year of construction, obviously that year the field is out of production for the landowner. The year after they do the spring clean-up. This would delay that. There would be the year after -- the clean-up would be delayed for a year, and then the following year after it would be another year, so we would be talking about three years where that landowner would have Union Gas on their property.

 My experience has been in -- through public consultation, talking to landowners, is that certainly it is an inconvenience to have the operator or Union Gas there doing the construction. We want to get this over with as soon as we can, right?

So by not over-wintering when conditions allow and you put in the proper mitigation measures, that landowner is whole or gets his property back completely for his operation a year ahead of time, versus the proposal of over-wintering.

 MR. JOHN GOUDY: Mr. Wesenger, you do understand that GAPLO's position is that the landowner should have the option of requiring over-wintering, not that it be done in all cases where -- including where the landowner doesn't want over-wintering.

 MR. WESENGER: I understand that, yes.

 MR. JOHN GOUDY: So if it was the landowner's option to choose over-wintering, then that would deal with the concern that you just raised that the landowner might want to have it put back together the year of construction.

 MR. WESENGER: Yes, if it were the landowner's option. It is not my -- you know, that is an area where Union Gas has to comment on the letter of understanding and the implications of that.

 My concern, I guess, would be -- I understand what you are saying but, you know, the landowner is obviously making a decision there to extend the presence of that operation of the pipeline construction on the property for an additional year.

 MR. JOHN GOUDY: And would you agree with me that there may be environmental, soil-related reasons why the landowner would be prepared to accept an extended stay for Union on the property in exchange for over-wintering the topsoil?

 MR. WESENGER: I don't know that I have the information to agree with that statement. We have done several soil and crop yield monitoring programs for Union Gas and other utilities in the province. I don't think we have specific instances where we have selected properties to monitor where the over-wintering has been implemented where we would look at the one, three and five years after to see what the yields returning on those lands are.

 Certainly since the 1970s the yields have improved significantly on properties, certainly the trenches where the most significant impacts are, but crop yields have returned on average close to 90 percent across the entire easement now.

 So I am not sure what the significant difference would be in the -- you know, if we over-wintered, you know, if you would get a 1 to 2 percent increase. I can't confirm that.

 MR. JOHN GOUDY: Would you agree with me that landowners may have concerns about the soil conditions that go beyond simply crop yield in the future that relate to the over-wintering of topsoil versus replacing it in the year of construction?

 MR. WESENGER: Not that they have conveyed through the forums where I have had the discussions with them. Right?

 MR. JOHN GOUDY: So there haven't been -- you are not aware of any benefits that may arise from over-wintering with respect to soil erosion?

 MR. WESENGER: The concern I would have with over-wintering and soil erosion would be the topsoil potentially in those piles eroding away.

 MR. JOHN GOUDY: What if the topsoil is covered by a cover crop that is established in the year of construction?

 MR. WESENGER: Certainly that would stabilize it.

 MR. JOHN GOUDY: Isn't that Union's practice?

 MR. VADLJA: No, that -- if I interpret your question correctly, I think you said: Is our practice to put a cover crop on a topsoil pile that's been stripped?

 MR. JOHN GOUDY: Where over-wintering is to be undertaken.

 Where the topsoil is to be over-wintered, is it not Union's practice to put a cover crop on the topsoil pile?

 MR. VADLJA: Not that I am aware of, no. I am not sure how you would go about doing that.

 MR. WESENGER: I think the challenge or the difficulty would be, depending on the timing of when that decision was made to over-winter the topsoil, is if you were to put a cover crop on the topsoil pile, could it in fact have time to germinate before the winter set in to actually achieve what you are trying to achieve with a cover crop.

It all depends on the timing of when that decision was made.

MR. JOHN GOUDY: Okay. One of the comments made earlier was that over-wintering topsoil, leaving the topsoil stripped over the winter, creates a bathtub scenario on the stripped area that would fill with water.

Was that part of your evidence before?

 MR. WESENGER: Correct. Basically the accumulation of snow sitting in that.

 MR. JOHN GOUDY: Is that not something -- is water on the construction area not something that is addressed through pre-construction tiling that Union undertakes?

 MR. PIETT: Pre-construction tiling addresses normal drainage and when you have stripped topsoil in piles, that is not normal drainage.

So no, we would have actually have to come out and actually put pumps to get the water out of there. In fact, what you have is your topsoil drops down to where your subsoil is, and then you have topsoil over here.

Anyway, it will depend on the area, because if the whole easement is going downhill, obviously the water is going to go down the easement and it's not going to have that bathtub effect in areas that are flat.

It is just an accumulation of water. If there's no way for it to get out other than normal drainage, it will stay there. The only way it's going to leave is either by natural drainage down to existing tile or through the trench some way, or to evaporate. So it just takes longer.

Once you can get your topsoil back there, once you can complete all our header tiles that we commit to doing either before construction or after construction, and we get the land back to normal and get the drainage repaired, then you won't have those issues.

And that is what we are just trying to the highlight.

As long as the topsoil is off, there are other issues

and they are negative to us trying to get the land back to the original condition that it was in prior to the construction.

 MR. JOHN GOUDY: Hasn't it been the experience of some

landowners that -- and has it been Union's experience in some cases that topsoil that is replaced in the year of construction is loose and susceptible to erosion?

 MR. VADLJA: My response would be no. I mean, I think you are talking about a situation where you have returned topsoil in the late summer or early fall, and you have got a heavy period of rain -- and you are suggesting that perhaps there is some soil that is going to be lost?

 MR. JOHN GOUDY: Or that it is not possible even to conduct agricultural activities over the area because the ground is so loose. It hasn't settled properly because it wasn't given the opportunity to settle.

 MR. VADLJA: That is not my experience. That is not my understanding, no.

 MR. JOHN GOUDY: Is it -- perhaps Mr. Wachsmuth or Mr. Piett have a recollection that over-wintering of topsoil was something that Union started to do in or about 1990 on the main transmission line in the London area.

 MR. WACHSMUTH: I believe it was done on some projects

before the Lobo-Beachville project, but that is subject to check. But I believe it was done before that as well.

 MR. JOHN GOUDY: Was there a time when over-wintering was not done?

 MR. WACHSMUTH: I honestly -– yes, probably for the 26-inch pipeline in 1957, but I just don't know.

 MR. PIETT: As we've stated before, the common practice is to return all the topsoil to its original location and get the land back to its original state. And only at times where we were pushed into the fall wet weather and could not do it appropriately, as we described earlier, would we have left it to be over-wintered.

 MR. JOHN GOUDY: But you have given the landowner the option to choose over-wintering previously?

 MR. PIETT: We don't have any recollection of those issues. And just – apologies -- we would have to go back into our records to see where we did or we didn't.

 MR. JOHN GOUDY: That was the case on the Strathroy-Lobo project?

 MR. WACHSMUTH: It was an option available to the landowner, yes.

 MR. JOHN GOUDY: And in that subsequent project,

EB-2007-0633 -- we reviewed it earlier -- where the same letter of understanding was used?

 MR. WACHSMUTH: That's correct.

 MR. JOHN GOUDY: Would you agree with me that over-wintering the topsoil significantly reduces the incidence of crowns over the trench that may exist after topsoil replacement?

 MR. PIETT: I would not describe it as "significantly." The one advantage to over-wintering is, yes, you can see your trench line in the subsoil. So if there was some kind of settlement that was not appropriately looked after in the previous season, yes,

you would see it, and yes, you would put it back to the proper level before bringing your topsoil back.

 But again, for the projects we do, they are typically, you know, 15 to 20 kilometres long; it's not significant.

 MR. JOHN GOUDY: And you have confirmed to me that Union's preference is not to over-winter topsoil unless soil conditions require it?

 MR. PIETT: That is correct, in wet weather conditions near the end of the year.

 MR. JOHN GOUDY: And so can landowners expect that Union's soil consultant is not likely to propose over-wintering of topsoil where the soil conditions are acceptable in the year of construction?

 MR. WESENGER: That's been the practice. The soils

consultant is a soil scientist. He is professional agrologist, and he is bound by a code of ethics. He is not going to make any recommendation that is going to negatively impact the agricultural soils.

 MR. JOHN GOUDY: Those are my questions, Madam Chair.

 MS. HARE: Thank you.

 MR. JOHN GOUDY: Oh, sorry, those are not quite all my questions. I do have a few more, sorry. I forgot I have one other issue. It's the straw layer.

 I think the evidence that we heard just after the lunch break was that in the one situation that Union recalls where a straw mulch layer was used between the virgin topsoil and the stored topsoil pole, the stripped topsoil, it was your evidence that the straw did not deteriorate, that the straw was still there as a

separation.

 MR. WESENGER: It was -- you could still tell it was straw. It is my understanding it had begun to decompose. I didn't ask how long the topsoil had been stored off easement, how long it had -- so I didn't have that information from the employee that I spoke with. But you are correct, yes.

 MR. JOHN GOUDY: And there was also evidence earlier that there could be properties where there is only 3 inches of topsoil?

 MR. PIETT: That was a general statement to say that there is topsoil variability across all properties. I mean, we deal with whatever we come across.

 MR. JOHN GOUDY: Can you agree with me that if you were in a location where there is only 3 inches of topsoil, there is not a lot to work with, and Union would have to do what it could to prevent the disturbance of the virgin topsoil adjacent to the work area?

 MR. PIETT: Yes, that is correct. And to leave the virgin there and to bring back the topsoil that we had stripped into its original location, yes, that is correct, so that we are consistently 3 inches across the property you are talking about.

 MR. JOHN GOUDY: Because when you are moving the stripped topsoil pile, any error there, there is not a lot of allowance if there is only 3 inches of topsoil.

 MR. WESENGER: Yes, that would be an extremely shallow depth of topsoil. So it would be extremely important, right, to be -- use caution when stripping, when you remove the topsoil for sure, if your -- if the interface between the topsoil layer and the subsoil layer, if there is only 3 inches. As I had mentioned previously, all those activities are monitored by the soils inspector. The concern here would be bringing back too much and removing some of the soil from off easement onto the easement lands, so scalping some topsoil from off easement and bringing it on easement.

 With an experienced operator, I don't think that would be too difficult to achieve on the layer between that where the fluffy topsoil that has been removed and mounded off easement, where that interface is between the virgin topsoil.

 A skilled operator who is on a pipeline construction job would be able to do that without the aid of the mulch. Would the mulch help? In that situation if there is only 3 inches of topsoil to salvage in the first place, it likely would be a benefit, I would think, just to assure that we aren't going to take too much topsoil. It isn't absolutely essential or necessary.

 MR. JOHN GOUDY: The mulch layer would also assist in preventing the sticking together of the stripped soil and the virgin soil, wouldn't it?

 MR. WESENGER: Depends on how much mulch you put down.

 MR. JOHN GOUDY: And you were referring to the contractors or the construction -- the operators of the equipment that strip topsoil and move soil. You can't say that all of the contractors that are going to be on Union Gas's work site are sufficiently experienced not to cause damage.

 MR. WESENGER: I think if they are in the role of stripping topsoil and operating a D-6 or D-8 or a D-10, they're highly qualified and skilled operators on a pipeline construction job. It is certainly one of the most sensitive areas in pipeline construction. They are monitored by the soils inspector to ensure they are doing it properly. If they are not doing it properly, if they aren't qualified, that is quickly reported to the site superintendent, and that operator would be replaced, is my understanding, as unqualified to do that job.

 MR. JOHN GOUDY: Adding the mulch layer would help to -- as a buffer or a protection against the error of the operator; correct?

 MR. WESENGER: With the assumption the operator is going to make an error, yes.

 MR. JOHN GOUDY: Well, it is Union's assumption that the operator is not going to make an error, right? That is what your evidence is?

 MR. WESENGER: Correct.

 MR. JOHN GOUDY: Right, but from the landowner perspective it is reasonable for the landowner to wonder whether the operator might make a mistake; I take it you would agree with that?

 MR. PIETT: Hence why we have topsoil inspectors out there, to ensure that we are doing it as we have committed to. No guarantees in life. I mean, that's -- it is a big activity and we have a lot of things to look after, and that is why we do it in concert with our contractors, well-qualified contractors. We work with good, qualified people on the site as well, and, you know, we do everything possible.

 I mean, you could go to the Nth degree and say we are going to lay down terra carpet. We could lay down planks of wood. We could lay down everything to differentiate between the stripped topsoil and the original virgin topsoil, but is that going to give any better job at the end of the day? Our belief is no, it's not, that through qualified operators, topsoil inspectors, and the processes that we have in place, we will do that appropriately. And again, we will work with landowners so that they can understand that.

 If there is a site-specific -- i.e., someone has some unique soil that has to be handled in some unique way and that can be demonstrated to us, and we would bring in a specialist to confer with them on that, then -- again, as we have described many times -- there is that opportunity for a landowner to state that, and we have got places where we track it and make sure that we handle it appropriately, but to again go to a general statement that is going to be right across, broad-brush across everything, no, we don't agree with that.

 MR. JOHN GOUDY: Well, again, I think that the proposal that Union -- or sorry, that GAPLO has put forward is that the mulch layer would be provided at the request of the landowner, not across the board but at the request of the landowner.

 MR. PIETT: The way this reads is that any landowner that requests it, then we are doing it.

 MR. JOHN GOUDY: Yes, but it is not -- that is not an across-the-board on all construction sites.

 MR. PIETT: It could be.

 MR. JOHN GOUDY: Could be.

 MR. PIETT: It could be. So all we are saying is that in practice -- it is not practical, so I will put it in that "not practical" bucket -- and we do have ways of ensuring that topsoil is stored properly and returned properly.

 MR. JOHN GOUDY: Those are all my questions, Madam Chair.

 MS. HARE: Thank you.

 Questions from Board Staff?

 **QUESTIONS BY MS. DJURDJEVIC:**

 MS. DJURDJEVIC: Thank you, panel. We just have just a couple questions.

 With respect to Issue No. 7, whether the form of easement agreement is appropriate, we have filed in GAPLO's evidence -- and I am going to have that. There it is on the screen. It is GAPLO's evidence, page 40, attachment 3.

Just would like the panel to confirm that this is the form of easement agreement that the Board approved in EB-2005-0550. That is the Strathroy-Lobo case. Do I have that correct?

 MR. WACHSMUTH: One moment, please.

 MS. DJURDJEVIC: Okay. Scroll down a bit, sorry. Keep going. A little bit further, to the section that is highlighted and -- so... You should have it on the -- oh. Well, now we have gone down.

 MR. WACHSMUTH: I am sorry I took so long. Could you please repeat your question? I wanted to bring up the easement agreement.

 MS. DJURDJEVIC: I just ask you to look at the document, GAPLO's evidence, page 40. This is the easement for transmission pipeline, and I would like you to confirm that this is the form of easement agreement that was used in the EB-2005 case, the Strathroy-Lobo case, and that this is the form of agreement that the Board approved.

And my assumption is that it is, is because in GAPLO's evidence on page 2, paragraph 5, footnote number 3 --

 MR. WACHSMUTH: I believe this is the easement that was approved in Strathroy-Lobo.

 MS. DJURDJEVIC: Thank you. We are quite sure it is as well, but we needed to confirm that.

 Now, if we go forward to GAPLO's evidence, page 47, also an easement agreement, and the same question. This is the easement agreement that was provided in the EB-2007-0633 case. That is the Dawn deliverability case. This is the form of easement agreement, as I understand it, that was provided to landowners and that was approved by the Board?

 MR. WACHSMUTH: That is my understanding.

 MS. DJURDJEVIC: Okay. And in both of these cases, that 2005/2007 case, paragraph 1 has the language that GAPLO is requesting in this proceeding?

 MR. WACHSMUTH: That is correct.

 MS. DJURDJEVIC: And so my question -- we heard evidence this morning about why the letter of understanding was revised after 2005/'07 as part of a comprehensive overhaul of that particular document.

But could you please clarify what has changed since the 2005 and 2007 cases that explains why Union is

moving away from the clause that it agreed to in the easement agreement -- different document now -- since the 2005-'07 cases?

 MR. WACHSMUTH: I can start with this, but again,

Mr. Walker will probably continue.

What we have heard a lot is about a couple of clauses. We talked about the future use clause and also talked about this abandonment clause.

But the easement agreement also went under a review, and there were some other changes made to it that haven't been talked about today. So both documents actually went through a review.

I mean, another example is that there is an HST clause, if you look at the agreement that we are asking the Board to approve, and there is some stuff dealing with postponement for mortgages.

So both documents went through a review and one of the clauses that we -- you are right, we did take out the future use, which has gone back in in a different format, and the abandonment clause which has come out.

And some of the reasons that the abandonment clause has come out, I will let Mr. Walker talk about.

 MR. WALKER: Yes, as we talked about earlier with the abandonment clause, it's really that development of the codes and technical papers have put us in a position where we would want to evaluate the abandonment at the time of abandonment, to the codes and regulations that are in place at that time, and do site-specific assessments for each section of pipe.

As I mentioned earlier, sometimes that results in a case where we may want to remove some pipe, and sometimes that may result where we may want to the abandon in place.

Until you do that evaluation, you can't kind of presuppose what we would do.

 MS. DJURDJEVIC: And just one more question on these easement agreements, these agreements that we just looked at.

Is that the wording of the easement agreement that was originally offered to landowners in 2005 and 2007, or was that as a result of settlement? Or do you know what the answer is to that?

 MR. WACHSMUTH: The easement agreement, which can be found at page 40 of GAPLO's prefiled evidence, attachment 3, was the result of a comprehensive settlement.

 MS. DJURDJEVIC: Okay. So what was the original form that was offered before settlement?

 MR. WACHSMUTH: In its simplest form, I don't believe it had anything that was highlighted in the document that is attachment 3 of GAPLO's evidence.

 MS. DJURDJEVIC: Okay. Thank you. Those are all the questions I have on that point. I have a couple of questions about abandonment methods.

We have heard that there are two methods; one is when a pipeline is deemed to be out of service, one is an in place abandonment which involves leaving it in the right-of-way, and the other method is removal, which involves digging it out and removing it.

So these methods differ in terms of operations, and of course the environmental and land use impacts and cost.

Could you just briefly, or in some summary form, compare for us these two methods, starting with potential environmental impacts and last use disturbances of one method as opposed to the other method?

 MR. WALKER: As we talked about earlier, I think Roger had mentioned that a large-scale abandonment project would be similar in scope and effort to a pipeline construction project.

So if you were removing the pipe from the ground, there is a lot of disturbance, a lot of digging to do that work. So the code points to technical papers, even filed in the DNV report that GAPLO filed, that sensitive areas such as national provincial parks, ecological reserves, regionally significant, environmentally-sensitive areas

should be subject to in place abandonments.

So those are the types of areas where you would look at abandoning in place more likely than removing the pipe.

If you do abandon in place, there are other techniques you can use as well. We've filled pipes with grout to prevent subsidence for when we have left pipes in the ground as well.

 MS. DJURDJEVIC: In terms of residential and/or agricultural properties, what do the codes or technical papers say in those circumstances, when looking at one method as opposed to the other?

 MR. WALKER: Each case would have to be looked at on an individual basis. But for agricultural lands, more often than not it will probably point to removing the pipe.

 MS. DJURDJEVIC: And why is that?

 MR. WALKER: Well, again, you would have to look at it on a case-by-case basis. But if there isn't environmental issues –- and it would depend on how deep the pipe is. That's one of the factors that is looked at, what current and future land use is, if there is likelihood of development on the land.

So I am not going to say that every time in agricultural land, it is going to say you should remove the pipe. But it would probably trend towards that side.

 MS. DJURDJEVIC: And what are the relative costs of pipeline abandonment for the two methods?

 MR. PIETT: Again, without the scope of a project, that is very difficult to answer.

But again, looking at something like this project, you could take the costs of this project and probably add another 25 percent to the cost if you are going to

be removing pipe as well.

In an abandonment case, there still is cost because you have to actually remove the pipe from service, so cut it at both ends. And then depending on the technique that has been chosen to abandon it in place, it will have some type of cost.

But again, until we know the scope, we can't cost that; it would be less.

 MS. DJURDJEVIC: And presumably Union, or whoever the

developer is, bears the cost of the abandonment; is that correct?

 MR. SMITH: Sorry, when you say Union bears the cost –-

MS. DJURDJEVIC: Well, they pay for any expenses

associated with the cost. It is not a landowner's responsibility anyway?

 MR. SMITH: No, it would be a cost of service.

 MS. DJURDJEVIC: So it something that would go back

into rate base -- or cost of service, rather?

 MR. SMITH: Yes. I mean, it is reflected in Union's

depreciation rates; that is the way it is typically dealt with.

 MS. DJURDJEVIC: All right. Moving on to a different line of questions, but about abandonment, we heard during the examination or cross-examination one of the witnesses referred to developments at the National Energy Board

with respect to pipeline abandonment principles and requirements, and that this was a, quote/unquote, "live issue."

And if I understood correctly, that is one of the reasons why Union prefers to not enter into agreements that deal with abandonment methods at the construction phase, but rather wait until the abandonment occurs.

Did I characterize your evidence correctly?

 MR. WALKER: I think is fair. I guess the way I stated it was that it is an area of -- it is evolving, so there are new technical ways that are being looked at to do things. So I think we would want to keep our options open.

 MS. DJURDJEVIC: Now, this proceeding obviously is under the jurisdiction of the Ontario Energy Board and not the National Energy Board.

But just for comparison, I would be interested to

know, if you have the information, what the NEB's regulations are with respect to abandonment.

 When I say "regulations" I am using that term loosely. It includes regulations, rules, guidelines and other regulatory tools.

Are you able to provide us any factual information about that? I see your counsel is going to say something.

 MR. SMITH: Why don't we let the witness answer? But I think this is also a legal question, because I will be raising this in argument. So I am happy to provide the position as well, so you have it.

 MS. DJURDJEVIC: At this point, I am just looking for factually, in terms of the -- does the NEB have -- is it more prescriptive requirements or -– you know, how does Union's approach intersect with what NEB regulations are?

 MR. WALKER: As I touched on earlier, the NEB would have an application type of approach for an abandonment.

But besides that, the new Z662 code that we talked about this morning, there is a note that refers to some technical papers that the NEB commissioned.

Because it's a note in the CSA code, it's not mandatory; it's meant as guidance. But it is there as a document that will help people put together their abandonment plans. So it's not mandatory, but it is basically a code recommendation: Here is something that you should follow.

 MS. DJURDJEVIC: Obviously after the fact we will be doing some research on this, but this morning's evidence was the first time we heard the reference to the NEB regulations, so -- which is why I am asking some questions that you can perhaps enlighten us.

 The NEB regulations, do they tend to leave it to the developer to decide which abandonment method is most appropriate, or does the landowner have some say in the matter?

 MR. WALKER: So the document that I am referring to, the new CSA Z662 code, points to -- like I said, is not regulation; it is a technical guidance document. In that document it does talk about the methods you would use to go through and evaluate each of the conditions and determine what the best abandonment plan would be. It has things in it that talk about it at a higher level that would say things like: In an abandonment project it is possible that a combination of both the abandonment in place and removal options would be used based on site-specific requirement.

 MR. SMITH: Slow down.

 MR. WALKER: Sorry. It talks about basically that it's possible that a combination of both abandonment in place and pipe removal options would be used based on site-specific requirements. It has sections that would go into technical issues like ground subsidence, soil mechanics, pipeline corrosion, soil and groundwater contamination, pipe cleanliness.

So it gives guidance on how to evaluate each of those types of issues and how to kind of weigh the risk of each of those in your abandonment plan.

 MS. DJURDJEVIC: All right. Thank you. That was useful.

And again, just to clarify, when I say "regulations" I am using the term loosely as various kinds of instruments that regulators refer to, and that would include guidance or guidelines.

 Do you know whether the NEB's regulations or guidance contemplates making a decision on the abandonment method at the time of the abandonment rather than anticipating it, you know, at the time of construction?

 MR. WALKER: The technical paper seems to be slanted towards doing the assessments at the time of abandonment. I am just trying to think of what the NEB application process for the abandonment process would be at the time of abandonment as well.

 So you wouldn't -- I mean, if you were applying to abandon a pipeline, it is going to be done at the time of that decision is made or that plan is developed.

 MS. DJURDJEVIC: So my last question is kind of a hypothetical. What would be Union's position or view if the Board was to consider including in the easement agreement or in the letter of understanding or as a condition of the leave to construct -- whichever is the most appropriate document or context -- if we were to include a condition or a requirement that Union is required to retain an independent consultant to determine the preferred method of pipeline abandonment?

And when I say "independent consultant" I mean that is somebody jointly selected by Union and landowners.

What would be your comment or response to that sort of hypothetical?

 MS. HARE: Just to make your question clearer, when? Now, or at the time of abandonment?

 MS. DJURDJEVIC: Sorry, at the time of abandonment.

 MR. WALKER: I mean, I suppose it is hard to imagine a situation 50 years in the future, but I guess if it was an expert in that area that could -- that was agreeable, that was knowledgeable in that area, I wouldn't see too many issues with that type of an approach.

 MS. DJURDJEVIC: Okay. Those are all my questions. Thank you very much, panel.

 MS. HARE: Okay. Thank you.

 **QUESTIONS BY THE BOARD:**

 MS. FRY: A couple of additional questions. One of you gentlemen -- and I can't remember which one it was -- just to be clear, mentioned that there have been major changes to the codes on abandonment since the 2007 case. And just to be clear, are you referring to the draft CSA standard, which I see has a date of 2013, or are you referring to other things also?

 MR. WALKER: It was mainly the 662, so there is -- the current edition is the 2011 version. These draft comments in 2013 are working towards the 2015 edition that would be released this year.

 MR. WACHSMUTH: I think I also was part of that statement, and I think I said that since 2015 a number of things -- hearings have been held at the NEB that dealt with the abandonment issue, so it was -- as well as the code things, there also are some other hearings that were held on abandonment at the NEB since --

 MS. FRY: Since 2007.

 MR. WACHSMUTH: -- since 2007. And the one report that was in GAPLO's evidence is really a result of those changes.

 MS. FRY: Thanks. Okay.

And I want to try two very general scenarios on you and see if you can comment on them.

Let's say you were in an abandonment scenario, segment of pipeline on a given piece of land, whatever it is, and in the first scenario you dealt with abandonment by taking the pipe out of the ground and doing remediation on the land, and in the second scenario you left the pipe in the ground but you did whatever is the appropriate mediation.

 Is it your view that in both scenarios the end point of the ground -- and I am not being technical here -- would be basically the same, or do you see possible differences in what you would get as the end point, depending on whether you took the pipe out of the ground or not?

 MR. PIETT: If we are talking about specific, we call it, grade elevation, and --

 MS. FRY: Well, any characteristics -- as I say, I am being non-technical -- any characteristics of the ground or soil structure.

 MR. SMITH: Sorry, just by way of clarification --

 MS. FRY: Yes.

 MR. SMITH: -- do you also include things like crop yield --

 MS. FRY: Anything, anything.

 MR. SMITH: Anything? Okay.

 MR. PIETT: So in general terms it would be the same. However, in the case where you actually remove the pipe, you would do basically a reset, because you would have to disturb it again. You would have to strip the topsoil. You would have to remove the pipe. You would impact whatever environmental things are there, and you bring the topsoil back, restore everything, as we do in normal construction, and then if there is productivity losses or anything like that, it would take a number of years for that to come back under our normal conditions.

So if the pipe was built in the year 2015 and then abandonment was, you know, 100 years later, then there is going to be that kind of environmental difference that you are going to impact the area at the time of the abandonment.

 MS. FRY: So are you saying the recovery period would be longer if you took the pipe out of the ground than if you simply did appropriate abandonment measures and left it in the ground, or would the recovery period be basically the same?

 MR. VADLJA: I would say that the recovery and the impact would be significantly greater to remove that pipe out of the ground. I mean, as Roger -- as my colleague had mentioned earlier, you are in essence constructing a right-of-way, stripping topsoil, removing that pipe, disrupting all the drainage tile, working through watercourses to remove that pipe. There is a lot of disruption, removing tree cover, so there is significant -- there would be significant impact if you had to remove that pipe, as opposed to just leaving it in the ground.

 MS. FRY: Okay. And that is magnitude of disruption. Are you also talking about length of recovery period?

 MR. VADLJA: Exactly. Length of recovery period. I mean, if you are going to the extent of removing that pipe from the ground, disrupting the land, the watercourses, that would then take some time to recover. Correct.

 MS. FRY: And it would take more time than if you did the appropriate abandonment measures just leaving it in the ground?

 MR. VADLJA: For sure.

 MS. FRY: Okay. Thank you.

 MS. HARE: I would just like to go over the timing of the letter of understanding. I understood Mr. Smith to say that it was first made available to GAPLO and other parties on February 12th. Did I understand that correctly?

 MR. SMITH: On or about. I just can't remember when I e-mailed it to my friend, but it was there or thereabouts.

 MS. HARE: But the settlement conference was the 9th. So does that mean GAPLO did not have it at the settlement conference?

 MR. SMITH: I don't want to get into what happened,

but --

 MS. HARE: The point is they didn't have it at the

settlement conference?

 MR. SMITH: They didn't have it that day. But you will remember the settlement conference and discussions between the parties continued on a without-prejudice basis for some period of time, including the period of time after I provided the document.

 MS. HARE: Okay. I understand that. Could you please tell me why you did not answer the interrogatory that GAPLO posed, No. 12, when they asked for the letter of

understanding?

 MR. WACHSMUTH: What it goes back to -– back in the 2005-'06 time frame, Union constructed the Hamilton-to-Milton loop as well at that point in time.

The landowners at that point in time did not want an LOU; they wanted to be dealt with individually. And really, at that point in time there was not enough -- because there's so many differences in the landowners along the Hamilton-to-Milton section -- you have a few farms, you have got a lot of large residential, you have got a golf course, some orchards, a lake where people go and do fly fishing at -- there really was not an interest in the

landowners to get together and form a committee and develop an LOU. They wanted to be dealt with individually.

So what we did -- when we answered the question to GAPLO, we weren't aware that people would want an LOU. We have since agreed, as part of the settlement conference, to offer everybody the LOU that we prepared for Brantford-Kirkwall.

But at one point in time, back when the evidence and that was being prepared, we weren't sure that the landowners would even want an LOU, a letter of understanding.

 MS. HARE: Well, that still leaves me a bit puzzled as to why you didn't answer the interrogatory, because --

 MR. WACHSMUTH: We didn't have the Hamilton-to-Milton LOU at that time.

 MS. HARE: But you're telling me it is the same one used on a previous project, so you had one?

 MR. WACHSMUTH: We had a Brantford-Kirkwall LOU and changed the names from Brantford-Kirkwall to Hamilton-Milton, and left all the words the same.

 MS. HARE: Do I also understand that you have not had any discussions with GAPLO offline about any of the issues we have been talking about today?

I don't understand. I thought Union typically did meet with landowner associations concerning these types of issues, but it sounds to me like --

 MR. SMITH: Sorry, I don't want to talk about the without-prejudice discussions. But GAPLO was at the settlement conference, and even subsequent to providing the letter of understanding we have had negotiations and they did result in certain changes. We just haven't reached a comprehensive deal.

But we did have discussions, Union and Mr. Goudy and his client, and we got as far as we got with K1.3. I had hoped that today wasn't going to –- well, it was apparent that there were a number of items that, maybe with some further discussion, we wouldn't have wasted the Board's time today on. And for that, I definitely apologize.

But it would be wrong to conclude that there weren't discussions and an effort made.

 MS. HARE: That is really all I wanted to know. Thank you. Those are my questions.

Redirect, Mr. Smith?

 MR. SMITH: I have no questions in re-examination.

 MS. HARE: Okay. Thank you.

 MR. SMITH: Sorry, I would just ask one quick question.

 I think this is a matter of argument, but because it keeps coming up in cross-examination, I will just ask for the Board's guidance in relation to it.

If it would be of assistance, by way of undertaking or otherwise, we can provide the regulatory scheme that applies at the National Energy Board, if it's of assistance as it relates to abandonment.

 If you simply go to the National Energy Board website, you will see that it is very involved. But I don't know whether, for the sake of the record, you would like that as a factual, or if you want me to compile the documents and

make them available for you for argument, because there is a lot more than simply the technical paper that GAPLO put

forward.

 MS. HARE: Thank you. We will discuss that over the break.

 What I suggest we do is take a break now, during which time, Mr. Goudy, you can assemble your witnesses at the

appropriate spot. And then we will be ready for that examination after the break.

So let's break until 3:40. Thank you very much, witnesses. You are now excused.

 MR. SMITH: Thank you.

 --- Recess taken at 3:17 p.m.

 --- Upon resuming at 3:43 p.m.

 MS. HARE: Please be seated.

 Mr. Goudy, please introduce your witnesses.

 MR. JOHN GOUDY: Thank you, Madam Chair.

On the right side is Ian Goudy, chair of GAPLO and a member of GAPLO, and on the left is Rick Kraayenbrink, another member and director of GAPLO. I guess could I ask that the witnesses be affirmed, and then I will take them through a brief introduction of their experience.

 MS. HARE: Yes, thank you.

 **GAPLO – Panel 1:**

 **Ian Goudy, Affirmed**

 **Rick Kraayenbrink, Affirmed**

 **EXAMINATION IN-CHIEF BY MR. JOHN GOUDY:**

 MR. JOHN GOUDY: Mr. Kraayenbrink, I will start with you. Could you please give the panel a summary of your background and experience as it relates to pipelines?

 MR. KRAAYENBRINK: I have been farming for 35 years with three brothers and a cousin, and I have owned several farms with different pipelines on them. One of the farms had seven. There was three -- or four national regulated lines and three Union lines, and at the present moment I own a farm with one NEB line, which is Vector, and another place where I have my residence, another farm, and it is a 24-inch line owned by Union.

 And in that time frame I have seen one -- three pipelines go in, into the land. So I have experience of, through my own land, having this pipeline construction.

 MR. JOHN GOUDY: Have you had any experience in dealing with pipeline companies with respect to construction practices?

 MR. KRAAYENBRINK: Yes, I had -- back in 2000, where we had no agreement whatsoever with TransCanada. It was absolutely a bad situation, because we had absolutely zero control, no letter of understanding, no consultation with myself. And so the previous -- the lines after that is we had landowners get together, and we had reasonable negotiations with the company with letters of understanding so that the pipeline construction was done in a fairly reasonable manner.

 MR. JOHN GOUDY: And Mr. Goudy, I have the same questions for you. Could you please give us a summary of your experience and background as it relates to pipelines?

 MR. IAN GOUDY: I have dealt with Union Gas for 58 years now. The original line was built, the 26-inch line was built on our property in 1957. The 34-inch line was built around 1962. My parents were involved with that construction, and I watched them go through expropriation, and I can tell you it isn't a very nice thing to have watched them go through.

 By the time the 42-inch line came in 1980, I owned the farm, and I appeared at a National Energy Board hearing in London by myself.

And then in 1990 the 48-inch line was -- the hearing for it took place in London as well.

 MR. JOHN GOUDY: Sorry to interrupt, but you made a reference to the National Energy Board previously --

 MR. IAN GOUDY: Oh, the Ontario Energy Board, I am sorry. And I appeared in that hearing as well.

 In the meantime, there were two Lake Huron large-diameter pipes for the Lake Huron water system built through our property as well.

 Of the six pipelines, the only one where the land wasn't expropriated was the -- or the only two would be the 48-inch line and the last water line. That -- that is my history with pipelines.

 MR. JOHN GOUDY: And could you give a summary of your experience in dealing with, I suppose -- specifically with Union Gas in relation to construction practices?

 MR. IAN GOUDY: The first two lines that were built -- and I find it disturbing to look in the latest LOUs that there is still wording in there to allow for the construction of a pipeline with no topsoil stripping. That is disturbing to me, because the first two lines, that is what happened. There was no topsoil stripping, not even over the trench, and there was severe damage done to the easement that lasts to today. There are areas on our property that are still suffering significant damage from the construction back in 1957.

 When the 42-inch line was built, the hearing that I attended in London took place shortly after the Lewington and O'Neill case, and what came from that hearing over that Enbridge pipeline was that topsoil should be stripped on the easement. And it was at that point that I took their evidence into that hearing, and the Board agreed at that time, where the landowner requested it, that topsoil should be stripped on the easement; the total area of the easement should be stripped.

 And so the 42-inch line, which was built in 1980 on our property, in that range, the topsoil was stripped and replaced the year of construction.

 Well, then by the time the 48-inch line came, it was decided that because there was virgin topsoil and previously disturbed topsoil, that it should be stripped, the virgin one way and the previously disturbed topsoil stripped the other way.

 There were a lot of changes made in the 1989-'90 hearing. And that is my experience with hearings.

 MR. JOHN GOUDY: You heard the evidence that Union's witness panel gave earlier today about the over-wintering of topsoil?

 MR. IAN GOUDY: Yes, and --

 MR. JOHN GOUDY: Sorry to cut you off, but Union said -- Union's evidence was that in its view the best practice is to replace stripped topsoil in the year of construction where the soil conditions are appropriate.

And I guess starting with you, Mr. Goudy, what is

your position on that issue?

 MR. IAN GOUDY: I strongly disagree with that position.

It was the construction in 1980 of the 42-inch line where the topsoil was replaced the year of construction. By the spring of the following year, partially because the soil was left in such a loose condition -- and when they are trying to prepare for compaction that is created by the construction, the work they do on that soil leaves it in a very loose condition.

And over the winter, through heavy rains and heavy snow melts, there was significant erosion. And at the hearing for the 48-inch line, I produced -– the lawyer involved produced the evidence which showed erosion

of 2 feet or better through the easement in different areas during the 42-inch construction.

And with expert evidence, we presented -- this was the first time that the request was put out to over-winter topsoil, and on my property, from that construction, the topsoil was over-wintered.

What took place was the topsoil was stripped both directions; the disturbed topsoil was pushed one way and the virgin soil the other. There basically was no cover crop on the topsoil piles.

Since then, I have been involved with the Lake Huron construction, and they have done the same type of thing with over-wintering and have established cover crops on those topsoil piles. So it does prove that it can be

done.

But anyway, with the 48-inch line there was no significant erosion in those topsoil piles.

The year of construction, the tile drainage systems were installed. There were parallel tiles put between each pipeline. Even the old ones, they agreed to put parallel tile. So it meant that the easement is drained every 25 feet, and then the outlet from those drains -- only the outlets cross the trench area. And in that construction, those tiles were installed the year of the pipeline installation.

There was no subsoiling done that year. The trench was slightly crowned when they left it with the subsoil that was there. In the following summer, they came back and they dug up the tile that had crossed the pipeline, the

outlets that crossed the pipeline, to make sure they hadn't

sagged. And where there was any subsidence, they repaired it with the subsoil that was still exposed.

And then they came back and they subsoiled it with their equipment, picked the rocks, levelled it out, and then the topsoil was brought back. They did the same process of removing the compaction of the topsoil. They

removed the stones and levelled it out, and established a cover crop.

Now, that work was done in July or early August. So when a cover crop was applied to that soil, it was able to establish itself and get roots so that there wouldn't be erosion the following winter.

And that same process was done on the Lake Huron pipelines as well, and I can honestly sit here and tell you that there is no issue with subsidence on either of those pipelines. The drainage systems have worked as good as drainage can work where you have the influence of a pipe in the ground, and it was very successful.

And it aggravates me to think that all the effort

that was put into this issue of over-wintering, as well as all the effort that was put into the process to come up with the LOU for the Strathroy-Lobo agreement -- it aggravates me that we are going backwards here.

There is a way of building these pipelines at very little cost, extra cost, to do it right. And I thought we had proved that in the hearing back in 1990, but apparently we didn't.

 MR. JOHN GOUDY: Mr. Kraayenbrink, there was some discussion earlier about providing for a landowner option to have a mulch layer between the stripped topsoil and the virgin topsoil in the area where the topsoil is stored.

What is your experience with using a mulch layer?

 MR. KRAAYENBRINK: I have one experience with the 24-inch line that went through one of our properties.

We put a mulch layer down. They actually hired us to put the mulch layer down, which consists of just simple straw bales, and we have a chopper and with the front-end loader to dump it in.

We hauled the bales there with our hauling equipment, and within hours we had the whole temporary work area covered with straw, so that you can provide a distinct area between the virgin topsoil and the stripped topsoil.

Topsoil, for us, is our life's blood. That is how we put food on the table for our families. And when a company has the right -- when we have no right to go and have an option of how to best protect our topsoil, it is appalling in this day and age.

Technically, am I an expert? I guess not under the technical terms. But with 35 years of experience in farming, I certainly know and have a lot of experience on how to treat topsoil.

It takes roughly about 1,000 years to make 1 inch of topsoil. This is an extremely precious commodity, not to just us that make a living, but to all of society.

I also -- we own an excavator, and on one of my cousin's farms we had to put a drainage system in, which consists of 12-inch pipe. But in order to dig the trencher in, I had to remove 12 feet wide, 5 feet deep of soil, again, which consists of stripping the topsoil and the subsoil, which, again, I used a mulch layer. And I

personally have experience of pulling that back with the machine and then you -- the soil will not stick together because of the mulch layer, and it just slides back perfectly, so all the virgin soil is left exactly where it is supposed to be.

 So in my opinion, I don't think any company should ever be allowed to go and put stripped topsoil on clean base sub -- or virgin topsoil. If there is a cover crop, that will work fine too. But if there isn't, then I think a mulch layer is absolutely essential. It is very economical to do. You know, we use thousands of bales of straw for animals, and to get a few bales of straw to put on the temporary work area to put underneath that topsoil is so -- so insignificant of a cost compared to the cost it could cost us down the road as a farmer.

 MR. JOHN GOUDY: The last question I have for both of you to comment on, it arises from a question that Board Member Fry asked of Union's panel, and that is with respect to abandonment. And so I am going to try to put the same question to you.

 From the landowner perspective, is there a difference in the condition of the ground or the condition of the land that results from abandonment by removal versus abandonment in place?

 MR. IAN GOUDY: Yes, there is. Abandonment in place is maybe initially no different than when the pipeline was in activity. The problem is -- is eventually that pipeline is going to rot out and it is going to start to collapse, and if that is a number of years down the road, and in the meantime -- I suppose our issue is if there is no more gas going to flow in these pipelines, at some point gas will run out, and when that day comes and there is no more gas in those lines, I expect Union Gas will no longer exist either. And our concern is that eventually those pipes will rot out.

 Now, when a 4-foot diameter pipe starts to rot out -- the witnesses earlier on talked about how to remove the pipe. It would affect drainage. Well, as those pipes start to collapse, that is also going to affect drainage. It is going to leave an indentation in the soil. It will create a safety factor for landowners -- or farmers who are operating over top of those pipelines at some point, and there will come a day where it will have to be addressed, and probably by that time one of the first-line people who are going to be affected by that is the landowner themselves.

 And it really bothers me, and I am sure a lot of other landowners, that our land was taken from us through the right of expropriation. These pipelines were built with hardly any input of landowners, as far as the pipe wall thickness, anything to do with the pipeline construction. We had very little influence on it.

 As far as compensation goes, we had very little influence over that. In fact, I can remember my parents being told: If you don't accept this and you want to go to court, we will take your farm from you. That was said to my parents by a Union Gas representative.

 And so at the end of the life, at the death of the pipeline, we get it again. They turn around and say: Okay, now, let's not talk about it. It isn't happening today. But it will happen some day, and so then we will be left with how to deal with the junk that's left in the ground, and it will be costly. I think we -- nobody has put a price on it, but I know of a TransCanada study that there is a significant cost to removing these pipes, but there is a significant cost to us to leave them in place.

 And with the wording that was put into the Strathroy-Lobo agreement, it gave us some satisfaction that things were going to be better. When we drop our defences, when we weren't there for the previous construction to this one, plus this construction, it all falls back to the way it was in the '50s.

 If a landowners organization like GAPLO didn't exist, I have my doubts if anything would have changed from what it was in the 1950s. Every change that has been made that makes it better for farmers in this case has come from negotiations which have taken place through hearings such as this, and to have things go back from what it was in 2005, that is sad.

 I'm done.

 MR. KRAAYENBRINK: With Union Gas's expert that was sitting to my right here -- with the Union Gas sitting to my right here, he did say that probably on agricultural land the pipe should be removed, and I wholeheartedly agree with that. We ourselves on our farm, we own a whole drainage plough system. We probably put in roughly 2 million feet of drainage tile in the last 15 years on our own.

 These pipelines are a real issue to deal with, because we cannot go and exactly drain the farm systematically the way we want to unless that these lines are all deep enough and there is a whole grid or layout of the whole drainage system prior to the pipeline going in.

 Today probably there is 80 percent of the drainage contractors do all the drainage via satellite, and that is so simple with technology today. As soon as it is all punched in of where you are, all that is required to get a topographic map is just to drive your piece of equipment up and down the whole field, and you have it.

 On an easement, it would just be the easement which would be -- I don't know. It would take a half an hour, and these lines could be installed where they should be.

 But with abandonment, with these old lines, as soon as Union's gone, guess who is left with the problem? How are we going to get through?

One of the experts was talking about filling it with grout or something. So now if we need a main drain that has got to go through middle of the pipe. How are we going to do that? That is going to be extremely costly to us.

The other thing is the conduit of water. If it ain't filled with grout, and my farm is the low point, as soon as that pipe starts to rot out it is a conduit -- it is a tile. And guess where all the water is going to end up? On my farm. And now where is it going to go?

The other issue, and Ian touched on that, is the safety issue. Our equipment anymore are combines. If the combine bin is full, or fairly full, that combine is starting to become a heavy piece of equipment. And once those pipelines rot and that front end drops, that driver could be injured or killed.

And with a self-propelled sprayer, which most of us have now, we run between 9 to 14 miles an hour through the field. If that front end drops, my tank is sitting right behind the cab, and if that whole machine stops, I am a goner.

So it is a real, real issue, this whole abandonment thing.

Let me ask all of you, as Panel and the Board: Would

you like to have an abandoned gas station in your front yard? That is what they are asking us to do, just leave their junk and garbage in our field. And we are saying: No, just simply take it out.

I think that is all I have to say on the abandonment issue.

 MR. JOHN GOUDY: Those are all my questions in-chief.

 MS. HARE: Thank you.

Mr. Smith, do you have cross-examination?

 MR. SMITH: Just one moment. I need to clarify something...

No questions.

 MS. HARE: Thank you.

Ms. Djurdjevic?

CROSS-EXAMINATION BY MS. DJURDJEVIC:

 MS. DJURDJEVIC: Just one question, the same question that I had posed to the witnesses from Union.

 Hypothetically, how would GAPLO respond to Board Staff's suggestion that an independent consultant be retained to determine what the most appropriate method of pipeline abandonment would be, at the time that abandonment becomes necessary?

Would that be adequate protection, in your view?

 MR. KRAAYENBRINK: In my view, no, because at the end of the day, it is on agricultural land and I am strictly speaking on agricultural land now.

I don't want that option whatsoever, to leave a pipeline in the ground, for all the reasons that I just

talked about, and because with a consultant is -- with that is who is paying that consultant?

We are the owners of the land; we are the ones that

have to live with the land. We don't want an abandoned gas

station. We just simply want it out.

And when it comes to cost, that might be the cheapest method for Union, but it is by far the most expensive method for us as landowners.

 MS. DJURDJEVIC: Thank you. Those are all my questions.

 MR. IAN GOUDY: Could I just add to that?

We don't -- abandonment is a consumer issue. I use natural gas; I was lucky enough to get it. But to not be collecting money now at the beginning of the life of a pipeline, to wait until the end of a pipeline, knowing what I know about pipeline removal, it is going to be too late.

So unless we start to prepare for that situation when it comes -- and I am not suggesting that Union Gas,

the company, is going to be completely responsible for that cost. As I say, the consumer in the end is the one who should pay for that cost. But it is something that we all need to face up to right now, and start to deal with it.

 As Rick said, we as landowners should not be saddled with that liability. Thank you.

 MS. HARE: Thank you. The Panel has no questions. Mr. Goudy, do you have any redirect?

 MR. JOHN GOUDY: I don't, thank you.

 MS. HARE: Thank you very much for your testimony.

Mr. Smith, are you ready with your argument in-chief, or would you like a few minutes? Are you ready?

 MR. SMITH: Ready to go.

 MS. HARE: You may be excused, if you would rather sit elsewhere -- or if you are happy there, it is up to you.

 MR. SMITH: There are just a couple of things that I would like to distribute, if I may.

 MS. HARE: By the way, Mr. Smith, you asked the question before the break as to whether the Panel would benefit from your producing a summary of NEB regulations with respect to abandonment, and we do not feel that is necessary.

 MR. SMITH: Okay. Actually, one of the things I have is section 74 of the National Energy Board Act, which I think is relevant to my argument.

So I did get a copy of that, and I will distribute it.

 MS. HARE: Okay. Thank you.

 **SUBMISSIONS BY MR. SMITH:**

 MR. SMITH: So what I am distributing, members of the Panel, is a package of materials that are relevant to the issue, largely relevant to the issue of abandonment.

 There are two issues that, broadly speaking, the Board is being asked to address. They are abandonment, which is contained in the easement agreement, and they are the construction-related matters, which are set out in the letter of understanding.

I am going to focus my time -- because it is really my issue, I suppose, abandonment, and I can probably do no better than the witnesses did on the construction matters, it not being my area of expertise. But I will have a couple of comments.

So what you have in front of you is -- what I have given you, and we may want to mark this -- but what I have given to you is a copy of the Technical Standards and Safety Act, a copy of the oil and gas pipeline systems regulation 2010. You should have a copy of EB-2006-0305, and I hope you also have a copy of the National Energy Board Act, section 74.

 MS. DJURDJEVIC: Would you like to mark these as exhibits, Mr. Smith?

 MR. SMITH: Yes, please.

 MS. DJURDJEVIC: I am going to suggest we make them separate exhibits.

 K1.4 will be the Technical Standards and Safety Act, 2000, Ontario Regulation 210/01.

**EXHIBIT NO. K1.4: TECHNICAL STANDARDS AND SAFETY ACT, 2000, Ontario Regulation 210/01.**

K1.5 is the Technical Standards and Safety Act, 2000.

**EXHIBIT NO. K1.5: TECHNICAL STANDARDS AND SAFETY ACT, 2000.**

 MS. DJURDJEVIC: K1.6 is OEB Decision EB-2006-0305.

**EXHIBIT NO. K1.6: DECISION IN EB-2006-0305.**

 MS. DJURDJEVIC: K1.7 is excerpt -- or section 72 from -- where is the Act -- oh, the National Energy Board Act. Yes, right at the top. Okay?

**EXHIBIT NO. K1.7: SECTION 72 FROM THE NATIONAL ENERGY BOARD ACT.**

 MR. SMITH: Thank you.

 So let me deal first with the issue of abandonment. And in my submission, the proper question here is not whether the clause that GAPLO is seeking to include in the form of easement was or was not included in the Strathroy-Lobo form of easement or, frankly, any other easement. Clearly it was, and nobody disputes that.

 The proper question before this Board is also not whether abandonment in place or some other form of abandonment -- i.e., removal -- is or is not to be preferred.

 The proper question is, in my submission, whether this Board should order the inclusion of the clause sought by GAPLO in the form of easement to be approved by the Board under section 97. And more specifically, the question is should the Board order today a clause which would mandate the method of abandonment -- i.e., removal -- some unspecified time in the future. And nobody sitting here today can say with any degree of confidence when that will be, be it decades from now or later, or what the science will tell us then about how a pipeline should be abandoned for the public interest generally.

 And I say this. My submission -- I base my submission on, really, two related points. The first is the one I have articulated already, which is nobody knows today what is going to happen in the future, but the second reason is a more technical one, and that is that -- respectfully, in my submission -- the authority to determine the form of abandonment today or in the future properly rests, at least as the legislation is currently crafted, with the TSSA. And that is why I have given you the materials that I have given you.

 So if you have regard to the first material I gave you, which is the Technical Standards and Safety Act -- actually, before we go to that, let me take you to the National Energy Board Act, section 74.

 Section 74 of the National Energy Board Act is the provision that most closely resembles section 43 of the Ontario Energy Board Act.

 Section 43 of the Ontario Energy Board Act, as you will be well familiar, is the section that deals with selling, leasing distribution systems and transmission systems, and has also restrictions on amalgamation.

 So you will see in section 74 -- and what is interesting is that section 74 has provisions in 1(a), (b) and (c), which are roughly the same as those which can be found in section 43 of the OEB Act, but what it specifically has is a reservation of jurisdiction relating to abandonment to the operation of a pipeline. So you cannot, without leave of the board, abandon the operation of a pipeline.

 So there is, at the National Energy Board level, two things that are important. The first is the Act specifically provides for the abandonment and the jurisdiction of the board, and it provides for an application, and then you will see that there is underneath that a mechanism at the National Energy Board Act. And as the witnesses talked about, you have to bring the abandonment application at the time you actually intend to abandon the pipeline.

 That compares to our Act, and our Act does not have in it a section comparable to section 74.1(d). What you have instead is the Technical Standards and Safety Act, 2000. And this is a bit of a funny Act because of where it came from historically.

 But if you look at section 2, what you will see is hat the Act applies with respect to, amongst other things, amusement devices, boilers, pressure vessels, elevating devices, and more importantly, it applies to fuels.

 If you continue through the Act, you will see at section 36 the general power that you would find relating to the power to make regulations. And under section 36(1):

"The Minister may make regulations adopting by reference in whole or in part and with such changes as he or she considers necessary any code, standard, guideline, or procedure governing the matters set out in Section 2 and require compliance with the thing as adopted."

 So that is the regulation power.

 That takes you to O-Reg 2010, which I have also given you. O-Reg 2010, under the Technical Standards and Safety Act, is the regulation that deals with oil and gas pipeline systems.

 And what you will see if you turn to section 2 -- it should be on page 3 of 9, under "Application" -- it says that:

"This regulation applies to the design, construction, operation and maintenance of oil and gas industry pipeline systems that convey..."

 And then, amongst other things, natural gas.

 And then you have underneath -- you have general requirements for compliance:

"Every person engaged in an activity, use of equipment, process or procedure to which the Act and this regulation applies shall comply with this Act and this regulation."

 And then importantly, you'll see under section 3.2:

"For the purpose of subsection 1, the reference to an activity, use of equipment, process or procedure includes but is not limited to design, construction, erection, maintenance, alteration, repair service, or disposal."

 And that takes us to where we are today, which is what you saw earlier, which is K1.2, dealing with the draft standard.

 The draft standard is important from this perspective. It is not important in that it tells us today how pipelines are going to be abandoned in the future. It does tell us about abandonment plans, and it does tell us information if we happen to be abandoning a pipeline later this year, how that would take place.

 My point with respect to the standard is this. It tells us beyond doubt that the TSSA has the jurisdiction over abandonment and it is intending to exercise it. I don't know what they are going to do about abandonment 20, 30, 40 years ago -- from now. It could be that down the road people think this draft standard, if it becomes the standard, is or is not adequate.

You do not need to decide that question. You do not need to decide whether this standard addresses the concerns that you heard articulated from the witnesses.

 I don't know whether it will or it won't. On its face it does address the issue of capping the pipeline so it wouldn't act as a drain for water. I get that. But I am not asking you to make any conclusions about whether it is the right thing to do or the wrong thing to do at this stage.

We only know for sure that the TSSA is alive to it, and it will be making a decision. And for that reason, I say it would be inappropriate and wrong for the Board to step in where the TSSA has the jurisdiction, and is clearly going about exercising it.

 And so that is why, in my submission, section 97 cannot be used as a workaround, effectively, for these provisions of the TSSA Act and O-Reg 2010/01.

 I do say that the issue of pipeline abandonment is a live issue and it is a fluid issue. And even looking at my friend's materials this was referred to a number of times, and I cite this only to point out that is an emerging issue.

But you will have seen attachment 6 to GAPLO's evidence. I will give you the cite, so you needn't turn it up, but beginning at page 22 -- in fact, even earlier. If you go to, for example, page 18 of GAPLO attachment 6, it begins by talking about conduit, what happens if you have left a pipeline in the ground and it acts as a conduit.

The next page, page 19, "Decomposition of pipeline material," it talks about what are the possibilities, the scientific evidence in relation to decomposition. Then you get to cleaning methods and disposal.

And ultimately, what you get to is that the board concludes -- it is not a conclusion of the board, but this study says it may be in some cases that in situ abandonment is appropriate. In other cases, in situ abandonment may not be appropriate.

My point is simply that we are a long way from knowing what is going to be appropriate in the future.

Union is going to live up -- because it has to and it is the right thing to do -- to whatever standards are in place. And if what is being sought is, as a condition of approval, you will comply with the law, whatever it is in relation to abandonment, by all means.

But I don't know what that is. I don't know what the science is going to be, and nobody does. But I do know who has the jurisdiction, and in my submission that is the TSSA.

Those are my submissions in relation to abandonment, subject to any questions in relation to them.

 MS. FRY: I do have a question. Just to be clear, are you saying that on abandonment issues, the TSSA has exclusive jurisdiction so that the OEB would not be allowed to deal with it? Or are you saying that because the TSSA has jurisdiction, the OEB should not deal with it?

 MR. SMITH: The latter. There is no exclusive jurisdiction provision in the TSSA Act. I looked; I didn't

find one.

 MS. FRY: So is there anything that would help in either Act that you would point to as giving us guidance as to how the two Acts in that respect were intended to live together?

 MR. SMITH: There isn't. I would just simply observe that it is apparent from the work that is being done at the TSSA that this issue is something they are alive to, and they have developed the appropriate committees and they are going to work on it. And they are clearly working on it.

And in the absence of some indication that they are failing to exercise their jurisdiction in some way, and there is a gap that requires it be filled by the Ontario Energy Board, I would say it would be wrong for the Board

to step in, in this case.

But I am not saying that there is an exclusive jurisdiction clause in the TSSA, because there isn't. And I did think of that question.

The one thing I would say when it comes to the issue of abandonment -- and we did talk around this a little bit, but this is a situation where you do have another authority. That is the NEC, the Niagara Escarpment Commission.

And the Niagara Escarpment Commission has very broad powers in relation to what does or does not happen in the Niagara Escarpment Commission.

I often think of the Niagara Escarpment, simplistically, as like a park. But it is not really, because there are people who live there and have farms there, and the NEC has certain powers in relation to their land.

It is very easy to imagine a situation in this case where, if my friends were correct, a landowner may request something and demand removal which the NEC would not approve. And in my submission, I don't think that setting up what is a potential conflict is, at this stage, good regulatory policy, when we don't know what is going to be the situation down the road.

There are going to be -- as this issue develops, no doubt -- 40, 50, 60 years from now, real issues relating to abandonment that will have to be dealt with in a public forum. I agree with Mr. Goudy to that extent. I think that some day we are going to have to deal with this, but we are going to know a lot more about it.

I do want the make just one passing observation in relation to the financing. There are different issues relating to paying for abandonment, but Union does, and is required to, collect money in its cost of service for, essentially, salvage and abandonment through its depreciation.

So that is happening, Mr. Goudy; it is not a

question of it not happening.

If there are no further questions in relation to abandonment, let me just turn the page then to the issue of the letter of understanding. And again, I do want to express my regret that there was some part of today's hearing that may have descended into drafting. That is probably not the best use of the Board's time, and we accept that.

There were a number of matters that remained outstanding, and I don't think, from a technical perspective, I can do better than what we heard from the witnesses. And so I don't propose to summarize that, or to even really re-plough it; no pun intended.

I would like to say that as it relates to substantially and perhaps all of the issues that remain in dispute, it is -- ultimately, I think it comes down to what we have here is a situation where Union has a lot of experience. And that is not -- in no way -- meant as disrespectful to the witnesses who testified. But

it has a lot of experience and scientific backing to what it has proposed.

 Nobody is suggesting, at least on this side of the table, that people would not in the field listen to the soils consultant, or even the independent monitor, which was agreed to by Union and will be there and include GAPLO representation, and will also include representation from a member of Board Staff.

 So to the extent there are issues that do develop, there will be both an opportunity for those to be raised, and indeed as you heard from Mr. Wachsmuth, not just raised but escalated.

So this is a situation, from Union's perspective, where it wants to be very respectful of the farmers and landowners' knowledge of their property, and knowledge of their specific circumstances. And you heard from the witnesses on any number of occasions that for

site-specific considerations, Union is open to discussing them, including them in schedule B, and there is a method to resolve them.

And ultimately, if Union can't resolve them, Union has to pay for them because it is required to under the Act, to compensate for loss.

I would also say that apart from that consultation that is going on, there is a broader consideration, which is Union has to work across a number of landowner properties. It wants to treat people equally.

In Union's submission, it is appropriate -- notwithstanding that it is going to consult, that it is appropriate that in some matters, for example over-wintering, it is appropriate that Union base its decision on the science, because if it doesn't base its decision on the science, there is an impact on how long they have to be on somebody's property, and that can extend, because of the way these properties are configured and because you have to migrate across properties, not just to the affected landowners but to adjacent landowners. And in my submission that is one reason why it is best for these kinds of decisions to be left to the soils consultant, again with reference to the independent crop consultant with all of the rights to raise matters as appropriate.

 So in my submission, we suggest that the letter of understanding be adopted as is, and as attached to the settlement agreement, subject -- and I have just not had the time to go through the transcript, but subject to those areas where we have worked our way through the issues as we have gone along and -- we can -- I don't know how you want me to address that, because I don't have detailed notes of every instance, but if you want me to I can provide that.

But there were a number of places -- the first two items we knocked off the list right away. Obviously we stand by those, and everything we conceded in the transcript, but other than that we -- I rely on the testimony of the witnesses today.

 MS. HARE: I think Ms. Fry had a question.

 MS. FRY: Yes, just one question of clarification.

 You referred to the impact of over-wintering decisions on adjacent landowners, and my memory isn't perfect. I am not remembering any evidence on that. Can you help me out?

 MR. SMITH: I will have to look at the transcript. It is apparent from...

 MS. HARE: Is it the erosion you are referring to?

 MR. SMITH: No, all I am observing is this. It is apparent from the Stantec -- and I will just give you the cite so you have it, but --

 MS. FRY: Okay. Thank you.

 MR. SMITH: -- it is apparent from the environmental report -- and maybe one of the easy ways to see it is if you look at the Stantec report, Exhibit -- it's tab E to the Stantec environmental report, figure 1.8. And what you will see -- and you should also have regard to Union's prefiled evidence, tab 13. I believe it's schedule 1, page 7 -- it is up on the screen so you can see it there.

 But what you have here and what is shown on the screen is you have Appleby Line on the left. The yellow line is actually the easement, so when Union is working the easement it is going along the easement, and the hedgerows -- and this is why you need to look at tab 13, schedule 1, page 7, because it sets out the property lines.

And the only point I am making, Member Fry, is decisions to -- different designs by different landowners, they're not isolated, because Union has to access properties, obviously, off of roadways. And so if you look at Appleby Line you would have to drive to get to the middle property unless there's some other way to get on the landowner's property; i.e., you pay additional compensation to get from some other county road.

 The only right Union has is to move along the easement, and so you would have to go across the first landowner's property to get to the second landowner's property, and my simple point in relation to that is it is better to have one person making the decision who has expertise than have a series of people making a series of different decisions, because it is not just their decision that is impacted; it is other people's decisions as well. That's the only point I was making there.

 MS. FRY: So basically it is an argument based on the evidence, but you not referring to some specific evidence by Union that says --

 MR. SMITH: No, no. That's right.

 MS. FRY: -- that if "X" happens re: over-wintering, we have this problem?

You are basing it on existing evidence and constructing your argument?

 MR. SMITH: Absolutely. I mean, as to the technical need to over-wintering, I can't help you. That is Mr. Wesenger's evidence and the Union Gas witnesses' evidence as to when they over-winter, and you will see in the letter of understanding this is not a question of black and white. It is not a question of my friend saying: Over-winter, and Union Gas saying: Over my dead body.

This is an instance of Union saying: We will over-winter if appropriate and based on our soil consultant's recommendation. And you heard the evidence from the witnesses that there may well be instances when that is appropriate.

 But Union also would like the ability to, if appropriate, push ahead and try and finish its project if it believes -- and this is what Mr. Wesenger testified to -- if it believes the soil conditions are such that it is appropriate to go ahead.

 And that is really the difference between our position and my friend's position. It's: Is it at the election of the landowner, or should it be a more nuanced decision that has regard to a few more factors?

And our position is obviously the latter, and we understand our friend's position to be the former.

 And I would just simply say I expect my friend is going to say something along the lines -- on this issue, something along the lines of: Well, we can expect the landowner to not ask for over-wintering in all cases. It is simply reserving the right to make that election.

And I respect that, and nobody is suggesting that people are going to act unreasonably.

 But having said that, it is still appropriate for the ultimate decision to be for the constructor who has to get the job done but will have regard to the soils consultant, as opposed to the landowner, who will be consulted.

 Those are my submissions.

 MS. HARE: Thank you.

 Mr. Goudy, how long do you think you will be in your submissions?

 MR. JOHN GOUDY: I had estimated an hour when I provided the estimate to Ms. Crnojacki, and I would expect that I would be an hour if I were to do submissions at this time.

 MS. HARE: All right. Just give us a moment.

 Okay. Given the hour and not wanting you to start and not finish, then we are going to suggest your argument would be in written form, and similarly for Board Staff. So do you think you would be ready with a written argument on Wednesday, March the 11th?

 MR. JOHN GOUDY: Yes, I think that would be workable.

 MS. HARE: Okay. Similarly for Board Staff?

 MS. DJURDJEVIC: Yes, that will be fine.

 MS. HARE: And then, Mr. Smith, for your reply, what would you suggest if you receive the written arguments on the 11th?

 MR. SMITH: Tuesday or Wednesday of the next week would be fine. I am away and out of the country next week. Not on the moon; I am in the United States.

 MS. HARE: The week of the 9th you are away?

 MR. SMITH: Yes, the week of the 9th I am away, so I just would prefer it is not the Monday, because I will be just getting back into the office. I am sure I could manage the 17th or 18th. Obviously I would prefer the 18th, but I am in your hands. MS. HARE: Well, let's set it for Wednesday the 18th.

So the schedule then will be the 11th for GAPLO and Board Staff, and the 18th then for Union Gas.

 MR. SMITH: Thank you very much.

 MS. HARE: Okay? Thank you very much to all participants. Thanks.

 --- Whereupon the hearing adjourned at 4:52 p.m.