

**Canadian Alliance of Pipeline Landowners' Associations (CAPLA)**

**CAPLA Response to NEB LMCI Discussion Papers**

*Stream 1: Company Interactions with Landowners*



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**CAPLA Response to NEB LMCI Discussion Paper**  
**Stream 1: Company Interactions with Landowners**

**Introduction**

This is a blueprint for change.

The NEB's current processes and company process expectations and requirements have not facilitated the resolution of longstanding landowner issues. Whatever progress landowner associations have achieved in addressing these issues in negotiations with the companies has been achieved despite the NEB's regulation and not as a result of it. However, the NEB has the statutory jurisdiction to establish the regulatory context in which landowners believe their longstanding issues can be resolved. CAPLA's responses to the NEB's LMCI Streams 1 and 2 provide CAPLA's proposal with respect to how this objective can be achieved.

## **LMCI Topic 1 – Landowner Notification and Company Consultation Programs**

CAPLA’s position is that:

- The NEB’s current expectations for company notification and consultation as outlined in the Filing Manual do not achieve the Board’s objective of ensuring “that the rights and interests of those impacted by regulated facilities are respected”;
- Filing Manual requirements limited to landowner notification and consultation without mandating issue resolution prior to certificate issuance do not result in landowner issues being satisfactorily addressed;
- Regulatory minimum requirements for easement agreements and Filing Manual “performance measures” should include provisions to ensure the satisfactory resolution of landowner issues. The proposed easement agreement and company fulfillment of “performance measures” should be subject to Board review and approval at the certificate hearing;
- Companies should either be required to negotiate resolution of landowner issues before proceeding with certificate applications, or these issues must be determined by the Board before approval of issuance of a Certificate of Public Convenience and Necessity;
- To achieve such issue resolution, the Board must include in its notification and consultation requirements an obligation for the companies to fund reasonable landowner legal, consultant and negotiating costs to resolve their issues by agreement or to pursue these issues at the certificate hearing;
- All Certificates of Public Convenience and Necessity should include provision for the establishment of a Joint Committee with company and landowner representatives to address issues arising during both construction and pipeline operations through to abandonment. These Committees should be funded by the company annually with

reasonable provision for the costs of independent legal and consultant advice for landowners and arbitration of issues not capable of negotiated resolution.

**Key Questions A/B – Why do the NEB’s expectations for company notification and consultation as outlined in the Filing Manual fail to ensure “that the rights and interests of those impacted by regulated facilities are respected”?**

With the issue of a Certificate of Public Convenience and Necessity, a company has the statutory power to enter upon the land of any person to construct, lay, carry or place its pipeline (*NEB Act* Section 73(c)). Failing voluntary surrender of easement land rights, the company may obtain an immediate right of entry by Board order (*NEB Act* Section 104). While the *Act* stipulates minimum requirements for a land acquisition agreement (Section 86(2)), the *Act* requires only that such agreements provide for compensation for land rights and damages – it does not require these or any other issues to have been resolved by agreement prior to company entry. Although the Board has jurisdiction to prescribe by regulation other matters which must be addressed in land acquisition agreements (*NEB Act* Section 86(f) and Section 107(a)), no such additional minimum requirements have been prescribed.

It is in this expropriation context that companies are enabled to carry out the NEB’s Filing Manual expectations for notification and consultation with landowners. There is no requirement under the *Act* or these Filing Manual requirements that landowner issues be resolved either by agreement with the company or as determined by the Board before the company is issued its certificate and empowered to appropriate the necessary land rights for the construction and operation of its pipeline. In short, the Board’s process expectations with respect to “communicating project details and negotiating land use agreements” do not result in landowners who “contact companies with any complaints or concerns they may have during construction or operation activities on the right-of-way” being enabled to “participate in processes **to resolve** the concern.”

More specifically with respect to the Board’s Filing Manual expectations for company notification and consultation, the Filing Manual leaves to the discretion of the company when consultation is initiated; what information is communicated; how the company

responds (or fails to respond) to identified issues; whether (or not) these concerns are addressed; how this “input” affects project design, construction or operation; how consultation outcomes are reported; and what environmental and socio-economic effects are assessed. These expectations “leave the fox in charge of the hen house” and, not surprisingly, the results are:

- Despite notification of landowner concerns early in the planning process, companies are refusing to undertake meaningful negotiations with landowner associations until after the certificate application is filed and generally not until the evidentiary record is complete and a hearing is imminent;
- Information provided by newsletter and open houses is, at best, very simplistic and limited with respect to project routing, design, construction, easement agreement and compensation issues. Detailed information required for resolution of landowner issues is generally not made available until the application is actually filed and often not until well into the hearing process;
- While expressing willingness to meet with representatives of landowner associations, companies typically refuse to fund the legal, consultant and negotiating costs necessary for the satisfactory resolution of landowner issues forcing landowner associations to incur these costs to participate in the certificate hearing process with no assurance of cost recovery;
- In its consideration of Filing Manual expectations for company notification and consultation with landowners, the Board is adopting company identification and assessment of landowner issues and relying upon company assurances that post-certificate consultations will resolve these issues;
- In their assessment of project specific and cumulative environmental and socio-economic effects, companies are being permitted by the Board to ignore the increasing impacts of ever expanding pipeline utility corridors on whole farm productivity; agricultural and cropping practices; agricultural and non-agricultural

development; abandonment implications; and landowner safety, liability and quality of life;

- Having narrowly defined and limited the landowner issues to be assessed, companies are not required to demonstrate that these issues have been resolved but only that they have been considered in the consultation process and have been assessed not to be significant or as amenable to “compensation” even though none of the form, period and amount of compensation is considered by the Board prior to certificate issue;
- After certificate issue, apart from the company’s own post-construction monitoring reports identifying, assessing and reporting on the remediation of adverse impacts, there is no independent identification and assessment of residual construction impacts and whether resolution of landowner concerns has been successfully implemented;
- There is similarly no forum or mechanism for the identification and resolution of ongoing impacts of pipeline operations up to and including abandonment.

**Key Questions C/D – What expectations or requirements should the NEB have for company notification and consultation programs to ensure satisfactory resolution of landowner issues?**

To achieve satisfactory resolution of landowner issues, the Board’s expectation and requirement should be that companies must resolve landowner issues by negotiated agreement or as determined by the Board at the certificate hearing before issue of a Certificate of Public Convenience and Necessity. To ensure appropriate identification and assessment of these issues and to permit their satisfactory resolution, the Board should require the companies to fund the reasonable legal, consultant and negotiating costs of landowners required to resolve their issues by agreement or to pursue these issues at the certificate hearing. In this context, with sufficient funding, the relevant measure of landowner satisfaction would be either a settlement agreement or Board endorsement of resolutions proposed by landowners. In addition, pre and post-construction landowner

surveys administered by qualified, independent consultants might be used by the Board to ensure that landowner issues are being identified, assessed and satisfactorily resolved.

With respect to current statutory and Filing Manual requirements related to company notification and consultation requirements, CAPLA proposes the following:

- Exercising its jurisdiction under Section 86(2)(f) and Section 107(a) of the *NEB Act*, the Board should amend the current minimum requirements for land acquisition agreements to require that these agreements include provisions to resolve many of the generic landowner issues which have been identified. The Board should then develop a standard form easement agreement reflecting these minimum requirements. For example, such mandated minimum requirements should include a requirement for pipeline removal on abandonment unless otherwise agreed by landowners at the time of abandonment; no surrender or assignment by the company without landowner consent; no restrictions on agricultural use; indemnity for costs to accommodate future development; and construction period compensation for land rights and damages with provision for an annual reviewable payment thereafter;
- In addition, the Filing Manual requirements for landowner notification and consultation should be amended to include “performance measures” which ensure the satisfactory resolution of these same (and other) generic issues. For example, Filing Manual expectations should be amended to require companies to establish upon certificate applications that financial provision is in place to fund pipeline removal and to protect landowners from potential liability from deteriorating abandoned pipe or operator insolvency; that blanket crossing permission for all agricultural equipment and practices has been provided with provision requiring mitigation or compensation for any future restrictions; that project design ( routing, depth, pipe thickness etc.) will accommodate current and potential future agricultural and non-agricultural development; and that the compensation package provides construction period compensation to include minimum market value land rights, a linear disturbance bonus, multiple year declining crop loss and a wet soil shutdown damage premium, with an annual payment thereafter reviewable every 5 years;

- Attached as Schedule 1 to this CAPLA LMCI Response is a summary chart providing examples of these and other generic landowner issues with CAPLA's proposed regulatory minimum easement requirements and Filing Manual "performance measures" derived from recent pipeline project settlements to address these issues. As part of the Board's LMCI initiative, CAPLA is prepared to work with the Board and industry to identify further generic landowner issues and provisions required for their resolution which should be mandated as minimum easement agreement provisions and Filing Manual notification and consultation requirements.

**Key Questions E/F – How should the Board monitor and evaluate company fulfillment of minimum easement requirement and “performance measure” expectations?**

Having established minimum easement agreement requirements and filing manual "performance measure" expectations, the Board should then monitor and evaluate company fulfillment of these requirements from the filing of the preliminary information package through the certificate hearing process, at hearing, during construction and post-construction during pipeline operations up to and including abandonment. This monitoring and evaluation should include:

- Inclusion in the preliminary information package of a methodology, timetable and costs budget for landowner consultation including negotiations with representatives of a landowner association;
- Filing Manual requirements for certificate applications to include a pre-filing independent landowner survey (developed and implemented in conjunction with the landowner association) identifying landowner issues and concerns with respect to both current pipelines and proposed construction; a consultation report to the date of filing identifying issue resolution, outstanding issues and the process, timetable and costs budget for continuing negotiations; and a pre-hearing update of this consultation report identifying issue resolution, issues to proceed to hearing and related costs budget;

- Board review and approval at hearing of easement agreements and determination of unresolved issues as a pre-condition to application approval and certificate issue;
- Certificate conditions to include establishment of Joint Committees and independent landowner construction monitors;
- Post-construction independent landowner survey (developed and administered in conjunction with the landowner association) with respect to implementation of resolution of landowner issues; and identification, assessment and remediation of construction impacts and continuing impacts;
- Mandatory filing of independent landowner construction monitor and Joint Committee reports with respect to construction and continuing impacts;
- Mandatory filing of annual Joint Committee reports with respect to identification and assessment of continuing and new issues, negotiated issue resolutions and arbitrations with annual budget reporting.

**Key Question G/H – How can the Board ensure compliance with minimum easement agreement requirements and amended Filing Manual “performance measure” expectations?**

The Board’s monitoring of a company’s notification and consultation from the preliminary information package through to the hearing is to ensure the appropriate identification and assessment of landowner issues and a reasonably funded process for their resolution either by negotiated agreement or by Board determination. To accomplish this objective, as a pre-condition to the issue of any Certificate of Public Convenience and Necessity, the Board must be satisfied with this consultation process and its results. In addition to requiring and reviewing progress reports and landowner surveys, the Board should implement mandatory Board staff supervised mediation funded by company applicants before proceeding with oral hearings. Mediation reports should record the respective positions of the parties, the extent to which issues have been resolved and the issues remaining for Board determination.

The independent monitor and Joint Committee reports filed with the Board during and following construction, and subsequently during operations of the pipeline up to and including abandonment, together with post-construction landowner surveys will identify for the Board continuing issues. Included in Joint Committee costs budgets should be provision for the parties to return to the Board for arbitration of issues not capable of negotiated resolution.

## **LMCI Topic 2 – Process of Acquiring Access to Right-of-Way**

CAPLA's position is that:

- Landowners who are unable to negotiate a satisfactory land acquisition agreement are subject to expropriation. Accordingly, landowners are not in a position to “negotiate with the companies to obtain satisfactory terms in exchange for the land rights”;
- The NEB's statutory power enabling it to “approve a project prior to any land use agreements being in place between the company and landowners” is inconsistent with its expressed expectation “that a legal agreement be signed for the rights”. Companies do not need to fulfill this expectation by coming to a negotiated resolution of landowner issues before being permitted to proceed with their projects;
- As above (see Topic 1), with respect to the process of land rights acquisition, regulatory minimum easement agreement requirements and Filing Manual “performance criteria” should include the provisions required to address satisfactorily generic landowner issues. Reasonably funded landowner consultation/NEB mediation with resolution of landowner issues by negotiated agreement or Board determination should then be a pre-condition to certificate issue;
- Similarly, with respect to entry access for integrity and maintenance digs on any existing or new pipeline, regulatory minimum easement agreement requirements and Filing Manual “performance criteria” should provide that, apart from emergencies, post-construction easement access will require landowner agreement in the standard form of an “integrity dig agreement”.

**Key Questions I/J/K – What is required to ensure that landowners’ rights are respected and the NEB’s expectation “that a legal agreement be signed for the rights” be fulfilled both with respect to land acquisition and a company’s need to access the lands?**

The current regulatory context for negotiation of land rights or land access does not respect the rights of landowners or ensure fulfillment of the NEB’s expectation “that a legal agreement be signed for the rights”. Since companies are not required to come to a negotiated resolution of landowner issues before appropriating the land rights necessary to proceed with their projects, and the Board does not require resolution of these issues before approving applications and issuing certificates, landowners have little bargaining leverage to achieve satisfactory resolution of their concerns.

To resolve this inequity in the bargaining position of the parties and to promote implementation of easement agreements which satisfactorily address landowner issues, CAPLA proposes:

- With respect to land acquisition, regulatory amendment of current minimum requirements for land acquisition agreements and amendment of Filing Manual requirements to include “performance criteria” to ensure satisfactory resolution of generic landowner issues (see Topic 1 above). Having mandated minimum easement agreement requirements and established Filing Manual “performance criteria” to achieve satisfactory resolution of landowner issues, provision for reasonably funded landowner consultation/NEB mediation will facilitate satisfactory resolution of landowner issues by negotiated agreement. For issues not resolved by agreement, the Board will then be empowered at the certificate hearing to evaluate the consultation process relative to Filing Manual “performance measures”, assess the proposed easement agreement relative to regulatory minimum requirements, and determine the resolution of outstanding issues before approval of applications and certificate issuance;
- Similarly, with respect to easement access for maintenance and repair work, the minimum requirements for land acquisition agreements beyond those in Section

86(2) should be prescribed to include a provision restricting off easement access to emergencies or subject to an “integrity dig agreement”. Filing Manual “performance criteria” should be amended to require that companies include for Board review and approval on certificate applications the form of “integrity dig agreement” to be made available to landowners during operation of the pipeline with specified minimum requirements.

**Key Questions L/M – Currently, what differences are there in company specific land acquisition agreements which should be reflected in regulatory minimum easement agreement requirements and Filing Manual “performance measures”?**

Land acquisition for pipeline construction and subsequent access demands for maintenance and integrity dig operations raise common issues for landowners which are not project specific but are generic to all pipelines. These issues include abandonment costs and liability, regulatory restrictions on agricultural operations and future land development, interference with agricultural and cropping practices, loss of soil productivity and related loss of profits and opportunity costs, and mitigation of or compensation for these impacts.

Since there are no regulatory or Filing Manual requirements that these issues be addressed and resolved in land acquisition agreements or as determined by the Board, they are considered only superficially, if at all, as part of company consultations or before the Board. As a result, current easement agreements (and related landowner agreements) reflect only the limited success which landowner associations have been able to achieve on these issues in negotiations conducted under the severe restrictions of the present regulatory context. Nevertheless, despite current NEB process limitations, recent company specific land acquisition and related landowner agreements do suggest at least partial answers to the satisfactory resolution of some of these issues. Attached as Schedule 2 to this CAPLA LMCI Response is a summary chart recording the resolution of generic landowner issues in recent pipeline settlements (the settlement documents referenced have been filed previously with the Board in other proceedings). CAPLA has included the provisions in bold type in this Schedule 2 in its proposed regulatory minimum requirements for easement agreements and Filing Manual “performance measures” set out in Schedule 1.

CAPLA's specific proposal for the satisfactory resolution of landowner issues as summarized in Schedules 1 and 2 is:

- To address abandonment issues: mandatory minimum easement agreement provisions requiring pipeline removal at the landowner's option (as per Union Gas); restoration standards to previous productivity or fertility except as compensated (as per Union Gas); company surrender and release only with landowner consent (as per Union Gas, Enbridge); and company assignment only with prior notice (Union Gas) and continuing liability (Union Gas). Filing Manual "performance measures" requiring financial provision to fund removal and no assignment unless assignee has equivalent credit rating or continuing liability (Enbridge);
- To address pipeline crossing issues: mandatory minimum easement agreement provisions requiring increase of pipeline depth to accommodate agricultural facilities and processes (Union Gas) and no restrictions on agricultural use. Filing Manual "performance measures" requiring depth of cover survey (Enbridge); maintain pipeline at greater of design depth or 3 ft. (Union Gas) by restoring topsoil or lowering pipe, or compensate (Union Gas, Enbridge); blanket crossing approval for all agricultural equipment except as specified (Enbridge); restrictions to be specified, then mitigated or compensated (Enbridge);
- To address off easement access issues: mandatory minimum easement agreement provisions limiting off easement access to emergencies with a follow-up report or with an Integrity Dig Agreement (Union Gas, Enbridge). Filing Manual "performance measures" specifying minimum requirements for the form of Integrity Dig Agreement, including stipulation of the agreed construction period; identification of access and dig site lands; advance compensation with top up rights paid on a minimum 0.5 acres; and a 150% compensation premium for construction outside the agreed period, extending longer than 45 days or in wet soil conditions (Union Gas, Enbridge);
- To address future use issues: mandatory minimum easement agreement provisions requiring reasonable efforts by the company to accommodate changes in future use

at the company's expense (Union Gas). Filing Manual "performance measures" requiring that project design accommodate current and potential future agricultural and non-agricultural use;

- To address surface facility issues: mandatory minimum easement agreement provisions requiring location of surface facilities at lot lines or road allowances (Union Gas, Enbridge). Filing Manual "performance measures" requiring that surface facilities not interfere with current and potential future agricultural and non-agricultural use;
- To address soil impacts/construction issues: mandatory minimum easement agreement provisions requiring restoration to previous productivity and fertility or compensation (Union Gas); and pipeline not to obstruct drainage or cultivation (Union Gas, Enbridge). Filing Manual "performance measures" requiring independent construction monitors and Joint Committee (Union Gas, Enbridge); drainage guaranty and responsibility for increased costs (Union Gas, Enbridge);
- To address compensation issues: mandatory minimum easement agreement provisions requiring construction period compensation for land rights and damages (Union Gas, Enbridge) with provision for an annual reviewable payment thereafter. Filing manual "performance measures" requiring that construction period compensation include minimum market value land rights, a linear disturbance bonus, multiple year declining crop loss and a wet soil shutdown damage premium (Union Gas, Enbridge), with an annual payment thereafter reviewable every 5 years.

**Key Questions N/O – What expectations or requirements should the NEB have for company land acquisition agreements and access needs to ensure satisfactory resolution of landowner issues?**

Implementation by the NEB of the regulatory minimum easement agreement requirements and Filing Manual "performance measures" proposed by CAPLA in Schedule 1, which are derived from the recent pipeline settlements summarized in Schedule 2, will establish the Board's expectations or requirements for company land acquisition agreements and access

needs. Requiring a reasonably funded landowner consultation/NEB mediation process and Board review and approval of the proposed easement agreement and consultation process at the certificate hearing, and Board monitoring of company notification and consultation programs with Integrity Dig Agreements and post-certificate NEB arbitration to address post-certificate issues as above (see Topic 1), will then ameliorate some of the inequity in current negotiations and facilitate the satisfactory resolution of landowner issues.

### **LMCI Topic 3 – Vehicles Crossing the Right-of-Way**

CAPLA's position is that:

- The reason why “the crossing of vehicles over a pipeline imposes additional stress on the pipeline and therefore risk to its integrity” is because existing pipelines have been constructed at depths and with design specifications insufficient to accommodate surface agricultural activity in the environment in which they co-exist;
- Current regulatory restrictions protect pipeline integrity at the cost of agricultural landowners;
- Regulatory minimum easement agreement requirements and Filing Manual “performance measures” should limit pipeline interference with agricultural use and require any such restrictions to be specified, mitigated or compensated.

**Key Questions P/Q – Why do the NEB's current regulatory restrictions on agricultural activities on and adjacent to pipeline easements fail to ensure “that the rights and interests of those impacted by regulated facilities are respected”?**

The depth and design of existing pipelines was determined by the pipelines with regulatory approval from the National Energy Board (or its predecessor). Accordingly, responsibility for risk to pipeline integrity resulting from inadequate depth or design deficiencies rests solely with the companies and the Board. Landowners should not be burdened with the costs related to these regulatory restrictions when it is the companies who primarily benefit from this regulatory protection of the integrity of their pipelines.

Landowners do not just “have concerns over the time it takes to get approvals, the inconvenience and disruption to farming practices, the inconsistency of the approval process between companies, and the lack of a blanket crossing approval for certain vehicle types.” Current regulatory restrictions under Section 112 of the *NEB Act* and

pipeline crossing regulations, both on easement and on the adjacent 60 metre control zone, include:

- Company consent and notice requirements for cultivation or other agricultural activities on easement or in the control zone (off-easement) at depths more than 30 centimetres (12 inches) or which reduce cover over the pipeline;
- Company consent requirement for the operation of farm equipment across the pipeline easement;
- Company consent and/or notice requirements for control zone (off-easement) construction and/or repair of “facilities” such as fencing, irrigation and drainage systems;
- Freezes on “excavation” which may extend to the whole of a landowner’s property for up to three working days;
- Operational delays associated with obtaining consents or providing notice;
- Regulatory obligations to comply with company requirements for construction, maintenance and abandonment of on easement and control zone (off-easement) facilities with resulting land use limitations; and
- Risk of criminal prosecution and penalty (with fines of up to \$1 million and/or imprisonment up to 5 years) and civil liability for regulatory contraventions.

The “current mechanisms and approaches” noted by the Board in its LMCI discussion paper have not been effective in relieving landowners of the burden of these regulatory restrictions. “Specially constructed crossings” are simply not feasible to accommodate the thousands of crossings along the whole pipeline length undertaken by farmers every year to complete cultivation, fertilizing, planting, spraying and harvest operations. For the same reason, requesting “approval for every vehicle crossing each time a landowner needs to cross the right-of-way” is simply unworkable. While “blanket approval for vehicles within a certain range of specifications” might seem to be the answer, the “blanket approvals”

provided to date by the companies for “normal” farm equipment and practices exclude many “normal” equipment and practices (e.g. transport trucks and excavation more than 12” or 18”) and continue to leave the risk with the landowner as to whether he or she has complied with regulatory consent requirements.

Agricultural operations are time sensitive – failure to complete these operations within a narrow time window (often hours) can result in subsequent weather delays, reduction in whole crop quantity and quality, and additional costs for rescheduling labour and equipment use. Faced with the prospect of time delays to obtain necessary regulatory consents, landowners are forced either to change their agricultural practices to avoid the need for regulatory consent, or to proceed without consent and thereby risk regulatory contravention. However, even those who attempt to avoid regulatory compliance by changing their agricultural practices (e.g. creating headlands rather than crossing control zone and pipelines; reducing cultivation depth to less than 12”, etc.) suffer the increased time and financial costs associated with these changes as well as environmental impacts (e.g. increased compaction) and related production losses.

As a result, whether landowners comply with regulatory consent requirements, change their agricultural practices to avoid regulatory requirements, or risk regulatory contravention, they incur loss of income, increased costs, development limitations and diminished property value arising from:

- Inability to make use of modern cultivation technologies and large scale farm equipment;
- Facility construction and expansion restrictions or forced location on alternate sites;
- Operational time delays which may extend up to 18 calendar days (or indefinitely for crossing permissions for which there is no required response time);
- Operational disruptions and interference with management flexibility;
- The restriction or limitation of control zone or easement activities to limit criminal and civil liability exposure; and/or

- Limited land rental and sharecropping opportunities and decreased rental value.

There can be no issue that it is “the rights and interests of those impacted by regulated facilities” (i.e. landowners) which are prejudiced by the NEB’s current regulatory restrictions on agricultural activities on and adjacent to pipeline easements. To address landowner impacts and resolve issues arising from these regulatory restrictions will require recognition that the need for restrictions is the responsibility of the companies and the Board; the benefit of restrictions is principally realized by the companies; and landowners should not be required to bear the costs arising from these restrictions. New pipelines should be constructed so as not to interfere with agricultural operations and, insofar as possible, existing pipelines should be adapted to accommodate agricultural facilities and processes. To the extent that restrictions on agricultural activities cannot be avoided or mitigated, landowners should be compensated.

**Key Questions R/S – What is required to ensure that landowners’ rights are respected and that landowners are not required to bear the costs of regulatory restrictions intended to protect pipeline integrity?**

To place the burden of the costs of regulatory restrictions to protect pipeline integrity on the companies where they properly belong, regulatory minimum easement agreement requirements and Filing Manual “performance measures” should limit pipeline interference with agricultural use and require any such restrictions to be specified, mitigated or compensated. CAPLA proposes:

- With respect to new pipelines, the Board should amend current regulatory minimum easement agreement requirements to include a provision requiring companies to design and construct pipelines so as not to restrict agricultural use and to accommodate agricultural facilities and processes;
- Filing Manual “performance measures” should include an initial depth of cover survey following construction and regular depth of cover surveys thereafter with the company required to maintain the pipeline at design depth (or at least 3 ft., whichever is greater) or to lower the pipe or compensate landowners for any

restrictions on their agricultural activities. In addition, companies should be required to include on certificate applications a blanket crossing approval for all agricultural equipment and processes except as specified, again with any restrictions to be mitigated or compensated. These same “performance measures” should apply to both new and existing pipelines.

**Key Questions T/U – What expectations or requirements should the NEB have for companies to accept responsibility for regulatory restrictions on agricultural operations?**

The regulatory minimum easement agreement requirements and Filing Manual “performance measure” provisions proposed by CAPLA to address landowner concerns with respect to regulatory restrictions on agricultural operations are summarized in Schedule 1. As mentioned previously, most of these provisions are derived from recent pipeline settlements and reflect provisions to which at least some pipeline companies have already agreed. In at least some measure, these provisions shift the costs of regulatory restrictions from landowners to the companies. Implementation by the NEB of such requirements would promote resolution of landowner concerns.