



EB-2014-0335

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

AND IN THE MATTER OF an application by Union Gas Limited for an Order pursuant to section 99(5) of the *Ontario Energy Board Act, 1998* granting authority to expropriate certain interests in one property for the purposes of constructing, operating and maintaining a natural gas pipeline between Union's existing Brantford Valve Site and the Kirkwall Custody Transfer Station.

PROCEDURAL ORDER NO. 1
December 18, 2014

Union Gas Limited ("Union") filed an application dated October 27, 2014, pursuant to Section 99(1) of the *Ontario Energy Board Act, 1998* (the "Act"), for an order or orders under Section 99(5) of the Act granting Union authority to expropriate certain interests in land in the City of Hamilton for the purposes of constructing, operating and maintaining a natural gas pipeline as part of Union's Brantford-Kirkwall / Parkway D Project.

Union was granted permission to construct the new natural gas pipeline on January 30, 2014 pursuant to the Board's Decision and Order in EB-2013-0074.

Union requires permanent easements over a total of 36.18 hectares of land and temporary easements over 25.58 hectares of land (for construction and top soil storage purposes) for the Brantford-Kirkwall pipeline. Union has secured all of the permanent and temporary easements required for the pipeline on a voluntary basis through negotiations with the affected landowners with the exception of a permanent easement over 1.2 hectares and a temporary easement over 0.43 hectares. The easements that Union still requires are located on a single property.

The Board issued a Notice of Application concerning this expropriation proceeding on November 10, 2014. No party responded with a request to become an intervenor in this process.

On December 3, 2014, the owner of the property for which Union seeks expropriation (the “impacted landowner”) filed a Letter of Comment. In that letter, the impacted landowner stated that Union has not attempted to negotiate with all of the lienholders of the property. As such, the impacted landowner requested that the expropriation application be dismissed or put on hold for 30 days pending proper discussion with all lienholders to allow the impacted parties to arrive at an acceptable Settlement Agreement in regard to the easement.

On December 11, 2014, Union filed a response to the Letter of Comment. Union stated that over the past 18 months it has attempted to reach a negotiated Settlement Agreement regarding the easement with the impacted landowner, the relevant lienholders and other encumbrancers. Union stated that it does not see any reasonable prospect that a negotiated Settlement Agreement would be reached if the Board were to provide a 30 day delay in the proceeding as requested by the impacted landowner. Union also stated that the compensation issues raised by the impacted landowner in its Letter of Comment are outside the scope of the Board’s jurisdiction in considering an application under Section 99 of the Act.

The Board agrees with Union that the compensation issues raised by the impacted landowner in the Letter of Comment do not fall within the Board’s jurisdiction under Section 99 of the Act. To the extent that the parties are unable to agree on the appropriate amount of compensation, the compensation issues are ultimately resolved by the Ontario Municipal Board. The question before the Board is whether the proposed expropriation is in the public interest. The Board finds that a 30 day delay in the proceeding is unlikely to result in a resolution, given the amount of time already spent in attempting negotiations with all parties and finds that it is in the public interest to avoid any potential delay in pipeline construction. Therefore, the Board will not delay the proceeding for 30 days. The Board has set out below a process for hearing the application.

The Board notes that the impacted landowner has not requested intervenor status in this proceeding. However, given the direct impact that the application has on the interests of the landowner, the Board has decided to grant the impacted landowner intervenor status. If the impacted landowner has any questions or submissions that it would like to make, which are in scope for this proceeding, the landowner will have the opportunity to do so. The Board reiterates that issues related to compensation are outside the scope of this proceeding.

The Board also notes that the impacted landowner filed an attachment to the Letter of Comment dated December 3, 2014. The Board has determined that the attachment contains information that is properly treated as confidential under the

Board's *Practice Direction on Confidential Filings*. Therefore, the Board has decided that the attachment to the Letter of Comment will not be placed on the public record.

The Board considers it necessary to make provisions for the following matters related to this proceeding. The Board may issue further procedural orders from time to time.

THE BOARD ORDERS THAT:

1. Board staff and intervenors seeking information and material from Union that is in addition to the evidence filed with the Board, and that is relevant to this proceeding, shall request it by written interrogatories filed with the Board and delivered to Union on or before **January 9, 2015**.
2. Union shall file with the Board complete responses to the interrogatories and deliver them to the intervenor no later than **January 16, 2015**.
3. Union shall file its Argument-in-Chief with the Board and serve it on the intervenor on or before **January 23, 2015**.
4. Board staff and intervenors who wish to make written submissions shall file such submissions with the Board, and deliver them to Union, on or before **January 30, 2015**.
5. If Union wishes to reply to the submissions of Board staff or the intervenor, the reply shall be filed with the Board and delivered to the intervenor on or before **February 6, 2015**.

All filings to the Board must quote file number **EB-2014-0335** be made electronically through the Board's web portal at www.pes.ontarioenergyboard.ca/eservice in searchable / unrestricted PDF format. Two paper copies must also be filed at the Board's address provided below. Filings must clearly state the sender's name, postal address, telephone number, fax number and e-mail address.

All filings shall use the document naming conventions and document submission standards outlined in the RESS Document Guideline found at www.ontarioenergyboard.ca/OEB/Industry. If the web portal is not available, parties may email their documents to the address below.

For all electronic correspondence and materials related to this proceeding, parties must include in their distribution lists the Case Manager, Lawrie Gluck at Lawrie.Gluck@ontarioenergyboard.ca and Senior Legal Counsel, Michael Millar at Michael.Millar@ontarioenergyboard.ca.

All communications should be directed to the attention of the Board Secretary and be received no later than 4:45 p.m. on the required date.

ADDRESS

Ontario Energy Board
P.O. Box 2319
2300 Yonge Street, 27th Floor
Toronto ON M4P 1E4
Attention: Board Secretary

Filings: <https://www.pes.ontarioenergyboard.ca/eservice/>
E-mail: boardsec@ontarioenergyboard.ca
Tel: 1-888-632-6273 (Toll free)
Fax: 416-440-7656

DATED at Toronto, December 18, 2014

ONTARIO ENERGY BOARD

Original Signed By

Kirsten Walli
Board Secretary