



**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.

**Before:** Marika Hare  
Presiding Member

**DECISION AND ORDER**  
**February 5, 2015**

**Background**

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 (the Project).

The OEB granted Union approval for the Project on January 30, 2014 pursuant to its 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 (which is part of the Project). 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 OEB issued a Notice of Application (the “Notice”) concerning this expropriation proceeding on November 10, 2014.

In Procedural Order No. 1, dated December 18, 2014, the OEB responded to a Letter of Comment filed on December 3, 2014 by the landowner of the unsecured easements (the Landowner). In addition, the Board granted the Landowner intervenor status in the proceeding and set out the process for the filing of interrogatories and submissions.

In Procedural Order No. 2, dated January 14, 2015, the OEB accepted a late intervention request from the Civil Remedies for Illicit Activities Office of the Ministry of the Attorney General (“MAG”).

The OEB received submissions from Union and OEB staff.

### **OEB Findings**

The OEB grants Union authority to expropriate the permanent and temporary easements that it requested in its application for the following reasons.

The OEB notes that Section 99(5) of the Act establishes the test for approving an application brought under Section 99(1). Section 99(5) states:

“If after the hearing the Board is of the opinion that the expropriation of the land is in the public interest, it may make an order authorizing the applicant to expropriate the land.”

The OEB finds that the proposed expropriation is in the public interest. The OEB notes that the requested easements are necessary for the construction, operation and maintenance of a new natural gas pipeline (the Brantford-Kirkwall pipeline), which is part of the Project. The OEB already found that the Project itself is in the public interest in its January 30, 2014 Decision and Order in EB-2013-0074. The OEB notes that for the Project to be completed and the benefits of the project to accrue to the public, the construction of the Brantford-Kirkwall pipeline needs to occur. As such, the OEB will grant Union authority to expropriate the requested easements as it will allow the pipeline to be constructed and the Project to move forward.

The OEB finds that Union has attempted to minimize potential impacts on the Landowner by proposing to construct the new pipeline on easements that are located immediately next to two existing pipelines that are already installed on the

Landowner's property. The OEB notes that the Landowner raised no concerns with regard to the specifics of the proposed easements.

The OEB notes that both Union and OEB staff submitted that Union's requested expropriation is in the public interest and should be granted by the OEB.

The only concerns raised by the Landowner and the MAG in this proceeding are related to compensation. The OEB notes that compensation issues do not fall within its jurisdiction under Section 99 of the Act. The OEB notes that the compensation issues will be addressed by Union in accordance with the *Expropriations Act* (as discussed by Union in its reply submission).

#### **THE OEB ORDERS THAT:**

1. Union Gas Limited is authorized to expropriate the interests sought in the lands listed in Appendix "A" to this Decision and Order.
2. Union Gas Limited shall file, with the OEB, a final expropriation plan for OEB approval and endorsement as soon as practical.

All filings to the OEB must quote file number **EB-2014-0335**, be made electronically through the OEB's web portal at [www.pes.ontarioenergyboard.ca/eservice](http://www.pes.ontarioenergyboard.ca/eservice) in searchable / unrestricted PDF format. Two paper copies must also be filed at the OEB'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](http://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](mailto:Lawrie.Gluck@ontarioenergyboard.ca) and Senior Legal Counsel, Michael Millar at [Michael.Millar@ontarioenergyboard.ca](mailto: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**

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**DATED** at Toronto, February 5, 2015

**ONTARIO ENERGY BOARD**

*Original Signed By*

Kirsten Walli  
Board Secretary

**APPENDIX A**

**TO DECISION AND ORDER**

**BOARD FILE NO. EB-2014-0335**

**DATED: February 5, 2015**

## Description of Land Subject to Expropriation and Interest Approved

<b>Legal Description</b>	<b>Approved Interest</b>
PT LT 21, CON 7 BEVERLY, AS IN CD424161, EXCEPT VM72061 (SECONDLY); S/T AB27949, CD457929 FLAMBOROUGH CITY OF HAMILTON	Permanent Easement 428 m x 28 m (1.2 ha)
PT LT 21, CON 7 BEVERLY, AS IN CD424161, EXCEPT VM72061 (SECONDLY); S/T AB27949, CD457929 FLAMBOROUGH CITY OF HAMILTON	Temporary Easement 428 m x 10 m (0.43 ha)