



**EB-2016-0186**

**Union Gas Limited**

**Application for approval to construct a natural gas pipeline in the Township of Dawn Euphemia, the Township of St. Clair and the Municipality of Chatham-Kent and approval to recover the costs of the pipeline**

**PROCEDURAL ORDER NO. 1  
August 11, 2016**

Union Gas Limited (Union) filed an application with the Ontario Energy Board (OEB) on June 10, 2016 for:

1. leave to construct 40 kilometres of 36 inch diameter pipeline from Union's Dawn Compressor Station in the Township of Dawn-Euphemia to its Dover Transmission Station in the Municipality of Chatham-Kent (the Project) pursuant to section 90 of the *Ontario Energy Board Act, 1998*, S.O. 1998, c.15, Schedule B (Act)
2. approval of the recovery of costs associated with the construction of the Project pursuant to section 36 of the Act
3. approval to calculate the Project's revenue requirement and resulting rates based on a 20 year depreciation term
4. approval of an accounting order to establish a Panhandle Reinforcement Deferral Account pursuant to section 36 of the Act

A Notice of Hearing was issued on July 12, 2016 and was served and published as directed.

Each of the Association of Power Producers of Ontario (APPo), Building Owners and Managers Association, Greater Toronto (BOMA), Canadian Association of Energy and Pipeline Landowners Associations (CAEPLA), Canadian Manufacturers and Exporters (CME), Consumers Council of Canada (CCC), Enbridge Gas

Distribution Inc. (Enbridge), Federation of Rental-housing Providers of Ontario (FRPO), Industrial Gas Users Association (IGUA), Liberty Oil and Gas Limited (Liberty), London Property Management Association (LPMA), the Municipality of Chatham-Kent (Chatham-Kent), Ontario Greenhouse Vegetable Growers (OGVG), School Energy Coalition (SEC) and Vulnerable Energy Consumers Coalition (VECC), applied for intervenor status.

Each of APPrO, BOMA, CAEPLA, CCC, Chatham-Kent, CME, FRPO, IGUA, LPMA, OGVG, SEC and VECC also applied for cost eligibility.

Each of APPrO, BOMA, CAEPLA, CCC, Chatham-Kent, CME, Enbridge, FRPO, IGUA, Liberty, LPMA, OGVG, SEC and VECC are granted intervenor status.

APPrO, BOMA, CAEPLA, CCC, CME, FRPO, IGUA, LPMA, OGVG, SEC and VECC are eligible to apply for an award of costs under the OEB's *Practice Direction on Cost Awards* (Practice Direction).

Chatham-Kent noted in its letter of intervention that it is aware that it is not eligible for an award of costs under the Practice Direction, but stated that it reserved the right to seek costs depending on the extent of its involvement and contribution throughout the proceeding and if exceptions under section 3.05 of the Practice Direction apply.

To provide certainty to both intervenors and the applicant, the OEB determines cost eligibility at the outset of a proceeding. Parties are therefore not generally permitted to reserve their right to request for cost eligibility at a later time or based on some future contingency. The OEB notes that the burden of establishing eligibility for a cost award is on the party applying for such eligibility, in this case, Chatham-Kent. The request for cost eligibility must include the reasons the requestor believes that it is eligible for an award of costs and address the OEB's cost eligibility criteria.

For the reasons provided below, the OEB will not grant cost eligibility to Chatham-Kent.

Section 3.03 of the Practice Direction states that a party is eligible to apply for a cost award where the party:

- (a) primarily represents the direct interests of consumers (i.e., ratepayers in relation to services that are regulated by the Board);
- (b) primarily represents an interest or policy perspective relevant to the Board's mandate and to the proceeding for which cost award eligibility is sought; or
- (c) is a person with an interest in land that is affected by the process.

Section 3.05 (i) of the Practice Direction states that despite section 3.03, a municipality in Ontario, individually or in a group, is not eligible for a cost award.

Chatham-Kent is a municipality in Ontario and acknowledges the applicability of section 3.05 in its letter. Chatham-Kent's letter does not indicate on what basis it may argue for an exception to section 3.05.

While Chatham-Kent's letter indicates that the municipality has a direct interest in the subject of this proceeding because the proposed project will be located partially within municipal property and because the proposed project is of vital concern to the municipality and its inhabitants. By granting intervenor status to the municipality, the OEB agrees that the municipality has a direct interest in this proceeding. The OEB finds, however, that because the municipality has access to a revenue stream from its own taxpayers, it should not be eligible to recover costs from ratepayers through the OEB's cost award mechanism.

The OEB has also considered whether, under section 3.07 of the Practice Direction, special circumstances exist and concludes that no circumstances exist that are special or unique that would warrant granting cost eligibility to the municipality in this case.

Cost eligible intervenors should be aware that the OEB will not generally allow the recovery of costs for the attendance of more than one representative of any party, unless a compelling reason is provided when cost claims are filed.

If any cost eligible intervenor plans to file expert evidence in this proceeding, the intervenor shall file a letter with the OEB describing the nature of the evidence, whether the intervenor will be participating jointly with other intervenors in the commissioning of the expert evidence, and the estimated cost. The estimated cost should include an explanation of any assumptions regarding any expert participation in the proceeding, and should include an estimate for any incremental time that will be spent by the intervenor's counsel or other consultant. The OEB is also making provision for OEB staff to file a letter relating to any expert evidence OEB staff plans to file. After reviewing this material, the OEB will provide guidance on cost eligibility for expert reports and/or participation in the proceeding.

The purpose of this procedural order is to set out the schedule for this hearing, including the review of a Draft Issues List which is attached as Schedule B.

It is necessary to make provision for the following matters related to this proceeding. The Board may issue further procedural orders from time to time.

**THE ONTARIO ENERGY BOARD THEREFORE ORDERED THAT:**

1. The intervenors in this proceeding are listed in Schedule A.

2. Any comments by Union, OEB staff and intervenors on the Draft Issues List provided at the Schedule B shall be filed with the OEB and delivered to Union and all other parties by **August 15, 2016**.
3. OEB staff and intervenors that require information and material from Union that is in addition to Union's pre-filed evidence and that is relevant to the hearing, shall request it by written interrogatories filed with the OEB and delivered to Union and the intervenors by **August 29, 2016**.
4. Union shall file with the OEB complete responses to the interrogatories and deliver them to the intervenors by **September 19, 2016**.
5. OEB staff and intervenors shall inform the OEB by letter of any intention to file expert evidence in this proceeding by **September 23, 2016**.
6. Intervenors that wish to present evidence shall file that evidence with the OEB and deliver it to Union and all other parties by **October 14, 2016**.
7. Anyone that requires information and material related to any intervenor evidence, that is in addition to the evidence filed and is relevant to the hearing, shall request it by written interrogatories filed with the OEB and delivered to Union and all other parties by **October 28, 2016**.
8. Responses to the interrogatories on the intervenor evidence shall be filed with the OEB and delivered to Union all other parties by **November 14, 2016**.

All filings to the Board must quote the file number, EB-2016-0186 and be made electronically in searchable / unrestricted PDF format through the OEB's web portal at <https://www.pes.ontarioenergyboard.ca/eservice/>. Two paper copies must also be filed. Filings must clearly state the sender's name, postal address and telephone number, fax number and e-mail address. Parties must use the document naming conventions and document submission standards outlined in the RESS Document Guideline found at <http://www.ontarioenergyboard.ca/OEB/Industry>. If the web portal is not available parties may email their documents to the address below. Those who do not have internet access are required to submit all filings on a CD in PDF format, along with two paper copies. Those who do not have computer access are required to file 7 paper copies.

All communications should be directed to the attention of the Board Secretary at the address below, 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

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**DATED** at Toronto, August 11, 2016

**ONTARIO ENERGY BOARD**

**By delegation, before: Kristi Sebalj**

*Original Signed By*

Kristi Sebalj  
Registrar

**Schedule A  
To  
Procedural Order No. 1  
Union Gas Limited  
EB-2016-0186  
Applicant and List of Intervenors  
August 11, 2016**

**Union Gas Limited  
EB-2016-0186**

**APPLICANT & LIST OF INTERVENORS**

August 11, 2016

**APPLICANT**

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**Union Gas Limited**

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**Union Gas Limited**

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**APPLICANT & LIST OF INTERVENORS**

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**Union Gas Limited**

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**Schedule B**  
**To**  
**Procedural Order No. 1**  
**Union Gas Limited**  
**EB-2016-0186**  
**DRAFT ISSUES LIST**  
**August 11, 2016**

## Draft Issues List

1. Are the proposed facilities needed?
2. Do the proposed facilities meet the OEB's economic tests as outlined in the Filing Guidelines on the Economic Tests for Transmission Pipeline Applications, dated February 21, 2013, as applicable?
3. What are the potential short-term and long-term rate impacts to customers? Are these costs and rate impacts to customers appropriate?
4. What are the facilities and non-facilities alternatives to the proposed facilities? Have these alternatives been adequately assessed and are any preferable to the proposed facilities, in whole or in part?
5. Do the facilities address the OEB Environmental Guidelines for Hydrocarbon Pipelines as applicable?
6. Are there any outstanding landowner matters for the proposed facilities with respect to routing and construction matters? For greater clarity, landowners include parties from whom permits, crossing agreements and other approvals are required.
6. Is the form of easement agreement offered by Union or that will be offered by Union to each owner of land affected by the approved route or location appropriate?
7. Are the proposed facilities designed in accordance with current technical and safety requirements?
8. Has there been adequate consultation with potentially affected parties?
9. Has there been adequate consultation with Indigenous communities potentially affected by the proposed facilities and are the rights-based concerns raised by the Indigenous communities adequately addressed and/or accommodated?
10. Does the project meet the capital pass-through mechanism criteria for pre-approval to recover the cost consequences of the proposed facilities?
11. If the OEB approves the proposed facilities, what conditions, if any, are appropriate?