

**mccarthy
tétrault**

April 28, 2011

Ontario Energy Board
2300 Yonge Street
P.O. Box 2319
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Toronto ON M4P 1E4

Attention: Ms Kirsten Walli
Board Secretary

McCarthy Tétrault LLP
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George Vegh
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Dear Ms. Walli:

Re: **IN THE MATTER OF** the Ontario Energy Board Act, 1998, S.O. 1998, c.15, Schedule B (the "Act"); and in particular sections 36.1(1), 38(1), 40(1), 90(1), thereof;

AND IN THE MATTER OF an application by Union Gas Limited for an Order designating the area known as the Jacob Pool, in the Municipality of Chatham-Kent, as a gas storage area;

AND IN THE MATTER OF an application by Union Gas Limited for authority to inject gas into, store gas in and remove gas from the areas designated as the Jacob Pool and to enter into and upon the lands in the said areas and use the said lands for such purposes;

AND IN THE MATTER OF an application by Union Gas Limited to the Ministry of Natural Resources for a license to drill wells in the said areas;

AND IN THE MATTER OF an application by Union Gas Limited for an Order granting leave to construct natural gas pipelines in the Municipality of Chatham-Kent.

Board File: EB-2011-0013, EB-2011-0014 and EB-2011-0015

Attached please find a Reply to Submissions of Kent Federation of Agriculture which is being filed on behalf of Union Gas Limited for the above-noted matters.

Sincerely,


George Vegh

GV:MAB
Att
c: Intervenors on record

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AND IN THE MATTER OF an application by Union Gas Limited for an Order designating the area known as the Jacob Pool, in the Municipality of Chatham-Kent, as a gas storage area;

AND IN THE MATTER OF an application by Union Gas Limited for authority to inject gas into, store gas in and remove gas from the areas designated as the Jacob Pool and to enter into and upon the lands in the said areas and use the said lands for such purposes;

AND IN THE MATTER OF an application by Union Gas Limited to the Ministry of Natural Resources for a license to drill wells in the said areas;

AND IN THE MATTER OF an application by Union Gas Limited for an Order granting leave to construct natural gas pipelines in the Municipality of Chatham-Kent.

Reply to Submissions of Kent Federation of Agriculture

1. These submissions are made by the Moving Party, Union Gas Limited ("Union") in Reply to the submissions of the Kent Federation of Agriculture ("KFA") which were filed with the Board on April 20, 2011 with respect to Union's Motion for an order striking the evidence filed by KFA.
2. KFA's submissions state that the KFA consents to the order requested by Union, "without prejudice to:

(a) KFA's right to re-submit its evidence with respect to the issue of compensation in these proceedings; and

(b) KFA's right to move the Board pursuant to Section 21 (1) of the Ontario Energy Board Act ("OEBA") to order a hearing to determine what constitutes just and equitable compensation pursuant to Section 38(2)."

3. Board Staff filed submissions in support of Union's motion on April 26, 2011.
4. Given that no person has objected to the Motion, Union respectfully requests that the Board grant the orders requested.
5. With respect to KFA's statement that its consent is "without prejudice" to future claims it may make, Union acknowledges that KFA may make such claims in the future. However, this should not be taken to suggest that Union agrees that these claims are appropriate.
6. With respect to the KFA's "without prejudice" condition (a), Union does not agree that KFA may re-submit its evidence in *these* proceedings. If, in the future, a *landowner* commences an application under s. 38(3) of the *OEB Act, 1998*, then a landowner (or its representative) may file evidence, and the Board may determine who else may file evidence and on what issues in the normal course.
7. With respect to the KFA's "without prejudice" condition (b), Union acknowledges that it is always open for any person to request the Board to commence a proceeding under ss. 19(3) of the *OEB Act, 1998*¹. However, there is no right for a person to bring a motion for an order commencing a proceeding. The difference between making a request and

¹ The KFA submissions refer to the Board's commencement of a hearing under ss. 21(2). However, that section relates to the Board's ordering the preparation of evidence. Subsection 19(3) addresses commencing a hearing.

bringing a motion is significant in that bringing a motion carries with it procedural entitlements that do not accompany making a request.

8. For the foregoing reasons, Union respectfully requests that the Board grant the orders requested

All of Which is Respectfully Submitted

Date: April 27, 2011

George Vegh

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Attention: Board Secretary

TO:

All Parties