

**IN THE MATTER OF** the *Ontario Energy Board Act, 1998, S.O. 1998, c. 15, (Schedule B)* pursuant to Section 90(1) (the "*OEB Act*");

**AND IN THE MATTER OF** an application by Union Gas Limited for an Order granting leave to construct a natural gas pipeline and ancillary facilities in the City of London and the Municipality of Middlesex Centre, in the County of Middlesex

## **ARGUMENT IN CHIEF OF UNION GAS LIMITED**

### **INTRODUCTION AND SUMMARY**

1. This is an application by Union Gas Limited ("Union" or the "Applicant") for an order under s. 90 of the *OEB Act*, granting leave to construct approximately 6.6 kilometres of 8 inch diameter and 0.6 kilometres of 12 inch diameter natural gas pipeline (the "Pipeline"), in the City of London and the Municipality of Middlesex Centre, County of Middlesex (the "County").
2. The uncontested evidence is that, if the Pipeline is not brought into service by November 2011, gas consumers in London will be at risk of losing service for the 2011/2012 winter heating season.<sup>1</sup> The customers that are at risk of losing service include the University of Western Ontario, the University Hospital and the London Health Sciences Hospital.<sup>2</sup> There is also no contrary evidence on market demand, project economics, public interest considerations or any other factor that the Board considers in granting leave to construct.
3. The only party raising concerns with the application is the County. The County is concerned that the Pipeline will be in close proximity to road infrastructure and will likely need to be relocated if and when the Wonderland Road allowance is eventually widened. As the Board Panel noted, the outstanding issue "is primarily a concern of the sequencing of public infrastructure improvements and the timing to accommodate that."<sup>3</sup>
4. The Board has granted the County considerable latitude in addressing this concern. It has permitted the County to file evidence late (without explanation for delay) and, after hearing the evidence, deferred its decision in order for Union and the County to further discuss how to address these concerns.

---

<sup>1</sup> The Applicant is at risk of losing up to 14,000 residential customers if the design day for the coldest temperature is achieved. See reference to Schedule 8 of the Application and pre-filed evidence. See also TR, p. 12, lines 22-28 and p. 13, lines 1-12.

<sup>2</sup> Transcripts dated May 24, 2011 ("TR"), p. 14, line 21.

<sup>3</sup> TR, p. 144, lines 2-7.

5. Union and the County have continued to discuss this matter in good faith and can be expected to continue to do so. However, the timing and sequencing issue remains driven by a basic factual and physical reality: the Pipeline is required now and the Road allowance widening, if approved, is several years away. No amount of goodwill and discussion can overcome that fact.
6. Union will continue to minimize any relocation costs and inconvenience for the County after leave to construct is granted and in accordance with the terms of the 2000 Model Franchise Agreement (the "Franchise Agreement") entered into between Union and the County and approved by order of the Board dated January 20, 2009. Under the Franchise Agreement, Union is given the authority and the duty to "distribute, store and transmit gas in and through" the County. In addition, the Franchise Agreement provides that "the consent of the Corporation is hereby given and granted to the Gas Company to enter upon all highways now or at any time hereafter under the jurisdiction of the Corporation and to lay, construct, maintain, replace, remove, operate and repair a gas system for the distribution, storage and transmission of gas in and through the Municipality."
7. Union respectfully suggests that there is a need for a decision on this matter and requests that the Board make a decision in light of its statutory objectives, and in particular, s.2 of the *OEB Act*, which lists the Board's objectives respecting gas as including:
  - "2. To protect the interests of consumers with respect to prices and the reliability and quality of gas service [and];
  3. To facilitate rational expansion of transmission and distribution systems."
8. Union's more detailed submissions are set out below.

***Proposed Pipeline***

9. The Pipeline is comprised of 6.6 km of NPS 8 and 0.6 km of NPS 12 hydrocarbon (natural gas) pipeline and is required in order to increase capacity of the existing London System in the County of Middlesex. The Pipeline will extend from Lot 21, Concession 5, City of London to Lot 20, Concession 9, Municipality of Middlesex Centre, County of Middlesex.
10. The total project cost of the Pipeline is estimated to be \$2,335,000, including interest, during construction. An economic analysis has been completed in accordance with the recommendations of the OEB E.B.O. 188 report on Natural Gas Expansion and the project is economically justified.
11. An environmental report has been prepared for the Pipeline. There will be no significant environmental impacts related to the construction of the Pipeline given Union's standard construction procedures, the mitigation measures recommended in the environmental report, and the fact that the majority of the Pipeline will be located within road allowance.

12. Construction of the Pipeline is scheduled to commence in the summer of 2011 to utilize the favourable summer construction weather and environmental windows. The proposed latest in-service date for the project is November 1, 2011. In order to adhere to such a schedule, OEB approval is requested so that construction can commence by July 2011.

### ***Need and timing***

13. The Applicant's current hydraulic model is showing low pressures in the northwest area of London.<sup>4</sup> In addition to the current low pressures, the northwest section of London is experiencing rapid growth. From 2008 to 2017, residential customers are forecasted to increase by approximately 18,000 attachments, which commercial and industrial customers are forecasted to increase by approximately 556 and 60, respectively.<sup>5</sup> The Applicant panel testified that they expect approximately 2000 new attachments annually for the next 10 years, the majority of which will be required in the northwest area of London.<sup>6</sup>
14. Based on existing low pressures in the system and anticipated growth, the Applicant undertook a facilities business plan, which combines the current hydraulic model with future load growth to provide annual projections as to how the system will react with increased attachments.<sup>7</sup>

### ***Routing Alternatives***

15. Based on existing pipelines, pressures and connection points, it was determined that the critical connection point for the new Pipeline would be fixed at Wonderland Road and Fanshawe Park.<sup>8</sup> The northern connection for the Pipeline is defined by the need to connect to the existing Union Gas Hensall Transmission Pipeline.<sup>9</sup> Using the existing pipeline and Fanshawe Park parameters, the Applicant's environmental consultant developed a study area in which to examine several routing options.<sup>10</sup>
16. The Applicant witness panel testified that three routing alternatives were considered: (i) Wonderland Road ("Preferred Route"), (ii) Highway 4, west on Sunningdale Road West and south on Wonderland Road, ("Sunningdale Option") and (iii) Highway 4, west on Eight Mile Road and south on Wonderland Road ("Eight Mile Option").<sup>11</sup> These three options were developed to use road allowances, since the Board had approved such routes in the past and, based on public consultations early in the process, there did not appear to be any opposition to making use of road allowances.<sup>12</sup> Using road allowances

---

<sup>4</sup> TR, p. 41, lines 23-27.

<sup>5</sup> Application, para. 17.

<sup>6</sup> *Ibid.*

<sup>7</sup> Application, para. 12.

<sup>8</sup> TR, p. 11, lines 19-25.

<sup>9</sup> TR, p. 9, lines 4-14.

<sup>10</sup> TR, p. 17, lines 3-13.

<sup>11</sup> TR, p. 17-19.

<sup>12</sup> TR, p. 17, lines 19-24.

are the least disruptive to the natural environment, communities and often the cheapest alternative, thereby benefiting ratepayers and landowners alike.

17. The Applicant initially considered and discounted the use of cross country private easement for the Pipeline due to the potential impacts and disruption to private property, agricultural land and other environmental features.<sup>13</sup>
18. The Sunningdale Option was ruled out based on the fact that there would be significant disruption to the community of Arva, which is built directly adjacent to Highway 4. As well, the Pipeline would be required to cross Medway Creek, adding to environmental concerns.<sup>14</sup>
19. The Eight Mile Option and the Preferred Route both made use of road allowances; however the Applicant has pursued the Preferred Route in this application given that it is the shortest and most direct route, thereby minimizing disruption to landowners and costs.<sup>15</sup>
20. The Preferred Route has the majority of the Pipeline located within the Road allowance. In the event that the ultimate running line for the Pipeline is determined to be on the east side of Wonderland Road, for that portion of Wonderland Road between Nine Mile Road and Eight Mile Road where the road is not continuous, Union would construct the Pipeline within the easements which it has acquired at this location rather than within the Road allowance. The Applicant has negotiated all of the permanent easements required for this section of Pipeline and has not encountered any resistance from these landowners.<sup>16</sup>

### **County's Concerns**

21. The County intervened in the process to address its concern respecting the use of the Preferred Route (i.e. Wonderland Road direct) for the Pipeline. Its basic concern is that the ROW may be widened in the future and that as a result, a portion of the Pipeline may need to be relocated.<sup>17</sup>
22. In accordance with its usual practice, in this case, Union worked closely with municipalities to minimize any future impacts pipeline development would have on municipal infrastructure.<sup>18</sup> Specifically, the Pipeline, and in particular the Preferred Route, were brought to the County's attention in September 2010<sup>19</sup>, in advance of the public consultations that were held in November 2010.<sup>20</sup> From that point on, the

---

<sup>13</sup> Board Staff IRR 1.

<sup>14</sup> TR, p. 18, lines 1-8.

<sup>15</sup> Board staff IRR.

<sup>16</sup> TR, p. 19, lines 19-24.

<sup>17</sup> Letter from County of Middlesex, dated January 25, 2011. [CountyMiddlesex\_Intrvreq\_Oral Hearingreq\_UnionGas\_20110125]

<sup>18</sup> TR, p. 25, line 2.

<sup>19</sup> TR, p. 20, line 25.

<sup>20</sup> TR, p. 19, line 13-19.

Applicant was in contact with the County regarding the Pipeline and in particular, the Preferred Route.

23. Public and agency consultations were carried out in November 2010 on the Pipeline and Preferred Route.<sup>21</sup> Generally, the landowners were supportive of the Preferred Route, because they did not feel it would impact their private property.<sup>22</sup>
24. Although not raised with the Applicant during the consultations, the County finally elaborated their concerns regarding the Preferred Route in their request to intervene (the "County Intervention Request") in the present proceedings dated January 25, 2011.<sup>23</sup> The County is concerned that the Pipeline relocation may impose additional costs during the potential future construction of Wonderland Road. The County also contends that landowners will be impacted by two major projects in a short time span.<sup>24</sup>
25. In an effort to address the County's concerns the Applicant offered (i) to install the Pipeline deeper than normal, (ii) install the pipe in a non standard location and (iii) provide the County with depth shots in order to provide the depth of the Pipeline, thereby alleviating potential conflict with future construction.<sup>25</sup>
26. The Applicant has made every effort to accommodate the County's requests and agreed to try and obtain land easements adjacent to the Wonderland Road allowance.<sup>26</sup> Union offered the landowners its standard compensation packages. These offers were not accepted. Union therefore advised the County that it was not successful in obtaining the voluntary land easements and the Preferred Route (within the existing Wonderland Road allowance) would be pursued.<sup>27</sup>
27. Subsequent to the hearing of this matter, in accordance with the Board panel's direction, the County approached the landowners directly to seek to obtain additional land rights. Union has been advised by the County that landowners have not accepted the County's offer.

#### ***Future widening of Wonderland Road***

28. Without questioning the sincerity of the County's concerns relating the future widening of Wonderland Road allowance, those concerns cannot trump the need to provide reliable

---

<sup>21</sup> TR, p. 19, line 13-19.

<sup>22</sup> TR, p. 19, line 22. Furthermore, the Applicant has received requests for service from some of the landowners along the Preferred Route. See also TR, p. 20, line 1.

<sup>23</sup> TR, p. 31, Lines 10-24 indicate that at the time the environmental assessment was submitted in December, there was no significant opposition to the Preferred Route.

<sup>24</sup> County Intervention Request.

<sup>25</sup> TR, p. 25, line 10-17.

<sup>26</sup> TR, p. 22, line 13-20.

<sup>27</sup> TR, p. 22, line 3. The Applicant went so far as to offer to, in the event they were successful in obtaining a large majority of the land easements, route the Pipeline back into the Wonderland ROW for those portions of the land that they could not obtain easements for.

gas services to gas consumers. There are three important evidentiary considerations to bear in mind in this regard.

29. First, the County has not demonstrated that it has concrete plans in place to undertake an improvement of Wonderland Road nor that any proposed improvement would even require a widening of the road allowance. To date, the Applicant still has not received any engineering plans regarding the County's proposed road widening.<sup>28</sup>
30. Secondly, even if Wonderland Road were to be widened at a later date, in working with the County to determine the correct running line for the Pipeline in the current Wonderland Road allowance, Union has committed to mitigate any impact the Pipeline may have on future construction.<sup>30</sup> The evidence is that, if the County works with the Applicant to determine the running line along the Preferred Route, the Applicant will be able to minimize future relocation costs.<sup>31</sup>
31. Third, as indicated in the introduction, relocation activities and costs are a natural part of any infrastructure process. That is why it is explicitly dealt with in the Franchise Agreement. With respect to relocation costs, ss. 12(d) of the Franchise Agreement provides that the County pays 35% of the relocation costs due to highway or municipal works and the Applicant pays 65% of the costs. The County is requesting that Union pay the entire relocation costs,<sup>32</sup> but that is inconsistent with the Franchise Agreement and unreasonable in light of the fact that the County and its residents will benefit from the Pipeline. The Pipeline is an extension of the Hensall system which currently services customers in the northern portion of the County of Middlesex and the Applicant has already received requests for connection from residents along the County-owned portion of the Pipeline.

### **Conclusion**

32. Union submits that its evidence clearly demonstrates that the Pipeline is urgently needed and in the public interest. While this case does raise issues of sequencing of municipal infrastructure, those issues are contemplated in the Franchise Agreement in its recognition that pipelines may, at times, have to be relocated. Further, while Union and the County can and will continue to work together in good will and to further the public interest, there is a basic factual and physical reality: the Pipeline is required now and the Road allowance widening, if approved, is several years away. No amount of goodwill and discussion can overcome that fact.
33. Union will continue to minimize any relocation costs and inconvenience for the County after leave to construct is granted and in accordance with the terms of the Franchise Agreement which specifically contemplates this eventuality.

---

<sup>28</sup> TR, p. 25, line 18-23.

<sup>30</sup> TR p. 53, lines 15-20.

<sup>31</sup> TR, p. 53, lines 15-20.

<sup>32</sup> TR, p. 49, lines 20-24.

34. Union respectfully suggests that there is a need for a decision on this matter and requests that the Board make a decision in light of its statutory objectives, and in particular, s.2 of the *Act*, which lists the Board's objectives respecting gas as including:
- "2. To protect the interests of consumers with respect to prices and the reliability and quality of gas service [and];
3. To facilitate rational expansion of transmission and distribution systems."
35. Given the urgency of this matter, Union requests that leave to construct be granted as soon as possible so that it may commence construction in July 2011 and the Pipeline may be brought into service by November 2011 in time for the winter heating season.
36. In addition, and to provide a clear path forward, Union also requests that the County specifically address in its Reply submissions, whether it is prepared to provide Union access to the road allowance to construct the Pipeline in accordance with an order granting leave to construct (on the assumption that the Board does provide leave) and the Franchise Agreement. If the County indicates that it is not prepared to provide access as requested, then Union will be required to bring such an application without further delay and puts the County on notice that it will rely upon the record in this proceeding to support that application.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED**