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BY EMAIL

June 20, 2011

Kirsten Walli
Board Secretary
Ontario Energy Board
2300 Yonge Street, 27th Fl.
Toronto, ON M4P 1E4

Dear Ms. Walli:

**Re: Union Gas Limited
London Reinforcement Project
Board File Number EB-2010-0381 – Board Staff Submission**

Further to the Board's Procedural Order No. 3, dated June 10, 2011, please find attached Board Staff submission for the above mentioned proceeding.

Please forward the attached to Union Gas Limited and all intervenors in this proceeding.

Yours truly,

Original Signed by

Khalil Viraney
Case Manager

Enclosure:

ONTARIO ENERGY BOARD

BOARD STAFF SUBMISSIONS

**Union Gas Limited Leave to Construct
Application**

**London Reinforcement Project
EB-2010-0381**

June 20, 2011

Introduction

Union Gas Limited (“Union” or the “Applicant”) filed an application with the Ontario Energy Board on December 17, 2010, under section 90 of the *Ontario Energy Board Act, 1998*, S.O. 1998, c. 15, Schedule B for an order granting leave to construct approximately 6.6 kilometres of 8 inch diameter and 0.6 kilometres of 12 inch diameter natural gas pipeline, in the City of London and the Municipality of Middlesex Centre, County of Middlesex. The Board assigned the application file number EB-2010-0381.

The Board issued a Notice of Application and Hearing on January 12, 2011. The County of Middlesex (“the County”), the Corporation of the City of London (“the City”), Ian Goudy of Goudy Farms Inc., Nancy Jackson and C. Harold Jackson applied for intervenor status. No objections were received, and the Board granted these requests.

In filing their letters of intervention, the City and the County asked for an oral hearing and indicated that the environmental report filed by Union was incomplete. Both parties indicated that the proposed pipeline would interfere with future reconstruction activities and the environmental report failed to evaluate all possible alternatives. The City also commented that an inappropriately planned and designed pipeline would increase future costs to the City and Union.

In Procedural Order No. 2, the Board set May 24, 2011 for an oral hearing. The Board also provided dates for filing intervenor evidence, interrogatories on the evidence filed and responses to them.

On May 18, 2011, the City of London filed a letter informing the Board about their decision to withdraw from the Application as an intervenor. On the same day, counsel for the County of Middlesex filed a report prepared by AECOM that reviewed and commented on the environmental report of Union Gas filed in support of the Leave to Construct Application.

The Issue

At the oral hearing the Board panel noted that the County of Middlesex’s plan to widen the road in the near future and Union’s proposal to lay the pipeline in the current road allowance was primarily a matter of conflict of timing related to sequencing of infrastructure improvements. The Board therefore decided to provide two weeks for

the parties to meet in order to make a final attempt to resolve the outstanding issues. Union was asked to provide an update on the status of the negotiation in two weeks.

On June 7, 2011, Union filed a letter informing the Board that it was unable to reach a mutually agreeable solution with the County and requested an expedited argument process.

Union filed its Argument-in-Chief on June 14, 2011. In its argument, Union reiterated its position that the need for the pipeline was immediate and there was a risk of losing customers in the 2011/2012 winter heating season if the pipeline was not built and put into service. Union has estimated that it could lose up to 14,000 customers if the design day for the coldest temperature is achieved¹. Union has submitted that it needs to have the pipeline in-service by November 2011 for which construction needs to commence by July 2011.

None of the intervenors questioned the need for the project. However, the County is concerned that the proposed pipeline will interfere with a future road infrastructure project. Union has proposed to lay the pipeline within the current road allowance. The evidence indicates that the County has planned for upgrades to the road in 2013². The current road allowance is approximately 20 meters. As part of its reconstruction plan, the County intends to get an ultimate right of way of 36 meters³.

The County has expressed concern that if the proposed pipeline is constructed within the current road allowance it will impact the future reconstruction of the road. The reconstruction would lead to significant changes to both the vertical and horizontal alignment of the road, replacement of existing drainage infrastructure and widening of the shoulders⁴. The County is unable to provide a firm location to Union to avoid having to relocate the pipeline when the reconstruction of the road takes place. This is because the County has not completed the pre-engineering study and hopes to achieve this by winter of 2012-13. Ideally, the County would prefer if Union could wait for another year to start construction, which Union states it is unable to do for fear of losing service to customers.

¹ Union Argument-in-Chief page 1, footnote 1, June 14, 2011

² Oral Hearing Transcript, Volume 1, Page 87, May 24, 2011

³ Oral Hearing Transcript, Volume 1, Page 86, May 24, 2011

⁴ Oral Hearing Transcript, Volume 1, Page 92, May 24, 2011

The City of London expressed similar concerns as the County initially. However, Union has been able to obtain additional easements south of Sunningdale road along the current road allowance within the City limits. The City is satisfied with Union's approach and has consequently withdrawn as an intervenor in this Application.

Union has also indicated in its evidence that its selection of Wonderland Road is the most appropriate in terms of meeting its technical needs, distance and disruption to traffic. In Union's view, the County was unable to suggest a suitable alternative at the oral hearing. The only option discussed at the oral hearing was along Highway 4 but this option was dismissed by Union as it crosses a deep water creek and would have to pass through a fully built up area in the community of Arva⁵.

Board staff submit that based on the terms of the Franchise Agreement with the County of Middlesex, Union has been granted access to use highways under the jurisdiction of the County to lay, construct, maintain, replace and repair a gas system for the distribution, storage and transmission of gas in and through the Municipality⁶. If the pipeline is to be relocated in the future, the County will have to bear 35% of the relocation costs according to Section 12(d) of the Franchise Agreement.

Board staff support Union's position on the construction, location and future relocation of the pipeline. It is to be noted however that earlier communication, co-ordination and engagement with stakeholders may have allowed for alternative solutions to accommodate both the pipeline and road widening construction without conflict.

Union informed the County of the project around September-October of 2010⁷. However, Union confirmed at the oral hearing that the executive was informed of the need for reinforcement approximately two years ago⁸. In fact Union did not expect any roadblocks in the project and did not plan for contingencies. If Union had involved the stakeholders earlier it would have allowed more time to the County to start pre-engineering work. Considering that the project is critical to Union and there is no short term solution, Union could have been more proactive in informing and involving stakeholders earlier in this process. Nevertheless, Board staff notes that the County

⁵ Oral Hearing Transcript, Volume 1, Page 52, May 24, 2011

⁶ 2000 Model Franchise Agreement

⁷ Oral Hearing Transcript, Volume 1, Pages 32 and 58, May 24, 2011

⁸ Oral Hearing Transcript, Volume 1, Page 55, May 24, 2011

took over jurisdiction of the road in July 2010⁹ and may not have been able to achieve significant progress even if Union had involved them earlier in the process.

The primary issue here is that of timing and sequencing of public infrastructure projects. Unfortunately, the County (and Union) may have to bear an additional cost relating to any misalignment created by the timing of the projects. As noted at the oral hearing, the County will incur an approximate cost of \$700,000¹⁰ if the pipeline is relocated in the near future. Union ratepayers too will incur an additional cost of approximately \$1.4 million; essentially they will be paying for the same project twice within a short period of time.

It is difficult to ascertain if the issue that has been brought forward before the Board could have been averted. If Union had involved the County earlier and the County had immediately commenced the pre-engineering study, there could have been some headway in determining where the pipeline needs to be laid to avoid interference with the future road reconstruction project. In any event, Board staff accepts Union's assertion that the pipeline has to be built this winter to meet security of supply requirements, and the proposed route appears to be the most appropriate, in the absence of viable alternatives.

Board staff submit that Union's Application for Leave to Construct a natural gas pipeline should be approved as filed.

- All of which is respectfully submitted -

⁹ Oral Hearing Transcript, Volume 1, Page 4, May 24, 2011

¹⁰ Oral Hearing Transcript, Volume 1, Page 98, May 24, 2011