

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 REPLY OF THE COUNTY OF MIDDLESEX

INTRODUCTION

1. The County of Middlesex (“County”) does not contest the locating by Union Gas Limited (“Union” or the “Applicant”) of a high pressure transmission line in the road allowance of Wonderland Road. It does contest the need to do such construction in 2011 and opposes any construction or installation of such a line prior to pre-design studies for the rebuild of Wonderland Road being completed by the County.
2. Contrary to the submissions of the Applicant, this case is very much about the public interest and balancing the interests of the taxpayers of Middlesex County against the interests of Union Gas and certain consumers of Union Gas in the City of London. As the Board indicated, this case is “primarily a concern of the sequencing of public infrastructure improvements and the timing to accommodate that”.¹

NEED AND TIMING

3. The Applicant, in support of demonstrating the need for this project, refers the Board to growth statistics for the entire City of London. All of the growth statistics, whether it be “14,000 potential lots that have been approved”, “the approximately 2,000 new attachments annually for the next 10 years”, or “the

¹ Transcript dated May 24, 2011 (“TR”), p.144, lines 4-7

2,000 customers per year” relate “generally in the City of London”, “throughout the City of London”.²

4. The Applicant provides the broad generalization that “the majority of that growth is in the northwest corner of that section” without providing any specific justification for that conclusion. There is no specific evidence for that area in terms of rate of build out on pre-approved subdivisions, building permit applications pending, or any other specific information confirming the actual anticipated growth that will be in the northwest portion of the City of London.
5. It then uses these unsubstantiated numbers and inputs them into its hydraulic model to provide for future predictions.³
6. The reason for this application is solely to service customers in the northwest part of the City of London and it is the service of new customers that is requiring this transmission line.⁴
7. There is no intention to service any potential customers along the route. A late claim that the service can benefit county residents along Wonderland Road is specious. Only two have applied and none have been approved. All of the documents filed with the Board by Union make that clear.⁵
8. While the long term justification for the project is to service projected growth in the northwest, the urgency appears to rely upon the fear that customers in the northwest may have their service affected by low pressure in the winter of 2011/12. This is all based on the hydraulic model and a design day temperature which is part of that model.
9. The Applicant acknowledges that it is hard to predict an exact number that might be affected and admits that, in the winter of 2010/2011, “we only approached about 75% of our design day temperature”.⁶
10. The claimed urgency of this application is not substantiated by the history of its development and the lack of communication with the relevant municipal stakeholders.
11. It is acknowledged by the Applicant that the need for reinforcement was communicated to the Executive of Union two years ago and, even before then, Union had identified the problems that would require this transmission line.⁷

² TR p.10, lines 25-26; p.11, lines 1-15

³ TR p.12, lines 22-28; p.13, lines 1-4

⁴ TR p.62, lines 1-5; p.76, lines 3-7

⁵ TR p.61, lines 27-28; p.62, lines 1-17; p.76, lines 3-8

⁶ TR p.41, lines 11-20

12. The first time any communication was held with the County is claimed by Union to be September, 2010 in discussions that allegedly were had between Union employee, Taylor Jones, and County employee, Jerry Rychlo. The County has no information concerning such discussions and certainly no report of such discussions was received by the County engineer.⁸ Union has presented no record confirming such discussion.
13. The County engineer testified that any proposal for a high pressure main line would normally come to him, yet no contact was made with Mr Traini until October, 2010 and no specific information about the final preferred routing was given until at the earliest the Azimuth Report provided in December, 2010.
14. Despite the Applicant's continuing claims to open communication at all times with municipal stakeholders it is obvious that Union proceeded to plan, finalize, confirm and attempt to receive approval for a major transmission line on a road under the jurisdiction of the County with minimal and late notice to the County such that the Board is faced with this conflict between the desired timing of the Applicant's project and the planned timing of the County's major infrastructure investment.

COUNTY'S POSITION

15. The County is prepared to accept this project on its Wonderland Road right-of-way provided the timing of the design and construction of the pipeline is coordinated with the planned reconstruction of Wonderland Road.
16. Wonderland Road was assumed within the jurisdiction of the County July 1, 2010. Prior to that date, the road was under the jurisdiction of the local municipality of Middlesex Centre. It is noted that there is no evidence of any communication about this project before July 1, 2010 with Middlesex Centre.⁹
17. Wonderland Road is classified as an arterial roadway under the terms of the County Official Plan and, in the normal course, would ideally have an ultimate right-of-way of 36 metres. Its current right-of-way is singularly deficient at 20 metres.¹⁰
18. The current Wonderland Road is substantially deficient. In addition to its narrow right-of-way, there are deficiencies in its horizontal and vertical alignment, including two reverse curves. Its shoulders and ditches are substandard and it is currently identified in the Capital Budget of the County

⁷ TR p.55, lines 4-10

⁸ TR p.89, lines 23-25; p.59, line 28; p.60, lines 1-9

⁹ TR p.84, lines 24-27; p.100, lines 8-11

¹⁰ TR p.86, lines 6-14

for a complete rebuild in 2013. Pre-engineering studies are currently underway.¹¹

19. The portion involved in the Union application is 5.5 km. The cost of rebuild for the County will be approximately \$300,000.00 per/km or an estimated 1.5 million dollars.¹²
20. If the Applicant proceeds to construct the transmission pipeline in the summer of 2011, prior to the completion of pre-engineering drawings for the County's rebuild of Wonderland Road, the fear is that there will be necessitated an immediate reconstruction of a substantial portion of the pipeline will be required within one year and a potential relocation of that pipeline may be required by the redesign of Wonderland Road.¹³
21. The simple proposal to provide for extra depth is insufficient because the exact profiling of the road is unknown and if it is varied even a couple of feet, a dangerous situation may result, which would require a long stretch of the pipeline to be relocated.¹⁴
22. It should be noted that as at June, 2011, the County has not been shown any design drawings for the pipeline.¹⁵
23. Because of this, the County engineer is unable to provide any sort of advice that what is being proposed is not going to conflict with the proposed Capital Works of the County.¹⁶
24. Should a total relocation be required, the cost to the County could be as high as \$665,000.00. This calculation is based on the cost sharing of the Franchise Agreement (see Exhibit # K1.2) and a pro-rating of the costs of the pipeline for the portion located within the County of Middlesex (see Schedule 1 attached).
25. This would increase the total cost to the County of reconstructing Wonderland Road in this area by approximately 44 %.¹⁷
26. That is an unacceptable burden to be imposed on the ratepayers of the County who derive no benefit from this project. The County is prepared to accept the location of this transmission line on Wonderland Road provided the

¹¹ TR p.85, lines 10-25

¹² TR p.86, lines 27-28; p.87, lines 11-13; p.88, lines 8-10

¹³ TR p.92, lines 2-28

¹⁴ TR p.92, lines 21-28; p.93, lines 1-4

¹⁵ TR p.93, lines 9-10

¹⁶ TR p.93, lines 15-23

¹⁷ TR p.87, lines 3-13

timing of its construction can be synchronized with redesign and reconstruction of Wonderland Road.

27. The ideal resolution would be for the construction to be planned for 2012 in advance of the road reconstruction in 2013. This delay of one calendar year is minimal compared to the costs that may be imposed upon non-benefiting taxpayers.
28. Pre-engineering drawings can be available with sufficient information as early as Spring 2012, facilitating installation by Union at that time, provided Union also supplies design details to the County on a timely basis.
29. The alternative, if Union is determined that its proposal must go ahead in July, 2011, is to require Union, notwithstanding s.12 of the Franchise Agreement, to pay 100% of the costs of any required relocation.
30. The concept of a Franchise Agreement is based in part upon an assumption that there is some benefit to a pipeline installation to the municipality through which it travels. In this case, there is none.

MUNICIPAL FRANCHISE AGREEMENT

31. The Applicant requests that the County specifically address whether it is prepared to provide Union access to the road allowance to construct the pipeline, pursuant to the Franchise Agreement. The County assures this Board that it will abide by any order of the Board and will meet its obligations under the Municipal Franchise Agreement. The County gives notice that it will be vigilant in its application of the provisions of the Franchise Agreement and, in particular, those provisions set out in Article 5.

ALL OF WHICH IS RESPECTFULLY SUBMITTED



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SCHEDULE 1

Potential Costs of Relocation Worst Scenario

1. Length of pipeline on Wonderland Road 6.6 km
2. Length of pipeline within County 5.5 km
3. Total projected cost of pipeline \$ 2.3 million
4. Or approximately \$35,000.00/km
5. Total relocation on County Section $5.5 \text{ km} \times \$350,000.00 = \1.9 million
6. 35 % County share = \$665,000.00

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