

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

APPLICANT’S REPLY SUBMISSIONS

INTRODUCTION

1. These submissions are in reply to submissions of Board Staff, the County of Middlesex (the “County”) and intervenors Jackson and Goudy.
2. In summary, Board Staff supports the Application in its current form. The County does not object to the Pipeline being built in the Wonderland Road right of way, however it opposes any construction or installation prior to pre-design studies for the possible future rebuild of Wonderland Road being proposed by the County. Intervenors Jackson and Goudy appear to support the Application and suggested various conditions.
3. Union’s response to each of Board Staff’s and the intervenor’s arguments is set out below.

BOARD STAFF SUBMISSIONS

4. Union accepts the submissions of Board Staff with one comment. Board Staff indicates at page 5 of its submissions that, in the event the Pipeline is to be relocated in the future, Union ratepayers will incur an additional cost of approximately \$1.4 million and that the ratepayers will be “paying for the same project twice within a short period of time.”¹
5. In the event that the Board approves the Application, Union will take all necessary steps to mitigate the scope and costs of future relocation of the Pipeline, and in this regard, has proposed a number of measures to the County.² Furthermore, in the event that Wonderland Road is widened by the County in the future, Union will work with the County to minimize the length of the Pipeline that needs to be relocated, thereby further reducing any cost to Union ratepayers. As a result, it is an over-simplification to present an additional cost, if any, that may arise.

¹ Board Staff Submissions, dated June 20, 2011, at p. 5.

² TR, p. 25, lines 8 – 28.

COUNTY OF MIDDLESEX

6. The County's argument can be categorized into three principal tenets. The County (i) questions the need for, and the timing of, Pipeline construction, (ii) claims a lack of communication on Union's part with respect to the Pipeline, and (iii) claims the County will incur significant costs if the Pipeline is constructed ahead of the County's proposed widening of Wonderland Road and opposes any payment thereof by the County. Union respectfully disagrees with the County's position in each of the foregoing issues.

(i) Need and Timing

7. The need for the Pipeline is based on the London Facilities Business Plan (the "London FBP"). Contrary to the County's claim, the London FBP is considerably substantiated by data collected by Union, as evidenced in the schedules to the Application. At no point during the interrogatory process or Hearing did the County question the London FBP as the basis to establish the need for the Pipeline, or the need for the Pipeline generally. Based on the evidence submitted at the Hearing, it was both the Applicant's and Board Staff's understanding that the basis for the need for the Pipeline was not in question by the County.³ It is not now available to the County to raise this new issue in its reply argument to Union.
8. Contrary to the County's claim that the Pipeline will only service residents in the City of London, although not necessary in order to succeed in the present Application, Union has already received requests for service from two customers and would expect to receive additional requests for service along Wonderland Road within the County's jurisdiction once the Pipeline is built.⁴ It is the typical practice of Union to grant such requests.⁵ Furthermore, the Franchise Agreement specifically contemplates cost sharing in the situation in which a hydrocarbon pipeline will only pass through a jurisdiction, as opposed to service customers within that jurisdiction.⁶
9. The evidence is clear that the Pipeline is needed not only to serve future customers in the northwest London, but also to ensure that existing customers will be provided service in the winter 2011-2012 season.⁷ The County's claim that the urgency of the Application is not substantiated by the history of its development is without merit. As evidenced by Schedule 3 to the Application, the number of customers seeking service has increased annually since Union first identified the need for the Pipeline in 2009. Union, like the County, has to prioritize its developments; however, given the continued growth in northwest London, construction of the Pipeline can no longer be deferred.⁸
10. Furthermore, there are many variables that could affect the timing, or the actual feasibility of the widening of Wonderland Road, including approval of capital budgets,

³ Board Staff Submissions, p. 3.

⁴ Transcripts of the Oral Hearing dated May 24, 2011 (the "TR"), p. 62, lines 1-5.

⁵ TR, p. 28, lines 3-6.

⁶ Exh K.1.2, Section 2 of the Franchise Agreement.

⁷ TR, p. 11, p. 12, lines 22-24.

⁸ TR, p. 57, lines 5 -11.

prioritization of County projects, budget shortfalls, change in government, etc. Based upon these variables it is difficult for the County to firmly commit to the timing of the re-construction of Wonderland Road.

(ii) Communication with the County

11. Union's executive approved the Pipeline in July 2010.⁹ Union communicated the need and plans for the Pipeline in September 2010 to Mr. Jerry Rychlo, two months in advance of the public consultation and shortly after the County took jurisdiction of Wonderland Road. Nothing in Union's communication with the County regarding the Pipeline differed from how Union would typically communicate with municipalities in recognition of a project need¹⁰, including in many previous successful applications before the Board.
12. The County submits at paragraphs 22 and 23 that it has not been provided with any design drawings for the Pipeline. However, the fact is that Union is unable to provide such drawings until the County agrees to the general location of the Pipeline within the road allowance.

(iii) Costs

13. In the event that the Board approves the Application, Union will take all necessary steps to mitigate the scope and costs of future relocation of the Pipeline, and in this regard, has proposed a number of measures to the County.¹¹ Should the Board approve the Application, the length of the section of Pipeline that may need to be relocated will be determined in large part by the County's placement of the Pipeline in the current road allowance. To be clear, in advance of any pre-engineering drawings being completed for a potential road widening, the County has complete discretion regarding the placement of the Pipeline within the current road allowance. Therefore, working cooperatively, and using the measures proposed by Union such as depth shots and placing the Pipeline at lower depths, the County and Union will be able to further reduce the cost, if any, associated with Pipeline relocation.
14. The County submits that, in the event the Board approves the construction of the Pipeline in 2011, that Union should bear 100% of any future relocation costs, contrary to section 12 of the Franchise Agreement. To attach such a condition to the approval would deviate from a binding agreement and established and Board-approved practice. The Franchise Agreement is in place specifically to address situations such as the one possibly contemplated and to provide parties with commercial certainty. In addition, as elaborated above, Union will design the Pipeline to mitigate the scope and cost of any future relocation, should it be required.

⁹ TR, p. 61, lines 15 – 17.

¹⁰ TR, p. 61, lines 1 – 4.

¹¹ TR, p. 25, lines 8 – 28.

GOUDY AND JACKSON SUBMISSIONS

15. Intervenors Goudy and Jackson raised three issues for which they propose conditions of approval. Union provides the following in response and submits that their proposed conditions of approval are not necessary.
- (i) Location of Pipeline. Within County jurisdiction, Union's preferred location of the Pipeline is along the east side of Wonderland Road, except in locations where Union has obtained easement rights on private land. The final location of the Pipeline is subject to additional negotiations between the County and Union as required under the Franchise Agreement.
 - (ii) Drainage. Union will work with local drainage officials to ensure the Pipeline does not impact existing farm drainage. Union has standard practices in place that will be followed to ensure that all drainage works are returned to their original condition.
 - (iii) Temporary land use. As the exact location of the Pipeline is not known at this time, Union cannot identify the exact requirement for the temporary use of lands at this time. In the event Union requires the temporary use of private lands, Union will meet with landowners on an individual basis and attempt to obtain temporary construction land rights. If a landowner does not accept Union's temporary lands package, Union will construct the Pipeline within the road allowance.

CONCLUSION

16. In conclusion, Union submits that the evidence demonstrates that it would be in the public interest for the Board to grant the orders requested in Union's Application specifically, a leave to construct the Pipeline. Union requests that the Board grant the order as applied for in Union's Application dated April 1, 2011 as soon as possible.

All of Which is Respectfully Submitted