

Ontario Energy Board

EB-2012-0430

IN THE MATTER OF the *Ontario Energy Board Act, 1998*,
S.O. 1998, c.15 (Schedule B);

AND IN THE MATTER OF an Application by Union Gas Limited for
orders pursuant to sections 90 and 97 of the *Ontario Energy Board
Act, 1998*, granting leave to construct a natural gas pipeline and
facilities in the Region of Waterloo.

WRITTEN SUBMISSIONS OF THE CITY OF KITCHENER

Introduction

1. The City of Kitchener ("Kitchener"), an active intervenor in this facilities proceeding and in prior rates proceedings of Union Gas Limited ("Union"), is a large volume contract customer of Union. Kitchener owns and operates an integrated gas and water distribution utility which receives regulated storage and transportation services from Union under Rates T3 and M12. Kitchener is the only embedded gas distribution utility served by Union under Rate T3. Kitchener is served directly from the Owen Sound transmission facilities which replacement and relocation is the subject of Union's instant application.
2. Kitchener will keep its submissions herein brief and limited to several key issues. Our submissions will differ in one important aspect from past submissions to the Ontario Energy Board ("Board"). In past rates proceedings before this Board, Kitchener's submissions have largely focused on the interests of its gas utility and the end use customers which it serves. In this proceeding, Kitchener has an interest from both a planning perspective as a municipal authority and as a gas distributor.
3. As a gas distributor with an onus similar to Union's to ensure the safe and reliable delivery of gas within its service area, Kitchener is supportive of Union's intent in the instant application "...to manage and ensure the long term integrity of the pipeline". [Union pre-filed evidence, Page 4, lines 4 and 5]
4. As a municipal planning authority acting cooperatively within a tiered public governance structure, Kitchener is obliged to current and future residents and stakeholders to ensure the responsible development of land

within its municipal boundaries for appropriate uses at an appropriate pace that will benefit them over the long term. This is a complex undertaking. Union's instant application has a direct impact on this complex – and sometimes fragile – municipal planning process for Kitchener within the Region of Waterloo as it relates to the Rosenberg Community.

Impacts of Proposed Pipeline Relocation on Regional Planning

5. Kitchener respectfully submits there is a need for Union to accommodate in a timely and mutually satisfactory fashion the planning concerns of the Region of Waterloo ("ROW") and Kitchener related to the proposed pipeline relocation so that development of the Rosenberg Community, including the participation of the Waterloo Regional District School Board ("WRDSB"), is not jeopardized.
6. Paragraphs 7 to 10 below relate to Union's response to Kitchener Interrogatory #1 (Project Summary, Landowners, Environmental).
7. Union's response to part a) of this Interrogatory indicates that its communications with regional planning approval authorities (Kitchener and ROW) about the proposed pipeline relocation came very late, if at all, in the lengthy public consultation process for the Rosenberg Community cited in the preamble to the interrogatory. Union appears to have spent more time and effort in communicating with the developers and existing landowners than with the approval authorities, and to the detriment of the planning process and its intent to provide certainty to all parties involved in the development. Union's engagement with two large land owners (Mattamy and Schlegel) in the planned Rosenberg Community is not the same as Union having engaged all of the stakeholders. Union should not suggest otherwise in this proceeding.
8. Respectfully, Union's response to part c) of this interrogatory doesn't answer the question that was posed, i.e. has Union received confirmation from the WRDSB that its concerns have been addressed? By way of reference to Staff Interrogatory #5 Response, it simply refers to the November 7, 2012 and January 28, 2013 correspondence filed by Union in response to the WRDSB which affirms Union's position on the construction and location of its *distribution* pipeline meeting the applicable Canadian technical and compliance standards (Ontario regulation 210/01 and TSSA CSA Z662 II and code adoption) which conflict with the Rhodes Report. Specifically, Union's position is it "...will not be adopting the suggestions

- contained in the report". [Attachment #1 to BS IR #5, Page 1] Kitchener's current understanding is that the WRDSB – a prospective landowner and a necessary partner to making the Rosenberg Community a reality – continues to oppose Union's instant application. Based on this understanding, it would appear the factual answer to the question we asked is: "No. Union has received no confirmation from the WRDSB that its concerns have been addressed".
9. Respectfully, Union's response to part e) of this Interrogatory doesn't answer the specific question that was posed, i.e. are any of the planned land uses no longer viable? It also reinforces our conclusion from the record in this proceeding that Union's communication and cooperative efforts were focused on the developers and not with the regional planning approval authorities. Based on the unresolved status of the WRDSB's concerns, the factual answer to our question would appear to be that Union doesn't actually know whether any of the planned land uses in the Rosenberg Community are no longer viable.
 10. Union's ending response to part f) of this Interrogatory is interesting to Kitchener: "Within the Rosenberg Community, the pipeline alignment is being slightly modified to conform to the two developers' proposed layout plan." This response begs some obvious follow-up questions / concerns: why was it modified and how will the alignment be modified and with what expected impact on affected existing and future landowners in proximity to the pipeline (including, perhaps, the WRDSB)? Kitchener respectfully submits that it would be helpful if Union could address these questions in its reply submission in this proceeding.
 11. Based on the record in this proceeding, Kitchener submits that Union appears to be selective about its classification of the proposed pipeline as "distribution" versus "transmission". To deflect the WRDSB's concerns with proximity, Union classifies the Owen Sound replacement pipeline as *distribution*. [Attachment #1 to BS IR #5, page 1] However, for rate-making purposes, Union appears to treat most of the costs of the proposed Owen Sound Replacement Project as *transmission-related*. [Response to Kitchener Interrogatory #1 (Project Costs and Economics), parts c, d and e.]
 12. Kitchener also notes that Union refers to the "Owen Sound *Transmission* system" in its response to Kitchener Interrogatory #1 (Proposed Facilities), parts a and b. Our understanding from the EB-2011-0210

(Union 2013 Rates) proceeding is that Kitchener is served directly off transmission main [EB-2011-0210 Hearing Tr. Volume 11, page 47, lines 20-22]. In the instant application, we are therefore unsure how Union can reasonably classify the proposed pipeline differently (distribution versus transmission) for different purposes.

13. To conclude our submissions under the topic of impacts of proposed pipeline relocation on regional planning, Union's response to Kitchener Interrogatory #1 (Environmental) casts doubt on the quality of Union's consultation with stakeholders. Union claims to be unaware of significant natural heritage features adjacent to the relocated pipeline. Kitchener respectfully submits that had Union allowed sufficient time for agencies such as the Grand River Conservation Authority and the Region's Environmental Planners to digest and comment on the ER, Union would have been fully aware of the natural heritage issues in areas where the pipeline is planned to be relocated.

Minimum Delivery Pressure at Kitchener Gate Station (KGS) and Strausburg Transmission Station (STS)

14. In EB-2011-0294, the Board issued its Decision and Order approving the parties to, the period of, and the space for storage that was the subject of a T3 contract between Union and Kitchener. A redacted non-confidential version of the contract was attached to the Board's Decision and Order as Appendix A. Paragraph 11 of the T3 Contract dated April 1, 2011 as included in Appendix A is reproduced below:

"11 MINIMUM DELIVERY PRESSURE

Pursuant to Section 5 of Schedule 1, Union is obligated to deliver natural gas to Customer at a minimum gauge pressure equal to ____ kPa (____psi) ("Minimum Delivery Pressure") at the Point of Consumption. Union will continue to deliver natural gas to Customer at pressures above the Minimum Delivery Pressure on any Day when Union determines in its sole discretion that it is able to do so. The parties acknowledge and agree that executing this Contract does not prejudice the position of either party related to the Minimum Delivery Pressure or restrict in any way Customer's right to initiate a review and seek appropriate contractual, regulatory and/or commercial remedies either through a commercially available process or through an Ontario Energy Board process."

15. As indicated in Union's response to Kitchener Interrogatory #2 (Proposed Facilities), the minimum gauge pressure at the KGS and STS is 175 psi.

16. Kitchener respectfully submits that the partial replacement of the existing Owen Sound transmission system should not reduce the minimum delivery pressure of 225 psi which Kitchener has historically received from Union, notwithstanding the contractual minimum pressure of 175 psi. Union's response to Kitchener Interrogatory #2 (Proposed Facilities) indicates that the lower bound of the contracted Minimum Gauge Pressure has not been closely approached based on actual operating data within the last five years at either the KGS or STS. Kitchener respectfully submits that Union should be held accountable to its replacement of "like for like" physical facilities serving Kitchener in any approval of the instant application.

Increased Maximum Hourly Flow at Kitchener Gate Station (KGS)

17. Further modifications to the KGS to accommodate an increased maximum hourly flow may be needed. Based on Union's response to Kitchener Interrogatory #1 (Project Costs and Economics), part f, this increase can be accommodated solely by modifications to the station. Any such modifications would no doubt be subject to further lively discussions between Union and Kitchener regarding options, costs and timing. Those discussions are outside the scope of this proceeding. However, our understanding is that no changes are needed to the replacement facilities upstream of the station in the instant application to allow an increase in maximum hourly flow. It would be helpful if Union could confirm this understanding in its reply submission.

Conclusion

18. Subject to the caveats noted above at paragraphs 5, 10, 16 and 17, and satisfying any conditions or concerns raised by Board Staff, Kitchener is not opposed to the approval of Union's instant application.

All of which is respectfully submitted.

The Corporation of the City of Kitchener

James A. Gruenbauer, CMA
Manager, Regulatory Affairs and Supply

Per:

