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January 20, 2015

**RESS, EMAIL & COURIER**

Ontario Energy Board  
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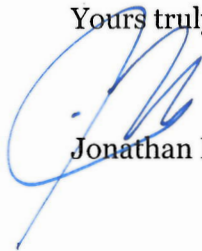
Attention: Ms. K. Walli, Board Secretary

Dear Ms. Walli:

**Re: Union Gas Limited - Application for Authority to Expropriate (EB-2014-0335) - Applicant Argument-in-Chief**

We are counsel to Union Gas Limited ("Union"), applicant in the above-referenced proceeding. Enclosed please find Union's Argument-in-Chief, which has been filed on RESS and served on all intervenors in the proceeding.

Yours truly,



Jonathan Myers

cc: Mr. M. Murray, Union Gas  
Mr. C. Smith, Torys  
Intervenors

**ONTARIO ENERGY BOARD**

**IN THE MATTER OF** the *Ontario Energy Board Act, 1998*, S.O. 1998, c. 15 (Sched. B) as amended (the “**Act**”);

**AND IN THE MATTER OF** an application by Union Gas Limited (“**Union**”) for an Order pursuant to section 99(5) of the Act granting authority to expropriate certain interests in one property for the purposes of constructing, operating and maintaining a natural gas pipeline between Union’s existing Brantford Valve Site and the Kirkwall Custody Transfer Station.

**APPLICANT ARGUMENT-IN-CHIEF**

**January 20, 2015**

**Introduction**

1. Union Gas Limited (“Union” or the “Applicant”) filed an application with the Ontario Energy Board (the “Board”) on October 27, 2014 (the “Application”) under Section 99(1) of the *Ontario Energy Board Act, 1998* (the “OEB Act”).
2. In the Application, Union requests an order of the Board under Section 99(5) of the Act granting authority for Union to expropriate certain interests in land relating to one property, in the City of Hamilton, for the purposes of constructing, operating and maintaining a natural gas pipeline as part of Union’s Brantford-Kirkwall/Parkway D Project (the “Project”).
3. In support of the Application, Union filed detailed pre-filed evidence concerning the relevant parts of its gas system, the Project, the granting of leave to construct the Project, the land requirements for the Project, the specific interests in land for which it requires authority to expropriate, as well as its efforts to reach a negotiated agreement with the relevant landowner. Union’s evidence, which demonstrates that the proposed taking is in the public interest, was not challenged in the proceeding. Authority to expropriate is

needed to enable Union to construct the Project, which the Board in previously granting leave to construct has found to be in the public interest. Accordingly, Union submits that the requested order granting authority to expropriate should be granted.

### **The Application**

4. As explained in the Application, Union carries out both an integrated natural gas utility business that combines the operations of distributing, transmitting and storing natural gas, and a non-utility storage business. Union serves approximately 1.4 million customers in northern, eastern and southern Ontario through an integrated network of over 67,000 kilometres of natural gas pipelines. Union operates storage and transmission assets, including underground natural gas storage at the Dawn Hub and the Dawn-Parkway System, which connects the Dawn Hub to consuming markets in Ontario, Québec and the U.S. Northeast.
5. The Project was approved by the Board as being in the public interest pursuant to sections 90 and 96(1) of the Act on January 30, 2014 (EB-2013-0074). As explained in the Application, and in the application in EB-2013-0074, the Project includes the construction of 13.9 km of NPS 48 pipeline and associated valving facilities along the Brantford-Kirkwall section of the Dawn-Parkway System, between the Brantford Valve Site and the Kirkwall Custody Transfer Station (the “B-K Pipeline”).
6. The Project, including the B-K Pipeline, are needed to meet incremental demand for Dawn-Parkway transportation capacity and for transportation capacity downstream of Parkway for eastern markets, which will support (a) increased access to the liquid market, diverse natural gas supplies and premium storage facilities at the Dawn Hub, (b) the continued shift from long haul transportation to short haul transportation, and (c) growing demand in central, eastern and northern Ontario, as well as in Quebec and the U.S. Northeast. As stated in the Application, the Board in the leave to construct proceeding found that the Project is part of a group of projects that will facilitate greater flows of mid-continent natural gas into Dawn for transportation to downstream markets and that

the projected benefits of the Project stems from an enhanced diversity of supply, gas cost savings and enhanced liquidity at Dawn.<sup>1</sup>

7. Union has requested authority to expropriate a 1.2 hectare (2.97 acre) permanent easement, as well as a 0.43 hectare (1.06 acre) temporary easement, on a single property that lies along the approved route for the B-K Pipeline.<sup>2</sup> The subject property is owned by Manuel and Valentina Fagundes (the “Landowner”). A legal description of the subject property, together with the dimensions of the proposed permanent and temporary easements, was filed at Appendix ‘C’ of the Application. The locations of the proposed easements are also depicted on the Draft Plan of Expropriation filed at Appendix ‘D’ and in the ortho-rectified aerial plan provide at Appendix ‘E’ of the Application. A segment of the B-K Pipeline will be situated on the permanent easement. The temporary easement is required for construction, clean-up and top soil storage purposes during the installation of this segment of the pipeline.
8. Union has attempted to negotiate a form of easement agreement with the Landowner for over 18 months. During this period, Union and its representatives have had over 25 discussions with the Landowner, including with respect to the locations of the easements, compensation and access for completion of environmental and archaeological surveys.<sup>3</sup> Despite these efforts, Union has not been able to reach agreement with the Landowner.
9. The public interest benefits of the Project cannot be realized unless the B-K Pipeline is completed and put into service, which cannot be achieved without Union acquiring the necessary permanent and temporary easements on the subject property. As explained in the Application, the proposed easements would permit Union to install the B-K Pipeline alongside and immediately next to the two existing pipelines that traverse the subject property. The placement of the pipeline on this portion of the subject property, generally within and along the same infrastructure corridor as already exists on the site, is intended to minimize potential impacts on the landowner and the property. Given the minimal

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<sup>1</sup> Application, Exhibit B, Tab 1, Schedule 1, p. 5.

<sup>2</sup> Application, para. 5.

<sup>3</sup> Applicant Response to Ministry of the Attorney General Interrogatory #4; Application, Exhibit B, Tab 1, Schedule 1, p. 4.

impacts to the subject property and that the recognized benefits of the Project cannot be realized without Union obtaining the requested easements, it is Union's submission that, on balance, expropriation of the requested interests in the Landowner's property is in the public interest.

### **The Legislative Framework**

10. The Board's power to grant an application for authority to expropriate is derived from s. 99 of the Act, which provides that any person who has been granted leave to construct a hydrocarbon line under s. 90 of the Act may apply to the Board for authority to expropriate land for such work. Subsection 99(5) of the Act establishes the test for approving an application brought under subsection 99(1): "If after the hearing the Board is of the opinion that the expropriation of the land is in the public interest, it may make an order authorizing the applicant to expropriate the land."
11. The Board has previously considered the nature of the public interest test to be applied in an application under section 99. As explained by the Board in its May 1, 2014 Decision and Order on an application for authority to expropriate by Dufferin Wind Power Inc. (EB-2013-0268), "in an expropriation application, the Board is required to consider the broad public interest under section 99 of the Act, balancing that broad public interest against the specific local interests, and the interests of the Applicant. Therefore, the fact that a landowner may suffer some harm from an expropriation is not the relevant question (as there will almost always be some form of harm when a property owner loses some of his or her land rights). Rather, the question for the Board to determine is whether that harm can be remedied through "practical solutions" or monetary compensation, or a combination of the two. If the answer to that question is affirmative then ordinarily harm to the landowner's interest will not, in and of itself, be an impediment to expropriation."

### **The Proceeding**

12. Union filed the Application and pre-filed evidence on October 28, 2014. Notice of Application was published and served in accordance with the Letter of Direction on

November 13, 2014, with intervenor status requests being due by December 4, 2014. No requests for intervenor status were filed by such date.

13. On December 3, 2014, a letter of comment was filed by the Landowner. In this letter, the Landowner requested that the Application be adjourned for 30 days to permit Union and the various parties holding liens registered on title to the subject property to reach a settlement on the allocation of compensation for the proposed easement. Union wrote to the Board on December 11, 2014 to further explain the efforts it made to negotiate a form of easement agreement with the landowner, the efforts it has made with the relevant lienholders, and the improbability of reaching a settlement if the adjournment were granted. Union also argued that the purpose of the requested adjournment related exclusively to the issue of compensation, which is outside the scope of the Board's jurisdiction under s. 99 of the Act. On this basis, Union urged the Board to refuse the adjournment request.
14. In Procedural Order No. 1, issued on December 18, 2014, the Board agreed that the issues raised by the Landowner were outside the Board's jurisdiction and refused the adjournment request. While the Landowner did not request intervenor status, because of the direct impact of the Application on the Landowner the Board decided to grant intervenor status to the Landowner and in so doing reiterated that issues relating to compensation are outside the scope of the proceeding.
15. On January 9, 2015, being the date that interrogatories were due, a late request for intervenor status and interrogatories were filed on behalf of the Ministry of the Attorney General, by its Civil Remedies for Illicit Activities Office (the "AG"). Union subsequently wrote to the Board on January 12, 2015 to indicate that it did not object to the AG's late request for intervenor status, as well as to confirm that the AG was properly served with Notice in the proceeding and to note for the Board that the issues raised by the AG appeared to relate entirely to compensation issues over which the Board has no jurisdiction. In Procedural Order No. 2, issued January 14, 2015, the Board granted intervenor status to the AG and further reiterated that compensation issues were outside the scope of the proceeding.

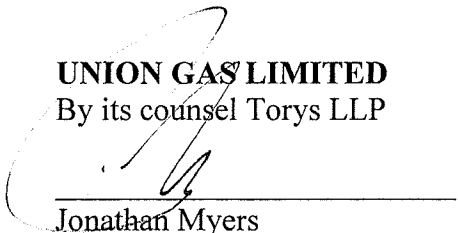
16. On January 15, 2015, Union filed its responses to the four interrogatories filed by the AG. Board staff filed a letter confirming that it would not be filing interrogatories. No interrogatories were filed by the Landowner.

### **Conclusions**

17. Based on the foregoing, it is Union's submission that the record in the proceeding is complete, that the record establishes that the proposed expropriation is in the public interest pursuant to s. 99 of the Act, and that no party has raised any issues that are material or relevant to the Board's jurisdiction. The issues raised in the letter of comment from the Landowner were exclusively related to the issue of compensation, as were the issues raised in the late intervention and interrogatory questions of the AG. As the Board made clear at various points during the course of the proceeding, matters relating to compensation do not fall within the Board's jurisdiction under s. 99 of the Act. Rather, to the extent that the parties are unable to agree on compensation, such issues are determined in accordance with the *Expropriations Act* under the authority of the Ontario Municipal Board. Accordingly, authority to expropriate should be granted as requested.

All of which is respectfully submitted this 20th day of January, 2015.

**UNION GAS LIMITED**  
By its counsel Torys LLP



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Jonathan Myers