

June 26, 2017

Ms. Kirsten Walli
Board Secretary
Ontario Energy Board
Suite 2700, 2300 Yonge Street
Toronto, Ontario
M4P 1E4

Re: EB-2015-0179 – Union Gas Limited (“Union”) - Response to Procedural Order No. 8

Dear Ms. Walli,

Union Gas Limited (“Union”) is writing in response to the Ontario Energy Board’s (“the Board”) May 25, 2017 Procedural Order No. 8 in the above noted proceeding. In particular, Union wishes to provide an update on its engagement with Batchewana First Nation of Ojibways (“Batchewana”) to date regarding the proposed expansion project to serve the community of Prince Township (the Project).

By way of background, on July 23, 2015, Union filed an application with the Board initiating the above noted proceeding and seeking among other things leave to construct the Project. On January 20, 2016, the Board temporarily put this proceeding on hold while it completed its Generic Community Expansion Proceeding (EB-2016-0004), the Decision and Order for which was issued on November 17, 2016. On that same day, the Board issued Procedural Order No. 4 in this proceeding, which resumed the hearing of the present application. On March 31, 2017, in response to Procedural Order No. 4 and in light of the Decision and Order in EB-2016-0004, Union filed updated evidence – not a fresh application.

On August 11, 2016, more than a year after Union filed its original application in the present proceeding, the Board issued the 7th Edition of the OEB Environmental Guidelines for Locating, Constructing and Operating Hydrocarbon Pipelines in Ontario (the “Guidelines”). The 7th Edition of the Guidelines do not purport to apply to projects or applications commenced prior to the update, and do not have any retroactive effect. Rather, the 6th Edition of the Guidelines, which were issued in 2011 and which were in effect when the original EB-2015-0179 application was filed, continue to apply to the Project.

Nonetheless, given Union’s commitment to engaging and building long-term productive relationships with Indigenous communities, Union developed a record of consultation and engagement for the Project that exceeds the recommendations of the 6th Edition of the Guidelines and achieves the intent of the 7th Edition of the Guidelines. Union describes these efforts at a high-level in its response to Exhibit C.Staff.17.

Union has achieved the intent of the 7th Edition of the Guidelines specifically in respect of its engagement with Batchewana. Consistent with the current Guidelines, Union began consultation with Batchewana early in the planning of the Project to ensure that the community would have sufficient time to review materials and understand if and how the Project may affect their rights, and to identify options as necessary for appropriately mitigating, avoiding or accommodating any such affects. Union continued this consultation and engagement throughout the Board's consideration of this application, and is committed to continuing these efforts as necessary throughout the life of the Project.

For a detailed interaction log describing Union's engagement with Batchewana, please see Attachment A. As noted in this log, as well as in Exhibit A, Tab 2, Section D of Union's original evidence submitted in July 2015, Union first notified Batchewana of the Project in June 2015. At that time, Union also provided Batchewana with a copy of the Environmental Protection Plan ("EPP") for the Project. Subsequently, Union made frequent attempts to meaningfully engage with Batchewana in respect of the Project. Several of these attempts occurred in 2015 before the Board's temporary suspension of the present proceeding. Several more attempts were made earlier this year after the proceeding was resumed.

Union was therefore pleased that, in May 2017, Batchewana began to express an interest in consultation regarding the Project. The reciprocal nature of consultation is well-recognized in the courts¹, and with that in mind, Union believes that a constructive and meaningful dialogue has emerged between the parties over the past month, and as is normal at Union, that engagement is planned to continue throughout the life of the project. Recently, on June 6, 2017, representatives of Batchewana and Union met to discuss a mutually agreeable process for consultation going forward. Union subsequently resent the EPP, the Project Description, the Archaeology and Cultural Heritage Reports and related mapping to Batchewana. As discussed at the June 6 meeting, Union also sent Batchewana materials related to Union's construction safety practices, directional drilling practices and spill management process, as well as a sample construction plan. Union met again with Batchewana representatives on June 14, 2017 to discuss, among other things, capacity funding for the review of Project documentation. Union has also scheduled open houses to occur at Batchewana on July 4-5, 2017. Representatives from both parties continue to be in frequent contact in respect of these items.

Union is committed to ensuring that meaningful and appropriate consultation with Batchewana continues in respect of the Project. As shown in Attachment A, Union has demonstrated its commitment for approximately two years, since the early stages of the Project. These efforts have been consistent not only with the intent of the 7th Edition of the Guidelines, but also and more importantly with the duty to consult and Union's commitment to Indigenous engagement.

¹ See, for example, *Halfway River First Nation v. BC*, 1999 BCCA 470 para. 161; *Pimicikamak Band v. Manitoba*, 2016 MBQB 128 para. 44; *Mikisew Cree First Nation v. Canada (Minister of Canadian Heritage)*, 2005 SCC 69 para. 66.

Given Union's efforts to date and the recent positive dialogue between the parties, Union is of the view that the continuation of this dialogue should not delay the Board's approval of the leave to construct for the Project.

Sincerely,

(Original signed by)

Karen Hockin
Manager, Regulatory Initiatives

Encl.

cc. C. Keizer, Torys
EB-2015-0179 Intervenors

Union Gas and Batchewana First Nations Detailed Interactions Log

2015-2017

Date	Time	Method	Outreach	Purpose
May 13, 2015		Letter	Wendy Landry	<ul style="list-style-type: none"> Letter of project notification sent to James Roach, Lands/Community Planning Coordinator, Batchewana First Nation (BFN), and copied to the Chief Dean Sayers
June 15, 2015		Mail		<ul style="list-style-type: none"> Environmental Protection Plan sent to Batchewana First Nation No feedback received or indication that there were not enough resources to review
July 8, 2015		Phone	Wendy Landry	<ul style="list-style-type: none"> Call made to the Batchewana First Nation Messages left with Sandra No return calls (hoping to get a meeting for Prince Township expansion)
July 22, 2015		Phone	Wendy Landry	<ul style="list-style-type: none"> Call made to the Batchewana First Nation Messages left with Sandra No return calls (hoping to get a meeting for Prince Township Expansion)
July 28, 2015		Phone	Wendy Landry	<ul style="list-style-type: none"> Call made to the Batchewana First Nation Messages left with Sandra No return calls (hoping to get a meeting for Prince Township Expansion)
Aug 10, 2015		Phone	Wendy Landry	<ul style="list-style-type: none"> Spoke to James Roach in Batchewana First Nation Confirmed that he received emails from Union Gas on the Prince Township Expansion project He indicated that he didn't feel there was too much interest in private homes getting gas. Advised that we would update as the project moved forward and OEB approval was still required. He said he would consult with the Chief and if there was an interest in Prince Township, he would follow up.
2017				

Feb 28, 2017		Email	Wendy Landry	<ul style="list-style-type: none"> • Letters of notification resent to Batchewana First Nation
March 2, 2017		Phone		<ul style="list-style-type: none"> • Follow up call to Batchewana First Nation on Prince Township Expansion letter • Messages left on voice mail.
March 2, 2017		Email	Wendy Landry	<ul style="list-style-type: none"> • Follow up email to Batchewana First Nation • No response
March 8, 2017		Phone	Wendy Landry	<ul style="list-style-type: none"> • Call left for a request to meet with Batchewana First Nation to discuss Prince Township Expansion • No response
March 8, 2017		Email	Wendy Landry	<ul style="list-style-type: none"> • Emails to Batchewana First Nation
March 27, 2017		Email	Wendy Landry	<ul style="list-style-type: none"> • Follow up emails to Batchewana James Roach, Chief Sayer, and Ed Dubois, Capital Projects Coordinator of Batchewana First Nation
March 29, 2017		Email	Wendy Landry	<ul style="list-style-type: none"> • Response from Batchewana Chief Sayers • “Batchewana is internally reviewing the correspondence. We will be responding to you in the very near future”.
March 29, 2017		Email	Wendy Landry	<ul style="list-style-type: none"> • Respond to Chief Sayer, ccing Ed Dubois, by email requesting if James Roach was the correct contact for Batchewana First Nation
March 29, 2017	2:18pm	Email	Wendy Landry	<ul style="list-style-type: none"> • Ed Dubois replied “Wendy Just to let you know James has taken a position in Southern Ontario.”
March 29, 2017		Email	Wendy Landry	<ul style="list-style-type: none"> • Response from Chief Sayers advising that he has made an accommodation for Union Gas to make a presentation at the Council meeting on April 5, at 7:30 pm.
April 5, 2017	7:30pm	In Person	John Bonin Glen Huard Don Van Daele	<ul style="list-style-type: none"> • John Bonin, Glen Huard, Don Van Daele attended and presented at Council meeting • Chief advised that he did not receive the Environmental Protection Plan and also brought up that their traditional land was found in the project area • The Chief requested that Union Gas do our homework on the history of Batchewana First Nation and Prince Township
April 6, 2017		In Person	Glen Huard	<ul style="list-style-type: none"> • Glen Huard visited the Municipal office in Prince Township • Received documentation that the land is the municipality’s as per the “quieting order” that the community had on file.
April 7, 2017			Glen Huard	<ul style="list-style-type: none"> • Quieting order received by Glen Huard

April 10, 2017		Phone	Wendy Landry	<ul style="list-style-type: none"> • Message left on voicemail for Chief Sayers to request a discussion with clarity on the quieting order received from the township.
April 13, 2017		Phone	Wendy Landry	<ul style="list-style-type: none"> • Message left with the front desk to have Chief Sayers to return call • No response
April 26, 2017		Phone	Wendy Landry	<ul style="list-style-type: none"> • Message left with front desk for Ed Dubois or Chief Sayers to return call • No response
May 1, 2017		Phone	Wendy Landry	<ul style="list-style-type: none"> • Message left for Chief Sayers, to request clarity on the request to do our history on Prince and Batchewana First Nation with respect to the quieting order paperwork we received. • No response
May 8, 10, 12, 2017		Phone	Wendy Landry	<ul style="list-style-type: none"> • Message left requesting a meeting to seek clarity as coming to area on May 15, 2017 • No Response
May 10, 2017		Phone	Wendy Landry	<ul style="list-style-type: none"> • Message left requesting a meeting to seek clarity as coming to area on May 15, 2017 • No Response
May 12, 2017		Phone	Wendy Landry	<ul style="list-style-type: none"> • Message left requesting a meeting to seek clarity as coming to area on May 15, 2017 • No Response
May 12, 2017		Phone	Wendy Landry	<ul style="list-style-type: none"> • Message left with Front desk • Tried 3 times to call again on May 12, as I was going to be in Sault Ste Marie on the 15th.
May 12, 2017	730 am	Email/Phone	Wendy Landry	<ul style="list-style-type: none"> • Email sent to again request a meeting • Followed by a call and message left
May 12, 2017	935 am	Email	Wendy Landry	<ul style="list-style-type: none"> • Email response from Chief that “he had left it with a technician and legal team and would be in touch for a meeting within two weeks”
May 15, 2017	10:18am	Phone	Wendy Landry	<ul style="list-style-type: none"> • Called community leaving messages for Chief Sayers and Ed Dubois
May 15, 2017	11:57	Phone	Wendy Landry	<ul style="list-style-type: none"> • Called community leaving messages for Chief Sayers and Ed Dubois
May 15, 2017	1:37pm	Phone	Wendy Landry	<ul style="list-style-type: none"> • Received a call back from Ed Dubois • Discussed the history of Batchewana First Nation and Prince Township. • He apologized for lack of response from the community and that part

				<p>of it was due to staff members leaving.</p> <ul style="list-style-type: none"> • Stated that Union Gas was looking for clarity on the request to do the history and that we received a “quieting order” that was issued. • He acknowledged that the Chief feels that there is an outstanding land disagreement with Batchewana First Nation and Prince Township. He said that when the Batchewana First Nation members lived on Whitefish Island they were moved to Gros Cap, and essentially that became the reserve. Then a judge by the name of Judge Prince came in and granted land to people in the area, hence “Prince Township”. • Stated that Union Gas needs clarity as it is a dispute on land between the two levels of government and Batchewana First Nation and has no bearing on us as we are just bringing pipe to an organized Municipality with the Province and private land owners. • He agreed, but said that it is the history from our grandfathers that has never been resolved. • Advised that he would talk to Chief today and tell him that Union Gas looking for clarity.
May 15, 2017		Email	Wendy Landry	<ul style="list-style-type: none"> • Ed emailed a response later apologizing that he was not able to connect with the Chief but would the next day. • Advised that next trip to Sault Ste Marie was on May 24th and could meet then as well.
May 15, 2017	2:09pm	Phone	Wendy Landry	<ul style="list-style-type: none"> • Message left for the Chief stating on route to Garden River First Nations and could stop by to discuss • No response or return call
May 26, 2017		In Person	John Bonin	<ul style="list-style-type: none"> • Spoke to Wayne Greer who is representing Batchewana First Nation at the OEB filing for Prince Township. • Agreed to set up time week of June 5-9 to lay out the process for the continued consultation before Union Gas engages Chief and Council.
June 6, 2017	12-2pm	In Person	Wendy Landry John Bonin	<ul style="list-style-type: none"> • Meeting with Batchewana First Nation • Discussion on the adequacy of the Consultation and no response to the outreach Wendy tried with the community. They were surprised at the volume of attempts and agreed that due to various staff changes the information was never properly filtered around the Council so they were unaware although the Chief was copied on most of the communication.

				<ul style="list-style-type: none"> • Batchewana will have a response to the OEB requirement by June 26th crafted by their lawyer including the history of the area in question, what we are doing to complete the Consultation process. • Batchewana stated that the Consultation process is starting at <u>ground zero</u> and provided a list of takeaway items to work on: <ul style="list-style-type: none"> ○ Union Gas will need to apply for a Batchewana Permit to complete work in the Prince Township area. Permit to be sent to Union Gas by Batchewana. ○ Batchewana to provide their own consultation protocols which will be reviewed by Union Gas. ○ Union Gas will re-send the 2015 Archaeology report as they cannot find it. ○ Union Gas to send any further Environmental Reports including the Environmental Protection Plan, full report or Mitigation plans ○ Union Gas will provide a Construction practices overview for protection measures and spills response during construction specifically around waterways ○ Wayne Greer (Batchewana) will have a summer student (Daniel McCoy) research the existing Batchewana families that still live in the Gros Cap area to ensure they are consulted with and invited to the open house
July 4, 2017		In person		<ul style="list-style-type: none"> • Community Engagement meeting scheduled
July 5, 2017		In Person		<ul style="list-style-type: none"> • Community Engagement meeting scheduled
July 6, 2017		In Person		<ul style="list-style-type: none"> • Community Engagement meeting scheduled

Updated Consultation Log with Batchewana First Nation;

June 6/2017 John Bonin and Wendy Landry met with Batchewana FN on the Prince Township Project. The Chief had to send regrets last minute as he had to travel to Toronto. In attendance for BFN was Consultants for Batchewana ; Abnetworks: Wayne Greer and Cody Greer; Batchewana Councillor; Stacey Tijerina; CAO Kim Lambert; Batchewana Natural Resources Technician Victor Bolduc

At this meeting there was a discussion held on the adequacy of the consultation and no response to the outreach Wendy tried with the community. There was obvious surprise at the volume of attempts and agreed that due to various staff changes the information was never properly filtered around the council so they were unaware. It was mentioned by Wendy Landry that the Chief was copied on most correspondence. Going forward Wendy Landry asked who are we to contact going forward to ensure we have good communication and it was directed that we correspond via the consultants.

The Community Expansion project and timeline was reviewed again with regards to the approach since 2015 and the current applications to the OEB.

The process was explained to the group and they suggested that we were starting at ground zero and a list of take away times was developed for both parties

The BFN representatives agreed that they will have a response to the OEB on June 26th explaining what we are doing to complete the consultation process.

The consultants were to send the Consultation Protocol to Wendy Landry and John Bonin for review. – this was completed on June 6/17

It was explained that Union Gas will have to apply for an internal BFN MNR work permit which is required to work on their traditional territory. When asked on time line it was said it could be 1-2 weeks to have it completed – This remains outstanding (6 emails have been exchanged on this item with Vic Bolduc and one phone call with Dan Sayers Manager)

The project description was resent to the consultants – June 6/17

Wendy Landry to resend the Environmental Protection Plan – resent they also found it in a previous employee desk while we were in the meeting, the original sent document.

The Archeology report and Cultural Heritage report was resent as requested on June 7.17

The Requested Maps were resent on June 7/17

3 Construction Safety Practices were sent by John Bonin to the Committee

Directional Drilling video and description sent to BFN on June 7/17

Spill Management process sent to BFN

3 Open Houses and Information sessions booked in all three requested communities for July 4, 5/17

Sample consultation plan sent to Wendy Landry from Wayne Greer, June 21/17

June 14/17- face to face meeting with Wayne Greer in Thunder Bay to update on the process and to discuss financial need request from BFN for consultation. It was discussed the amount of funding for Reviewing of documents, open houses - Wendy Confirmed that some capacity funding was available. It was mentioned that many residents of Prince Township were band members of BFN. Wayne stated that Virginia would draft up a letter for the OEB and he would send it to us to work toward a joint letter stating that we were now engaged in consultation.

June 14/17 Telephone call with Dan Sayers and Leann; he indicated the open houses would need capacity funding to hold them, I requested a detailed invoice and agreed we could provide capacity to hold those meetings. Leann Sayers agreed that I contact her for the further planning of the open houses.

25, text messages with Wayne Greer this week since Monday June 19, and many emails.

June 22/17 Email from Wayne Greer a copy of the letter from BFN that would be going to the OEB on Monday June 26.17. The email stated call me if you have questions, attempts to call Wayne Greer on June 23/17 messages were left.

Respectfully Submitted

Wendy Landry

Manager of Indigenous and Municipal Affairs
Union Gas