

EB-2010-0381

IN THE MATTER OF the *Ontario Energy Board Act, 1998*, S.O. 1998, c. 15, (Schedule B) pursuant to Section 90(1);

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

BEFORE: Ken Quesnelle
Presiding Member

DECISION AND ORDER

Union Gas Limited (“Union” or the “Applicant”) filed an application with the Ontario Energy Board on December 17, 2010, under section 90 of the *Ontario Energy Board Act, 1998*, S.O. 1998, c. 15, Schedule B for an order granting leave to construct approximately 6.6 kilometres of 8 inch diameter and 0.6 kilometres of 12 inch diameter natural gas pipeline, in the City of London and the Municipality of Middlesex Centre, County of Middlesex. The Board assigned the application file number EB-2010-0381.

For the reasons set out below, the Board finds the construction of the proposed pipeline to be in the public interest and grants leave to construct on the terms and conditions (Conditions of Approval) set out in this Decision. The Board’s Conditions of Approval are attached as Appendix A.

The Proposed Pipeline

The proposed route will extend from the 3450 kPa pipeline at Ten Mile Road and Wonderland Road North. It would extend from the existing Forest Hensall Goderich system and travel south to tie into the existing 10 inch 420 kPa steel pipeline on the north side of Fanshawe Park Road. With the exception of a small portion of the pipeline along Wonderland Road that is north of Fanshawe Park Road and south of Sunningdale Road, the entire pipeline is proposed along the current road allowance. A map showing the location of the proposed pipeline is attached as Appendix B.

The Proceeding

The Board issued a Notice of Application and Hearing on January 12, 2011. The County of Middlesex ("the County"), the Corporation of the City of London ("the City"), Ian Goudy of Goudy Farms Inc., Nancy Jackson and C. Harold Jackson applied for intervenor status. No objections were received, and the Board granted these requests.

In filing their letters of intervention, the City and the County asked for an oral hearing and indicated that the environmental report filed by Union was incomplete. Both parties indicated that the proposed pipeline would interfere with future reconstruction activities and the environmental report failed to evaluate all possible alternatives. The County indicated that it was developing plans for widening Wonderland Road and placing the proposed pipeline in the existing narrow right of way width would place the pipeline in close proximity and/or underneath road infrastructure including culverts, catch basins, and drainage ditches, as well as impact on several municipal drains in the area. The City in its letter added that an inappropriately planned and designed pipeline would increase future costs to the City and Union.

In Procedural Order No. 2, the Board set May 24, 2011 for an oral hearing. The Board also provided dates for filing intervenor evidence, interrogatories on the evidence filed and responses to them.

On May 18, 2011, the City of London filed a letter informing the Board about their decision to withdraw from the Application as an intervenor. Union was able to obtain additional easements along the portion of Wonderland Road located north of Fanshawe Park Road and south of Sunningdale Road within the City of London. Since the City of London does not plan to do any reconstruction north of Sunningdale Road in the near term, it withdrew as an intervenor.

However, the County still had concerns and on May 18, 2011 it submitted a report prepared by AECOM that reviewed and commented on the environmental report of Union Gas filed in support of the Leave to Construct Application.

At the oral hearing the Board panel noted that the County of Middlesex's plan to widen the road in the near future and Union's proposal to lay the pipeline in the current road allowance was primarily a matter of conflict of timing related to sequencing of infrastructure improvements. The Board therefore decided to provide two weeks for the parties to meet in order to make a final attempt to resolve the outstanding issues. Union was asked to provide an update on the status of the negotiation in two weeks.

On June 7, 2011, Union filed a letter informing the Board that it was unable to reach a mutually agreeable solution with the County and requested an expedited argument process.

Union filed its Argument-in-Chief on June 14, 2011. In its argument, Union reiterated its position that the need for the pipeline was immediate and there was a risk of losing customers in the 2011/2012 winter heating season if the pipeline was not built and put into service. Union has estimated that it could lose up to 14,000 customers if the design day for the coldest temperature is achieved¹. Union has submitted that it needs to have the pipeline in-service by November 2011 for which construction needs to commence by July 2011.

Union indicated that it would strive to minimize any relocation costs and inconvenience to the County after leave to construct is granted. Union argued that under the Franchise agreement between the County and Union, it had the authorization to enter upon all highways, construct, maintain, replace, remove, operate and repair a gas system for the distribution, storage and transmission of gas in and through the Municipality².

None of the intervenors questioned the need for the project. However, the County in its submission challenged the immediate need for the pipeline. The County argued that Union did not provide any firm evidence that the majority of the forecasted attachments were in the northwest London area for which the pipeline was required. The County added that the claimed urgency of the Application was not substantiated by the history of its development. Union in reply refuted the County's claim and noted that at no point

¹ Union Argument-in-Chief page 1, footnote 1, June 14, 2011

² Part II of Model Franchise Agreement

during the process (interrogatory stage or oral hearing) did the County question Union's London Facilities Business Plan as the basis to establish the need for the pipeline. Union was of the opinion that the County could not raise this new issue in the final argument. Union further added that the County's claim that the urgency of the Application was not substantiated by the history of its development was without merit. Union submitted that the evidence clearly established that the proposed pipeline was needed to serve not only future customers in the northwest London area, but also to ensure that existing customers get the required service in the 2011-2012 winter season.

The County in its submission also claimed that Union did not inform the County of the proposed pipeline in a timely manner. The County engineer who would normally be told of a high pressure gas pipeline was not informed until October 2010 and was provided with the Environmental Assessment only in December 2010. The County further noted that Union had still not provided the design drawings of the pipeline. In Reply, Union noted that its communication with the County did not differ in anyway with how Union would typically communicate with municipalities in recognition of a project need. Union clarified that it first communicated the need for the pipeline to Mr. Jerry Rychlo, the County engineering supervisor two months prior to the public consultation process, shortly after the County took over jurisdiction of Wonderland Road. Union further submitted that it was unable to provide drawings of the pipeline until the County agreed to the general location of the pipeline within the road allowance.

Despite its reservation, the County was prepared to accept Union's proposed project provided the timing of the design and construction of the pipeline was coordinated with the planned reconstruction of Wonderland Road. The County indicated that the current road is substantially deficient with a narrow right-of-way, reverse curves in some areas and substandard shoulders and ditches. The County dismissed Union's offer of laying the pipeline deeper since the exact profile of the road was not known. The County was concerned that if Union proceeded with constructing the proposed pipeline prior to completion of pre-engineering studies, it could lead to reconstruction of a substantial portion of the pipeline within one year. In the case where the entire pipeline along the County road was to be relocated, the County would have to bear an additional cost of \$665,000 based on the cost sharing calculation of the Franchise Agreement³. The County claimed that the additional cost was an unacceptable burden on the taxpayers of the County for a project that would largely benefit the residents of the City of London. In the County's view the ideal solution would be for Union to defer the project by a year

³ Schedule 1, County of Middlesex Submission, June 20, 2011

by which time the County would be able to provide the pre-engineering drawings to Union and suggest a suitable location for the pipeline.

The County lastly submitted that if Union was determined to proceed with the project in July 2011 that Union should pay 100% of the relocation costs notwithstanding Section 12 of the Franchise Agreement.

In Reply, Union reiterated that the need for the pipeline was immediate and the project could not be delayed by a year. However, it was committed to take all necessary steps to mitigate the scope and costs of future relocation of the pipeline. Union indicated that in advance of any pre-engineering studies, the County would have complete discretion of placing the pipeline in the current road allowance. Union did not accept the County proposal of bearing 100% of the potential relocation costs. Union noted that it would not deviate from the binding agreement between the County and Union. The Franchise Agreement was specifically in place to address situations as discussed in the current Application and it provided parties with commercial certainty.

Board staff in their submission supported Union's need for the project and the Application as filed but noted that earlier communication and engagement with stakeholders may have allowed for alternative solutions to accommodate both the pipeline and road widening construction without conflict. Board staff noted that Union did not plan for contingencies and was not proactive in involving stakeholders early in the process.

Union accepted the submissions of Board staff but disagreed with Board staff's opinion that Union ratepayers would have to bear an additional burden of \$1.4 million in the event that the pipeline is relocated in the near future. Union submitted that it was committed to mitigate the scope and costs of future relocation and it would work with the County to minimize the length of the pipeline that needs to be relocated.

Intervenors Goudy and Jackson raised three issues in their submission.

1. Location of Pipeline: The intervenors wanted Union to provide the exact location of the pipeline. In Reply, Union confirmed that its preferred location was along the east side of Wonderland Road except in locations where Union had obtained easements on private land.
2. Drainage: Intervenors sought assurance that appropriate care would be taken with respect to drainage infrastructure. Union assured parties that it would work

with local drainage officials to ensure that the pipeline does not impact existing farm drainage.

3. Temporary land use: The intervenors submitted that in the case of temporary land use the affected landowners should be compensated to the level of the most recent GAPLO-UNION landowner gas pipeline agreements. Union responded that in the event it required temporary use of private lands it would negotiate with the landowners on an individual basis.

The Public Interest Test

Section 96 of the Act provides that the Board shall make an Order granting leave if the Board finds that “the construction, expansion or reinforcement of the proposed work is in the public interest”. When determining whether a project is in the public interest, the Board typically examines the need for the project, the economics, impact on ratepayers, environmental impact, the impact on land owners and pipeline design technical requirements.

The Board has considered the following issues:

- Is there a need for the proposed pipeline?
- Are there any undue negative rate implications for Union’s rate payers caused by the construction and operation of the proposed pipeline?
- What are the environmental impacts associated with construction of the proposed pipeline and are they acceptable?
- Are there any outstanding landowner matters or issues raised by the affected municipalities for the proposed pipeline routing and construction?
- Is the pipeline designed in accordance with the current technical and safety requirements?

Each of these issues is addressed below.

The Need for the Project

Union has indicated that the pipeline is required to meet current and future demands in the northwest London area. The evidence also indicates that the need for the pipeline is immediate and there is a risk of losing customers in the 2011/2012 winter heating season if the design day for the coldest temperature is achieved. No Parties introduced evidence to the contrary.

The Board is satisfied with Union's evidence on this matter and finds that Union has adequately addressed the need for the pipeline.

Project Economics

The total estimated cost of the pipeline is \$2.3 million. Union has conducted an economic feasibility test in accordance with the Board's recommendations in the E.B.O 188 report on Natural Gas System Expansion to assess the economics of this project.

When the proposed facilities are included in Union's 2011 new business investment portfolio, the resulting Profitability Index ("P.I.") is 1.23. A P.I. of 1.62 is achieved when the proposed facilities are included in Union's rolling portfolio as at November 2010. Union has also provided a stand alone Discounted Cash Flow analysis that indicates a Net Present Value of \$8.2 million and a P.I. of 1.35.

The Board accepts the project economics provided by Union and finds them in accordance with the Board's E.B.O 188 report. The Board notes that actual costs will not be available until the project is completed. For this reason, the Board will require a report from Union on the actual costs for the project approved by this decision and order. Therefore, the Board has included the following as a Condition of Approval to the leave to construct order:

1.5 Within 15 months of the final in-service date, Union shall file with the Board Secretary a Post Construction Financial Report. The Report shall indicate:

- a) the actual capital costs of the project and an explanation for any significant variances from the estimates filed in this proceeding.

The Board requires that the Post Construction Financial Report be prepared for the approved project on a stand-alone basis and provide disaggregated numbers for the pipeline project which is the subject to this application.

Land Owner and Right-of-Way Issues

The proposed pipeline is primarily within municipal road allowance. As noted previously Union has obtained additional easements for a portion of the pipeline. One major issue in this proceeding has been the County's opposition to the timing and location of the project. Union's proposed pipeline may impact the future reconstruction activities of the County on Wonderland Road. The County fears that future reconstruction activities may require relocation of Union's pipeline within a couple of years and this will put an additional cost burden on the County. At the same time, Union is unable to postpone the project for a year as requested by the County so that it can provide the detailed pre-engineering studies to Union that would avoid any future relocation.

The Board notes that despite Union knowing that it required a pipeline approximately two years prior to filing the Application it informed the local municipal authorities two months before the broader public consultation that took place in November 2010⁴. This is clearly insufficient if the municipalities have a major issue or concern with a proposed project. The Board recognizes that the County's recent takeover of the jurisdiction over Wonderland Road may have affected the County's ability to provide details on any planned road widening in a timely manner. However, the Board sees early communication as the key to providing effective and mutually acceptable solutions in these types of situations.

The County is concerned that its own future project may be in conflict with the proposed pipeline of Union. The mistiming in the sequencing of projects has created an issue largely because Union did not provide enough advance notification to the affected stakeholders in this process. The Board is concerned that if this is the standard practice of Union, then it is not serving its purpose of effective communication with critical stakeholders especially when its system requirements are so urgent. The Board expects that Union will review its process of how and when it communicates its forward looking system needs in order to avoid or reduce conflicting construction impacts.

⁴ EB-2010-0381 Oral Hearing Transcript, Volume 1, page 55, May 24, 2011

Union's communication practices may not violate any of the terms of the Franchise Agreement but it is simply not reasonable to expect that a Municipality will always be able to accelerate its capital infrastructure plans to accommodate the installation of needed gas infrastructure on the timelines that have been afforded for that purpose in this case.

The scenario that has played out in this instance is suboptimal and has led to unnecessary legal and administration costs being incurred even before the construction commences. There are also the costs that will be incurred to either avoid relocation or performing unavoidable relocation.

The Board expects Union to focus its attention on its forecasting of its critical needs and the concomitant requirement to provide early notice of these particular projects to the relative road authorities within the franchises that it operates. It is too late to seek compromises of competing infrastructure works schedule when the latitude of one of the schedules has already been exhausted.

In granting this Leave to Construct the Board fully expects Union to work closely with the County of Middlesex to minimize the possibility of future relocation and take all reasonable measures to avoid relocation. The Board understands that Union may have to incur additional expenditure upfront so as to prevent future reconstruction or relocation activities. The Board supports any reasonable incurred additional costs that could prevent future relocation or reconstruction requirements. At the same time, if reconstruction or relocation is required in the near term, a future Board panel will be free to examine the prudence and recovery of such costs in the ordinary course.

The County in its submission has asked Union to bear 100% of the costs in the event of a relocation of the pipeline. The Board understands the County's concern and is aware that relocation would pose an additional cost burden on the County. However, the Franchise Agreement is binding on both parties and the Board expects the County will have to bear its portion of any costs. In the event that relocation of the pipeline is required however, it is expected that Union will have taken all reasonable measures to avoid or minimize the extent of this outcome and thereby having lowered any cost burden on the County.

The Board is satisfied that Union's commitments in response to the concerns raised by Goudy and Jackson should adequately address the issues identified. The Board also

considers Union's proposal to negotiate the terms for temporary access to private lands on an individual basis to be acceptable.

Environmental Assessment

The selection of the proposed route and environmental assessment with impact mitigation recommendations have been completed by Azimuth Environmental Consulting ("Azimuth"). Azimuth prepared an Environmental Report ("ER") entitled "London North Reinforcement Project Environmental Report". The ER is part of the pre-filed evidence submitted by Union. The ER has been completed according to Board's *"Environmental Guidelines for Locating, Constructing and Operating Hydrocarbon Pipelines in Ontario"* [2003]. Copies of the ER were submitted to the Ontario Pipeline Coordination Committee ("OPCC"), the local Conservation Authority and local municipalities. A public information session was held in London on November 1, 2010. No members of the public expressed opposition to the preferred route. Union filed copies of all the comments received in the public information session and from consultation with other parties including the County of Middlesex and the City of London. As noted earlier, both the County and City expressed concerns with the use of the existing road allowance along Wonderland Road due to the number of existing underground services, the narrow road allowance and the future reconstruction of Wonderland road.

According to the report there are no outstanding concerns related to the environmental impacts of the proposed project. The proposed route is mainly in the road allowance and the ER found "no significant environmental or land use impacts along the preferred route that could not readily be mitigated through Union's standard construction specifications".

The municipalities raised some concern with respect to the impact on the municipal drainage infrastructure including culverts, catch basins and drainage ditches. Union has agreed to consult with and obtain applicable permits from the local authorities to ensure compliance with all crossing requirements along the proposed running line. The Board believes that Union's standard construction practices should be able to address these issues adequately.

Union has indicated that it will implement an environmental inspection program. This program will ensure that all recommendations in the ER are followed. A company

inspector will monitor pipeline construction activities and ensure that all activities comply with the mitigation measures found in the ER. Union will obtain all required permit approvals, including any environmental permit approvals prior to the start of construction.

The Board finds that the evidence supports the appropriate mitigation and restoration measures required to construct the pipeline. To ensure appropriate implementation of all the recommendations in the ER the Board included the following condition of approval:

- 1.2 Union shall implement all the recommendations of the Environmental Report filed in the pre-filed evidence, and all the recommendations and directives identified by the Ontario Pipeline Coordinating Committee (“OPCC”) review.

The Conditions of Approval also impose monitoring and reporting requirements in the Conditions of Approval 3.1; 3.2 and 3.3.

The Board is aware that other approvals will be required for Union to construct the pipeline. The Board finds that Union’s compliance with the Condition of Approval 5.1 ensures that the requirements of these other permits and approvals are fully addressed.

Pipeline Design - Technical and Safety Requirements

Union’s evidence is that the proposed pipeline is designed in accordance with the requirements of Ontario Regulations 210/01, Oil and Gas Pipeline Systems, under the *Technical Standards and Safety Act 2000*. The pipe will be manufactured to the Canadian Standards Association Z245.1-07 *Steel Line Pipe Standards for Pipeline Systems and Materials*. The pipeline will be hydrostatically tested in accordance with Ontario Regulation requirements.

The proposed pipeline is within Class 1 to Class 3 locations. Since the majority of the pipeline is located within the current road allowance and in consideration for future potential development along the route, the proposed pipeline is designed to meet Class 3 location requirements. The minimum depth of cover specified is 1.2 meters to the top of the pipe. Union will provide additional depth to accommodate existing or planned

underground facilities, or in specific areas in compliance with the applicable regulated standards.

Union also noted that the Technical Standards and Safety Authority (TSSA) has reviewed the pipeline design specification and has not raised any issues regarding the construction and operation of the pipeline.

The Board finds that the proposed pipeline meets the construction and operational requirements for safe operation. The TSSA, as the agency overseeing the operation of the pipelines in Ontario, has the authority to implement all the applicable standards.

Costs

The County of Middlesex did not seek costs in this proceeding. However, given the circumstances of this case, the Board is of the view that the County should have an opportunity to seek an award of costs. As described above, had Union been more proactive in notifying the County (or its predecessor) with respect to its intentions regarding the project, it is possible that some of the outstanding issues could have been resolved without recourse to the Board's hearing process. Given the circumstances of this proceeding, the Board may be prepared to find the County eligible for an award of costs under section 3.04 of the Board's *Practice Direction on Costs Awards* (the "Practice Direction").

The County may apply for an award of costs in the manner specified in the Practice Direction by the date outlined below. Any objections from Union, whether with respect to eligibility or quantum, may be filed by the dates outlined below.

Orders Granted

For the reasons set out above, the Board finds that the pipeline project being proposed by Union in this proceeding is in the public interest and grants the leave to construct subject to the Conditions of Approval set out in Appendix A.

THE BOARD ORDERS THAT:

1. Union Gas Limited is granted leave, pursuant to subsection 90 (1) of the Act, to construct approximately 6.6 kilometres of 8 inch diameter and 0.6 kilometres of 12 inch diameter natural gas pipeline, in the City of London and the Municipality of Middlesex Centre, County of Middlesex, subject to the Conditions of Approval set forth in Appendix A.
2. The intervenors shall file with the Board and forward to Union, their respective cost claims within 15 days from the date of this Decision.
3. Union shall file with the Board and forward to the intervenors any objections to the claimed costs within 20 days from the date of this Decision.
4. The intervenors shall file with the Board and forward to Union any responses to any objections for cost claims within 27 days of the date of this Decision.
5. Union shall pay the Board's costs incidental to this proceeding upon receipt of the Board's invoice.

DATED at Toronto, July 13, 2011

ONTARIO ENERGY BOARD

Original Signed By

Kirsten Walli
Board Secretary

APPENDIX "A"

TO BOARD DECISION AND ORDER

IN THE MATTER OF EB-2010-0381

DATED JULY 13, 2011

CONDITIONS OF APPROVAL

EB-2010-0381

UNION GAS LIMITED LEAVE TO CONSTRUCT APPLICATION

CONDITIONS OF APPROVAL

1 General Requirements

- 1.1 Union Gas Limited ("Union") shall construct the facilities and restore the land in accordance with its application and the evidence filed in EB-2010-0381 except as modified by this Order and these Conditions of Approval.
- 1.2 Unless otherwise ordered by the Board, authorization for Leave to Construct shall terminate by December 31, 2012, unless construction has commenced prior to that date.
- 1.3 Union shall implement all the recommendations of the Environmental Report filed in the pre-filed evidence, and all the recommendations and directives identified by the Ontario Pipeline Coordinating Committee ("OPCC") review.
- 1.4 Union shall advise the Board's designated representative of any proposed material change in construction or restoration procedures and, except in an emergency, Union shall not make such change without prior approval of the Board or its designated representative. In the event of an emergency, the Board shall be informed immediately after the fact.
- 1.5 Within 15 months of the final in-service date, Union shall file with the Board secretary a Post Construction Financial Report. The Report shall indicate:
 - a) the actual capital costs of the project and an explanation for any significant variances from the estimates filed in this proceeding.

2 Project and Communications Requirements

- 2.1 The Board's designated representative for the purpose of these Conditions of Approval shall be the Manager, Natural Gas Applications.
- 2.2 Union shall designate a person as project engineer and shall provide the name of the individual to the Board's designated representative. The project engineer will

be responsible for the fulfillment of the Conditions of Approval on the construction site. Union shall provide a copy of the Order and Conditions of Approval to the project engineer, within seven days of the Board's Order being issued.

- 2.3 Union shall give the Board's designated representative and the Chair of the OPCC ten days written notice in advance of the commencement of the construction.
- 2.4 Union shall furnish the Board's designated representative with all reasonable assistance for ascertaining whether the work is being or has been performed in accordance with the Board's Order.
- 2.5 Union shall file with the Board's designated representative notice of the date on which the installed pipelines were tested, within one month after the final test date.
- 2.6 Union shall file with the Board's designated representative notice of the date on written confirmation of the completion of construction. A copy of the confirmation shall be provided to the Chair of the OPCC.

3 Monitoring and Reporting Requirements

- 3.1 Both during and after construction, Union shall monitor the impacts of construction, and shall file four copies of both an interim and a final monitoring report with the Board. The interim monitoring report shall be filed within six months of the in-service date, and the final monitoring report shall be filed within fifteen months of the in-service date. Union shall attach a log of all complaints that have been received to the interim and final monitoring reports. The log shall record the times of all complaints received, the substance of each complaint, the actions taken in response, and the reasons underlying such actions.
- 3.2 The interim monitoring report shall confirm Union's adherence to Condition 1.1 and shall include a description of the impacts noted during construction and the actions taken or to be taken to prevent or mitigate the long-term effects of the impacts of construction. This report shall describe any outstanding concerns identified during construction.

- 3.3 The final monitoring report shall describe the condition of any rehabilitated land and the effectiveness of any mitigation measures undertaken. The results of the monitoring programs and analysis shall be included and recommendations made as appropriate. Any deficiency in compliance with any of the Conditions of Approval shall be explained.

4 Easement Agreements

- 4.1 Union shall offer the form of agreement approved by the Board to each landowner, as may be required, along the route of the proposed work.

5 Other Approvals and Agreements

- 5.1 Union shall obtain all other approvals, permits, licences, and certificates required to construct, operate and maintain the proposed project, shall provide a list thereof, and shall provide copies of all such written approvals, permits, licences, and certificates upon the Board's request.

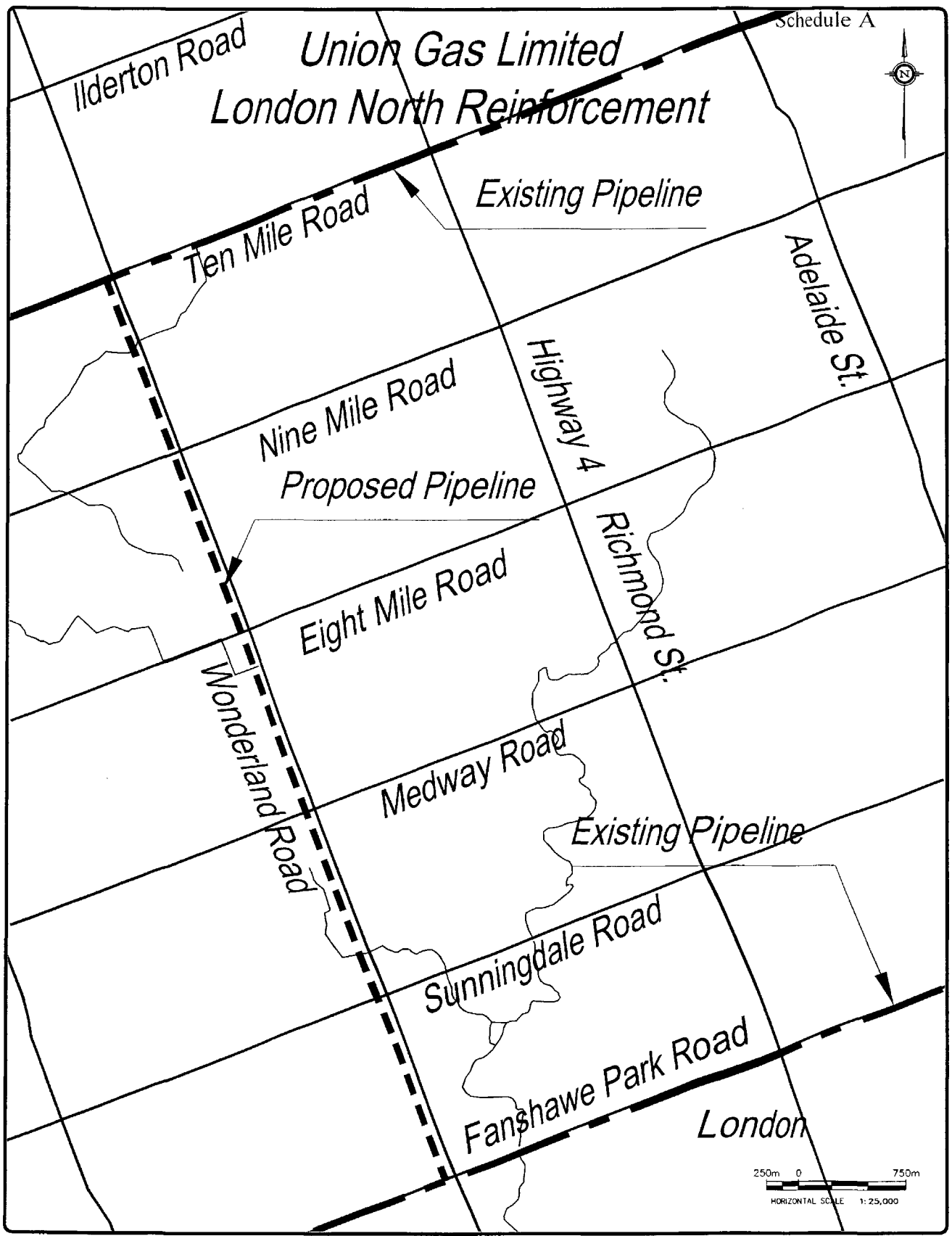
APPENDIX "B"

TO BOARD DECISION AND ORDER

IN THE MATTER OF EB-2010-0381

DATED JULY 13, 2011

MAP OF THE PIPELINE ROUTE



LEGEND:	
	Preferred Pipeline Route
	Existing Pipeline
<small>DAYSTAMP: M:\10 Projects\10-223 Wonderland Rd Pipeline Project\Drafting\dwg\10-223.dwg Plotted by: MCGRAWHILL on December 15, 2010 at 10:23am File: M:\10 Projects\10-223 Wonderland Rd Pipeline Project\Drafting\dwg\10-223.dwg Layout: Newspaper Plotcode: 10</small>	

Preferred Route	
London North Reinforcement Project London, ON	
DATE ISSUED: December 2010	Figure No.
CREATED BY: JLM	
PROJECT NO.: 10-223	
REFERENCE: First Base Solutions	