



**EB-2015-0042**

**Union Gas Limited**

**Application for an exemption from the requirement for an  
order granting leave to construct a natural gas pipeline  
in the City of Greater Sudbury**

**BEFORE: Ken Quesnelle  
Presiding Member and Vice-Chair**

**DECISION AND ORDER**

**April 23, 2015**

**Introduction and Summary**

Union Gas Limited (Union) is a natural gas storage, transmission and distribution company based in Ontario that serves about 1.4 million customers in over 400 communities across northern, southwestern and eastern Ontario. Union applied to the Ontario Energy Board (OEB), for an order granting it an exemption from the requirement to obtain leave to construct approximately 700 metres of natural gas pipeline in the City of Greater Sudbury (the Sudbury Replacement Project).

The Sudbury Replacement Project involves replacing and upsizing two sections of Union's existing Sudbury Lateral Line, which was constructed in 1958.

Union said that as part of property and population reviews of its pipelines for class location compliance it had identified locations along the Sudbury Lateral Line that need to be replaced to meet current class location requirements.

Union also noted that during inspections along the Sudbury Lateral Line, which were conducted as part of its integrity management program, it identified integrity issues that could pose safety and security of supply concerns if not addressed. Union stated that

the replacement of two sections of the Sudbury Lateral Line is the most effective way of managing the ongoing safety and reliability of the pipeline.

Union is also seeking approval to increase the size of the two proposed replacement sections of the Sudbury Lateral Line from Nominal Pipe Size (NPS) 10 to NPS12 diameter pipeline. Union stated that upsizing the pipeline will provide additional capacity for future growth on the Sudbury system.

The OEB will exempt Union from the requirement to obtain leave to construct for the Sudbury Replacement Project. The OEB finds that the necessity for an expedited completion of the Sudbury Replacement Project to address the safety and reliability risks identified by Union is a “special circumstance” that justifies granting the requested exemption.

### **The Exemption Request**

Union stated that the Sudbury Replacement Project would not require leave to construct approval if the existing pipe was removed and a new pipeline was constructed in the existing easement on a like-for-like basis. However, as Union is proposing to upsize the pipeline from NPS10 to NPS12, the project requires approval for leave to construct pursuant to section 90(1) of the *Ontario Energy Board Act, 1998* (the Act).

Union provided the following reasons why the OEB should grant it an exemption, pursuant to section 95 of the Act, from the requirements of section 90(1) of the Act.

1. Union’s pipeline integrity management program has demonstrated a need for the pipeline replacement.
2. The directly affected private landowners have not identified any issues with the Sudbury Replacement Project.
3. The alternative to the Sudbury Replacement Project is to complete separate individual investigative digs where anomalies have been identified.
4. There will be no long-term significant environmental impacts as a result of the Sudbury Replacement Project if the proposed mitigation measures are followed.
5. Construction needs to be completed by November 2015 to ensure that there is no disruption of services to customers.

Union stated that it anticipates that the Sudbury Replacement Project will begin in May 2015 and be completed by November 2015. A map showing the location of the proposed Sudbury Replacement Project is attached as Schedule B.

## Findings

The OEB grants Union an exemption, pursuant to section 95 of the Act, from the requirement under section 90(1) for leave to construct approval for the Sudbury Replacement Project.

Section 95 of the Act provides that “the Board may, if in its opinion special circumstances of a particular case so require, exempt any person from the requirements of section 90 or 92 without a hearing.” The ordinary meaning of “special circumstances” is circumstances that are not “usual or common” as compared to the regular circumstances that would be expected in a leave to construct application.

Section 90(1) of the Act states the following:

No person shall construct a hydrocarbon line without first obtaining from the Board an order granting leave to construct the hydrocarbon line if,

- a) the proposed hydrocarbon line is more than 20 kilometres in length;
- b) the proposed hydrocarbon line is projected to cost more than the amount prescribed by the regulations [\$2 million pursuant to O.Reg 328/03];
- c) any part of the proposed hydrocarbon line,
  - i. uses pipe that has a nominal pipe size of 12 inches or more, and
  - ii. has an operating pressure of 2,000 kilopascals or more; or
- d) criteria prescribed by the regulations are met.

The OEB notes that the Sudbury Replacement Project triggers the need for leave to construct approval due to the proposed upsizing of the pipeline to NPS12 and because the estimated cost of the pipeline replacement project is greater than \$2 million.

The reason for Union's request for an exemption is the requirement for an expedient approval to address the safety and security of supply risks in relation to the Sudbury Lateral Line identified by Union as part of its integrity management program. The OEB finds the necessity for an expedited completion of the Sudbury Replacement Project to address the identified safety and reliability risks constitutes a special circumstance that warrants an exemption from the requirements of section 90(1) of the Act.

The OEB notes that not all proposed projects designed to address safety and reliability concerns will warrant the granting of an exemption pursuant to section 95 of the Act. The question of whether the special circumstances, once determined that they exist, warrant an exemption must be considered in light of the characteristics of the project that triggered the need for leave to construct approval in the first instance.

One of the characteristics that triggered the need for leave to construct approval is the pipe size. The OEB considered potential system impacts resulting from Union's proposal to replace and upsize certain sections of the Sudbury Lateral Line from NPS10 to NPS12. The OEB finds that a proposal to upsize to the next incremental NPS does not warrant the same level of system impact scrutiny that the addition of a new NPS12 pipeline would require.

In addition, the OEB notes that Union's cost estimates are only slightly over the amount prescribed by the regulations (i.e. \$2 million). The OEB finds that the benefit of providing an expedient approval to facilitate a timely replacement of the pipe outweighs any benefit of scrutinizing an application where no person will be adversely affected in a material way by the outcome of the proceeding.

After weighing the special circumstances that exist in relation to the Sudbury Replacement Project (i.e. the need for expedient approval of the project to address the safety and reliability concerns) against the characteristics of this project that trigger the need for leave to construct approval, the OEB finds that granting an exemption, pursuant to section 95 of the Act, from the requirements of section 90(1) of the Act is in the public interest.

The OEB notes that while it is not granting Union leave to construct in relation to the Sudbury Replacement Project, the Board expects that Union will adhere to the Conditions of Approval set out in Schedule A.

**THE BOARD ORDERS THAT:**

1. Union Gas Limited is exempt from the requirements of section 90(1) of the Act for the construction of approximately 700 metres of NPS12 natural gas pipeline in the City of Greater Sudbury. A map showing the location of the proposed Sudbury Replacement Project is attached as Schedule B. This exemption is subject to Union adhering to the Conditions of Approval set out in Schedule A.
2. Union Gas Limited shall pay the OEB's costs incidental to this proceeding upon receipt of the OEB's invoice.

**DATED** at Toronto, April 23, 2015

**ONTARIO ENERGY BOARD**

*Original signed by*

Kirsten Walli  
Board Secretary

**SCHEDULE A**

**DECISION AND ORDER**

**EB-2015-0042**

**DATED: April 23, 2015**

**CONDITIONS OF APPROVAL**

## **EB-2015-0042**

### **Union Gas Limited Leave to Construct Application**

#### **Conditions of Approval**

1. The exemption from the requirements of section 90(1) of the *Ontario Energy Board Act, 1998* shall terminate 5 months after this decision is issued, unless construction has commenced prior to that date. If Union is unable to begin construction before the deadline, it shall file a letter with the OEB providing the reasons that construction has not yet begun and advising when it expects to begin construction.
2. Union must construct the pipeline in accordance with the evidence that is set out in its application. Specifically, Union must replace the pipeline using NPS12 pipe, replace only those sections of the pipeline that are described in its application and follow the pipeline routing described in its application.

**SCHEDULE B**

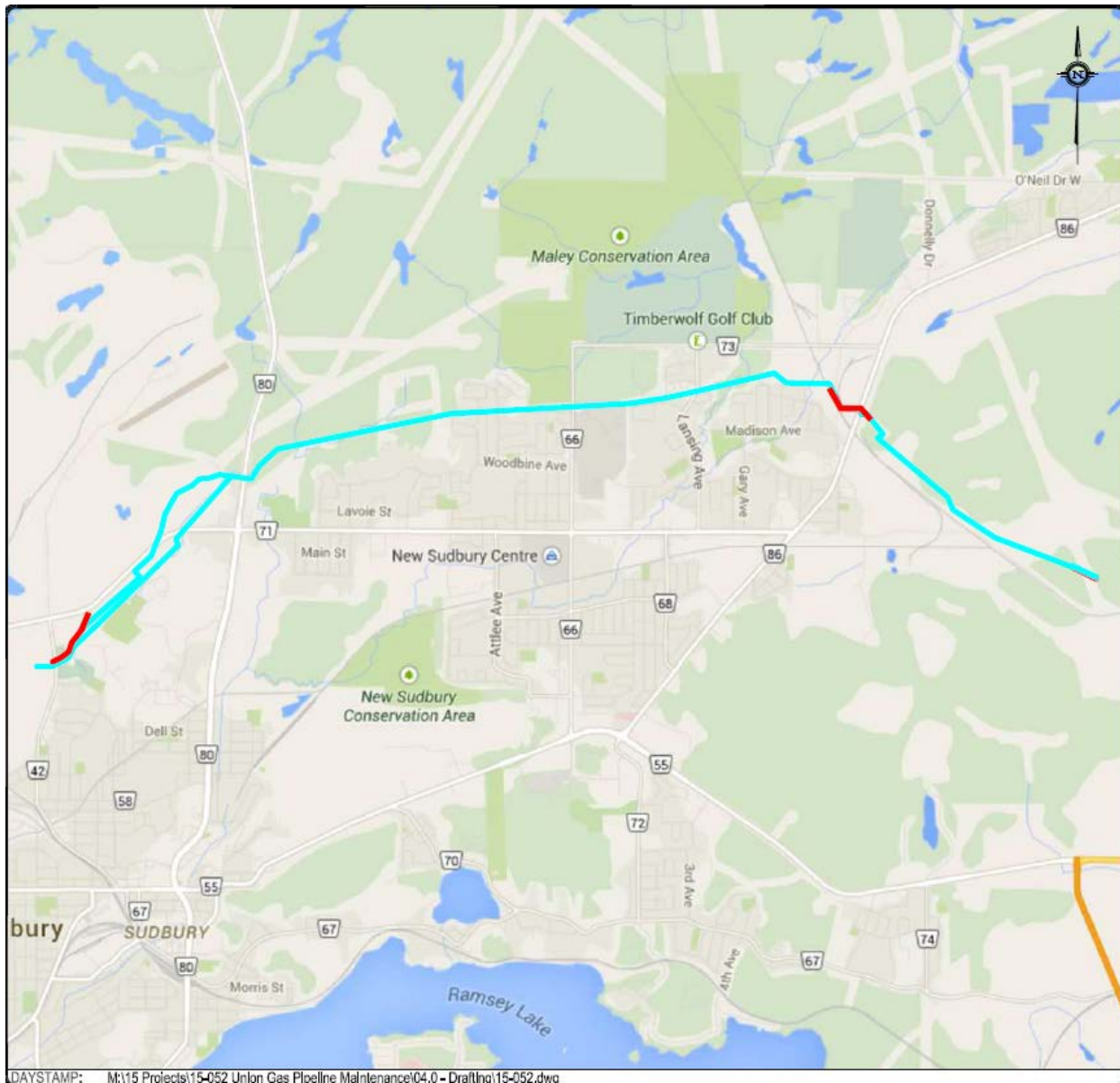
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**DATED: April 23, 2015**

**MAP OF PROPOSED SUDBURY REPLACEMENT PROJECT**





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