



# Ontario Energy Board Commission de l'énergie de l'Ontario

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## DECISION AND ORDER

EB-2015-0179

UNION GAS LIMITED

COMMUNITY EXPANSION APPLICATION

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

**Cathy Spoel**  
Member

**Paul Pastirik**  
Member

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August 10, 2017

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# 1 INTRODUCTION AND PROCESS

In the Ontario Government's 2013 Long-Term Energy Plan, the Government signaled that it would consider opportunities to expand natural gas service within the Province to areas that are not currently served. In response to the Government's initiatives, the OEB invited parties with the appropriate technical and financial expertise to apply for approvals for expansion projects, and to propose, within those applications, the regulatory flexibility or exemptions from current requirements that would facilitate these expansions.

In response, Union Gas Limited (Union) filed an application<sup>1</sup> in July 2015 with the OEB seeking approval to provide natural gas service to certain communities that do not have access to natural gas.

At the Pre-Hearing Day on December 18, 2015, a number of parties submitted that the issues in the proceeding and the evidence they proposed to file had broader implications and raised public policy issues.

The OEB agreed, and through a letter dated January 20, 2016, determined that it intended to proceed with a generic hearing on its own motion. The OEB deferred Union's application until the completion of the generic hearing. On November 17, 2016, the OEB issued its Decision on the Community Expansion Proceeding (Generic Proceeding).<sup>2</sup> The Decision, among other things, determined that existing customers should not subsidize new community expansions.

The OEB issued Procedural Order No. 4 concurrent with the Decision on the Generic Proceeding that resumed Union's application. In a letter dated December 22, 2016, Union advised the OEB that it intended to file a revised application by the end of March 2017.

The OEB determined that it would consider interest from other parties that wish to serve the four communities identified in Union's application. The OEB required parties to advise the OEB and all parties to the proceeding of their interest in serving these communities by March 28, 2016. The OEB did not receive any indication of interest.

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<sup>1</sup> EB-2015--0179

<sup>2</sup> EB-2016-0004

Union filed its updated evidence on March 31, 2017. Union's updated application proposed four expansion projects to serve the following communities: (1) Kettle and Stony Point First Nation and Lambton Shores; (2) Milverton, Rostock and Warburg; (3) Prince Township; and (4) the Delaware Nation of Moraviantown First Nation.

The OEB approves Union's application as filed, with the exception of the leave to construct application for Prince Township<sup>3</sup> which is deferred pending the outcome of negotiations between the Batchewana First Nation of Ojibways and Union. The OEB will issue procedural direction in respect of this part of the application at a later date.

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<sup>3</sup> Union has forecasted that the Prince Township expansion project will add 291 customers by year 10 of the project.

## 2 THE PROCESS

As Union's revised application potentially raised different issues than the original application, the OEB restarted its process including requiring intervenors interested in participating to reapply for intervenor status.

A detailed account of the OEB process is attached as Schedule A to the Decision and Order.

### 3 EVIDENCE

Union filed its updated application under section 36 and section 90 of the *Ontario Energy Board Act, 1998* to reflect the findings of the OEB in the Generic Proceeding. In the absence of the ability to cross-subsidize community expansion projects, Union noted that the number of communities it would be economically feasible to serve had been significantly reduced. Union's updated application therefore proposed only four expansion projects to serve the following communities:

1. Kettle and Stony Point First Nation and Lambton Shores
2. Milverton, Rostock and Warburg
3. Prince Township; and
4. The Delaware Nation of Moraviantown First Nation

Of these four projects, Union is seeking specific leave to construct approval to provide natural gas service to three communities, the Delaware Nation of Moraviantown being the only exception. Union is planning to provide service to the Delaware Nation of Moraviantown First Nation subject to receipt of the necessary aid-to-construction from the expansion community or the government.

Union holds a Certificate of Public Convenience and Necessity for each of the project areas, existing Franchise Agreements for Lambton Shores, Milverton, and Prince Township, and is in the process of obtaining necessary permits under the federal *Indian Act* for Kettle and Stony Point First Nation and the Delaware Nation of Moraviantown First Nation.

#### Expansion Surcharge

Union's revised application proposed a volumetric-based System Expansion Surcharge (SES) to existing rates for a community-specific defined period of time not to exceed 40 years towards recovery of the cost of the projects. The surcharge rate is \$0.23/m<sup>3</sup>. The SES will appear as an extra line item on each expansion area customer's monthly bill along with the current gas bill line items. Potential customers will be informed of the details of this charge as the project is developed and at the time their application to Union for service is made. The SES will be applied to all general service customers (Rates M1, M2, 01, 10). However, the SES will not apply to the contract rate classes. Union has indicated that currently there are no potential customers that meet the eligibility criteria for Union's contract rate classes.

The SES rate and the duration for each community are presented below:

| Project  | SES Rate                | SES Expiry Date   |
|--|-------------------------|-------------------|
| Kettle and Stony Point First Nation and Lambton Shores | \$0.23 / m <sup>3</sup> | December 31, 2029 |
| Milverton, Rostock and Wartburg                        | \$0.23 / m <sup>3</sup> | December 31, 2032 |
| Delaware Nation of Moraviantown First Nation           | \$0.23 / m <sup>3</sup> | December 31, 2057 |
| Prince Township  | \$0.23 / m <sup>3</sup> | December 31, 2039 |

Union has proposed that the approved SES term be applied to customers attaching to any future extensions of the pipeline system.

In its original application, Union proposed that municipalities in the new expansion communities would be required to make a financial contribution to the project. Based on the determination of the OEB in the Generic Decision that such contributions should be voluntary and not mandatory, Union has modified its proposal to include contributions only if the municipality or First Nation is willing to make a contribution.

In its application, Union noted that its proposal to fix the SES amount for the duration of the recovery period meets the OEB's requirement of a rate stability period. In addition, Union proposed that it would bear the risk of fewer customers than forecasted connecting to the system for the duration of the 10-year customer forecast period. For ratemaking purposes, Union's forecasted number of customers for the expansion communities would be the OEB-approved forecasted attachment level in this application. The same approach would be followed for the SES related revenue. Consequently, existing customers of Union would not bear the risk of underachievement of attachment forecast through the initial 10-year period<sup>4</sup>.

Following the end of the 10-year forecast period, Union will use the actual attachments and the actual SES revenue for ratemaking purposes subject to OEB review and approval. In other words, Union will not seek to recover from existing or new community expansion customers any shortfall in revenue requirement for the first 10 years of the project. Union proposed that it would bring forward any potential revenue requirement shortfalls for the going forward period (as compared to the original forecast) in a future rates application after the 10-year forecast period is over, and it would be up to the OEB to approve or adjust any resulting rate impacts. However, Union is not seeking any approvals at this time related to any potential rate adjustments after the 10-year forecast period.

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<sup>4</sup> Response to OEB Staff Interrogatory #3.

### Capital Costs

With respect to capital costs, Union's proposed treatment is the same as other capital projects. Union will bring forward its actual capital costs in the next rebasing proceeding when the assets are placed in service.

### Grants and Capital Contributions

Union will treat any municipality, First Nation or government upfront contribution as an Aid-to-Construct to meet the minimum Profitability Index (PI) of 1.0 and any residual funding would be used to reduce the SES term. Any financial support to a project in the form of an annual payment for an agreed upon term would be treated as an offset to the annual revenue requirement.

### Leave to Construct Approval

Union has requested leave to construct approvals for facilities required to serve:

- Kettle and Stony Point First Nation and Lambton Shores
- Milverton, Rostock and Wartburg; and
- Prince Township

The applications have been filed under section 90 of the *Ontario Energy Board Act, 1998*. On May 18, 2017, the Batchewana First Nation of Ojibways requested intervenor status and cost eligibility. The Batchewana First Nation claimed that its rights and interests trigger the Crown's duty to consult and argued that consultation had thus far been deficient. In Procedural Order No. 9 issued on June 7, 2017, OEB noted that the submission process would exclude Union's leave to construct application to service Prince Township and indicated that it would issue further procedural direction in the event that the Batchewana First Nation and Union failed to reach an agreement on Prince Township leave to construct application. This Decision has not considered the Prince Township leave to construct application.

### **Kettle and Stony Point First Nation and Lambton Shores**

The project consists of a proposed pipeline approximately 20.3 kilometres in length, including 10.4 kilometres of nominal pipe size (NPS) 4 inch plastic pipeline and 9.9 kilometres of NPS 2 inch plastic pipeline. A map showing the proposed installation is attached as Schedule B to this Decision and Order. Kettle Point, Ontario is the home of the Chippewas of Kettle and Stony Point First Nation.

The total estimated capital cost of the project is \$1.78 million. Union has forecasted 364 potential customers by year 10 of the project. Union currently holds the Certificates of



Public Convenience and Necessity and Franchise Agreements for the County of Lambton and Municipality of Lambton Shores.

An Environmental Protection Plan (EPP) for the project was prepared by Union's Environmental Planning Department in 2015. The EPP was updated in 2017 for the recent application. Union hired external consultants to complete archeological assessments for the project and an Environmental Constraints Screening Report. The proposed facilities will be constructed using Union's standard practices and procedures and Union has noted that construction will be in compliance with the mitigation measures identified in the EPP. Union has confirmed that the pipelines will be constructed in the manner recommended and described in the OEB document, "*Environmental Guidelines for Locating, Constructing and Operating Hydrocarbon Pipelines in Ontario*". Union has confirmed that all comments received from the Ontario Pipeline Coordinating Committee (OPCC), First Nations and other relevant agencies regarding the project and/or the EPP have been noted and addressed as required<sup>5</sup>.

The proposed facilities will be located within road allowances. Union has acquired in fee simple a small property for a proposed station where the facilities will tie into Union's existing facilities.

Union has consulted with the Chippewas of Kettle and Stony Point First Nation since 2004 and continues to consult with them on expansion of natural gas in their community. Union has indicated that it will have inspectors in the field who will be available to First Nations and Métis Nations of Ontario as a primary contact to discuss and review any issues that may arise during construction.

A standalone Discounted Cash Flow (DCF) analysis was completed for the project consistent with the OEB's recommendations in the E.B.O. 188 Report on Natural Gas System Expansion.

### **Milverton, Rostock and Wartburg**

Union has proposed 47.39 kilometres of new piping consisting of 20.5 kilometres of NPS 4 inch steel piping, 4.125 kilometres of NPS 4 inch plastic piping and 22.765 kilometres of NPS 2 inch plastic pipeline. A map showing the proposed installation is attached as Schedule C to this Decision and Order. The proposed facilities will provide

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<sup>5</sup> EB-2015-0179, Revised Application, March 31, 2017, Exhibit A, Tab 2, Section A, Schedule 11, page 3

service to the communities of Milverton, Rostock and Wartburg as well as the residents and businesses between Sebringville and Milverton.

The total estimated capital cost of the project is \$5.03 million. Union is forecasting a total of 525 existing residential, 41 existing multi-family residential, 100 new residential, 66 existing medium and small commercial, 6 existing large commercial and 1 existing seasonal customers to be attached by the tenth year of the project.

Union explored a compressed natural gas supply model to service Milverton but the alternative would increase the operating costs by over \$400 per year per attached customer as compared to a traditional pipeline.

Union currently holds the Certificates of Public Convenience and Necessity and Franchise Agreements for the County of Perth, Municipality of Perth South and Municipality of Perth East.

An EPP for the project was prepared by Union's Environmental Planning Department in 2015. The EPP was updated in 2017 for the recent application. Union hired external consultants to complete archeological assessments for the project and an Environmental Constraints Screening Report. The proposed facilities will be constructed using Union's standard practices and procedures and Union has noted that construction will be in compliance with the mitigation measures identified in the EPP. Union has confirmed that the pipelines will be constructed in the manner recommended and described in the OEB document, "*Environmental Guidelines for Locating, Constructing and Operating Hydrocarbon Pipelines in Ontario*". Union has confirmed that all comments received from the OPCC, First Nations and other relevant agencies regarding the project and/or the EPP have been noted and addressed as required<sup>6</sup>.

The proposed facilities will be located within road allowances. Union has been advised by the County of Perth that they will be contacting the landowners along the current travelled road and will be acquiring any necessary land rights to incorporate the travelled road within the actual road allowance, to ensure that the proposed pipeline is located within the road allowance. A distribution station in Milverton will be required. Union has indicated that it has an agreement in principle for the purchase of fee simple rights for the proposed station facilities. Distribution stations will also be required for Rostock and Wartburg. These stations will be installed within road allowances and no permanent land rights are required.

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<sup>6</sup> EB-2015-0179, Revised Application, March 31, 2017, Exhibit A, Tab 2, Section B, Schedule 11, page 3

Union notified a number of First Nations and Métis Nations of Ontario about the project. Union received only one response, from the Chippewas of the Thames First Nation, who stated that the project was not in their traditional territory and they did not need to be consulted further. Union has further confirmed that it will have inspectors in the field who will be available to First Nations and Métis Nations of Ontario as a primary contact to discuss and review any issues that may arise during construction. When Union completes the necessary archeological assessments for the Project, Union will consult with and provide the results of the survey to any First Nations and/or Métis upon their request.

A standalone Discounted Cash Flow (DCF) analysis was completed for the project consistent with the OEB's recommendations in the E.B.O. 188 Report on Natural Gas System Expansion.

## 4 OEB FINDINGS

Union's revised application is guided by the Generic Community Expansion Decision. The Generic Decision proposed stand-alone rates as the most appropriate mechanism to ensure recovery of project costs and prevent any cross-subsidization. However, it did indicate that incumbent utilities could still propose a surcharge over and above existing rates to recover the shortfall in revenues to cover the cost of expansion. Union has proposed a surcharge for the proposed communities and has fixed the quantum for the entire duration of the surcharge which ranges from 12 to 40 years.

With the exception of the Canadian Propane Association (CPA), the other intervenors and OEB staff supported the community expansion projects of Union. The School Energy Coalition (SEC), Consumers Council of Canada (CCC) and Vulnerable Energy Consumers Coalition (VECC) raised certain issues related to the allocation of risk between existing ratepayers, expansion ratepayers and Union.

CPA in its submission made several arguments and submitted that the application is not compliant with the Generic Decision and should be rejected. CPA also alleged that Union had not demonstrated a need for the projects. In its May 2, 2017 letter, the OEB specifically noted that it would accept CPA as an intervenor only with respect to the issue of the term of the rate stability period in this phase of the proceeding. However, CPA has made submissions with respect to other issues including Union's forecasted attachment rate. The OEB has only considered CPA's submissions that address the issues in the application and Union's proposal for a rate recovery approach to facilitate natural gas service in the communities.

The intervenors are concerned about the possibility of a cross-subsidy between existing and new community expansion customers, which is not permitted as per the Generic Decision of the OEB. Union has agreed to assume the risk of under-forecasting the number of attachments for the first 10 years of the project. In other words, Union will not attempt to recover any forgone revenue for the expansion projects if the forecasted attachments or volumes are not achieved during the first 10 years of the projects. The intervenors are not opposed to the risk that Union is willing to undertake for the first 10 years of the project. However, following the end of the 10-year forecast period, Union proposes to use the actual attachments and the actual SES revenue for ratemaking purposes, subject to OEB review and approval. In other words, since Union proposes to reset base rates based on actual attachments, any shortfall in revenue requirement (from forecast) from year 11 could be borne by all ratepayers (new and existing). SEC and CCC have raised this issue and they are of the opinion that under no circumstances

should existing ratepayers bear any portion of the expansion costs. CCC argued that the protection afforded to existing customers by the Generic Decision should not be removed as a result of Union exercising the option to propose a surcharge to existing rates as compared to charging stand-alone rates in the new communities.

SEC and OEB staff submitted that after the 10-year forecast risk period is over, Union should be required to redo the E.B.O. 188 Discounted Cash Flow analysis updating only for the actual prudently incurred capital costs and the actual customer attachments, to determine an updated PI. SEC further submitted that if the output of the revised calculation differs from the original PI in the application, Union should be required to adjust the SES to ensure the project has a PI of 1.0 over the first 40 years of the project.

CCC in its submission disagreed with the possibility of revising the SES at a future date. CCC submitted that once set, the SES should not be increased with respect to the quantum or duration. This would be unfair to community expansion customers who have based their attachment decision on a surcharge that is fixed in terms of rate and duration. CCC submitted that Union should bear the entire risk associated with the expansion projects as a result of their reliance on a SES charge rather than stand-alone rates.

VECC on the other hand has argued that the proposed projects fall within the policies of E.B.O. 188 and they should be included in Union's investment portfolio. VECC has argued that all the proposed projects are contiguous to Union's current serving territory. In other words, the projects are eligible to be at a PI of 0.8 to 1.0 as per the existing E.B.O. 188 guidelines. VECC submitted that the OEB should order Union to recalculate the SES at the mid-point PI of 0.90 and incorporate these projects into its investment portfolio.

VECC has argued that the projects are contiguous to Union's current distribution system. This is incorrect as the projects are not normal distribution system expansion projects such as providing service to a new subdivision. Further, in many subdivision projects, the developer charges new buyers for providing utility and other services that reflects the contribution in aid-of-construction charged by the utilities. All the proposed projects require installation of a main and are not economically feasible under the current guidelines. If the projects would fit under the current guidelines or the expansion customers would be willing to make the required capital contribution, Union would have already expanded into the communities. It was clear in the Generic Proceeding that these projects required a different approach and subsidy from existing customers was not appropriate as the benefits to the new community expansion customers of

converting to natural gas far outweigh the costs to serve them. Setting a PI of 0.9 would require a subsidy from existing customers.

Although the OEB has determined a preference for stand-alone rates to facilitate community expansion, the Generic Decision does not preclude incumbent utilities from proposing a surcharge over and above existing rates. The OEB supports the proposed rate recovery approach of Union and approves the SES with respect to the quantum, proposed duration and in the manner in which Union intends to implement the surcharge, for all four expansion projects including Prince Township. The OEB also approves the forecast attachments in the proposed communities for revenue requirement calculations.

In making this determination, the OEB understands that the rates of new community expansion customers will not remain fixed for the duration of the 10-year forecast risk period. Although the SES will remain fixed for the proposed duration of the surcharge, the base rates will change during the (10-year) rate stability period based on the rate plan approved by the OEB, which could include cost of service rate adjustments, incentive rate setting adjustments and/or Z-factor adjustments. The OEB notes that the system serving the new communities is part of the Union Gas system and not operationally separate from the rest of Union's system. The community expansion customers will be charged existing rates and therefore would be responsible for recovery of OEB-approved costs related to operating the entire system.

In approving a surcharge to existing rates, the OEB agrees with staff that in cases where there is no competition to provide gas distribution services to a new community, a surcharge to existing rates is a cost-effective and reasonable approach to recover project costs. Developing individual rates for each new expansion community may not be a viable option in every case.

SEC and OEB staff have argued that should Union seek recovery for any revenue requirement shortfall after the end of the initial 10-year period, it must be supported by a revised PI calculation that uses actual capital costs and actual customer attachments. The OEB agrees with this approach and will require Union to provide a revised DCF calculation based on actuals after the 10-year forecast risk period is over in the event that Union seeks to recover any revenue requirement shortfall. The OEB will determine the appropriate revenue recovery methodology at that time. The OEB's determination in the Generic Proceeding that cross-subsidies from existing customers are inappropriate will govern that review.

### Capital Costs

Union proposed to bring forward any variance between actual and forecast capital costs in a future rate application. This would presumably occur before the end of the 10-year forecast period, after the assets are placed into service. If capital expenditures exceed forecast, all customers would be liable for the additional costs as the rates are based on a common rate base. However, the prudence of excess capital costs incurred would be subject to an OEB review.

SEC submitted that Union should bear the risk of capital cost overruns during the first 10-year period similar to the treatment with customer attachments. CCC made a similar argument proposing that Union should bear the risk associated with the forecast capital costs of the projects and with respect to forecast customer attachments. VECC submitted that Union should be required to calculate the SES one year after each project is completed. At the time of recalculating the SES charge, Union must provide evidence supporting any capital cost overrun of greater than 10% of its original estimate. Union in reply argued that VECC's position was arbitrary and would not reflect all capital spending arising from ongoing customer attachments that cannot be fully considered until after the 10-year forecast risk period.

The OEB agrees with Union that recalculating the SES charge after one year of project completion is too early considering that a number of customers would still be attaching to the system and Union would still be incurring capital costs. Since Union has proposed to use existing rates in the new communities, the rates in the expansion communities will be based on a common rate base. Union's proposed treatment of capital costs is the same as other distribution system expansion projects that form part of the common rate base. The community expansion projects are no different and the OEB agrees that consideration of Union's proposal on this basis is warranted. The OEB will determine the appropriate treatment of any capital cost overrun at the time of rebasing.

### Municipal Contributions

Following the OEB's Decision in the Generic Proceeding, Union's revised application proposed that if a municipality or First Nation makes an upfront voluntary financial contribution to a project, Union will treat the contribution as an Aid-to-Construction and accordingly reduce the net capital cost of the project. If a municipality or First Nation agrees to provide ongoing financial support in the form of an annual payment for an agreed upon term, Union will treat the financial support as revenue.

Union has indicated that the Township of Perth East, which includes the Town of Milverton and surrounding areas, the Delaware Nation of Moraviantown and Prince Township have agreed to make a financial contribution for the first 10 years of the project.

The OEB has no concerns with Union's proposed approach.

#### System Advancement Costs

In its original application, Union proposed that costs for upstream distribution system reinforcements be included in the economic assessment for any new attachments or load additions. Accordingly, Union has included a system advancement cost of \$126,500 for the Milverton expansion project. The advancement cost recognizes an estimated reinforcement cost of \$1.87 million to occur in year 2020 as compared to the need for the reinforcement in 2022 without demands from the Milverton expansion.

The OEB approves the inclusion of the proposed system advancement charges for the Milverton expansion project.

#### Governments Grants

Union has submitted that any government funding for the four community expansion projects would be first used to reduce any necessary aid-to-construct for the project, and any residual grant funding would be used to reduce the SES term. The OEB accepts Union's proposed approach.

The project to provide service to the Delaware Nation of Moraviantown First Nation community is contingent upon grant funding or some other means of direct Aid-to-Construction to meet a minimum PI of 1.0. Union has indicated that it intends to apply by July 31, 2017 for a grant from the Ontario Natural Gas Grant Program for the project. In the absence of additional funding, Union has indicated that the project will not proceed. The project does not require leave to construct approval of the OEB<sup>7</sup>.

The OEB approves Union's proposal to provide service to the Delaware Nation of Moraviantown First Nation community with the understanding that it is contingent upon

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<sup>7</sup> A leave to construct approval under *section 90* is required from the OEB if any of the following criteria are met: (1) diameter of pipe is 12 inches or greater; (2) the operating pressure is 2,000 kilopascals or greater; (3) the cost of project is greater than or equal to \$2.0 million, or (4) the length of pipe required exceeds 20 km.



some type of additional funding. Union is required to update the OEB within 90 days of the date of this Decision on the status of the Moraviantown project.

#### Leave to Construct Approval

Union has requested leave to construct approvals for facilities required to serve:

- Kettle and Stony Point First Nation and Lambton Shores
- Milverton, Rostock and Wartburg
- Prince Township

The applications have been filed under section 90 of the *Ontario Energy Board Act, 1998*. As noted earlier, the OEB will not approve the Prince Township leave to construct application as part of this Decision. This application is subject to further negotiations between Union and the Batchewana First Nation of Ojibways. The OEB will issue further procedural direction based on the outcome of the negotiations between the two parties.

#### **Kettle Point and Lambton Shores**

The OEB finds that the construction of the project is in the public interest and grants leave to construct, subject to the Conditions of Approval attached as Schedule D to this Decision and Order.

The OEB finds that Union's EPP adequately addresses the environmental issues. The OEB will impose Conditions of Approval relating to environmental mitigation and construction monitoring and reporting. The OEB is satisfied that Union has made appropriate efforts to consult with affected Indigenous communities with respect to the Project. The OEB is further satisfied that Union has met the objectives of the OEB's Environmental Guidelines<sup>8</sup> regarding consultation with Indigenous communities and that the duty to consult has been sufficiently discharged for the Project as of the time of this Decision.

The OEB expects Union to continue to consult proactively with affected First Nations and Métis communities, as appropriate, throughout the construction phase of the Project to address any concerns that may arise.

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<sup>8</sup> Environmental Guidelines for the Location, Construction and Operation of Hydrocarbon Pipelines and Facilities in Ontario, 7<sup>th</sup> Edition, 2016

### **Milverton, Rostock and Wartburg**

The OEB finds that the construction of the project is in the public interest and grants leave to construct, subject to the Conditions of Approval attached as Schedule D to this Decision and Order.

The OEB finds that Union's EPP adequately addresses the environmental issues. The OEB will impose Conditions of Approval relating to environmental mitigation and construction monitoring and reporting. The OEB is satisfied that Union has made appropriate efforts to consult with affected Indigenous communities with respect to the Project. The OEB is further satisfied that Union has met the objectives of the OEB's Environmental Guidelines regarding consultation with Indigenous communities and that the duty to consult has been sufficiently discharged for the Project as of the time of this Decision.

The OEB expects Union to continue to consult proactively with affected First Nations and Métis communities, as appropriate, throughout the construction phase of the Project to address any concerns that may arise.

### **ORDER**

1. Union Gas Limited is granted leave, pursuant to sections 90(1) and 91 of the Act to construct pipelines approximately 20.3 kilometres in length, in the communities of Kettle and Stony Point First Nation and Lambton Shores, subject to the conditions of approval set out in Schedule D to this Decision and Order.
2. Union Gas Limited is granted leave, pursuant to sections 90(1) and 91 of the Act to construct pipelines approximately 47.39 kilometres in length, in the communities of Milverton, Rostock and Wartburg, subject to the conditions of approval set out in Schedule D to this Decision and Order.
3. Union shall file with the OEB, and shall also forward to all intervenors a draft Rate Order attaching a proposed Tariff of Rates and Charges reflecting the Board's findings in this Decision on or before August 18, 2017. The draft Rate Order must show the System Expansion Surcharge on all impacted rate schedules.

4. Intervenors and OEB staff shall file any comments on the draft Rate Order with the OEB and forward them to Union by August 24, 2017. Note that cost awards will not be provided for review and comments related to the draft Rate Order.
5. Union shall file with the OEB and forward to the intervenors responses to any comments on its draft Rate Order by August 29, 2017.
6. Eligible intervenors shall file with the OEB and forward to Union their respective cost claims on or before August 31, 2017.
7. Union shall file with the OEB and forward to the intervenors any objections to the claimed costs of the intervenors on or before September 8, 2017.
8. If Union objects to the intervenor costs, intervenors shall file with the OEB and forward to Union any responses to any objections for cost claims on or before September 14, 2017.
9. Union shall pay the OEB's costs of, and incidental to, this proceeding immediately upon receipt of the OEB's invoice.

All filings to the OEB must quote the file number, EB-2015-0179 and be made electronically in searchable / unrestricted PDF format through the OEB's web portal at <https://www.pes.ontarioenergyboard.ca/eservice/>. Two paper copies must also be filed. Filings must clearly state the sender's name, postal address and telephone number, fax number and e-mail address. Parties must use the document naming conventions and document submission standards outlined in the RESS Document Guideline found at <http://www.oeb.ca/Industry>. If the web portal is not available parties may email their documents to the address below. Those who do not have internet access are required to submit all filings on a CD in PDF format, along with two paper copies. Those who do not have computer access are required to file 7 paper copies.

All communications should be directed to the attention of the Board Secretary at the address below, and be received no later than 4:45 p.m. on the required date.

**ADDRESS:**

Ontario Energy Board  
P.O. Box 2319  
2300 Yonge Street, 27th Floor  
Toronto ON M4P 1E4  
Attention: Board Secretary

E-mail: [boardsec@oeb.ca](mailto:boardsec@oeb.ca)  
Tel: 1-888-632-6273 (Toll free)  
Fax: 416-440-7656

**DATED** at Toronto, **August 10, 2017**

**ONTARIO ENERGY BOARD**

*Original Signed By*

Kirsten Walli  
Board Secretary

**SCHEDULE A**  
**DECISION AND ORDER**  
**UNION GAS LIMITED**  
**EB-2015-0179**  
**AUGUST 10, 2017**  
**ONTARIO ENERGY BOARD PROCESS**

## OEB Process

In Procedural Order No. 6 issued on April 7, 2017, the OEB determined that parties interested in intervening in Union's revised application must reapply for intervenor status and cost eligibility. The OEB noted that cost eligibility would be granted to parties that are directly impacted by the application and potential intervenors seeking cost eligibility must describe in their intervention request how Union's application will impact their members.

The following parties applied for intervenor status:

- Building Owners and Managers Association Toronto (BOMA)
- Canadian Propane Association (CPA)
- Consumers Council of Canada (CCC)
- EPCOR Southern Bruce Gas Inc. (EPCOR)
- Energy Probe Research Foundation (Energy Probe)
- Independent Electricity System Operator (IESO)
- London Property Management Association (LPMA)
- Northeast Midstream LP
- School Energy Coalition (SEC)
- The Corporation of the Township of Prince
- Vulnerable Energy Consumers Coalition (VECC)

Each of BOMA, CCC, Energy Probe, LPMA, SEC and VECC also applied for cost award eligibility. No objections were received regarding the requests for intervenor status or cost eligibility.

In Procedural Order No. 7 issued on April 26, 2017, the OEB granted intervenor status to CCC, IESO, SEC, the Corporation of the Township of Prince and VECC. The OEB determined that these parties had a direct interest in the outcome of the hearing and the OEB anticipated their contributions to be of assistance in making its determinations. Each of CCC, SEC and VECC were also found to be eligible for an award of costs under the OEB's *Practice Direction on Cost Awards*. However, the OEB determined that BOMA, EPCOR, Energy Probe, LPMA and Northeast Midstream would not be granted intervenor status for this phase of the proceeding. The OEB did not consider it necessary to obtain the views of BOMA, EPCOR, Energy Probe and LPMA on the introduction of natural gas service in communities where they have no or minimal representation. The OEB further noted that the views of these parties were canvassed thoroughly in the Generic Hearing (EB-2016-0004).

In the Procedural Order, the OEB also provided a schedule for filing interrogatories, response to interrogatories and a settlement conference with the objective of reaching a settlement among the parties on the issues.

The CPA submitted a late intervention request on April 27, 2017. Union objected to the intervention stating that given the findings in the Generic Proceeding on Community Expansion that disallowed cross-subsidies from existing customers, the focus of the CPA has been addressed and there was no need for CPA's further participation in this proceeding. Union further argued that CPA's contention that it intended to focus on Union's forecast and estimates were not required as OEB staff and other intervenors could adequately address these matters.

In reply, CPA quoted section 21(4) of the *Ontario Energy Board Act, 1998*, wherein the OEB is mandated to hold a hearing where there are persons other than the applicant who will be adversely impacted in a material way by the outcome of the proceeding. The CPA also referred to Rule 22.02 of the OEB's *Rule of Practice and Procedure* that states that intervenors should be those who have a substantial interest in the proceeding. The CPA argued that its members without a doubt would be adversely affected in a material way by approval of the application and therefore have a substantial commercial interest in the proceeding.

In a letter date May 2, 2017, the OEB accepted the intervention of CPA but limited their participation to only addressing the term of the rate stability period.

On May 18, 2017, the Batchewana First Nation of Ojibways requested intervenor status and cost eligibility. Batchewana First Nation claimed Aboriginal and treaty rights in the areas served by the proposed Prince Township expansion. The Batchewana First Nation claimed that its rights and interests trigger the Crown's duty to consult and argued that consultation had thus far been deficient.

In response, Union filed a letter dated May 24, 2017 indicating that it did not object to the intervention request of the Batchewana First Nation. However, it submitted that the intervention request applied only to the section 90 leave to construct proposal to serve Prince Township and did not impact the remaining three proposed projects or the section 36 rate surcharge proposal for each project.

In Procedural Order No. 8 issued on May 25, 2017, the OEB approved the intervention request of the Batchewana First Nation and its request for cost eligibility under the OEB's *Practice Direction on Cost Awards*. The OEB agreed with Union that the Batchewana First Nation's interest was limited to Union's leave to construct application

to service the Prince Township, and did not impact the other proposed projects or the section 36 rate surcharge proposal of the proposed projects.

The OEB further encouraged Union to engage the Batchewana First Nation with a view to resolving any potential issues on the Prince Township leave to construct application. The OEB directed both parties to provide an update to the OEB and intervenors on the consultations undertaken with respect to the Prince Township leave to construct by June 26, 2017.

A settlement conference was held on May 29, 2017. However, Union and the intervenors were unable to reach a settlement on any of the issues. Union filed a letter dated June 6, 2017 proposing a written hearing with an expedited process to file argument-in-chief and submissions.

In Procedural Order No. 9 issued on June 7, 2017, the OEB determined that the application would proceed by way of a written hearing. The OEB further noted that the process would exclude Union's leave to construct application to service Prince Township and indicated that it would issue further procedural direction in the event that the Batchewana First Nation and Union failed to reach an agreement on Prince Township leave to construct application.

The OEB scheduled a process for filing of Union's argument-in-chief, final arguments of all parties and reply argument by Union.

Pursuant to Procedural Order No. 8, Union filed an update on its engagement with Batchewana First Nation on June 26, 2017. In its letter, Union indicated that it first notified the Batchewana First Nation of the Prince Township project in June 2015. At that time, Union also provided Batchewana with a copy of the Environmental Protection Plan (EPP) for the project. Union noted that over the past month, there had been a constructive and meaningful dialogue between Union and Batchewana and a mutually agreeable process was reached for consultation going forward. Union subsequently resent the EPP, Project Description, the Archaeology and Cultural Heritage Reports and related mapping to Batchewana. In addition to the letter, Union filed an interaction log detailing its engagement with the Batchewana First Nation.

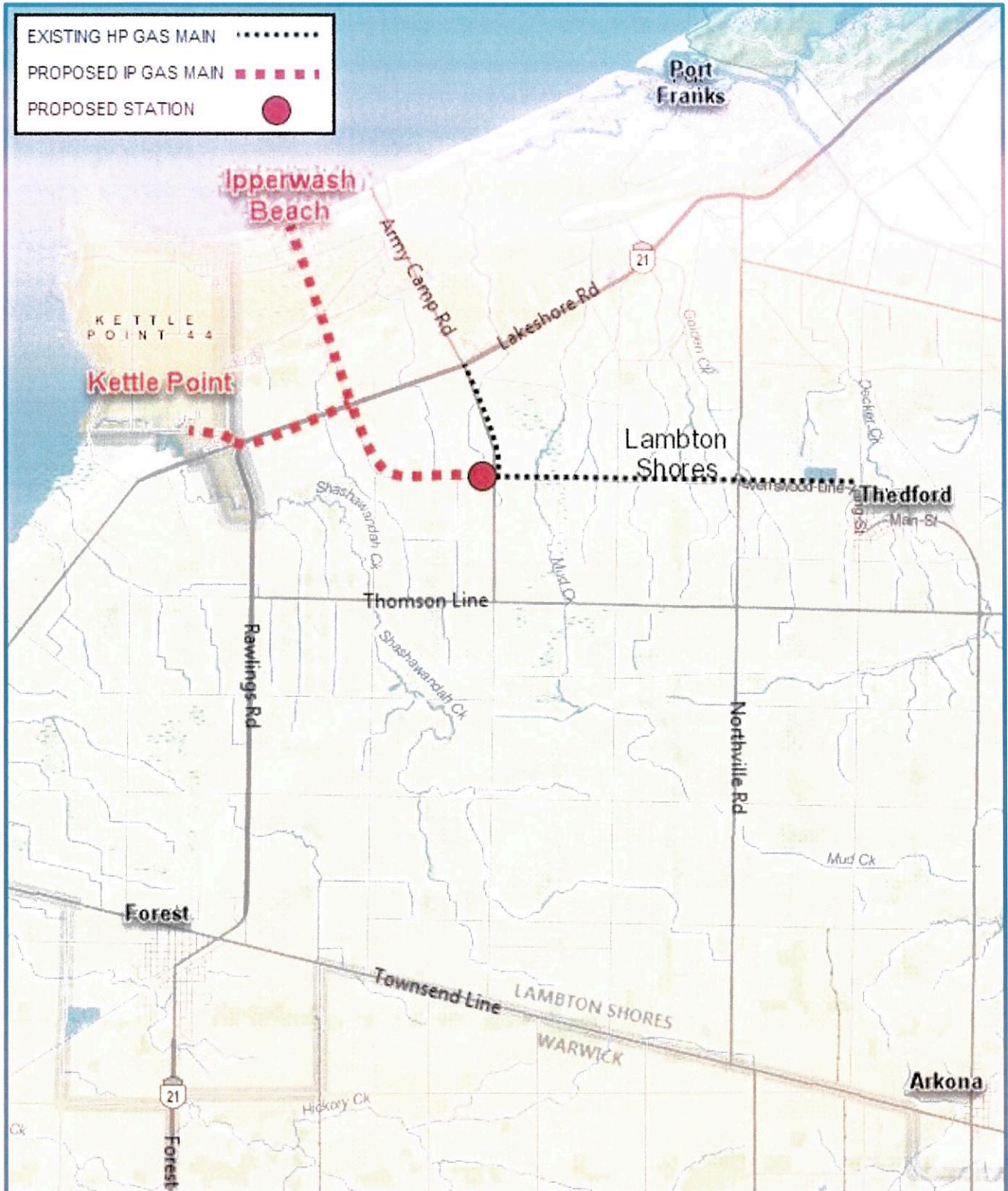
The Batchewana First Nation too filed an update on the same day as Union. In its letter, Batchewana confirmed that Union had engaged with the First Nation on the Prince Township natural gas expansion. There was a broad agreement on a list of specific tasks and Batchewana had provided their Engagement and Accommodation Protocol that was to be reviewed by Union Gas. Union provided a series of documents

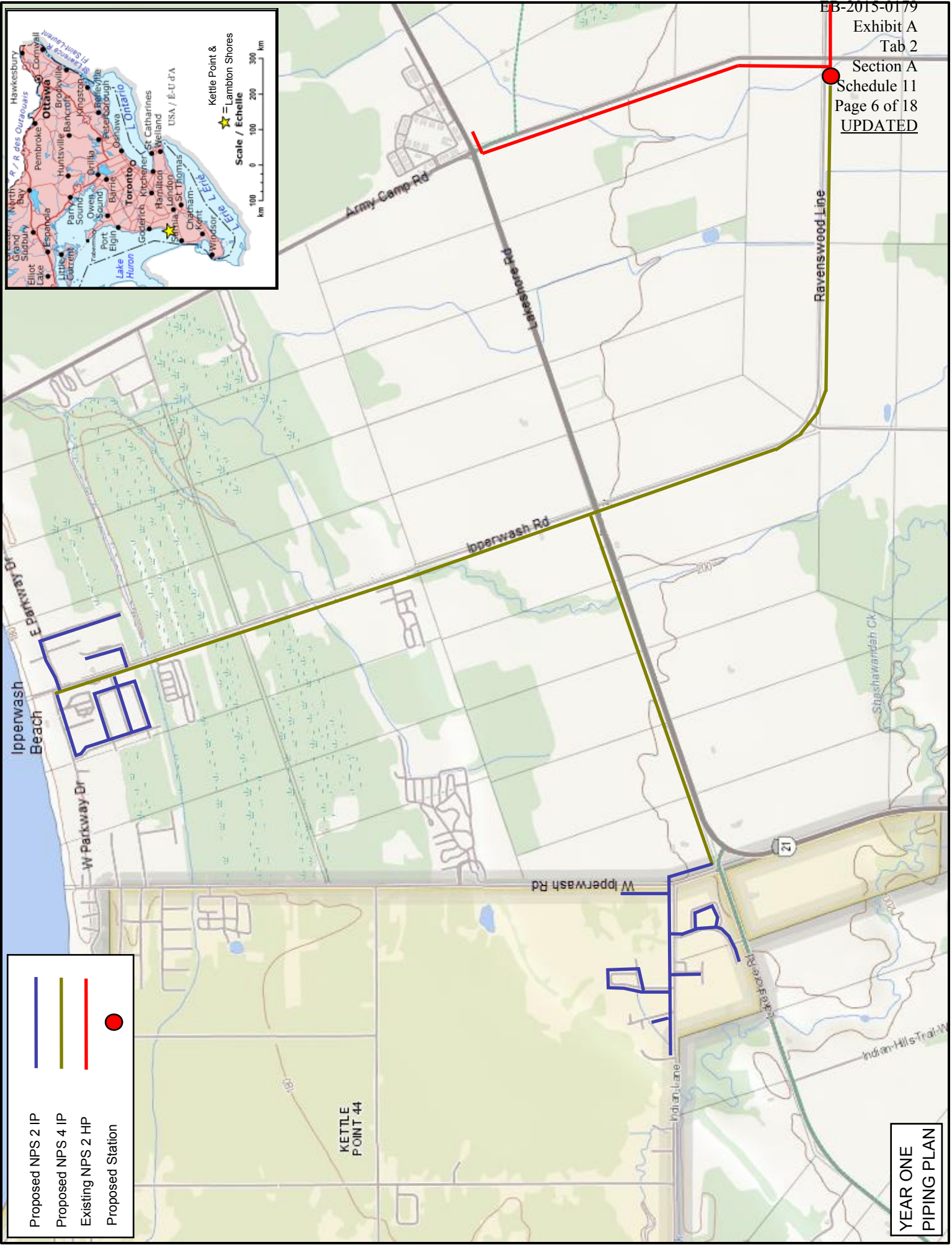
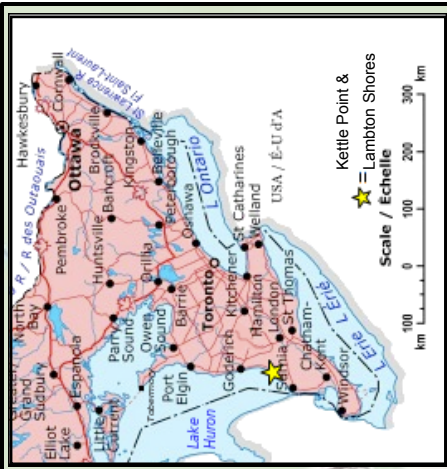


mentioned in its letter and was committed to submission of a Consultation/Consent Plan to the Batchewana Natural Resources Department. The parties agreed to continue their dialogue but the Batchewana First Nation could not commit to meeting Union's requested deadline of July end 2017 for a decision by Chief and Council. Batchewana noted that it will be able to advise on a precise timeline when the final list of activities that had been agreed to by both parties have been confirmed and the Chief and Council have received input from the First Nation residents.

**SCHEDULE B**  
**DECISION AND ORDER**  
**UNION GAS LIMITED**  
**EB-2015-0179**  
**AUGUST 10, 2017**  
**MAP OF KETTLE AND STONY POINT AND LAMBTON SHORES**

# Kettle Point & Lambton Shores – Community Expansion Key Plan





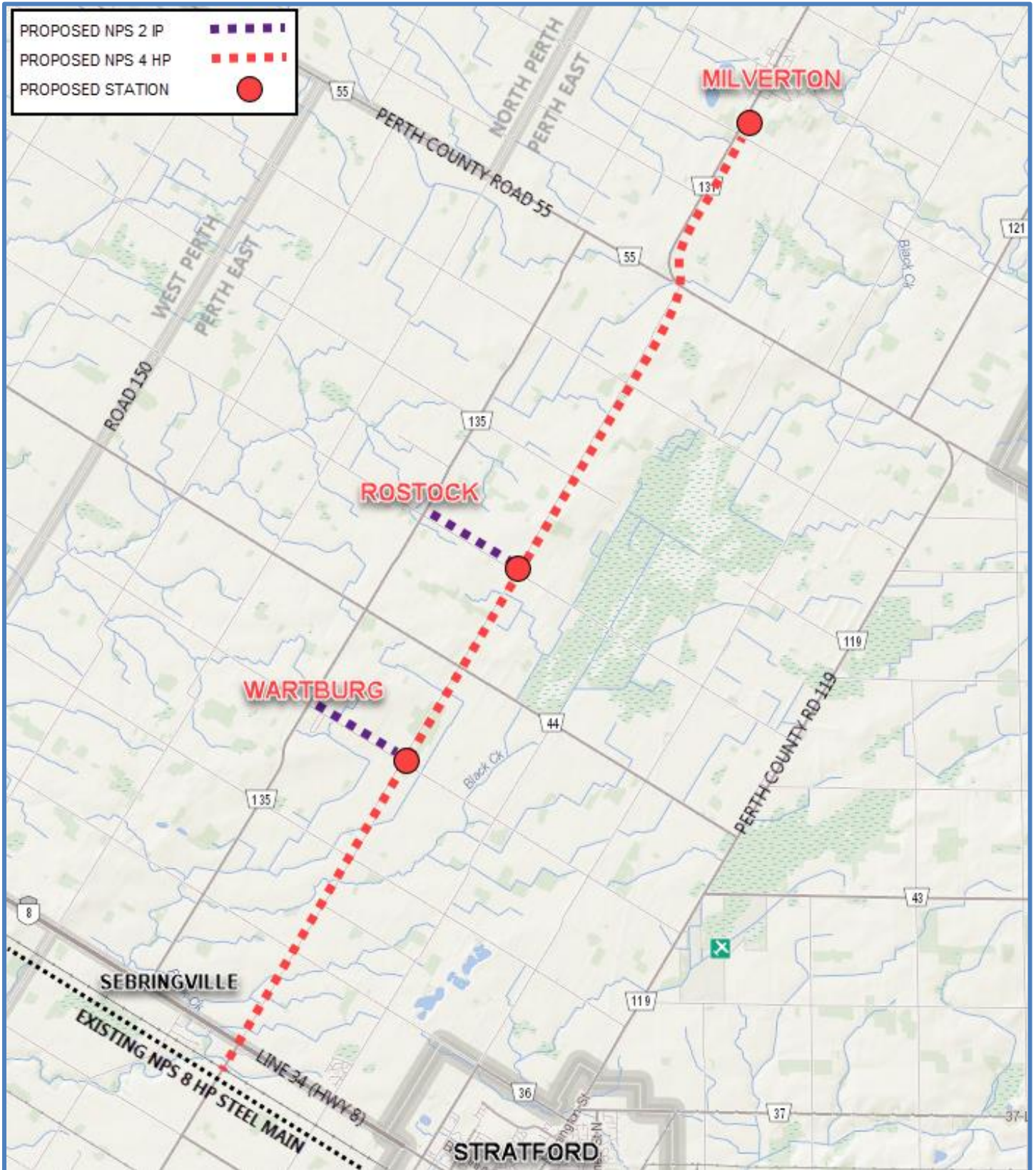
- Proposed NPS 2 IP
- Proposed NPS 4 IP
- Existing NPS 2 HP
- Proposed Station

KETTLE POINT 44

YEAR ONE PIPING PLAN

**SCHEDULE C**  
**DECISION AND ORDER**  
**UNION GAS LIMITED**  
**EB-2015-0179**  
**AUGUST 10, 2017**  
**MAP OF MILVERTON, ROSTOCK AND WARTBURG**

# MILVERTON, ROSTOCK & WARTBURG - Community Expansion Key Plan



**SCHEDULE D**  
**DECISION AND ORDER**  
**UNION GAS LIMITED**  
**EB-2015-0179**  
**AUGUST 10, 2017**  
**LEAVE TO CONSTRUCT**  
**CONDITIONS OF APPROVAL**

**Leave to Construct Conditions of Approval  
Application under Section 90 of the *Ontario  
Energy Board Act, 1998***

**Union Gas Limited**

**EB-2015-0179**

1. Union Gas Limited (Union) shall construct the facilities and restore the land in accordance with the OEB's Decision and Order in EB-2015-0179 and these Conditions of Approval.
2.
  - a) Authorization for leave to construct shall terminate 12 months after the decision is issued, unless construction has commenced prior to that date.
  - b) Union shall give the OEB notice in writing:
    - i. of the commencement of construction, at least 10 days prior to the date construction commences;
    - ii. of the planned in-service date, at least 10 days prior to the date the facilities go into service;
    - iii. of the date on which construction was completed, no later than 10 days following the completion of construction; and
    - iv. of the in-service date, no later than 10 days after the facilities go into service.
3. Union shall implement all the recommendations of the Environmental Protection Plan filed in the proceeding.
4. Union shall advise the OEB of any proposed change to OEB-approved construction or restoration procedures. Except in an emergency, Union shall not make any such change without prior notice to and written approval of the OEB. In the event of an emergency, the OEB shall be informed immediately after the fact.
5. Union shall file, in the proceeding where actual capital costs of the project are proposed to be included in rate base, a Post Construction Financial Report, which shall indicate the actual capital costs of the project and shall provide an explanation of any significant variances from the cost estimates filed in this proceeding.
6. Both during and after construction, Union shall monitor the impacts of construction, and shall file with the OEB one paper copy and one electronic (searchable PDF) version of each of the following reports:
  - a) a post construction report, within three months of the in-service date, which shall:



- 
- i. provide a certification, by a senior executive of the company, of Union adherence to Condition 1;
  - ii. describe any impacts and outstanding concerns identified during construction;
  - iii. describe the actions taken or planned to be taken to prevent or mitigate any identified impacts of construction;
  - iv. include a log of all complaints received by Union, including the date/time the complaint was received, a description of the complaint, any actions taken to address the complaint, the rationale for taking such actions; and
  - v. provide a certification, by a senior executive of the company, that the company has obtained all other approvals, permits, licenses, and certificates required to construct, operate and maintain the proposed project.
- b) a final monitoring report, no later than 15 months after the in-service date, or, where the deadline falls between December 1 and May 31, the following June 1, which shall:
- i. provide a certification, by a senior executive of the company, of Union adherence to Condition 3;
  - ii. describe the condition of any rehabilitated land;
  - iii. describe the effectiveness of any actions taken to prevent or mitigate any identified impacts of construction;
  - iv. include the results of analyses and monitoring programs and any recommendations arising therefrom; and
  - v. include a log of all complaints received by Union, including the date/time the complaint was received, a description of the complaint, any actions taken to address the complaint, the rationale for taking such actions.