



EB-2008-0139

IN THE MATTER OF the *Ontario Energy Board Act, 1998*, S.O. 1998, c.15, Schedule B;

AND IN THE MATTER OF an application by Union Gas Limited, under section 95 of the *Ontario Energy Board Act, 1998*, requesting exemption from the requirements of section 90(1) for an Order granting leave to construct natural gas pipelines and ancillary facilities in the City of Owen Sound and the Town of Thornbury, in the County of Grey.

BEFORE: Paul Vlahos
Presiding Member

Paul Sommerville
Member

DECISION AND ORDER

Union Gas Limited (“Union”) has filed an application with the Ontario Energy Board (the “Board”) dated June 18, 2008 seeking exemption from the requirement to obtain leave to construct a natural gas pipeline and ancillary facilities.

Union proposes to construct approximately 18.7 kilometres of 8 inch diameter natural gas pipeline and ancillary facilities in the City of Owen Sound and the Town of Thornbury, in the County of Grey.

According to Union, the Ministry of Transportation (MTO) plans to reconstruct/relocate Highway 26 between the Hamlet of Woodford and the Town of Thornbury. The MTO will commence this work in the spring of 2009 and complete it by the fall of 2010. This is a continuation of the reconstruction of Highway 26 which the MTO commenced in 2005. In order to facilitate the reconstruction/relocation of Highway 26, the MTO requires Union to relocate those portions of its 6 inch pipeline in areas where there are

conflicts between the new location of Highway 26 and the current location of the pipeline. The MTO approached Union with its plans for the highway upgrades in 2007 and indicated that it will serve Union with a Move Order¹ later this year.

Union is proposing to replace 18.7 km of the existing pipeline along Hwy 26 from Woodford to Thornbury. Union proposes to construct the Meaford to Thornbury (Phase I) section in 2008 and 2009 and the Woodford to Meaford (Phase II) section in 2009 which will meet MTO's requirements.

Section 90(1) of the *Ontario Energy Board Act* (the "Act") lists the criteria under which a person requires leave of the Board to construct a hydrocarbon pipeline. The replacement of the existing 6 inch diameter pipeline with the same size pipeline would ordinarily have been exempted under section 90(2). However, section 90(1)(b) of the Act requires leave to construct if the proposed hydrocarbon line is projected to cost more than the amount prescribed by the regulations. Ontario Regulation 328/03 made under the Act states in section 3, "The amount for the projected cost of a proposed hydrocarbon line for the purposes of clause 90(1)(b) of the Act is \$2 million." Union plans to increase the pipeline's diameter size from 6 inch to 8 inch to defer the need for future reinforcement of the East Owen Sound line and projects that the cost for the project, including pipeline, station, and interest during construction is \$3,430,000. Accordingly, leave to construct pursuant to section 90(1) of the Act would be required for the proposed construction. However, 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(1) without a hearing.

Union's application requests an exemption pursuant to section 95 of the Act.

The Board accepts Union's evidence that the pipeline will be located entirely within road allowances and is consequential to the Ministry of Transportation highway relocation and that no other person will be adversely affected by the project. Unions' plan to take this opportunity to increase the diameter size of the pipeline in order to defer future reinforcement is reasonable. These are special circumstances in this case that warrant exemption of the project from the requirements of section 90(1) of the Act.

¹ *Public Service Works on Highways Act*, R.S.O. 1990, Chapter P.49, section 2.(1)

In so finding, the Board has noted below the aspects of Union's evidence respecting certain other matters that the Board typically reviews in determining if a proposed project is in the public interest. The Board has also attached a set of conditions to apply to this project, which are attached to this Decision and Order.

Proposed Pipeline Design

According to Union's evidence, the design and pipe specifications, installation and testing of the proposed pipeline adhere to the requirements of Ontario Regulation 210/01 under the *Technical Standards and Safety Act*, Oil and Gas Pipeline Systems and the CSA Z662-03 Oil and Gas Pipeline Systems code.

Environmental Assessment

In its pre-filed evidence Union states that the MTO has completed a class environmental assessment for the proposed highway work. This report identified environmental features and mitigation measures that MTO proposes to complete. Union notes that the proposed relocation of the EOS line will be in the zone of influence of the MTO study area and that the features identified in the MTO report will also be impacted by the work Union is required to complete. For the 2008 pipeline construction, Union has completed an environmental screening for the project consistent with the requirements of E.B.O 188. Union states that it will complete an environmental screening for the 2009 construction of the project after the MTO assessment has been completed and provide a copy to the Board when it is completed.

All pipelines will be constructed in the manner recommended and described in the Board document "Environmental Guidelines for Locating, Constructing and Operating Hydrocarbon Pipelines in Ontario (2003)."

The conclusions of the environmental screening indicate that the environmental and socio-economic effects associated with construction of the project are generally short-term in nature and minimal. There are no significant cumulative effects as a result of the construction of the project.

Financial Feasibility

The total estimated cost for the project, including pipeline, station, and interest during construction (“IDC”) is \$3,430,000. Union has not conducted a financial feasibility analysis as the project is consequential to the MTO’s relocation requirements.

Land Issues and Form of Easement

Section 97 of the Act provides that a leave to construct will not be granted until the applicant has satisfied the Board that it has offered or will offer to each owner of land affected by the approved route or location an agreement in a form approved by the Board.

Union reviewed the pipeline project with the directly-affected municipalities and no concerns have been identified. As the pipeline will be constructed entirely within the road allowances, no permanent easements will be required.

Aboriginal Consultation Conducted by Union

When determining whether a project is in the public interest, the Board typically examines, among other things, whether the applicant has consulted with Aboriginal Peoples. In the subject application, there was no indication in the pre-filed evidence that Union has consulted with aboriginal peoples. However, the highway reconstruction/relocation will have an Environmental Assessment undertaken by the MTO which will involve a level of consultation with potentially affected First Nation groups and other Aboriginal Peoples as set out in the *Class Environmental Assessment for Provincial Transportation Facilities, 2000*.

THE BOARD ORDERS THAT:

The application by Union Gas Limited for an exemption from the requirements of section 90(1) of the Act, with respect to the construction of approximately 18.7 kilometres of 8 inch diameter natural gas pipeline and ancillary facilities in the City of Owen Sound and the Town of Thornbury, in the County of Grey, is approved subject to the Conditions of Approval attached as Appendix A to this Decision and Order.

DATED at Toronto September 4, 2008
ONTARIO ENERGY BOARD

Original Signed By

Kirsten Walli
Board Secretary

APPENDIX A
TO BOARD DECISION AND ORDER
IN THE MATTER OF EB-2008-0139
DATED September 4, 2008
CONDITIONS OF APPROVAL

EB-2008-0139

Union Gas Limited

East Owen Sound Replacement

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-2008-0139, 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 December 31, 2011, unless construction has commenced prior to then.
- 1.3 Except as modified by this Order, Union shall implement all the recommendations of the Environmental Screening filed in the pre-filed evidence, and all the recommendations and directives identified in the Ministry of Transportation's class environmental assessment.
- 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.

2. Project and Communications Requirements

- 2.1 The Board's designated representative for the purpose of these Conditions of Approval shall be the Manager, Facilities.
- 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 fulfilment 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 furnish the Board's designated representative with five copies of written confirmation of the completion of construction. A copy of the confirmation shall be provided to the Chair of the OPCC.
- 2.7 Union shall file with the Board's designated representative a copy of the Move Order served by the Ministry of Transportation for both phases of the project.
- 2.8 Union shall furnish the Board's designated representative with both the estimated project costs and environmental reports for the second phase of the project prior to commencement of construction of the second phase.
- 2.9 Union shall file with the Board's designated representative a detailed map showing the location of Phase II of the proposed pipeline once the location has been finalized and a Ministry of Transportation Move Order issued.

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 Other Approvals and Agreements

- 4.1 Union shall obtain all other applicable 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.