



EB-2012-0431

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 for an order pursuant to section 90 of the *Ontario Energy Board Act, 1998*, granting leave to construct a natural gas pipeline and facilities in the Municipality of Leamington and the Town of Lakeshore, in the County of Essex.

BEFORE: Paula Conboy
Presiding Member

Emad Elsayed
Member

DECISION AND ORDER

March 28, 2013

Union Gas Limited ("Union") filed an application with the Ontario Energy Board (the "Board") on November 23, 2012 under section 90 of the *Ontario Energy Board Act, 1998* (the "Act"), for an order granting Union leave to construct approximately 8.5 kilometres of Nominal Pipe Size ("NPS") 12 (inch diameter) natural gas pipeline (the "Proposed Pipeline") in the Municipality of Leamington and the Town of Lakeshore, in the County of Essex. The Board also notes that Union requires Board approval of the form of easement agreement provided in the application (as required by section 97 of the Act). The Board has assigned the application file number EB-2012-0431.

For the reasons set out below, the Board finds that the construction of the Proposed Pipeline is in the public interest and grants Union leave to construct subject to the Board's Conditions of Approval attached as Appendix A to this Decision and Order (the "Conditions of Approval"). The Board also approves the proposed form of Pipeline

Easement Agreement that has been offered or will be offered to all landowners affected by the approved route.

The Proposed Pipeline

The Proposed Pipeline will parallel the existing North Leamington Line from the Comber Transmission Station to the County Road 14 Station. The Proposed Pipeline will be constructed on a road allowance from the existing NPS 20 Panhandle Line to County Road 8 and on the abandoned railroad corridor south of County Road 8. There will be modifications at the Comber Transmission Station and a connection to the North Leamington Line at the County Road 14 Station to facilitate the Proposed Pipeline.

Construction of the Proposed Pipeline is planned to start in May, 2013 in order to meet the required in-service date of November, 2013.

A map showing the location of the Proposed Pipeline is attached as Appendix B to this Decision and Order.

The Proceeding

The Board issued a Notice of Application (“Notice”) dated January 10, 2013. On February 6, 2013, the Board received a letter of comment from Brookfield Renewable Energy Group (“Brookfield”). Board staff filed interrogatories on February 8, 2013 and Union filed interrogatory responses on February 15, 2013. Board staff filed a written submission on February 27, 2013 and Union filed its reply submission on March 8, 2013.

Infrastructure Crossing the Proposed Pipeline

In its letter of comment, Brookfield stated that it has overhead and underground infrastructure crossing the Proposed Pipeline and would like to be included in the planning and construction stages of the project. Brookfield stated that it would like a crossing agreement developed where it has underground intersections.

In response to Board staff interrogatories, Union stated that it is aware that Brookfield has overhead and underground infrastructure crossing the Proposed Pipeline. Union

stated that it has contacted Brookfield to begin planning the crossing of Brookfield's infrastructure. Union further stated that the planning process will develop protocols that will ensure that both Brookfield's and Union's facilities can co-exist without any negative impacts. Lastly, Union stated that it will contact Brookfield before crossing Brookfield's infrastructure during the construction stages of the Proposed Pipeline.

The Public Interest Test

This is an application under section 90 of the Act seeking an order for leave to construct a hydrocarbon pipeline. Section 96 of the Act provides that the Board shall make an order granting leave to carry out the work under section 90 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 considers the following factors:

1. Is there a need for the Proposed Pipeline?
2. Has the economic feasibility of the Proposed Pipeline been demonstrated?
3. What are the environmental impacts associated with construction of the Proposed Pipeline and have they been adequately addressed?
4. Are there any outstanding landowner matters for the Proposed Pipeline routing and construction?
5. Is the Proposed Pipeline designed in accordance with the current technical and safety requirements?

Each of these issues is addressed below.

The Need for the Proposed Pipeline

In its application, Union stated that it has received a number of requests for firm and interruptible natural gas service from greenhouse growers in the Leamington, Kingsville, Mersea Township, and Gosfield South Township area. These requests have come from new greenhouse operations, existing greenhouses that operate on fuels other than natural gas, and from growers who want to switch from interruptible service to firm natural gas service.

Union has entered into negotiations with 18 customers ("Contract Customers") who would account for 51% of the capacity of the Proposed Pipeline. Union stated that it

would continue to sign contracts with growers until the Proposed Pipeline is at full capacity. Union indicated that some growers have identified that they do not require additional natural gas service at the present time but will require additional service in the near future (“Forecast Customers”).

Union stated that although it is possible to only build for the Contract Customers who have shown an interest in the Proposed Pipeline, a more practical and economic approach is to build for Contract Customers and Forecast Customers.

In its reply submission, Union filed a Revised Contract and Forecast Customer Growth Schedule. Union also stated that the Proposed Pipeline’s capacity has now been substantially allocated in the first year of the project and there is a greater percentage of customers forecasted to switch from interruptible to firm service than what was originally forecasted.

The Board finds that Union has adequately substantiated the need for the Proposed Pipeline.

Project Economics – Feasibility of the Proposed Pipeline

The upfront capital cost for the Proposed Pipeline is estimated to be \$8.2 million. Union has employed an economic feasibility test consistent with the “Ontario Energy Board Guidelines for Assessing and Reporting on Natural System Expansion in Ontario” set out in the Ontario Energy Board’s EBO 188 “Report to the Board” dated January 30, 1998 (“EBO 188”).

In EBO 188, the Board determined that all individual projects must achieve a minimum threshold Profitability Index (P.I.) of 0.8 for inclusion in a utility's Rolling Project Portfolio. In that decision, the Board also determined that an overall project portfolio P.I. of 1.10 (to include a safety margin) or better is in the public interest.

Union calculated that the project P.I. would be 1.0 with an expected \$2 million contribution from growers. They also stated that when the Proposed Pipeline is included in Union’s 2013 new business investment portfolio, the resulting portfolio P.I.

would be 1.14. Further, the company indicated that including the Proposed Pipeline in Union's Rolling Project Portfolio as at October 2012 would result in a P.I. of 1.43.¹

In its interrogatory responses, Union stated that if contract negotiations are unsuccessful and the Proposed Pipeline is completed without any contribution from growers, the rate impact on a typical residential customer in Rate M1 would be less than \$0.50 per year.

Board staff submitted that given the stated purpose of the Proposed Pipeline is commercial in nature, namely to provide additional natural gas service to greenhouse growers, Union should be required to collect the \$2 million contribution before constructing the Proposed Pipeline. This would ensure that the Proposed Pipeline meets a P.I. of 1.0 on a stand alone basis and therefore not result in cross-subsidization from other ratepayers.

In its reply submission, Union indicated that capacity has now been substantially allocated in the first year of the project and that a greater percentage of existing customers are forecasted to switch from interruptible to firm service than what was originally forecasted, resulting in fewer new customers requiring additional distribution facilities.

The impact of these changes, in Union's submission, is that there are now additional revenues in the early years of the economic analysis as well as lower costs since there is no longer a need to construct new distribution facilities.

Union submitted that based on these changes, the calculated P.I. is 1.18² and the \$2 million contribution from the greenhouse growers to be collected prior to the start of construction is no longer required

The Board accepts Union's evidence on the cost estimates and will not require Union to collect a contribution from greenhouse growers prior to constructing the Proposed Pipeline.

The Board will require Union to file a Post Construction Financial Report of the actual costs of the Proposed Pipeline once it is completed.

¹ EB-2012-0431, Pre-filed Evidence, page 6

² Union reply submission, attachment #2, March 8, 2013

Environmental Impacts

The route selection for the Proposed Pipeline was completed in accordance with the *Environmental Guidelines for the Location, Construction and Operation of Hydrocarbon Pipelines and Facilities in Ontario, 6th edition, 2011* (“OEB Environmental Guidelines”). Union filed the results of the routing and environmental assessment in a report entitled *Leamington Expansion Project, Environmental Report* (the “ER”).

Union stated that, by following its standard construction practices and adhering to the mitigation measures identified in the ER, construction of this project will have negligible impacts on the environment.

To ensure this is the case, the Board has imposed monitoring and reporting requirements in the Conditions of Approval. The Board finds that the environmental plans proposed by Union are acceptable.

The Board is aware that other approvals will be required for construction of the Proposed Pipeline. Therefore, the Board is including in its Conditions of Approval the requirement for Union to “obtain all other approvals, permits, licences, and certificates required to construct, operate and maintain the proposed project.”

Landowner Matters

The Proposed Pipeline will be constructed on private easement lands, road allowances and an abandoned railway corridor owned by the Municipality of Leamington. Union has indicated that it will require permanent land rights from one private landowner. Union stated in its interrogatory responses that it has reached an agreement in principle with this landowner.

Union anticipates the timeline for obtaining all permits for location and construction is by April 15, 2013.

Union filed a Pipeline Easement Agreement that it proposes to offer affected landowners. Board staff did not raise any concern with the proposed form of agreement, and the Board approves it as filed.

Pipeline Design - Technical and Safety Requirements

Union confirmed that the design specifications for the Proposed Pipeline are in accordance with the requirements of Ontario Regulation 210/01, made under the *Technical Standards and Safety Act 2000*, Oil and Gas Pipeline Systems.

The Board finds that the Proposed Pipeline meets the construction and operational requirements for safe operation. The Technical Standards and Safety Authority, as the agency overseeing the operation of pipelines in Ontario, has the authority to enforce all of the applicable standards.

THE BOARD ORDERS THAT:

1. Union Gas Limited is granted leave to construct approximately 8.5 kilometres of NPS 12 natural gas pipeline and facilities located in the Municipality of Leamington and the Town of Lakeshore, in the County of Essex, subject to the Conditions of Approval set out in Appendix A to this Decision and Order.
2. Pursuant to section 30 of the *Ontario Energy Board Act, 1998*, Union shall pay the Board's costs of and incidental to, this proceeding immediately upon receipt of the Board's invoice.

DATED at Toronto, March 28, 2013

ONTARIO ENERGY BOARD

Original Signed By

Kirsten Walli
Board Secretary

Appendix A

Conditions of Approval

EB-2012-0431

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-2012-0431 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, 2014, 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 members of the Ontario Pipeline Coordinating Committee ("OPCC").
- 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 the actual capital costs of the project and shall explain all significant variances from the estimates filed in the 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 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.

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

Map of the Location of the Proposed Pipeline

SCHEDULE A

Comber

Panhandle Pipeline

County Rd. 46

Existing Comber Station

South Middle Rd.

Townline Rd.

Lakeshore Rd. 243

Lakeshore Rd. 245

Staples

Highway 77

County Rd. 8

Mersea Rd. 11

Mersea Rd. 10

Preferred Route

County Rd. 14

Existing County Road 14 Station

Mersea Rd. 8

Highway 77



Leamington Expansion Project

--- Preferred Route