



**EB-2013-0284**

**IN THE MATTER OF** the Ontario Energy Board Act,  
1998, 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 distribution pipeline in  
the City of Hamilton.

**BEFORE:** Marika Hare  
Presiding Member

## **DECISION AND ORDER**

**August 29, 2013**

Union Gas Limited (“Union”) filed an application with the Ontario Energy Board, (the “Board”) on August 9, 2013, under section 95 of the *Ontario Energy Board Act, 1998* (the “Act”), requesting an exemption from the requirements of Section 90 of the Act for an Order granting leave to construct a natural gas pipeline in the City of Hamilton.

Union has proposed to replace approximately 70 metres of the Dawn Parkway 48 pipeline in the vicinity of Lot 11, Concession 7 and Lot 13, Concession 9 in the City of Hamilton (formerly Town of Flamborough). Union stated that the results of a scheduled pipeline inspection in September 2012 identified integrity issues in the vicinity of the pipeline’s crossing of the Provincial Highway 6 owned by the Province of Ontario Ministry of Transportation (“MTO”), located in the City of Hamilton. Union has proposed to abandon approximately 45 metres of the existing pipeline currently in place and construct a new portion of pipeline adjacent to the existing pipeline. The pipeline replacement is scheduled to begin in September 2013 and be completed by November 2013.

Section 90 of the *Ontario Energy Board Act* states the following:

90.(1) 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 most than the amount prescribed by the regulations<sup>1</sup>;
- (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. 2003, c. 3, s. 63 (1).

#### Exception

90.(2) Subsection (1) does not apply to the relocation or reconstruction of a hydrocarbon line unless the size of the line is changed or unless the acquisition of additional land or authority to use additional land is necessary. 1998, c. 15, Sched. B, s. 90(2); 2003, c. 3, s. 63 (2).

Union's proposed pipeline construction project uses like-for-like pipeline size of nominal pipe size 48 inches. The estimated construction costs are \$3.92 million. Union requires a new easement for the replacement pipeline proposed to be constructed directly adjacent to the existing pipeline. Although the pipeline size will remain unchanged, leave to construct pursuant to section 90(1) of the Act would ordinarily be required for the proposed construction because Union is required to acquire additional land rights.

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 or 92 without a hearing". Union requested an exemption pursuant to section 95 of the Act for the following reasons:

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<sup>1</sup> Ontario Reg. 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."

1. Union's pipeline integrity program has demonstrated an immediate need for the pipeline replacement;
2. The directly affected landowners have not identified any issues with the project. The landowners have signed the necessary permanent and temporary agreements needed to complete the project. The permit process with MTO from the Highway 6 crossing has been started and MTO has provided Union with a letter of non-objection to the project;
3. The alternative to the proposed project would be to remove the existing pipeline and construct a new pipeline across Highway 6. This alternative is not practical as the pipeline is under the main highway between Guelph and Hamilton;
4. Union has completed an environmental screening for the replacement work. If the proposed mitigation measures are followed, there will be no long term significant environmental impacts as a result of this project; and
5. In order to ensure that there is no disruption of services to customers, the pipeline must be completed by November 2013.

Union states that temporary easements will be required from the landowner to the west of Provincial Highway 6 and these have been obtained. Union notes that it will not require any fee simple purchases of land to complete the project. Union states that it requires crossing permits or agreements from MTO, but as noted above, MTO has provided a letter stating that it has no objection to the proposed project.

### **Board Findings**

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 under the terms and conditions (the "Conditions of Approval") described in Appendix A.

The Board accepts Union's evidence that the pipeline replacement / relocation project is essential in order to adhere to Union's integrity management program and ensure safe

and reliable service to its customers, that there are no long-term environmental impacts of the construction project, and that the affected landowners have raised no concerns related to the construction project. Therefore, the Board finds that there are special circumstances that warrant exemption of the project from the requirements of section 90(1) of the Act. The Board has set out the Conditions of Approval that will apply to this project in Appendix A.

Given the Board's decision to grant Union an exemption from Section 90 of the Act, it is not necessary for the Board to make any further findings in this proceeding. However, for ease of reference, the Board has set out Union's evidence as it relates to project need, design and construction, project costs and economics, environmental assessment and land issue in Appendix B.

**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 70 metres of NPS 48 natural gas pipeline in the City of Hamilton is approved subject to the Conditions of Approval attached as Appendix A to this Decision and Order.

**DATED** at Toronto, August 29, 2013

**ONTARIO ENERGY BOARD**

*Original Signed By*

Kirsten Walli  
Board Secretary

**APPENDIX A**

**TO BOARD DECISION AND ORDER**

**BOARD FILE NO.: EB-2013-0284**

**DATED August 29, 2013**

**CONDITIONS OF APPROVAL**

**EB-2013-0284**

**Union Gas Limited**

**Dawn Parkway NPS 48 Replacement Project**

**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-2013-0284, and approved in this Order and these Conditions of Approval.
- 1.2 Unless otherwise ordered by the Board, authorization for Leave to Construct shall terminate December 31, 2013, unless construction has commenced prior to that date.
- 1.3 Union shall implement all the recommendations of the Environmental Review filed in the pre-filed evidence.
- 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 Ontario Pipeline Coordinating Committee ("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 file with the Board, prior to construction, all easement agreements related to the project.

#### **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**

**BOARD FILE NO.: EB-2013-0284**

**DATED August 29, 2013**

## **Project Need**

Union's integrity management program included a scheduled inspection of the Dawn Parkway NPS 48 pipeline in 2012. The inspection identified metal loss on a section of the pipeline that Union is now proposing to replace. The section of the pipeline with metal loss is under Provincial Highway 6 and therefore inaccessible for direct inspection. Union states that the most effective action to manage and ensure the long term integrity of the pipeline, while minimizing impacts to the environment, is to replace approximately 70 metres of the existing pipeline currently in place and construct a new like-for-like NPS 48 pipeline adjacent to the existing pipeline.

## **Design and Construction**

All design specifications for the pipeline replacement are in accordance with the *Ontario Regulations 210/01* under the *Technical Standards and Safety Act 2000, Oil and Gas Pipeline Systems*. The proposed pipeline is designed to meet Class 3 location requirements. The portion of the pipeline to be abandoned will be in compliance with TSSA guidelines.

The construction is scheduled to commence in September 2013 and be completed by the end of November 2013.

## **Project Costs and Economics**

Union has not conducted a Discounted Cash Flow ("DCF") analysis for this project as the project is underpinned by the relocation requirements and there are no new contracts associated with this replacement. The total estimated costs for the project are \$3,915,000.

## **Environmental Assessment**

Union retained Stantec Consulting Ltd. to prepare an environmental review of the proposed pipeline. Union has also completed an environmental screening for the project consistent with the requirements of E.B.O. 188.

Union stated that the results of the environmental review indicate that if the mitigation measures identified in the environmental report are followed there will be no long term significant environmental impacts as a result of this project.

## **Land Issues**

Union indicated that temporary easements will be required from the landowner to the west of Provincial Highway 6 and that these have been obtained for the construction of the proposed pipeline. Union will not require any fee simple purchases of land to complete the project. Union will also require crossing permits or agreements from the MTO. MTO has provided a letter to Union, which was included with the application, indicating that they have no objection to the project.