



**EB-2010-0154**

**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 Greater Sudbury.

**AND IN THE MATTER OF** a motion to review and vary an order of the Board.

**BEFORE:** Paul Sommerville  
Presiding Member

## **DECISION AND ORDER ON MOTION TO REVIEW AND VARY**

### **Background**

Union Gas Limited (“Union”) filed an application with the Ontario Energy Board, (the “Board”) on April 6, 2010, 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 natural gas pipeline and ancillary facilities in the City of Greater Sudbury (the “City”).

Union stated that the City is proposing to construct a four lane extension to Maley Drive in northern Sudbury with the work to commence in 2010 and be completed by 2014. In order to facilitate the construction of the roadways, the City needs Union to relocate those portions of its NPS 10 and NPS 12 Sudbury Laterals pipelines (“Sudbury Laterals”) that conflict with the new location of Maley Drive. Union proposed to replace and or relocate 1,580 metres of NPS 10 pipeline and 493 metres of NPS 12 pipeline.

The pipeline relocation was originally scheduled to begin in mid-August 2010 and be completed by the end of November 2010.

On May 13, 2010 the Board issued a Decision and Order granting Union an exemption from the requirements of Section 90 of the Act for an Order granting Leave to Construct a natural gas pipeline and ancillary facilities in the City of Greater Sudbury. In granting the exemption request, the Board set as a condition of approval (“CoA”) that Union must commence construction by December 31, 2011.

On October 3, 2011, the Board received a request from Union to extend this construction deadline. Union has requested that CoA 1.2 be amended to state that the authorization for leave to construct shall terminate December 31, 2012 as opposed to the current termination date of December 31, 2011. Union noted that the extension request has been filed on the basis that the City has delayed construction of its road expansion project and has not yet served Union with a Move Order for the pipeline. Union noted that it will not move the pipeline without a Move Order from the City.

On October 17, 2011 the Board issued Procedural Order No.1. The Procedural Order noted the decision of the Board to treat the letter filed by Union on October 3, 2011 as a Motion to Review the Decision and Order issued on May 13, 2010 in the EB-2010-0154 proceeding, pursuant to Rule 42 of the Board’s *Rules of Practice and Procedure*. The Board offered the landowners directly affected by the project (namely, the City of Greater Sudbury, the Nickel District Conservation Authority and Vale Inco Limited) the opportunity to file comments in regards to Union’s request to extend CoA 1.2 to December 31, 2012. No comments were received from any parties.

### **Board Findings**

As no concerns have been raised by any parties, the Board has decided that it is appropriate to vary the CoA in its original Decision in this proceeding, issued on May 13, 2010 to allow for the construction project to take place in 2012. The Condition of Approval 1.2 has been amended in Appendix “A” to state that the authorization for leave to construct shall terminate December 31, 2012, as requested by Union.

**THE BOARD ORDERS THAT:**

Pursuant to the Board's powers under Rule 45, the CoA of the Board's Decision and Order issued on May 13, 2010 shall be varied to allow for construction to commence by December 31, 2012.

The Condition of Approval 1.2 attached to the Board's May 13, 2010 Decision and Order stated that "Unless otherwise ordered by the Board, authorization for Leave to Construct shall terminate December 31, 2011, unless construction has commenced prior to then." This will be amended to state that "Unless otherwise ordered by the Board, authorization for Leave to Construct shall terminate December 31, 2012, unless construction has commenced prior to then."

An Amended Conditions of Approval is attached as Appendix "A" to this Decision and Order on Motion to Review and Vary.

**DATED** at Toronto November 8, 2011

**ONTARIO ENERGY BOARD**

*Original Signed By*

Kirsten Walli  
Board Secretary

**APPENDIX A**

**TO BOARD DECISION ON MOTION TO REVIEW AND VARY**

**BOARD FILE NO.: EB-2010-0154**

**DATED: November 8, 2011**

**CONDITIONS OF APPROVAL**

**EB-2010-0154**

**Union Gas Limited**

**Sudbury 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-2010-0154, 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, 2012, unless construction has commenced prior to then.

1.3 Union shall implement all the recommendations of the Environmental Screening filed in the pre-filed evidence, and all the recommendations identified in the City of Greater Sudbury's 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, 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 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 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 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.