



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

DECISION AND ORDER

EB-2017-0118

UNION GAS LIMITED

2017 Panhandle Replacement Project (Jefferson)

BEFORE: Lynne Anderson
Presiding Member

June 23, 2017

INTRODUCTION

On March 2, 2017, Union Gas Limited (Union Gas) applied to the Ontario Energy Board (OEB) under section 90(1) of the *Ontario Energy Board Act, 1998* (the Act) for approval to construct 600 metres of 16 inch diameter pipeline in its Panhandle Transmission System in the City of Windsor, County of Essex. Construction involves removing the existing 16 inch diameter pipeline and replacing it with a new 16 inch diameter pipeline to comply with current land use and population density design requirements (Project).

Total capital costs are estimated to be approximately \$1.52 million. Union Gas plans to start construction in the summer of 2017 to meet an in-service date of November 1, 2017.

A map of the Project is attached as Schedule A to this Decision and Order.

For the reasons set out below, the OEB finds that the construction of the Project is in the public interest and grants leave to construct, without a hearing, subject to the Conditions of Approval attached as Schedule B to this Decision and Order.

THE PROCESS

The OEB has determined that it will dispose of this proceeding without a hearing, as no person has requested a hearing after the OEB gave notice of the application and the right to request a written or oral hearing. This determination is based on section 21(4)(a) of the Act, which reads:

No hearing

(4) Despite section 4.1 of the Statutory Powers Procedure Act, the Board may, in addition to its power under that section, dispose of a proceeding without a hearing if,

(a) no person requests a hearing within a reasonable time set by the Board after the Board gives notice of the right to request a hearing;

The OEB issued a Notice of Application (Notice) on April 25, 2017. Union Gas published and served the Notice as directed by the OEB. The Notice was served to all directly affected landowners and encumbrancers; the clerks of the City of Windsor and the County of Essex; Indigenous communities with lands or interest in the lands directly affected by the Project; the Métis Nation of Ontario; all affected utilities and railway companies; members of the Ontario Pipeline Coordinating Committee (OPCC); and the Essex Region Conservation Authority. Union Gas published the English and French versions of the Notice in the Windsor Star and Windsor Le Rempart and posted the Notice on its website. The Ministry of Energy has determined, based on currently available information, that no duty to consult has been triggered by the Project.¹ Indigenous communities were advised of the Project and did not raise concerns.

The Notice of Hearing for this application set a May 15, 2017 deadline for requests for intervenor status and submissions on the form of hearing (oral or written). The OEB has received no requests for intervenor status, nor has the OEB received any requests for a hearing beyond the Union Gas request, made as part of the application, that this application be determined by way of a written hearing. The OEB has not received any letters of comment in respect of this application.

The OEB issued Procedural Order No. 1 on June 2, 2017 setting the schedule for written discovery and submissions.

¹ Letter from the Ministry of Energy to Union Gas Limited, dated June 22, 2017 and filed with the OEB by Union Gas Limited on June 22, 2017.

OEB staff filed interrogatories on June 9, 2017. Union Gas responded to those interrogatories on June 15, 2017. OEB staff provided proposed Conditions of Approval as part of its interrogatories. Union Gas responded that it could accept the conditions.

THE PUBLIC INTEREST TEST

This is an application under section 90 of the OEB Act seeking an order for leave to construct a natural gas pipeline. Section 96 of the Act provides that the OEB shall make an order granting leave if the OEB 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 OEB typically examines the need for the project and alternatives, the project’s economics and rate impacts, the environmental impacts, design and safety requirements, consultation with Indigenous communities, and landowner matters. Each of these issues is addressed below.

NEED FOR THE PROJECT AND ALTERNATIVES

The existing pipeline was built in 1951 and, according to Union Gas, the population density has increased significantly since that time. Union Gas asserts that the Project is needed because the current pipeline does not meet the design provisions of the CSA Z662-15 “*Oil and Gas Systems Code*” (CSA Z662-15) as mandated by the *Technical Standards and Safety Act, 2000*.²

Union Gas advises that in accordance with CSA Z662-15, the Project will address pipeline related safety issues due to the increased population density along the existing pipeline. Pipeline construction design under CSA Z662-15 is based on, among other criteria, a location classification system (Class Location). The Class Location system takes into account land use and population density within a sliding boundary 1.6 km long by 400 metres wide centered over a pipeline.³ Union Gas has stated that the Project will be designed to meet Class 3 design requirements of CSA Z662-15.

With respect to alternative locations for the pipeline, Union Gas stated that “Due to the short distance of the pipeline no alternatives were considered.”⁴

Findings:

The OEB accepts Union Gas’ evidence that the Project is needed because it is replacing existing pipeline that does not meet the current pipeline design requirements of CSA Z662-15. The OEB accepts Union Gas explanation that no alternatives were considered due to the short distance of the pipeline.

² Union Gas also noted that the need is partly to accommodate minor construction concerns of Hydro One.

³ Technical operating requirements and standards and design requirements, under the TSSA mandate, are set in the “Oil and Gas Pipeline Systems Code Adoption Document” (Code Adoption Document). The Code Adoption Document is a result of a regulatory mechanism by which TSSA has the authority to adopt and amend the Code Adoption Document. The Code Adoption Document contains the adopted and modified national standards set by the Canadian Standards Association (CSA). According to CSA Z662-15 Standard Class 1 areas consist of 10 or fewer dwellings; Class 2 areas consist of 11 to 45 dwellings, or a building occupied by 20 or more persons during normal use such as playgrounds, recreational areas, or other places of public assembly as well as industrial installations; Class 3 areas consist of 46 or more dwellings; Class 4 contains a prevalence of buildings intended for human occupancy with 4 or more stories above ground.

⁴ Union Gas Limited Application EB-2017-0118, Project Summary, page 5, line 12.

PROJECT ECONOMICS AND RATE IMPACTS

The estimated cost of the Project is \$1.52 million. Union Gas indicated that it did not conduct an economic feasibility analysis for the Project because the Project was driven mainly by the need to comply with regulatory requirements regarding Class Location, and there are no new contracts associated with the Project. Union Gas stated that the cost recovery for the Project would be brought for OEB consideration in its next rebasing application.

Regarding the reasonableness of the capital costs estimate, Union Gas provided a breakdown of capital costs for the replacement projects on the Panhandle Transmission System completed in the past 5 years.

Union Gas is not seeking approval of the cost consequences of the Project in this proceeding and it indicated that this will form part of the company's 2019 rate application.

Findings:

The OEB accepts Union Gas' rationale for not conducting an economic analysis. The OEB expects rate impacts to be minimal for this Project because the total forecast cost of the Project, at \$1.52 million, is not material relative to Union Gas' 2013 approved rate base of \$3.7 billion⁵.

The OEB expects to review these costs in the 2019 rate application, including a review of Union Gas' approach to the calculation of interest during construction. The OEB will require a report from Union Gas on the actual costs of the Project in its next rebasing proceeding, as shown in the attached Conditions of Approval. The OEB will then consider, in that proceeding, the prudence of those costs for inclusion in Union Gas' rate base.

⁵ This rate base was approved in the OEB's Decision EB-2011-0210 on Union Gas' Cost of Service rates application.

ENVIRONMENTAL ASSESSMENT

Union Gas prepared a “2017 Panhandle Replacement Pipeline Project Environmental Protection Plan” (EPP) in accordance with the OEB’s *Environmental Guidelines for the Location, Construction and Operation of Hydrocarbon Pipelines in Ontario, 2016* (OEB Environmental Guidelines). Union Gas filed the EPP with the OEB and provided it for review to the members of the Ontario Pipeline Coordinating Committee (OPCC), municipalities, the Essex Region Conservation Authority, affected agencies, First Nations and Métis communities. There are no outstanding issues or concerns raised in the review of the EPP by the OPCC or other parties.

The EPP stated that the identified mitigation and restoration measures will be implemented in adherence to the OEB Environmental Guidelines. The implementation of the mitigation and restoration measures will be monitored through Union Gas’ environmental inspection program.

Segments of the existing pipeline will either be removed from the ground or abandoned in place. Union Gas confirmed it will follow the TSSA Abandonment Checklist for sections to be removed and will follow the CSA Z662-15 and TSSA Abandonment Guidelines for all pipe abandoned in place.

Findings:

The OEB finds that Union has adequately addressed the environmental issues through its proposed mitigation measures, and its commitment to implement recommendations in the EPP and address any comments from the OPCC. The OEB is also imposing Conditions of Approval relating to environmental mitigation and construction monitoring and reporting per Schedule B.

DESIGN AND SAFETY REQUIREMENTS

The purpose of the Project is to replace existing pipe that no longer meets code requirements because construction development and population density have changed. Union Gas has stated that the new pipeline will be constructed in compliance with the requirements of the CSA Z662-15.

The OEB notes that the Technical Standards Safety Authority (TSSA), an agency overseeing the implementation of the CSA Z662-15 in Ontario, was notified about the Project and participated in the OPCC review of the Project. The TSSA did not express any concerns regarding the design specifications of the pipeline.⁶

Finding:

The OEB finds that Union Gas has provided adequate evidence to confirm that the proposed facilities have been designed in accordance with current technical and safety requirements.

⁶ In response to OEB staff interrogatory # 4, Union Gas stated that the TSSA asked Union Gas to correct a text reference in the EPP which wrongly stated that the pressure test of the new pipe will be according to the Energy Act instead of according to the CSA Z662-15. Union Gas responded that it would correct the text accordingly. This is the only comment from the TSSA regarding the Project.

CONSULTATION WITH INDIGENOUS COMMUNITIES

The 2016 edition of the OEB Environmental Guidelines sets out streamlined procedures and protocols for Indigenous consultation and the duty to consult on natural gas pipeline projects that are subject to the OEB's approval. Union Gas is required to adhere to these procedures and protocols and to file the required documentation with the OEB as part of its evidence in support of its application. In accordance with the OEB Environmental Guidelines, Union Gas contacted the Ministry of Energy informing it about the Project. Union Gas received an initial response from the Ministry of Energy on January 19, 2017, indicating that its preliminary review could not determine if the duty to consult was triggered and advising Union Gas to notify Walpole Island First Nation, Aamjiwnaang First Nation, Caldwell First Nation and Oneida Nation of the Thames about the Project. Union Gas notified these First Nations as the Ministry of Energy directed.

On June 22, 2017 Union Gas filed with the OEB a letter from the Ministry of Energy to Union Gas, dated June 22, 2017, which confirmed that the Ministry determined, based on currently available information, that no duty to consult has been triggered and that therefore it would not be necessary for the Ministry to provide a letter of opinion regarding the sufficiency of consultation.

The OEB notes that although the Ministry of Energy determined that the duty to consult for the Project was not triggered, Union Gas did consult with the potentially affected First Nations. The consultation is described in the "Indigenous Consultation Report, Panhandle Replacement Project (Jefferson)" which was filed with the application. Union Gas stated that it will update the Indigenous Consultation Report if the First Nations raise any concerns or issues with the Project in the future. Since filing the application Union Gas followed up with the Walpole Island First Nation, Aamjiwnaang First Nation, Caldwell First Nation and Oneida Nation of the Thames First Nations. Union Gas received no concerns related to the Project. Union Gas has committed to the following during the Project construction: Union Gas inspectors will be made available to First Nations if any issues are raised; Union Gas will consult with and provide the results of the archeological surveys to any First Nations upon their request; and Union Gas will extend an opportunity to First Nations to participate with monitors in the archeological and environmental surveys.

Finding:

The OEB is satisfied that Union has followed the requirements of the OEB Environmental Guidelines regarding consultation with Indigenous communities.

LAND MATTERS

Union Gas indicated that it would acquire new permanent land rights and temporary land use rights for the Project. According to section 97 of the OEB Act, “In an application under section 90, 91 or 92, leave to construct shall not be granted until the applicant satisfies 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 Gas therefore requires the OEB’s approval of the form of easement agreement that it has offered or will offer to the affected landowners.

The two landowners directly affected by the required permanent land rights are The Corporation of the City of Windsor and The Hydro-Electric Power Commission of Ontario (the landowners). Union Gas indicated that the negotiations with the landowners are underway and that it has reached agreements in principle with both parties. Union Gas also stated that in the process of negotiations, the landowners may require a different form of permanent easement agreement than the one Union Gas included in the evidence for OEB’s approval.

Finding:

The OEB approves the form of agreement that was offered by Union Gas to the landowners.

The OEB notes that it is the form of agreement offered by Union Gas that is approved by the OEB. The OEB understands that the content of the agreement may be amended by mutual agreement between parties through further negotiations. To the extent that any changes to the form of the agreement are at the specific request of the landowners, the OEB is satisfied that no further approval of the form of agreement is required by the OEB. If Union seeks its own amendments to the form of agreement, the revised form of agreement must be filed with the OEB for consideration of whether the amended form has a material effect on the leave granted in this proceeding.

The OEB finds that Union Gas has adequately addressed land issues associated with the Project.

ORDER

THE ONTARIO ENERGY BOARD ORDERS THAT:

1. Union Gas Limited is granted leave, pursuant to subsection 90(1) of the OEB Act, to construct approximately 600 metres of nominal size 16 inch diameter steel pipeline to replace the existing pipeline segments in the City of Windsor, Essex County, as described in its application. Leave to construct is subject to the Conditions of Approval set forth in Schedule B.
2. Union Gas Limited shall pay the OEB's costs incidental to this proceeding upon receipt of the OEB's invoice.

DATED at Toronto June 23, 2017

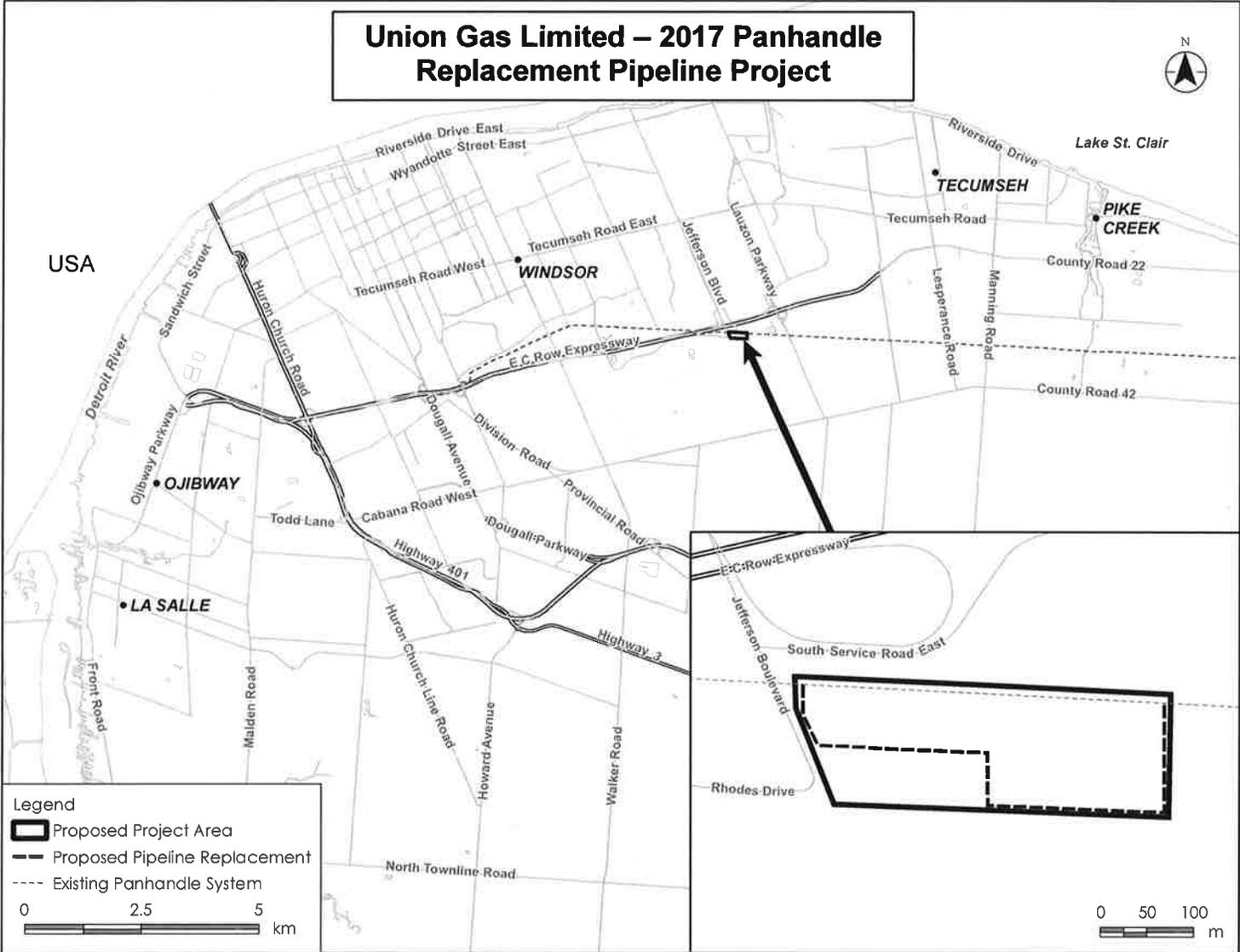
ONTARIO ENERGY BOARD

Original Signed By

Kirsten Walli
Board Secretary

SCHEDULE A
DECISION AND ORDER
UNION GAS LIMITED
EB-2017-0118
JUNE 23, 2017

Union Gas Limited – 2017 Panhandle Replacement Pipeline Project



USA

Lake St. Clair

TECUMSEH

PIKE CREEK

WINDSOR

OJIBWAY

LA SALLE

Riverside Drive East
Wyandotte Street East

Tecumseh Road East
Tecumseh Road West

E.C. Row Expressway

Dougall Avenue
Division Road
Provincial Road
Dougall Parkway

Highway 401
Highway 3

North Townline Road

Riverside Drive

Tecumseh Road

County Road 22

County Road 42

Jefferson Blvd
Lauson Parkway

Lesperance Road

Manning Road

Detroit River
Sandwich Street
Huron Church Road

Ojibway Parkway

Todd Lane

Cabana Road West

Huron Church Line Road
Howard Avenue

Walker Road

E.C. Row Expressway

South Service Road East

Jefferson Boulevard

Rhodes Drive

SCHEDULE B
DECISION AND ORDER
UNION GAS LIMITED
EB-2017-0118
JUNE 23, 2017

Leave to Construct Conditions of Approval

Application under Section 90 of the OEB Act

Union Gas Limited

EB-2017-0118

1. Union Gas Limited (Union Gas) shall construct the facilities and restore the land in accordance with the OEB's Decision and Order in EB-2017-0118 and these Conditions of Approval.
2. (a) Authorization for leave to construct shall terminate 12 months after this Decision and Order is issued, unless construction has commenced prior to that date.

(b) Union Gas shall give the OEB notice in writing:
 - i. of the commencement of construction, at least ten days prior to the date construction commences;
 - ii. of the planned in-service date, at least ten 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 Gas shall implement all the recommendations of the Environmental Report filed in the proceeding, and all the recommendations and directives identified by the Ontario Pipeline Coordinating Committee review.
4. Union Gas 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 Gas shall file, in the proceeding where the 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 for any significant variances from the cost estimates filed in this proceeding.

6. Both during and after construction, Union Gas 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 Gas' 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 Gas', 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, licences, and certificates required to construct, operate and maintain the proposed project.
 - b) a final monitoring report, no later than fifteen 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 Gas' 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 Gas, 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.