



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

DECISION AND ORDER

EB-2017-0180

UNION GAS LIMITED

**Application for approval to construct a natural gas pipeline in the City of
Greater Sudbury**

BEFORE: Lynne Anderson
Presiding Member

September 28, 2017

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INTRODUCTION

On May 5, 2017, Union Gas Limited (Union Gas) applied to the Ontario Energy Board (OEB) under section 90(1) of the Ontario Energy Board Act, 1998 for an approval of its proposal to build 20 km of NPS 12 hydrocarbon (natural gas) pipeline in the Sudbury area (the Proposed Pipeline). This Proposed Pipeline would replace two sections of NPS 10 pipeline in the City of Greater Sudbury. A map of the facilities is included as Attachment A.

Union Gas stated that the Proposed Pipeline is needed because its Integrity Management Program has identified multiple integrity issues through inspections and investigative digs. The current pipeline was predominately constructed in 1958. Union Gas proposed to increase the size of the pipeline to 12 inches (NPS 12) to provide capacity for future growth on the Sudbury system.

Union Gas stated in its application that the Proposed Pipeline was the continuation of three previous pipeline replacement projects in the Sudbury area (Sudbury Replacement Projects) previously approved by the OEB¹. One issue that arose is whether the Proposed Pipeline should be NPS 12 in size rather than NPS 10, the size of the existing pipeline. The OEB is granting leave to construct the NPS 12 pipeline proposed by Union Gas, but has noted that Union Gas could improve future applications by providing the OEB with a forecast of growth to support the upsizing of any pipelines, as well as information on the longer-term plans for supply to an area in order to provide context for individual projects. Leave is granted under section 90(1) of the OEB Act for the Proposed Pipeline. For the reasons set out in this Decision and Order, the OEB finds that the construction of the Proposed Pipeline is in the public interest.

¹ EB-2015-0042, EB-2016-0122 and EB-2016-0222

THE PROCESS

The OEB issued a Notice of Application (Notice) on June 8, 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 Greater Sudbury; Indigenous communities with lands or interest in the lands directly affected by the Proposed Pipeline; the Métis Nation of Ontario; all affected utilities and railway companies; members of the Ontario Pipeline Coordinating Committee (OPCC); and the Sudbury Conservation Authority. Union Gas published the English and French versions of the Notice in the Sudbury Star and Sudbury Le Voyageur, and posted the Notice on its website.

Union Gas requested that this application be determined by way of a written hearing. The Notice of Hearing for this application set a June 26, 2017 deadline for requests for intervenor status and for any requests for an oral hearing. The OEB received no requests for intervenor status, or requests for an oral hearing. The OEB did not receive any letters of comment in respect of this application.

The OEB issued Procedural Order No. 1 on July 7, 2017, setting the schedule for written interrogatories and written submissions. Union Gas filed responses to OEB staff interrogatories on July 25, 2017. According to Procedural Order No. 1, the submission from OEB staff was due by August 9, 2017, and Union Gas' reply submission, if any, was due by August 16, 2017. However, in response to OEB staff interrogatory no. 6, Union Gas indicated that it was awaiting a letter from the Ministry of Energy (MoE) to inform Union Gas if there was a duty to consult, as well as to provide the MoE's comments regarding the consultation activities that Union Gas had completed and further consultation that was proposed.

According to section 3.3 of the OEB *Environmental Guidelines for the Location, Construction and Operation of Hydrocarbon Pipelines and Facilities in Ontario* (OEB Environmental Guidelines), the MoE is to provide a letter to the applicant expressing its view on the adequacy of the Indigenous consultation prior to the record being closed by the OEB for a leave to construct proceeding.

By August 8, 2017 the OEB had not received the letter from the Ministry referred to in Union Gas' response to interrogatory no. 6. For this reason, the OEB issued a letter dated August 8, 2017, cancelling the remaining schedule set in Procedural Order No. 1, and advising that, "the new schedule for the balance of this proceeding will be issued after the OEB receives complete documentation on the Indigenous consultation activities as required by the OEB Environmental Guidelines."

On August 11, 2017, Union Gas filed a letter from the MoE dated August 10, 2017 advising that “the Ministry is of the opinion that the procedural aspects of consultation undertaken by Union Gas to date for the purpose of the Ontario Energy Board’s leave to construct is satisfactory”.

Union Gas also filed an update to the version of the Indigenous consultation log filed in its response to OEB staff interrogatories. Union Gas’ August 11, 2017 filings completed the evidentiary record for this proceeding. The OEB issued Procedural Order No. 2 to set the dates for an OEB staff written submission and written reply submission by Union Gas. OEB staff filed written submissions on August 25, 2017 and Union Gas filed a reply submission on September 1, 2017. This concluded the record for the proceeding.

STRUCTURE OF THE DECISION

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, land matters, design and safety requirements, and consultation with Indigenous communities.

This Decision and Order is structured by each of these issues.

NEED FOR THE PROJECT AND ALTERNATIVES

Union Gas stated in its application that the Proposed Pipeline was the continuation of three previous pipeline replacement projects in the Sudbury Area (Sudbury Replacement Projects) previously approved by the OEB². OEB staff asked questions about why Union Gas did not file a single application for each of these projects. Union Gas responded that there could not have been a single application because there were specific requirements for each individual case.

The existing pipeline in question was predominately constructed in 1958. Union Gas did inspections of the existing pipeline in 2002 and again in 2006/2007 and 2014/2015. Union Gas stated that the pipeline continues to deteriorate due to corrosion and denting. Cathodic protection is used to reduce corrosion, but Union Gas has stated that it is difficult to maintain because of the pipeline's location in both granite bed rock and low lying swamps.

Union Gas is also proposing to increase the size of the pipeline from 10 inches to 12 inches (NPS 10 to NPS 12) in this replacement project. According to Union Gas, this would increase the capacity of the Sudbury Lateral System by 5% at an incremental cost of \$1.5M (approximately a 2% increase to the cost forecast).

Union Gas did not provide a load forecast for the Sudbury area in its application. In response to interrogatories, Union Gas provided a general service growth forecast of 1400 m³/hr/year and stated that the incremental capacity of moving from a 10 inch pipe to a 12 inch pipe would be utilized within 8 years based on this forecast. In its reply submission, Union Gas provided a table with a load forecast to demonstrate that the capacity of the pipelines in the Sudbury area would reach capacity in 2026/2027, even with the Proposed Pipeline. Since these details were only available at the time of the reply submission, there was no opportunity for OEB staff to ask questions or comment on this forecast.

Union Gas also stated that while it had not determined the impacts of the Cap and Trade program on its facilities, there was an expectation that annual customer usage would decline but peak hour demands may not. Union Gas designs its systems based on peak hour demands, the maximum amount of natural gas the pipeline needs to carry in peak periods.

² EB-2015-0042, EB-2016-0122 and EB-2016-0222

Findings

The OEB accepts Union's evidence that the project is needed to maintain a safe and secure supply of gas in the Sudbury area. The pipeline is nearly 60 years old and Union has stated that its inspections have uncovered integrity issues.

The OEB accepts Union Gas' proposal to use 12 NPS pipeline for the Proposed Pipeline. While Union Gas did not provide a customer and volume forecast to be tested as part of its application, the incremental cost of the 12 NPS pipe over the 10 NPS is forecast to be \$1.5M, a 2% increase in the cost of project. This is expected to increase the capacity of the Sudbury Lateral System by 5%. If Union Gas' volume forecast is accurate, installing NPS 12 pipe now will be the lowest cost option to meet the capacity requirement in the Sudbury area. The OEB notes that the accuracy of Union Gas' current forecasts can be tested in a future rate application when the rates are sought to recover the cost of the Proposed Pipeline. The OEB has also approved the use of NPS 12 in previous applications for pipelines in the Sudbury area.

The OEB accepts that Union Gas has not yet determined the impact of the cap and trade program on its facilities at this time as the program is still new. In the future, if Union Gas is proposing that a pipeline be upsized to support growth, it should provide a forecast of that growth in its application.

With respect to the coordination of multiple projects into a single application, this is the preferred approach whenever possible so the OEB can consider the overall plan for supply to an area when assessing each project. The OEB understands that all of the details required for a leave to construct application might not be available to file a comprehensive application for multiple projects in an area at the same time. There is an expectation, however, that utilities file information to provide context to each application. Robust planning and asset management is a key element of the OEB's Renewed Regulatory Framework. System integrity was an issue in the recent Sudbury Replacement Projects. Union Gas' Integrity Management Program should be developing at least a five year plan for facility replacements to be included in a comprehensive asset management plan. On this basis, when an application for a pipeline replacement in an area is filed, Union Gas can provide details of other planned projects in the area to provide the appropriate context for considering each application.

PROJECT ECONOMICS AND RATE IMPACTS

Union Gas considered two other alternatives: Replace the existing pipe with another pipe of the same size (NPS 10), or only replace those segments of the pipeline identified as having integrity concerns.

The proposed project is forecast to cost approximately \$74M. This is in the range of 29%-64% higher cost per metre than the recent Sudbury Replacement Projects³. Union Gas has stated the Proposed Pipeline has large proportions of rock excavation, wetland management, specialized cathodic protection design and bypass installations that were not present to the same extent in other Sudbury replacement projects. In addition, Union Gas estimated in its interrogatory responses that the cost of managing known integrity issues in this section of the Sudbury system is \$8 to \$10M over the next several years and that these issues will be addressed with the Proposed Pipeline.

Union Gas is not seeking approval of the cost consequences of the Proposed Pipeline in this proceeding and it did not provide estimated bill impacts to customers. Union Gas has indicated that it will seek cost recovery of the Proposed Pipeline as part of its 2019 rates application.

Findings

The use of NPS 12 pipe was discussed earlier in this Decision and Order. Given the age of the existing pipeline, the OEB accepts Union Gas' explanation for why it did not propose the option to replace only sections of the existing pipeline. The OEB therefore approves the option selected by Union Gas for the Proposal Pipeline.

The OEB finds that the cost estimates are acceptable to address potential safety and security issues from the existing pipeline. In 2013, the OEB approved a rate base for Union Gas of \$3.7B⁴. This project at \$74M is material, but is not expected to result in an unreasonable rate impact to customers when depreciated over the typical 50 year period.

The OEB expects to review the costs of the Proposed Pipeline in a future rate application at which time the OEB will be able to assess the actual costs for the project.

³ OEB Staff interrogatory #3

⁴ This rate base was approved in the OEB's Decision EB-2011-0210 on Union Gas' Cost of Service rates application.

ENVIRONMENTAL ASSESSMENT

As required by the OEB's Environmental Guidelines, Union Gas had an Environmental Report (ER) prepared for the Proposed Pipeline. The ER was provided to members of the OPCC. No concerns were raised by the OPCC.

OEB staff asked questions about safety measures for blasting and hoe-ramming of rocks and the methods for dewatering of swamps and wet areas. Union Gas committed to following applicable provincial standards: Specification, OPSS.MUNI 120 General Specification for the Use of Explosives; Ontario Provincial Standard Specification, OPSS.ROV 120 General Specification for the Use of Explosives; and Guidelines for the Use of Explosives In or Near Canadian Fisheries Waters. In addition, Union Gas will follow its own procedures and specifications. This will include the hiring of a blasting consultant to work with its contractor in developing a blasting plan.

Findings

The OEB finds that Union Gas has adequately addressed the environmental issues through its proposed mitigation measures and its commitment to implement recommendations in the Environmental Report.

LAND MATTERS

Based on Union Gas evidence, there are 77 properties directly affected by the Proposed Pipeline. While existing easements will be used where possible, numerous new easements are being obtained. Union Gas has also stated that numerous temporary easements will be required from 61 properties.

Union Gas also plans to use road allowances. Union Gas has a franchise agreement with the City of Greater Sudbury that establishes, among other things, the terms and conditions of using road allowances for natural gas pipelines.

In its reply submission Union Gas provided an update that 57% of the necessary land rights are in place.

Per section 97 of the *OEB Act*, leave to construct cannot be granted until an OEB-approved form of agreement has been offered to landowners. Union Gas filed in its application a copy of the form of easement agreement that has been provided to property owners for the OEB's approval. Union Gas submitted that this is the same form of agreement approved by the OEB in the recent Union Gas Panhandle Reinforcement proceeding⁵. OEB staff agreed with Union Gas that the form of agreement is consistent with past OEB approved agreements.

Findings

The OEB is satisfied that Union Gas is addressing land matters appropriately and the OEB approves the form of agreement offered to landowners. The OEB notes that it is the form of agreement that is approved by the OEB and that the content of each clause may be amended by mutual agreement between parties through further negotiations.

⁵ EB-2016-0186

DESIGN AND SAFETY REQUIREMENTS

Union Gas has stated that the new pipeline will be constructed to meet or exceed the requirements of CSA Code Z662-15 Standard and will be designed and constructed in accordance with *Ontario Regulation 210/01* and the *Technical Standards and Safety Act 2000, Oil and Gas Pipeline Systems*. Union Gas also stated that the pipe used for the Proposed Pipeline will be manufactured to CSA Z245, 1-14 Steel Pipe Standard.

For any pipe to be abandoned in place, Union Gas has stated that it will follow the TSSA Abandonment Guidelines.

The Technical Standards and Safety Authority (TSSA) was served notice of this application as part of the OPCC. No concerns were raised.

Findings

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

The OEB finds that Union Gas has provided adequate evidence to confirm that the existing facilities will be abandoned in accordance with current technical and safety requirements.

CONSULTATION WITH INDIGENOUS COMMUNITIES

Notice of this proceeding was provided to all potentially impacted Indigenous communities. As detailed in the materials filed with the OEB, Union Gas has conducted various meetings, open houses, and other communications with a number of Indigenous communities. Summaries of these meetings were filed as part of the record. Union Gas has committed to continuing this dialogue as the project progresses, and the OEB is not aware of any significant concerns about the project. No Indigenous communities sought to intervene in this proceeding.

During construction, Union Gas has committed to having staff in the field to meet with Indigenous organizations to discuss and review any issues. Union Gas will also consult with and provide the results of any archaeological assessments for the project to any Indigenous group upon their request.

The Ministry of Energy (MoE) sent a letter to Union Gas on August 10, 2017 advising that “the Ministry is of the opinion that the procedural aspects of consultation undertaken by Union Gas to date for the purposes of the Ontario Energy Board’s Leave to Construct is satisfactory.”

The MoE also asked that Union Gas continue to dialogue with the Atikameksheng Anishnawbek First Nation about the community's concerns and to keep the MoE informed about upcoming meetings with the Wahnapiatae First Nation and Atikameksheng Anishnawbek First Nation. Union Gas agreed to undertake these meetings and keep the MoE and OEB informed of the outcomes.

Findings

The OEB is satisfied that the duty to consult has been adequately discharged up to this stage of the project. The OEB expects Union Gas meet its commitments to the MoE and to continue to work closely with any potentially impacted Indigenous communities as the project moves forward.

CONDITIONS OF APPROVAL

OEB staff proposed a number of conditions of approval for the Proposed Pipeline based on conditions approved by the OEB for similar projects. Union Gas stated that it can accept the conditions proposed by OEB staff.

The OEB approves the conditions of approval proposed by OEB staff for this project, which are provided in Attachment B.

CONCLUSION

The OEB finds that the Proposed Pipeline serves the public interest. The OEB accepts Union Gas' evidence that the project is needed to maintain a safe and secure supply of gas to the area.

The OEB approves the form of agreement offered to landowners by Union Gas pursuant to section 97 of the Act.

The MoE provided an opinion that Union Gas' consultation described in its Indigenous Consultation Report has been satisfactory. The OEB is satisfied that the duty to consult has been sufficiently discharged for the Proposed Pipeline as of the time of this approval.

The OEB notes that Union Gas is responsible for obtaining all necessary approvals, such as permits, licences, certificates, land agreements including agreements pertaining to access roads construction and removal, connection agreements and easement rights required to construct, operate and maintain the Proposed Pipeline, at such time(s) as they may be necessary.

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 20 km of NPS 12 hydrocarbon (natural gas) pipeline to replace the existing pipeline segments in the City of Greater Sudbury, as described in its application. Leave to construct is subject to the Conditions of Approval set forth in Attachment B.
2. Union Gas Limited shall pay the OEB's costs incidental to this proceeding upon receipt of the OEB's invoice.

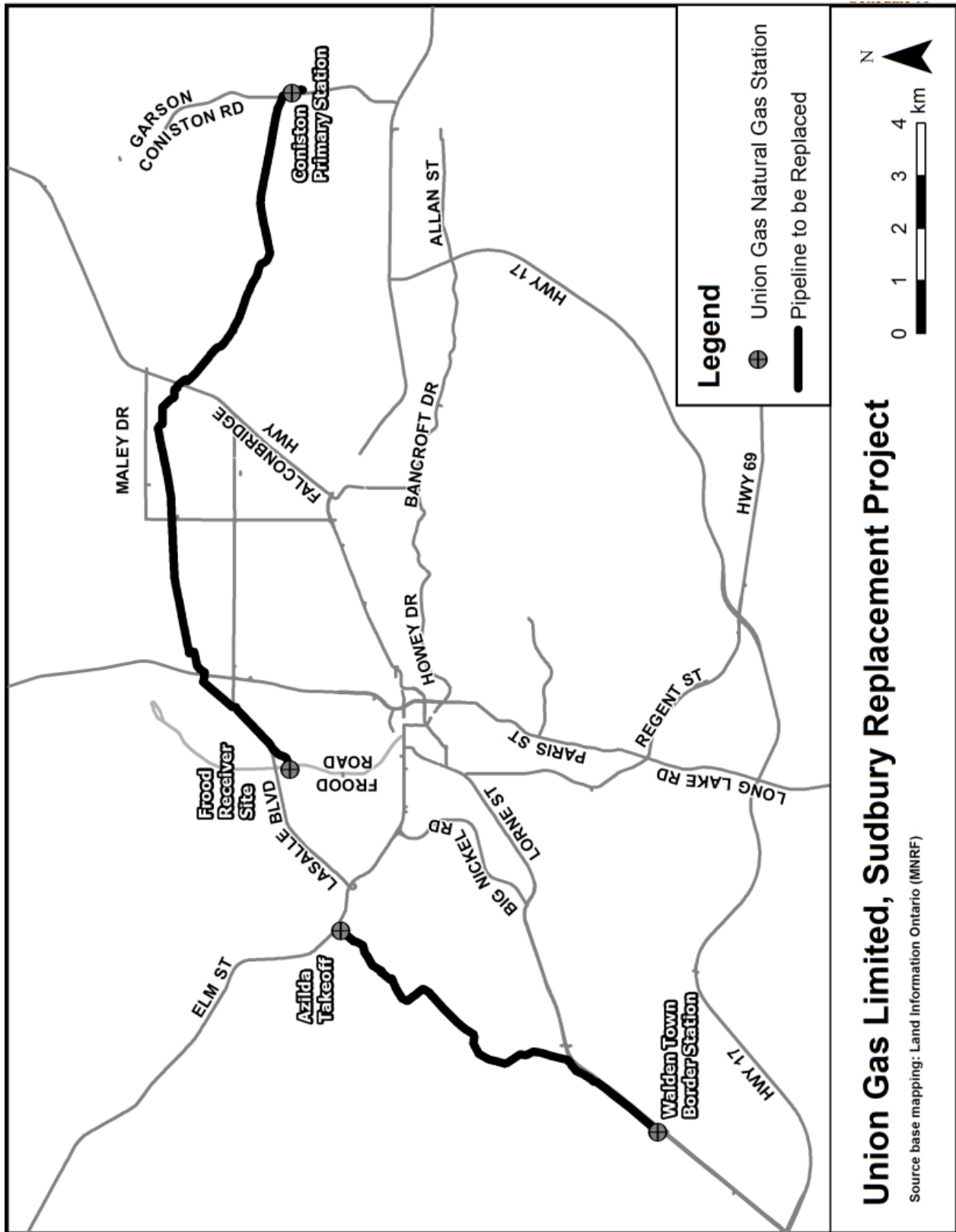
DATED at Toronto September 28, 2017

ONTARIO ENERGY BOARD

Original signed by

Kirsten Walli
Board Secretary

ATTACHMENT A
MAP OF FACILITIES
DECISION AND ORDER
UNION GAS LIMITED
EB-2017-0180
SEPTEMBER 28, 2017



ATTACHMENT B
CONDITIONS OF APPROVAL
DECISION AND ORDER
UNION GAS LIMITED
EB-2017-0180
SEPTEMBER 28, 2017

Leave to Construct Conditions of Approval**Union Gas Limited****EB-2017-0180**

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-2017-0180 and these Conditions of Approval.
2. (a) Authorization for leave to construct shall terminate 12 months after the decision 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 Gas 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.

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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, licenses, 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; and the rationale for taking such actions.