



EB-2007-0079

IN THE MATTER OF the *Ontario Energy Board Act, 1998*,
S.O.1998, c.15 (Sched. B);

AND IN THE MATTER OF an Application by Union Gas Limited for an Order pursuant to Section 90(1) of the *Ontario Energy Board Act, 1998*, granting leave to construct natural gas pipelines in the United Counties of Leeds and Grenville.

BEFORE: Gordon Kaiser
Vice Chair and Presiding Member

Paul Vlahos
Member

Cynthia Chaplin
Member

DECISION AND ORDER

Union Gas Limited (the “Applicant” or “Union”) filed an application with the Ontario Energy Board, (the “Board”) dated March 13, 2007, under section 90 of the *Ontario Energy Board Act, 1998*, S.O. 1998, c.15, Schedule B for an order of the Board for leave to construct approximately 6.5 kilometers of 4 inch Nominal Size Pipe (“NPS”) steel pipeline. The pipeline is required to supply gas to the proposed Johnstown Ethanol Plant (“the Plant”), and the pipeline is to be constructed in the Townships of Augusta and Edwardsburgh/Cardinal in the United Counties of Leeds and Grenville.

For the reasons set out below, the Board finds the construction of the proposed pipeline is in the public interest and grants Leave to Construct, subject to certain Conditions of Approval, which are attached to this Decision.

The Proposed Pipeline

The proposed pipeline route originates at an existing station on the TransCanada Pipeline; runs south-east along Edward Street; turns north-east along Cedar Grove Road; turns south along the CPR railroad right-of-way; passes under Highway 401; parallels Highway 401; turns south-east along the proposed extension of Pirelli Road, and enters the Plant along an existing section of Pirelli Road. A map showing the location of the proposed pipeline is attached as Appendix A.

Proceeding

The Board issued the Notice of Application on April 3, 2007, which was published and served by Union as directed. A letter of comment was received from TransCanada Pipelines Limited ("TCPL"), which is dealt with below. No applications were received for observer or intervenor status. Accordingly, the Board decided to proceed by way of written hearing.

On June 5, 2007, Union revised its evidence and informed the Board that construction would start in spring 2008 instead of the summer 2007 as originally planned. At the same time, Union updated its evidence on the construction costs and provided the comments received from the Ontario Pipeline Coordinated Committee's ("OPCC") review of the environmental assessment and proposed routing for the proposed pipeline.

On July 27, 2007, Board staff, through written interrogatories, asked Union to clarify certain aspects of the pre-filed evidence and to provide additional information. On August 8, 2007, Union responded to the interrogatories, which concluded the discovery phase of the proceeding.

The Public Interest Test

This is an application under section 90 of the Act, seeking a Leave to Construct Order. Section 96 of the Act provides that the Board shall make an Order granting leave 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 examines the need for the project, the economics of the project, the

environmental impact, the impact on landowners and the Applicant's consultation with Aboriginal Peoples. Each of these factors will be considered in turn.

The Need for the Project

GreenField Ethanol Inc. ("GreenField") started construction of the Plant in 2006 and is planning to complete it for in-service in August 2008.

Union's existing Prescott system feeds from a single TCPL tap ("Prescott Tap") and is comprised of 54.3 km of NPS 1 to NPS 6 pipeline operated at the Maximum Operating Pressure ("MOP") of 429 kPa to 1,210 kPa (the "Prescott system"). It supplies about 1,965 customers, and has a peak hour design of 5,800 m³/hour. The 1,210 kPa pipeline runs from Prescott Town Border Station ("TBS") to the Johnstown Pressure Regulating Station ("PRS").

The Plant's design load of 7,200 m³/hr represents about 125% of the existing 5,800 m³/hr design load of the Prescott system. To provide the additional capacity to meet the Plant's design load, Union considered four dedicated pipeline alternatives from Prescott TBS to the Plant: an NPS 6 pipeline with a MOP of 3,450 kPa; an NPS 4 pipeline with a MOP of 3,450 kPa; an NPS 4 pipeline with a MOP of 1,900 kPa; and an NPS 6 pipeline with a MOP of 1,900 kPa. The preferred alternative, the NPS 4 pipeline with a MOP of 3,450 kPa, was selected based on the least cost and required capacity to meet the Plant's projected demand.

The Plant would require between 1,891,000 gigajoules ("GJ") and 2,000,000 GJ annually. The peak demand for the Plant is estimated at 7,023 GJ/day.

The proposed pipeline would start at Prescott TBS and terminate at the Plant. At the termination point, customer pressure regulating and metering stations will be built to reduce the pipeline MOP from 3,450 kPa to the customer delivery pressure of 275 kPa.

The Board accepts Union's evidence that additional transmission facilities are needed to accommodate the Plant's demand starting in August 2008 and that the proposed pipeline represents the best alternative to meet that need.

The Proposed Pipeline's Design and Routing

According to Union's evidence, the design and pipe specifications, installation and testing of the proposed pipeline adhere to the requirements of *Ontario Regulation 210/01* under the *Technical Standards and Safety Act*, Oil and Gas Pipeline Systems and the CSA Z662-03 Oil and Gas Pipeline Systems code.

On April 27, 2007, TCPL sent a letter of comment which proposed certain conditions and which was based on an assumption that Union's pipeline would cross TCPL's pipeline at the northern terminus. In a responding letter dated June 6, 2007, Union stated that the proposed pipeline will not cross any of the TCPL pipelines, and that Union and TCPL are working on the requirements of the *National Energy Board Act* regarding the interconnection facilities.

The Board is satisfied that the evidence establishes that the pipeline design and specifications are acceptable and that the proposed route is the best alternative for the location of the pipeline.

Environmental Assessment

Union retained Azimuth Environmental Consulting Inc. ("Azimuth") to undertake an environmental and socio-economic impact assessment and to select the preferred route. The assessment was carried out in accordance with the Board's *Environmental Guidelines for the Location, Construction and Operation of Hydrocarbon Pipelines and Facilities in Ontario* (May 2003) (the "Board's Environmental Guidelines"). The results of the assessment are documented in the "Johnstown Ethanol Plant Pipeline Project Environmental Study Report", March 2007 ("Azimuth Report"), which was filed in this proceeding.

In accordance with the Board's Environmental Guidelines, the Azimuth Report was reviewed by the OPCC. There are no outstanding concerns related to the OPCC review.

As part of the environmental assessment process, Azimuth undertook consultation with government agencies and the public. A public meeting was held on January 18, 2007, in Johnstown to inform the public of the project and to solicit input. The Azimuth Report included details of the public consultation undertaken.

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Union indicated that it would implement the mitigation and monitoring recommended by Azimuth. In response to the letter from the Ministry of Environment, dated May 4, 2007, and to the concerns of certain landowners, Union has confirmed that it would implement its “Water Well Monitoring Program” to ensure mitigation of potential construction impacts on water wells.

Stage 1 Archeological Assessment was completed and included in the pre-filed evidence along with the letter from the Ministry of Culture concurring with the results of the Stage 1 report.

At the time it selected the preferred route, Union had not determined on which side of Cedar Grove Road and Edward Street the proposed pipeline would be located. In response to oral and written queries by landowners to fix the final alignments, Union sent a letter to all landowners on April 5, 2007, advising that, after consultation with the affected municipalities, the finalized pipeline route would be as follows: it would cross Edward Street (County Road 18) and travel to the east side of Edward Street within the road allowance to Cedar Grove Road; run on the north side of Cedar Grove Road to the township boundary; cross Cedar Grove Road to the south side and run along the CPR right-of-way; cross under Highway 401; turn east and parallel Highway 401, and finally turn south to access the Plant on an alignment that would parallel the proposed extension of Pirelli Road.

The Board accepts Union’s evidence regarding the proposed routing, the environmental assessment of the proposed pipeline, and the proposed potential impacts mitigation and monitoring.

Economics of the Project

The initial estimated cost of the pipeline, border station and metering station costs for construction in 2007 was \$ 4,228,420. That estimate was revised to \$4,542,888 to reflect the estimated 2008 construction costs. Union submitted that the economic feasibility of the project would not be negatively impacted by the increase in the estimated costs.

Union stated that a Rate 100-Large Volume High Load Factor Firm Service contract will be negotiated with GreenField. Union filed with the Board a form of Gas Delivery Agreement between Union and GreenField. The contract will cover all gas distribution,

pipeline and other facilities costs. While the delayed in-service date of the Plant has removed the urgent need to finalize the contract, both parties expect the agreement to be completed by October 31, 2007.

Union has agreed that one of the Conditions of Approval is that Union will notify the Board as soon as the Gas Distribution Agreement is executed.

To cover all the costs incurred prior to construction, including pre-engineering costs, the Azimuth Report and land costs, Union has signed an indemnity letter with GreenField. The indemnity letter expires when the Contract is signed.

The economic feasibility of the project was determined in accordance with the Board's approved procedures as established in EBO 188¹. The economic analysis indicated that a contribution in aid of construction is required from the Plant in order for the net present value ("NPV") to equal zero or the profitability index ("PI") to equal one. A PI of 1.0 indicates that the project is economic for Union.

Clause 5 of the Gas Distribution Agreement is designed to ensure the economic feasibility of the project by providing an ongoing revenue stream from GreenField. Clause 5 which is entitled "Payment if FMAV not consumed", reads:

In each Contract Year, Customer shall consume or, in any event, pay for the Firm Minimum Annual Volume ("FMAV") specified in Section 6 of Schedule 1 of this Contract...

This provision requires the customer to pay for a firm quantity not consumed ("Firm Deficiency Volume" or FDV) regardless of the actual consumption. The amount is calculated by multiplying FDV and Firm Delivery Commodity Charge.

Clause 9 of the Gas Distribution Agreement, entitled "Schedule of Payment", establishes that the Aid Amount to be paid by the customer is paid in four installments, the last to be paid upon Union's notice to the customer that the facilities are completed and in-service. The evidence does not state the estimated amount that will be required. The Gas Distribution Agreement also states that from time to time Union will invoice the

¹ *The Consumers Gas Company Ltd, Union Gas Limited and Centra Gas Ontario Inc., Natural Gas System Expansion, Report of the Board, EBO 188, (January 30, 1998)*

customer for the costs of interconnecting Union facilities to the natural gas transportation facilities of others.

The Board accepts Union's evidence and finds that the project is economically feasible under the proposed contractual arrangements between Union and GreenField. The arrangements made or to be made with the GreenField will protect Union's other ratepayers from the financial risks related to the construction and operation of the proposed pipeline.

Land Issues and Form of Easement

Section 97 of the Act provides that a leave to construct will not be granted until the applicant has satisfied 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 has filed with the Board a form of easement agreement that was offered and will be offered to the affected landowners. On June 5, 2007, Union informed the Board that it has acquired land rights from all of the affected private landowners and that it would continue to negotiate with municipalities and CPR to secure the remaining land rights.

The Board is satisfied that Union is effectively resolving the landowner issues associated with the project. The Board approves the form of easement which has been filed by Union.

Aboriginal Consultation Conducted by Union

In response to a request from Board staff, Union provided information on its consultations with Aboriginal Peoples relative to the proposed pipeline project. In consultation with Indian and Northern Affairs Canada, Union identified one Aboriginal group within the study area for the proposed pipeline, the Mohawks of Akwesasne, whose Grand Chief, Timothy Thompson, received letters from Union on December 20, 2006, January 5, 2007 and February 13, 2007. The letters outlined the status of the environmental study and route selection process and invited comments and participation. Similar letters were sent to other government agencies. No response or request for a meeting was received from the Grand Chief in response to the

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correspondence from Union. All the documentation sent to the Mohawks of Akwesasne is included in the Environmental Report and is part of Union's pre-filed evidence.

As of September 30, 2006, Union found no land claims in the study area after a search of the Status of Claims in Southern Ontario mapping from Specific Claims Branch of Indian and Northern Affairs Canada web site.

The Board finds the consultation conducted by Union in regard to the proposed project acceptable.

Orders Granted

For the reasons indicated, the Board finds the pipeline project proposed by Union in this proceeding is in the public interest and grants an Order for Leave to Construct subject to the Conditions of Approval as set out in Appendix B.

THE BOARD ORDERS THAT:

1. Union Gas Limited is granted leave, pursuant to subsection 90 (1) of the Act, to construct approximately 6.5 kilometres of NPS 4 natural gas steel pipeline in the Townships of Augusta and Edwardsburgh/Cardinal in the United Counties of Leeds and Grenville for the purpose of supplying gas to the proposed Johnstown Ethanol Plant, subject to the Conditions of Approval set forth in Appendix B.
2. Union Gas Limited shall pay the Board's costs incidental to this proceeding upon receipt of the Board's invoice.

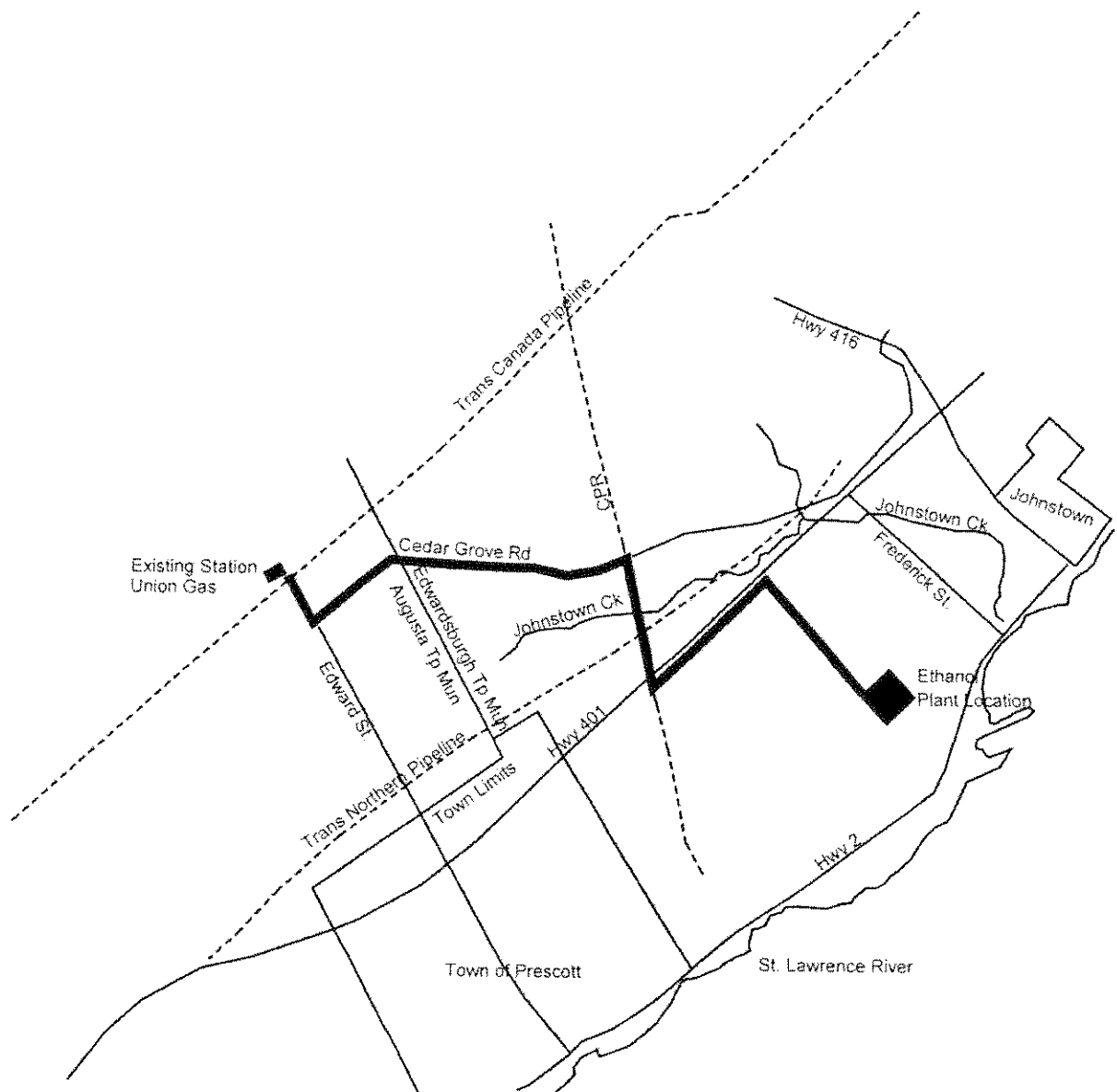
DATED at Toronto October 9, 2007
ONTARIO ENERGY BOARD

Original Signed By

Kirsten Walli
Board Secretary


APPENDIX A
TO BOARD DECISION AND ORDER
IN THE MATTER OF EB-2007-0079
DATED October 9, 2007
MAP OF THE PIPELINE ROUTE

Union Gas Limited Proposed Gas Supply to Johnstown Ethanol Plant



APPROX. SCALE = 1:50,000
500m 0 1000m 2000m

Legend

 Proposed Pipeline Route

Union Gas Limited Proposed Gas Supply Pipeline to Johnstown Ethanol Plant

Date Issued: April 2007

Created By: PHD

Project No: 06-249

File Name:

Figure No:

APPENDIX B
TO BOARD DECISION AND ORDER
IN THE MATTER OF EB-2007- 0079
DATED October 9, 2007
CONDITIONS OF APPROVAL

EB-2007-0079

**Union Gas Limited
Johnstown Ethanol Plant Supply Pipeline
Leave to Construct Application**

Conditions of Approval

Leave to Construct

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-2007-0079, 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, 2008, unless construction has commenced prior to then.
- 1.3 Except as modified by this Order, Union shall implement all the recommendations of the Environmental Study Report filed in the pre-filed evidence, and all the recommendations and directives identified by the Ontario Pipeline Coordinating Committee ("OPCC") review.
- 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, Facilities.
- 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 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.
- 5.2 Union shall notify the Board of an executed the Gas Distribution Agreement no later than 10 days after executing the agreement.