



EB-2007-0708

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 for an Order pursuant to Section 90(1) of the
Ontario Energy Board Act, 1998, granting leave to
construct natural gas pipelines and ancillary facilities in
the City of Windsor, in the County of Essex.

BEFORE: Cynthia Chaplin
Presiding Member

DECISION AND ORDER

Union Gas Limited (the “Applicant” or “Union”) filed an application with the Ontario Energy Board, (the “Board”) dated August 14, 2007, under section 90(1) 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 5 kilometres of 12 inch Nominal Size Pipe (“NPS”) natural gas pipeline and ancillary facilities. According to Union’s application, the pipeline and ancillary facilities are required to meet the natural gas service requirement of the East Windsor Cogeneration Centre. The pipeline is to be constructed in the Townships of Windsor in the County of Essex.

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 12 inch NPS pipeline would connect Union’s existing Panhandle System to the East Windsor Cogeneration Centre site (“the proposed station”), and run south from the proposed station east of Walker Road to the Windsor Ford Line Station take off

site, south of the Daimler Chrysler Plant. A map showing the location of the proposed pipeline and ancillary facility is attached as Appendix A.

Proceeding

The Board issued the Notice of Application on September 7, 2007, which was published and served by Union as directed. A letter requesting observer status was received from TransAlta Cogeneration L.P. and TransAlta Energy Corporation on October 10, 2007. A letter requesting late intervenor status was received on October 26, 2007 from East Windsor Cogeneration LLP. The Board approved both requests. A letter of comment was received on November 15, 2007 from the Ministry of the Environment, which is addressed below. The Board proceeded by way of written hearing.

On November 21, 2007, Union submitted its response to the letter of comment received from the Ministry of the Environment (the "MOE").

On November 15, 2007, Board staff, through written interrogatories, requested clarification of certain aspects of the pre-filed evidence and additional information. On November 22, 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 consultation with Aboriginal Peoples. Each of these factors will be considered in turn.

The Need for the Project

In April 2006, the Ontario Government announced that East Windsor Cogeneration Centre ("EWCC") had been selected to develop and construct an 84 MW natural gas combined-cycle generation facility in the City of Windsor to provide electricity to the Ontario electricity grid. EWCC has entered into a 20 year combined heat and power ("CHP") contract with the OPA. The CHP contract was awarded to EWCC through the recent OPA's request for proposal process that sought 1,000 MW of high efficiency CHP projects across Ontario.

The EWCC Project involves the installation of cogeneration facilities at the Powerhouse located adjacent to the engine plant owned by Ford Motor Company of Canada Limited ("Ford") located in Windsor, Ontario. The cogeneration facility will sell steam to Ford and deliver 84 MW (average) of electricity to Hydro One Networks.

Union's existing Panhandle System for natural gas transportation extends from Union's Dawn Station in Lambton County to the Detroit River. The existing facilities in the area of the EWCC consist of distribution piping with a maximum operating pressure of 1250 kilopascals ("kPa").

EWCC has indicated that the peak natural gas demand for the generating station will be 660,000m³/day. The minimum contracted delivery pressure is 1,482 kPa. Union was advised that to meet the requirements of the CHP contract, EWCC requires 31,400 m³/hr of natural gas service. To meet the EWCC demands Union proposes to install approximately five kilometres of NPS 12 pipeline, from Union's existing Panhandle system to the EWCC site. The maximum operating pressure of the proposed pipeline will be 4,140 kPa.

In addition to the pipeline, Union will construct a new metering facility at the proposed EWCC site and make modifications to its existing Windsor Ford Line Station take off, which is located adjacent to the Panhandle system.

The Board accepts Union's evidence that additional transmission facilities are needed to accommodate the EWCC demand starting in July 2008 and that the proposed pipeline and ancillary facilities 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.

Union chose the NPS 12 size as opposed to various alternatives to meet the requirements of the EWCC and to allow for growth to an area designated by the City of Windsor for future industrial expansion.

The Board is satisfied that the evidence establishes that the pipeline design and specifications are acceptable and that the proposed project is the best alternative.

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 “East Windsor Cogen Centre Pipeline Project Environmental Report”, July 2007 (“Azimuth Report”), which was filed in this proceeding.

In accordance with the Board’s Environmental Guidelines, the Azimuth Report was reviewed by the Ontario Pipeline Coordination Committee (“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 May 23, 2007, in Windsor to inform the public of the project and to solicit input. The Azimuth Report included details of the public consultation undertaken.

In a letter dated November 15, 2007, the MOE expressed concerns with regard to the preferred route for the pipeline in the area of the Grand Marais Drain. MOE has identified an area of PCB and metals contamination in and along the Grand Marais Drain between the Canadian Pacific Railway crossing and Chrysler Centre Road. The MOE also notes that a Closed Waste Disposal Site X-6065 is located in the general vicinity of Drouillard Road and Seminole Street in the City of Windsor and “appears” to be located within 500 metres from the preferred route of the pipeline.

MOE is concerned about the potential for the pipeline corridor to collect contaminants and serve as a conduit for movement of contaminants to other locations. The MOE states:

it is critical that the proponent carry out further consultations with all affected property owners to ensure that all appropriate action is taken to determine the extent of contamination in the soils and to ensure that any excavation into or through the impacted soils contains measures to deal with the contaminated materials, to appropriately manage and dispose of any excavated materials and to insure that no offsite or adverse effect results from the pipeline construction.

In its response of November 21, 2007, to the MOE letter, Union stated that it will retain the services of an Environmental Consultant to review the issues, as presented in the letter; and work with the property owners and the MOE to determine the extent of the contamination along the pipeline route, and develop mitigation measures to contain and prevent the possible migration of contaminants along the pipeline.

The consultant will also work with the MOE and the Project Leads (City of Windsor and a Private Partner) to generate a strategy which will allow for the installation of the pipeline in conjunction with the planned remediation of the sites.

The Board notes that Union has committed to implement the recommendations in the Azimuth Report and has made additional commitments arising from the MOE's letter. The Board accepts Union's evidence regarding the environmental assessment of the proposed pipeline, and finds that the proposed mitigation and monitoring activities are acceptable and address the environmental concerns. The Conditions of Approval reflect Union's commitments.

Economics of the Project

The total estimated cost for the project, including pipeline, station, and interest during construction ("IDC") is \$5,346,337.

The economic feasibility of the project was measured in accordance with the Board's approved procedures as established in EBO 188¹. When the proposed facilities are included in Union's 2007 new business investment portfolio the resulting Profitability Index ("P.I.") is 1.47. Union has also conducted a stand alone Discounted Cash Flow ("DCF") analysis. This analysis indicated that the proposed facilities have a Net Present Value ("NPV") of \$0.312 million and a P.I. of 1.06. A PI at or above 1.0 indicates that the project is economic for Union.

Union executed a 20 year T-1 Contract Carriage Service Agreement with EWCC on August 17, 2007. Union stated that the contract has minimum annual volume and firm demand charge components that support the economics of the project. EWCC will begin payment for T-1 service to Union on July 1, 2008, or the date Union has completed and placed into service the facilities. The contractual financial assurances commenced with the contract execution and will cover all project costs and provide protection from the customer regarding revenue stream.

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)]

The Board accepts Union's evidence and finds that the project is economically feasible under the proposed contractual arrangements between Union and the EWCC. The arrangements made with the EWCC 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. Union has indicated that individual negotiations with the directly affected landowners to obtain the necessary land rights to construct the proposed pipeline have been initiated.

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, Walpole Island First Nations. Azimuth and Union Gas staff responsible for First Nations consultation concluded that contact would not be required because the study area was located in an older portion of the City of Windsor that had been fully developed for many years and the study did not affect the Detroit River shoreline outside the historically industrial lands.

On August 15, 2007, Union Gas did provide Walpole Island First Nations with information on the project to insure they were informed of Union Gas projects in the area. No comments were provided. On November 7, 2007, Union held a meeting with Walpole Island First Nations on other matters and the EWCC project was not raised as a concern.

The Board is satisfied that in this application sufficient consultation has occurred and notes that Union remains committed to ongoing consultation with Aboriginal Peoples in respect of its projects.

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 5 kilometres of NPS 12 natural gas pipeline in the City of Windsor in the County of Essex for the purpose of supplying gas to the proposed East Windsor Cogeneration Centre, 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 December 18, 2007

ONTARIO ENERGY BOARD

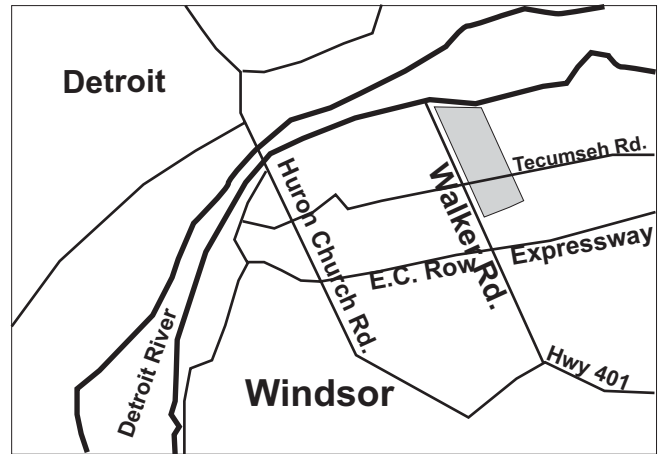
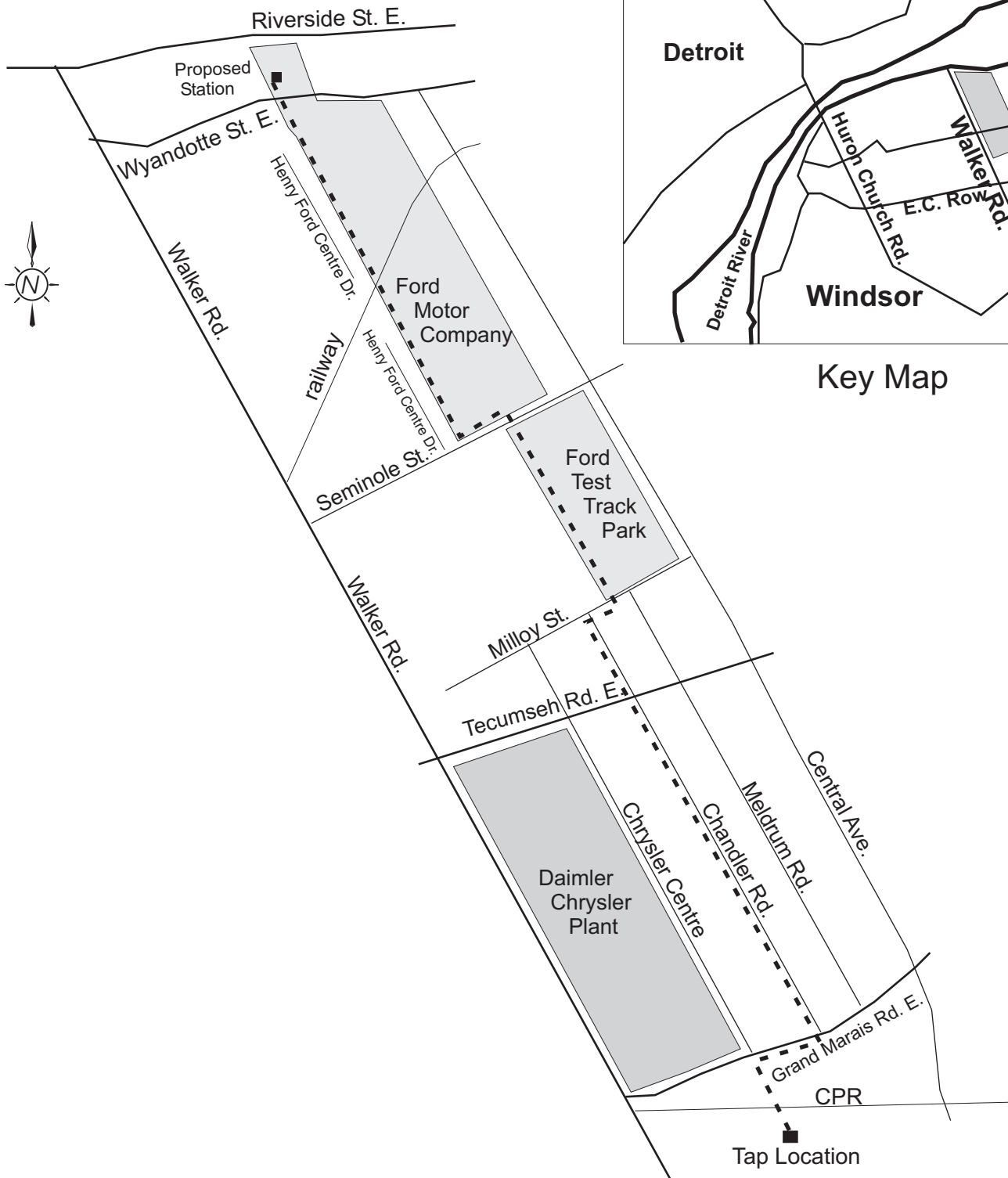
Original signed by

Kirsten Walli
Board Secretary

APPENDIX A
TO BOARD DECISION AND ORDER
IN THE MATTER OF EB-2007-0708
DATED December 18, 2007
MAP OF THE PIPELINE ROUTE

Union Gas Limited

Proposed Gas Supply To East Windsor Cogeneration Centre



Key Map

0m 200m 400m 600m 800m

----- Proposed Pipeline Route

APPENDIX B

TO BOARD DECISION AND ORDER

IN THE MATTER OF EB-2007- 0708

DATED December 18, 2007

CONDITIONS OF APPROVAL

EB-2007-0708

Union Gas Limited

East Windsor Cogeneration Centre

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-2007-0708, 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. Union shall also fulfill the commitments identified in its letter of November 21, 2007 to the Ministry of the Environment.
- 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.