



**ONTARIO ENERGY BOARD**

**STAFF SUBMISSION**

**Union Gas Limited**

**Application for Leave to Construct Natural Gas Pipelines Thunder Bay Project**

**EB-2012-0226**

**and**

**Application for Certificate of Public Convenience and Necessity**

**EB-2012-0227**

**September 20, 2012**

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## Introduction

Union Gas Limited (the "Applicant" or "Union") filed two applications with the Ontario Energy Board (the "Board") on April 30, 2012 requesting: 1) leave to construct a natural gas pipeline and ancillary facilities and, 2) a Certificate of Public Convenience and Necessity ("CPCN") for Gorham Township ("Gorham"). The applications were filed together.

### Leave to Construct

The leave to construct application was filed pursuant to section 90 of the *Ontario Energy Board Act, 1998*, S.O. 1998, and is a request for an order granting Union leave to construct approximately 19 kilometres of nominal pipe size ("NPS") 16 (16 inch diameter) steel pipeline and 13.0 kilometres of NPS 12 (12 inch diameter) steel pipeline from TransCanada Pipeline's ("TCPL") valve site in Gorham to the Ontario Power Generation ("OPG") generating station on Mission Island in the City of Thunder Bay ("Generating Station"). The Board has assigned this application file number EB-2012-0226.

The 19 kilometer section of NPS 16 pipeline is proposed to replace two existing sections of pipeline: (i) a NPS 8 pipeline between TCPL's Thunder Bay tap and Onion Lake station; and (ii) a NPS 10 Thunder Bay Lateral pipeline between Onion Lake Regulating Station ("Onion Lake RS") and Belrose Regulating Station ("Belrose RS"). The NPS 12 pipeline is a new section running for approximately 13 kilometers from the Belrose RS in a southerly and easterly direction to a proposed customer metering station on the OPG property connecting to the Thunder Bay Generating Station.

Union is proposing to commence construction of both the NPS 16 and NPS 12 pipelines in May 2013. The planned in-service date is November 2013.

### Certificate of Public Convenience and Necessity

Union also applied for a Certificate of Public Convenience and Necessity ("CPCN") to construct works to supply gas to Gorham residents as a portion of the proposed pipeline is within Gorham. Gorham is an unincorporated township, and is not a municipal corporation incorporated under the laws of the Province of Ontario. This would be the

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first such certificate for Gorham. The Board has assigned file number EB-2012-0227 to the CPCN application.

### **The Proceeding**

The Board issued a Notice of Application (“Notice”) for both EB-2012-0226 & EB-2012-0227 dated June 5, 2012. The Board issued Procedural Order No. 1 on August 9, 2012 by which it set a schedule for a written proceeding.

Board staff submit that they have no issues regarding the CPCN application and support Union’s request for a CPCN for the Township of Gorham.

The submissions below deal only with the leave to construct application and address the following: the need for the project; project economics and ratepayer protection; environmental assessment and pipeline design; land issues and conditions of approval.

### **The Need for the Project - EB-2012-0226**

The NPS 16 replacement pipeline and the new NPS 12 pipeline segments constitute a pipeline that will be referred to as the “proposed pipeline” in these submissions. The purpose of the proposed pipeline is to supply gas to a future natural gas fired generating station located in the City of Thunder Bay (“Thunder Bay Station”). The gas fired station will be a result of the conversion of the existing Thunder Bay coal fired peaking generating station. The conversion from coal to gas fired generation is part of the Ontario Government program to convert all coal fired generation in the province by the end of 2014. According to Ontario’s Long Term Energy Plan (2011) the Thunder Bay coal fired generating station is planned to be converted to natural gas by the end of 2014. The conversion will be undertaken by Ontario Power Generation (“OPG”).

The need for the proposed pipeline is based on the requirement to provide a dedicated gas supply to the Thunder Bay Station. Union filed in its evidence a Directive by the Minister of Energy, dated August 17, 2011, to the Ontario Power Authority (“OPA”) to negotiate with OPG regarding the electric power purchase agreement for the Thunder Bay Generating Station (“Power Purchase Agreement”) and directed that the Power Purchase Agreement be executed by December 31, 2011. Board staff note that, at the time of filing this submission, there is no finalized Power Purchase Agreement between

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OPG and the OPA which would underpin the long-term economic feasibility of the gas fired generation plant.

Board staff submit that the need for the pipeline is contingent on the conversion and operation of the existing coal fired generation facility and as such the Board's approval should, in Board staff's submission, be dependent on the finalization of the Power Purchase Agreement. Board staff submit that the execution of the Power Purchase Agreement be ordered by the Board as a prerequisite to construction commencement. Board staff propose that the following condition be attached to Board's leave to construct order should the Board decide to approve the application.

- 1.6 *Union shall not commence construction of the proposed pipeline unless a Power Purchase Agreement with the Ontario Power Authority has been executed. Union shall file with the Board a document providing verification that the Power Purchase Agreement is within 7 days of the date it is executed.*

### **Project Economics and Ratepayer Protection**

According to Union's evidence, the estimated capital cost of the pipeline is about \$62.924 million. An economic evaluation of the project was conducted using the Discounted Cash Flow ("DCF") methodology. The Profitability Index ("PI") of the project is 1.0 over a 20 year customer attachment horizon. This PI is achieved with the inclusion of a Contribution in Aid of Construction ("CIAC") to be paid by OPG in the estimated amount of \$23.625 million. As set in the executed Distribution Contract (more fully described below) the CIAC estimate will be adjusted after the actual cost of construction is determined.

OPG, as the customer, has a 20 year Rate 20 Distribution Contract with Union which supports the economic feasibility of the proposed pipeline. Union filed a copy of the Distribution Contract in response to Board staff IRs. Board staff notes that it contains clauses that provide financial protection for Union and for its ratepayers as well as for OPG in the event that construction is not completed as planned or the operation of the pipeline ceases prior to the expiry of the Distribution Contract. Further, the contract includes the estimated amount and method of calculation and payment schedule for the capital contribution to be paid by the OPG. It also contains a section that sets out the financial rights and obligations for both Union and OPG in the event of termination of the contract prior to completion of the pipeline. The financial obligations of OPG and Union

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in the event of early termination of the contract after gas delivery service commences is also set out in the contract.

Board staff submits that Union's evidence supports Union's position that its ratepayers would be protected from financial risks occurring prior to pipeline construction, upon construction and during the operation of the Thunder Bay Generating Station. The economic feasibility of the project is achieved by establishing the CIAC which OPG has committed to paying through signing the Distribution Contract.

Board staff's view is that the executed Distribution Contract between Union and OPG contains all the necessary terms to protect Union and its ratepayers from any financial harm should the pipeline construction be postponed or cancelled in the event that the generating plant conversion does not take place or ceases operation.

The financial protections established for the ratepayers are specified in the Distribution Contract. To ensure that protection of the rate payers is maintained Board staff submit that the following condition be imposed should the Board decide to approve the application for leave to construct:

- 1.7 *Union shall not, without prior approval of the Board, consent to any alteration or amendment to the Northern Gas Distribution Contract between Union Gas Limited and Ontario Power Generation Inc., dated April 4, 2012 and executed on April 13, 2012, where such alteration or amendment has or may have any material impact on Union's ratepayers.*

Board Staff submits that with the above noted condition of approval, it has no outstanding concerns relative to the rate-payers protection and economics of the pipeline.

Board staff submit that the executed Distribution Agreement between OPG and Union provides sufficient financial protection for Union's rate-payers should the Board approve construction of the pipeline.

## **Environmental Assessment and Pipeline Design**

Pipeline route selection and environmental assessment were completed in accordance with the *Environmental Guidelines for the Location, Construction and Operation of*

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*Hydrocarbon Pipelines and Facilities in Ontario, 6<sup>th</sup> edition, 2011* (“OEB Environmental Guidelines”). The results of routing and environmental assessment are presented in an Environmental Report entitled *Thunder Bay Generating Station Pipeline Project, October, 2011* (“ER”). The ER was completed by Stantec Consulting Inc. (“Stantec”) and was submitted as part of the pre-filed evidence. No outstanding environmental or construction issues were identified and Union stated that it would implement all of the recommendations in the ER.

Board staff submits that the evidence supports Union’s position that there was a public consultation, including consultation with aboriginal groups. . In this regard Board staff notes that Union signed a general Relationship Agreement with the Métis Nation of Ontario (“MNO”). Union committed to address issues identified during consultation with First Nations by working with the Economic Development departments of Fort William First Nation (“FWFN”), MNO and Union’s pipeline contractors. Union, in response to Board staff interrogatories confirmed that it met several times with Red Sky Métis Independent Nation (“RSMIN”) regarding a proposal to conduct a Traditional Study of the pipeline route on McKellar and Mission Islands and that the Traditional Study would be completed by the end of August 2012. Board staff would encourage Union to provide an update on this matter in its reply submissions.

Board staff submit that the consultation was consistent with the OEB Environmental Guidelines.

It is Board staff’s position that the design specifications for the pipe, including design factors for class location and hydrostatic testing, according to Union’s evidence, meet the requirements of the Ontario Regulations 210/01 under the *Technical Standards and Safety Act 2000*, Oil and Gas Pipeline Systems. With regard to the replacement of the existing pipeline Union stated it would follow the Technical Standards and Safety Authority (“TSSA”) Pipeline Abandonment Checklist.

## **Land Issues**

Union’s evidence states that for most of the replacement pipeline between TCPL and Belrose RS Union will use the existing easements with 66 directly affected properties and land rights, with exception of 2 locations where it would require a new easement agreement. Union has reached agreements with 62 landowners along the replacement

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section of the proposed pipeline. Along the new section of the proposed pipeline there are 37 directly affected landowners. Union is in the process of negotiations with these landowners and has reached an agreement with 8 landowners as of September 5, 2012. Union is committed to reaching agreements with all of the unsigned landowners by early 2013.

Board staff notes that Union has confirmed 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, as pursuant to section 97 of the OEB Act. Union filed the approved form of the easement agreement in Schedule 19 of the prefiled evidence.

Among the affected properties are 3 separate parcels in Gorham owned by the Province of Ontario and managed by the Ministry of Natural Resources. Union has crown easements for all 3 parcels but will also need temporary easements for construction. Union stated it would obtain the required MNR's work permits.

Union requires land rights from the City of Thunder Bay, Hydro One and Canadian Pacific Railway who are also directly affected landowners. Union stated that negotiations with these landowners are underway.

Board staff submits that Union has not obtained all of the land rights required, but is committed to ongoing negotiations and expects to obtain all land rights and crossing and work permits prior to construction commencement. Board staff note that Union agreed, in response to Board staff Interrogatory #5 to comply with the following condition which address other approvals and permits to be obtained by Union:

*4.1 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.*

Based on Union's acceptance of the above noted condition of approval Board staff submits that it has no concerns with the land issues.

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## Conclusion

Board staff supports the construction of the proposed pipeline and the granting of a certificate of public convenience and necessity for Gorham. Board staff submit that the need for this project is contingent on the execution of the Power Purchase Agreement between OPG and the OPA. It is Board staff's position that the Board's approval, and the commencement of construction should be contingent on the finalization of that Agreement.

With respect to other conditions, by way of Board staff Interrogatory #5 Union was asked if it would comply with certain proposed conditions of approval (attached as Appendix A to these submissions). Union responded that it would comply with the proposed conditions. Board staff submit that the conditions attached at Appendix A along with condition 1.6, 1.7 and 4.1, set out above, adequately address the ratepayer protection, economics of the project, construction and land restoration impacts of the proposed pipeline and that they be included as part of the Board's order in this matter.

**Appendix A**  
**to**  
**Board Staff Submissions**  
**EB-2012-0226**

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**EB-2012-0226****Union Gas Limited  
Leave to Construct Application****Board Staff Proposed  
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-2012-0226 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, 2013, unless construction has commenced prior to that date.
- 1.3 Union shall implement all the recommendations of the Environmental 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.
- 1.5 Within 15 months of the final in-service date, Union shall file with the Board Secretary a Post-Construction Financial Report. The Report shall indicate:
  - a) the actual capital costs of the project and an explanation for any significant variances from the estimates filed in this proceeding.
  - b) the actual capital costs for the project borne by Union and the actual costs contributed towards construction by the OPG, including the method and the actual cost inputs used to determine the final amount of the contribution by the OPG.
- 1.6 Union shall not commence construction of the proposed pipeline unless a Power Purchase Agreement with the Ontario Power Authority has been executed. Union shall file with the Board a document providing verification that the Power Purchase Agreement is within 7 days of the date it is executed.

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- 1.7 Union shall not, without prior approval of the Board, consent to any alteration or amendment to the Northern Gas Distribution Contract between Union Gas Limited and Ontario Power Generation Inc., dated April 4, 2012 and executed on April 13, 2012 where such alteration or amendment has or may have any material impact on Union's ratepayers.

## **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 fulfillment 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.

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- 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 Other Approvals and Agreements**
- 4.1 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.