



**EB-2012-0430**

**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 orders pursuant to sections 90 and 97 of the *Ontario Energy Board Act, 1998*, granting leave to construct a natural gas pipeline and facilities in the Region of Waterloo.

**BEFORE:** Marika Hare  
Presiding Member

Ellen Fry  
Member

**DECISION AND ORDER**  
**March 21, 2013**

Union Gas Limited ("Union") filed an application with the Ontario Energy Board (the "Board") on November 13, 2012 under sections 90 and 97 of the Ontario Energy Board Act, 1998, S.O. 1998, c. 15, Schedule B (the "Act"), for an order granting Union leave to construct approximately 25 kilometers ("km") of Nominal Pipe Size 12 ("NPS 12") hydrocarbon pipeline (the "Proposed Pipeline") to replace a portion of the existing Owen Sound Pipeline located in the Region of Waterloo. The Board has assigned the application file number EB-2012-0430.

For the reasons set out below, the Board finds that the construction of the Proposed Pipeline is in the public interest and grants Union leave to construct subject to the terms and conditions attached as Appendix A to this Decision and Order (the "Conditions of Approval"). The Board also approves the proposed form of easement agreement that has been offered or will be offered to all landowners affected by the approved route.

## **The Proposed Pipeline**

The Proposed Pipeline will begin at Union's Owen Sound valve site located on Northumberland Road just south of Highway 401 on Lot 34, Concession 9, in the Township of North Dumfries and end at the Waterloo Gate Station on Fischer-Hallman Road in the City of Waterloo, within the Region of Waterloo.

The Proposed Pipeline is to be located generally within the road allowance. Construction of the Proposed Pipeline is planned to start in April 2013 and be completed by the end of November 2013.

A map showing the location of the Proposed Pipeline is attached as Appendix B.

## **The Proceeding**

The Board issued a Notice of Application ("Notice") dated December 6, 2012. Union served and published the Notice as directed by the Board. The City of Kitchener ("Kitchener") requested and was granted intervenor status in this proceeding. Observer status was requested by and granted to Enbridge Gas Distribution Inc. On January 10 and 14, 2013, the Board received letters of comment from the Region of Waterloo Legal Services ("RWLS") and the Waterloo Region District School Board ("WRDSB"), respectively. Appended to WRDSB's letter of January 11, 2013 were copies of its letters of September 7, 2012 and October 23, 2012 as well as a document titled "Summary of Gas Pipeline Regulations in Ontario". WRDSB also filed a letter dated August 13, 2012 from Azimuth Environmental Consulting. Board staff filed interrogatories on February 1, 2013 and Union filed interrogatory responses on February 11, 2013. Board staff and Kitchener filed a written submission on February 21, 2013 and Union filed its reply submission on March 4, 2013.

## **Rosenberg Secondary Plan**

In its letter of comment, WRDSB raised a concern about the proximity of the Proposed Pipeline to a planned site for a future public school to be built in the City of Kitchener. WRDSB was involved in consultations with the City of Kitchener to designate three public school sites in the City's Official Plan ("Rosenberg Secondary Plan"). WRDSB indicated that the location of the sites was based on criteria that included a minimum setback distance from known gas pipelines, and other major facilities.

WRDSB stated a new section of the Proposed Pipeline that will run down Bleams Road compromises the approved Rosenberg Secondary Plan, because one of the designated school sites would be within 100 metres of a proposed high pressure gas pipeline.

### **Rhodes Report**

WRDSB stated that recent pipeline setback standards calculated by Dr. Charles Rhodes<sup>1</sup> ("Rhodes Report") indicate that a minimum distance of 231 metres is necessary to ensure human safety in the event of a pipeline rupture.

WRDSB objected to the Proposed Pipeline along Bleams Road unless the design for the pipeline was modified with respect to location, size and maximum operating pressure in order to meet the pipeline setback standards based on the Rhodes Formula.

In a letter dated January 28, 2013, responding to the WRDSB's concerns, Union stated that *Ontario Regulation 210/01 under the Technical Standards and Safety Act 2000, Oil and Gas Pipeline Systems* (the "Regulation") and *CSA Z662-11 Standard Oil and gas pipeline systems* (the "CSA Standard"), as amended, are the Ontario regulation and code documents governing the design, construction, operation and maintenance of natural gas pipelines and that compliance with these requirements is governed by the Technical Standards Safety Association in Ontario.

Union stated that it had reviewed the Rhodes Report and submitted that the report conflicted with the Regulation and the CSA Standard. The Rhodes Report relies on the CSA Plus 663 Standard<sup>2</sup>. Section 1.4 of the CSA Plus 663 Standard states that this standard is not intended to cover local natural gas distribution pipelines. The Proposed Pipeline along Bleams Road is a distribution pipeline and not a major transmission pipeline and will operate as part of a lower pressure system (hoop stress less than 40% of the specified minimum yield strength). As a lower pressure system, there are no requirements for additional setback beyond the limit of the easement or road right of way for pipelines operating at this pressure.

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<sup>1</sup> Attachment to Union Gas Limited, Owen Sound Pipeline Replacement Project - Impacts on Planned School Sites, January 11, 2013, WRDSB

<sup>2</sup> Canadian Standards Association (CSA) Plus 663, Land use planning for pipelines: A guideline for local authorities, developers, and pipeline operators

Union also stated that it operates and maintains a number of pipelines of similar size and operating pressures, within its franchise areas across Ontario, which are located at distances of less than 200 meters from schools and hospitals. This is a practice which complies with the above noted Regulation and CSA Standard which govern the design, construction and operations of natural gas pipelines and are accepted industry practices. Union submitted that there are no governing requirements for additional setback beyond the limit of the easement or road right of way for distribution pipelines.

Union stated that because there were conflicts between the Rhodes Report and the statutes, regulations and codes which specifically govern the Proposed Pipeline, Union would not be adopting the suggestions contained in the Rhodes Report.

Board staff agreed that the Proposed Pipeline is a distribution pipeline and not a transmission pipeline because, according to Union's evidence, the Proposed Pipeline will be 12 inches in diameter and transmission pipelines typically range in size from 508.0 mm to 1219.2 mm (20 in to 48 inches) in diameter.<sup>3</sup> Accordingly, Board staff agreed that the CSA Plus 663 Standard is not applicable to the Proposed Pipeline. Board staff also submitted that because Union will be operating at hoop stresses of less than 40%, there are no regulatory requirements for additional setback beyond the limit of the easement or road right of way, therefore the 200 metre setback standard does not apply.

In its reply submission, Union stated that it will offer to meet with the WRDSB to review construction and operation of the Proposed Pipeline before construction to determine if any additional measures can be implemented to address the concerns of the WRDSB.

### **Board Findings with respect to setback requirements**

The Board agrees that CSA Plus 663 Standard relied on by the WRDSB is not applicable because it is intended to cover transmission pipelines and the Proposed Pipeline is a distribution pipeline. The Board agrees that because Union will be operating at hoop stresses of less than 40%, there are no regulatory requirements for additional setback beyond the limit of the easement or road right of way. The Board also notes that Union is following the Ontario Regulation and CSA Standard that govern the design, construction, operation and maintenance of natural gas pipelines and that

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<sup>3</sup> Canadian Standards Association (CSA) Plus 663, Land use planning for pipelines: A guideline for local authorities, developers, and pipeline operators, page 15

compliance with these requirements is governed by the Technical Standards Safety Association in Ontario.

For the reasons set out above, the Board finds that the 200 metre setback standard is not required. However, the Board encourages Union to dialogue with the WRDSB with respect to the route and set-back prior to construction as Union stated in its reply submission.

### **The Public Interest Test**

This is an application under section 90 of the Act seeking an order for leave to construct a hydrocarbon pipeline. Section 96 of the Act provides that the Board shall make an order granting leave to carry out the work under section 90 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 considers the following factors as defining the scope of the public interest test:

- Is there a need for the Proposed Pipeline?
- Has the economic feasibility of the Proposed Pipeline been demonstrated?
- What are the environmental impacts associated with construction of the Proposed Pipeline and have they been adequately addressed?
- Are there any outstanding landowner matters for the Proposed Pipeline routing and construction?
- Is the Proposed Pipeline designed in accordance with the current technical and safety requirements?

Each of these issues is addressed below.

### **The Need for the Pipeline**

Union stated that based on its experience with the Owen Sound line and given its overall condition and proximity to built-up areas, partial replacement of the pipeline was the most effective action to manage and ensure the long term integrity of the pipeline. Union stated that if the project is delayed, integrity concerns will become more serious as risk of failure increases. Union also noted that results of scheduled inspections in 2011 identified multiple integrity issues that could pose safety and security of supply concerns if not addressed.

The Board finds that Union has adequately substantiated the need for the Proposed Pipeline.

### **Project Economics – Feasibility of the Proposed Pipeline**

The capital cost for the Proposed Pipeline is estimated to be \$23.9 million. A breakdown of the capital costs was provided in the application.

Union stated that a discounted cash flow report was not completed as the Proposed Pipeline is underpinned by the relocation requirements and there are no new contracts associated with this replacement.

The Board accepts Union's evidence on the cost estimates.

As the actual costs will not be available until the Proposed Pipeline is completed, the Board will require a report from Union on the actual costs of the Proposed Pipeline approved in this Decision and Order. Accordingly, the Board has included the following in its Conditions of Approval:

- 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 the actual capital costs of the project and shall explain all significant variances from the estimates filed in the proceeding.

### **Environmental Impacts**

The Proposed Pipeline will begin at Union's Owen Sound valve site located on Northumberland Road just south of Highway 401 on Lot 34, Concession 9, in the Township of North Dumfries and end at the Waterloo Gate Station on Fischer-Hallman Road in the City of Waterloo, within the Region of Waterloo.

As the majority of the pipeline between the Owen Sound valve site and the Kitchener Gate Station will be replaced for technical reasons and in the same easement, the full route selection was not completed.

Union retained the services of Azimuth Environmental Consulting Inc. to review the proposed route of the pipeline and prepare an Environmental Report ("ER"). Union

stated that they will implement a program dealing with environmental inspection. This program will ensure that the recommendations in the ER are followed.

The ER identified species at risk concerns along the route and Union stated that they are working with the Ministry of Natural Resources to develop mitigation practices that will ensure there will be no long term environmental impacts.

Union stated that the design specifications are in accordance with the requirements of the Regulation and the CSA Standard referenced earlier in this Decision.

To ensure mitigation of impacts, and restoration of land and water resources, the Board has imposed monitoring and reporting requirements in the Conditions of Approval. The Board also finds that the environmental plans proposed by Union are acceptable.

The Board is aware that other approvals will be required for construction of the Proposed Pipeline. Therefore, the Board is including in its Conditions of Approval the requirement for Union to “obtain all other approvals, permits, licences, and certificates required to construct, operate and maintain the proposed project.”

### **Landowner Matters**

For the majority of the Proposed Pipeline between the Owen Sound Valve site and Kitchener Gate Station, Union plans to use its existing easement and associated land rights or the rights under Union’s Franchise Agreement with the Region of Waterloo. Union will require temporary land rights in this section.

For the section between Bleams Road and the Waterloo Gate Station, Union will require permanent and temporary land rights or utilize the provisions outlined in the existing franchise agreement with the Region of Waterloo to construct the pipeline.

Union filed with the Board a Pipeline Easement Agreement that Union will offer to the affected landowners.

Section 97 of the Act requires that the Board approve the form of agreement that has been or will be offered to the landowners affected by the approved route. The Board approves the proposed form of agreement included in Union’s evidence.

## Pipeline Design - Technical and Safety Requirements

Union has stated that the design specifications for the Proposed Pipeline are in accordance with the requirements of Ontario Regulation 210/01, made under the *Technical Standards and Safety Act 2000*, Oil and Gas Pipeline Systems.

The Board finds that the Proposed Pipeline meets the construction and operational requirements for safe operation. The Technical Standards and Safety Authority, as the agency overseeing the operation of pipelines in Ontario, has the authority to enforce all of the applicable standards.

For the reasons set out above, the Board finds that the Proposed Pipeline is in the public interest and grants Union the leave to construct subject to the Board's Conditions of Approval. The Board also approves the proposed form of Pipeline Easement Agreement that has been offered or will be offered to all landowners affected by the approved route.

### THE BOARD ORDERS THAT:

1. Union Gas Limited is granted leave to construct approximately 25 kilometers of NPS 12 hydrocarbon pipeline and facilities located in the Region of Waterloo, subject to the Conditions of Approval set out in Appendix A to this Decision and Order.
2. Pursuant to section 30 of the *Ontario Energy Board Act, 1998*, Union shall pay the Board's costs of and incidental to, this proceeding immediately upon receipt of the Board's invoice.

**DATED** at Toronto, March 21, 2013

**ONTARIO ENERGY BOARD**

*Original Signed By*

Kirsten Walli  
Board Secretary



## **Appendix A**

### **Conditions of Approval**

## **EB-2012-0430**

### **Union Gas Limited Leave to Construct Application**

#### **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-2012-0430 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, 2014, 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 members of the Ontario Pipeline Coordinating Committee ("OPCC").
- 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 the actual capital costs of the project and shall explain all significant variances from the estimates filed in the proceeding.

#### **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.
- 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.

## **Appendix B**

### **Map of the Location of the Proposed Pipeline**

# Union Gas Limited Proposed Owen Sound Replacement Pipeline

