



EB-2014-0350

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 or orders granting leave to
construct a natural gas pipeline and ancillary facilities
in the Tyendinaga Township in Hastings County and
Sophiasburg Township in Prince Edward County.

BEFORE: Marika Hare
Presiding Member

Allison Duff
Member

DECISION AND ORDER
March 19, 2015

Union Gas Limited (Union) filed an application with the Ontario Energy Board (OEB) on November 20, 2014 under section 90 of the *Ontario Energy Board Act, 1998*, for an order granting leave to construct approximately 1.3 kilometres of Nominal Pipe Size (NPS) 8 inch diameter steel natural gas pipeline and ancillary facilities. The proposed pipeline would replace a portion of its existing Picton lateral NPS 6 pipeline in Tyendinaga Township and Sophiasburg Township where it crosses the Bay of Quinte.

For the reasons set out below, the OEB finds that the construction of the proposed pipeline is in the public interest. The OEB grants leave to construct, subject to the OEB's Conditions of Approval, which are attached as Appendix A.

The Proposed Pipeline

The proposed NPS 8 pipeline would replace a portion of Union's existing Picton lateral NPS 6 pipeline which serves the Tyendinaga Mohawk Community, Deseronto and

eastern Prince Edward County. Union anticipates the construction to begin in June 2015 and be completed by the beginning of November 2015. A map showing the location of the Proposed Pipeline is attached as Appendix B.

The Proceeding

The OEB issued a Notice of Application (Notice) on December 1, 2014. Union served and published the Notice as directed by the OEB. No person requested intervenor status in this proceeding and no letters of comment were received.

OEB staff filed a written submission supporting Union's application.

The Public Interest Test

This is an application under section 90 of the 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 the alternatives, the economics, the impact on the ratepayers, the environmental impact, the impact on land owners, and the pipeline design technical requirements.

The following issues define the scope of the proceeding:

- Is there a need for the proposed pipeline? What were the alternatives?
- Are there any undue negative rate implications for Union's ratepayers caused by the construction and operation of the proposed pipeline?
- What are the environmental impacts associated with construction of the proposed pipeline and are they acceptable?
- Are there any outstanding landowner matters for the proposed pipeline routing and construction?
- Is the pipeline designed in accordance with the current technical safety requirements?

Each of these issues is addressed below.

The Need for the Pipeline and the Alternatives

Union stated that the Ontario Ministry of Transportation (MTO) will be conducting rehabilitating work on the Skyway Bridge crossing the Bay of Quinte. Union's existing pipeline is currently attached to the bridge structure. The proposed pipeline is necessary because of an order from the MTO to move the pipeline.

Union considered two other alternatives for the proposed pipeline. The first alternative would be to attach the proposed pipeline to the other side of the Skyway Bridge. This alternative was rejected by Union because there is no MTO approval to install a new pipeline on the side of the bridge. Union also identified high operational and maintenance costs with this alternative. The second alternative was to lay the pipeline on the bottom of the Bay of Quinte. This alternative was rejected because this proposal is not recognized as an industry wide best practice, and also due to the potential for significant environment impacts to fish habitat and the potential for third party damage.

In consultation with the MTO, Union determined that the preferred location for the proposed pipeline was adjacent to the Skyway Bridge within the MTO right of way, but directionally drilled beneath the Bay of Quinte, such that it is not laying on the bottom. Union stated that this location is preferred because:

- the operating and maintenance costs are lower than the other alternatives considered over the life of the pipeline;
- the construction perspective it is easier and safer;
- reduced number of high risk activity hours for future maintenance work; and
- and it allows for in-line inspections.

The OEB finds that the evidence supports the need for the proposed pipeline and related facilities and there is no superior alternative.

Project Economics and Impact on Ratepayers

The estimated costs of the project are \$8.9 million. Union did not complete a Discounted Cash Flow analysis because the project is underpinned by the MTO's relocation requirements. Instead, Union used qualitative and quantitative analysis of the three different alternatives to determine the preferred option for the replacement.

The OEB finds that the evidence on the project costs and economics are acceptable. As the actual costs will not be available until the proposed pipeline is completed, the OEB will require a report from Union on the actual costs of the project. This requirement is included in the Conditions of Approval.

Environmental Assessment

The pipeline route selection and environmental assessment were completed in accordance with the OEB's *Environmental Guidelines for the Location, Construction, and Operation of Hydrocarbon Pipelines and Facilities in Ontario, 6th edition, 2011* (OEB Environmental Guidelines). The results of the routing and environmental assessment are presented in an Environmental Report entitled *Bay of Quinte, Ontario Highway 49 Pipeline Relocation Environmental Report, November 2014* (ER). The Environmental Report was completed by Neegan Burnside Ltd. and was submitted as part of the application. Union committed to comply with all mitigation measures recommended in the Environmental Report. Union also stated that all design installation and testing of the proposed pipeline, including station facilities will be conducted in accordance with the requirements of *Ontario Regulation 210/01, Oil and Gas Pipeline Systems* under the *Technical Standards and Safety Act, 2000*.

The evidence indicates that there was extensive public and agency consultation and review through the Ontario Pipeline Coordinating Committee and consultation with aboriginal groups. The Environmental Report stated that the consultation was consistent with the OEB's Environmental Guidelines.

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

Land Issues

Section 97 of the Act states:

In an application under section 90, 91 or 92, leave to construct shall not be granted until the applicant satisfies 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 did not file as part of its application, a form of easement agreement that has been or will be offered to landowners directly affected by the proposed pipeline. In response to OEB staff interrogatory #1, Union stated that the only new land rights required for the project are temporary land rights south of the Skyway Bridge, which have been obtained. Union also stated that an encroachment permit application was filed on December 12, 2014 and is under review by the MTO. Union also noted that it is working with the Mohawks of the Bay of Quinte for a new permit¹ for the new and existing pipelines within the reserve.

In its submission, OEB staff requested that Union confirm its position on whether Union is required to file the form of permanent easement agreement offered to affected landowners, as envisaged by section 97 of the Act, and whether the OEB's approval of such an agreement under section 97 would be required. Union stated that in the event new permanent land rights are required, Union would be required to file a form of easement for approval by the OEB pursuant to section 97 of the Act. Union submitted that it did not file a form of easement because no new permanent land rights are required. Union also noted that in the event that new permanent land rights were required, Union would provide the OEB with updated evidence regarding the change in routing of the pipeline and include the form of easement for the OEB to approve.

The OEB acknowledges that the requirement to file a form of easement agreement is applicable if and when new land rights are required and when landowners are affected by the approved route or location of the project. Union has confirmed that no permanent land rights are required for the proposed pipeline. The OEB also accepts Union's commitment to implement its Landowner Relation Program, including Complaint Tracking system, to address and resolve any issues and concerns occurring during and after construction.

Pipeline Design – Technical and Safety Requirements

Union provided evidence that the pipeline design specifics for the pipe, hydrostatic testing, the minimum depth of the pipeline cover, and Class Location are in accordance with the requirements of Ontario Regulation 210/01, Oil and Gas Pipeline Systems, under the *Technical Standards and Safety Act, 2008* (TSSA) and the CSA Z662-11 Oil and Gas Pipeline Systems Code.

¹Under section 28(2) of the Indian Act.

Regarding Class Location², the existing pipeline is in Class 3³. To address the future potential development along the pipeline route, the design specification for the new NPS 8 pipeline will be in accordance with Class 3 requirements.

The OEB accepts Union's evidence that the pipeline will meet the construction and operational requirements for safe operation as required by the Technical Safety and Standards Association, the agency with the responsibility of overseeing the operational and safety aspects of the pipeline in Ontario.

For the reasons set out above, the OEB finds that the proposed pipeline is in the public interest and grants Union the leave to construct subject to the Conditions of Approval set out in Appendix A.

IT IS ORDERED THAT:

1. Union Gas Limited is granted leave, pursuant to subsection 90 (1) of the Act, to construct approximately 1.3 kilometres of 219.1 millimetre diameter (Nominal Pipe Size 8 inch) Extra High Pressure steel pipeline and facilities located in the Tyendinaga Township, in Hastings County and Sophiasburg Township, in Prince Edward County, subject to the Conditions of Approval set forth in Appendix A.
2. Union Gas Limited shall pay the OEB's costs incidental to this proceeding upon receipt of the OEB's invoice.

DATED at Toronto, March 19, 2015

ONTARIO ENERGY BOARD

Original signed by

Kirsten Walli
Board Secretary

² Class Location is a classification set out by the CSA Z662-11 that is based on land use and population density along both sides of the pipeline route.

³ Class 3 areas consist of 46 or more dwellings.

APPENDIX A
TO THE OEB'S DECISION AND ORDER IN
EB-2014-0350
DATED: March 19, 2015
Conditions of Approval

EB-2014-0350

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-2014-0350.
- 1.2 Unless otherwise ordered by the OEB, authorization for Leave to Construct shall terminate December 31, 2015, unless construction has commenced prior to that date.
- 1.3 Union shall implement all the recommendations contained in the Environmental Report filed in the pre-filed evidence, and all the recommendations and directives identified by the Ontario Pipeline Coordinating Committee ("OPCC").
- 1.4 Union shall advise the OEB'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 OEB or its designated representative. In the event of an emergency, the OEB 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 an explanation for any significant variances from the estimates filed in this proceeding.

2 Project and Communications Requirements

- 2.1 The OEB'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 OEB'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 OEB's Order being issued.
- 2.3 Union shall give the OEB'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 OEB's designated representative with all reasonable assistance for ascertaining whether the work is being or has been performed in accordance with the OEB's Order.
- 2.5 Union shall file with the OEB'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 OEB'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 OEB. 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 Other Approvals

- 4.1 Union shall obtain all other approvals, permits, licences, and certificates required to construct, operate and maintain the proposed project, and shall provide an affidavit that all such approvals, permits, licences, and certificates have been obtained.

APPENDIX B
TO THE OEB'S DECISION AND ORDER IN
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DATED: March 19, 2015
Map of Proposed Pipeline Project

