



Ontario Energy Board
Commission de l'énergie de l'Ontario

DECISION AND ORDER

EB-2015-0120

UNION GAS LIMITED

Application for leave to construct three natural gas pipelines to serve a mine site and the City of Greater Sudbury.

BEFORE: **Emad Elsayed**
Presiding Member

July 09, 2015

1 INTRODUCTION AND SUMMARY

Union Gas Limited (Union) filed an application with the Ontario Energy Board (OEB) on March 11, 2015 under subsection 90(1) of the Ontario Energy Board Act, 1998 (the Act) for leave to construct three natural gas pipelines and ancillary facilities (the Project). One pipeline is approximately 1.5 kilometres of nominal pipe size (NPS) 12 inch; the second is approximately 2.0 kilometres of NPS 10 inch; and the third is approximately 2.3 kilometres of NPS 6 inch. The Project is located in the City of Greater Sudbury (Sudbury). Two maps showing the location of the Project are attached as Schedule A.

According to Union, the Project will ensure the continued reliable and safe delivery of natural gas, serve the new FNX Victoria Mine site, and meet the projections for the growing demands for natural gas in Sudbury. The in-service date of the pipeline serving the FNX Victoria Mine is planned for September 2015. The in-service date for the other facilities is planned for December 2015.

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

2 THE PROCESS

The OEB issued its notice of application on April 1, 2015. Union served and published the notice as directed by the OEB. There were two intervenors approved in this proceeding: Energy Probe Research Foundation (Energy Probe) and the Industrial Gas Users Association (IGUA).

The OEB proceeded to hear the case by way of a written hearing.

OEB staff filed a written submission on June 19, 2015. IGUA and Energy Probe filed written submissions on June 22, 2015. Union filed its reply submission on June 30, 2015.

3 THE PUBLIC INTEREST TEST

This is an application under subsection 90(1) 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, the project cost and economics, the environmental impact, and the impact on landowners. Each of these issues is addressed below.

4 NEED FOR THE PROJECT

Union explained that the need for the Project is driven by the following factors:

- i. FNX Mining Company Inc. (FNX) requires natural gas service at its new Victoria Mine site. FNX engages in the exploration, development and production of copper, nickel, cobalt, platinum and gold at its various mining properties in the Sudbury basin. FNX has commenced site construction work at the Victoria Mine in preparation for the sinking of an exploration shaft. Natural gas will be required in September 2015 for power generation after which the natural gas usage will shift from power generation to mine air heating along with building heat for various surface buildings.
- ii. Residential and small commercial demand is growing in the Sudbury area. Over the past 10 years, the average growth of the Sudbury system has been a 1.3% annual customer attachment rate and this rate is expected to continue.
- iii. In 2014, Union reviewed the industrial customers' gas consumption and found a system shortfall on a peak day on the Sudbury system indicating that the system is operating below the minimum design specifications. Union explained that its finding on the system operating levels supports the need for reinforcement of the Sudbury system.

OEB staff, IGUA and Energy Probe supported the need for the Project. The support of OEB staff and Energy Probe was contingent on certain concerns being addressed by Union. These concerns were addressed by Union in its reply submission and a subsequent update to its reply submission. This is described in the following sections.

IGUA's submission identified that a number of its customers are interested in additional natural gas service. In its reply submission, Union stated that it is prepared to expand the Sudbury system if industrial customers require firm incremental capacity. Union also submitted that it has met with IGUA's Sudbury working group and is in the process of gathering the customers' requirements to determine the scope of any future projects.

The OEB accepts Union's evidence related to the need for the Project in terms of the anticipated future growth in customer demand in the Sudbury area as well as serving the needs of the FNX Victoria Mine site. The OEB finds that Union has adequately justified the need for the Project.

5 PROJECT COST AND ECONOMICS

The estimated capital cost of the Project is \$10.8 million. Of this amount, \$6.6 million is attributable to the FNX Victoria Mine and \$4.2 million is attributable to system reinforcement and general service growth. The cost of the Project will be included in rates in Union's 2019 rebasing application.

Union's economic analysis indicated that a capital contribution of \$4.7 million is required from FNX meaning that Union's net investment for the FNX Victoria Mine portion of the Project will be \$1.9 million. The contribution is needed in order to bring the FNX portion of the Project up to a Profitability Index (PI) of 1.0. A PI of 1.0 is consistent with the OEB's guidance in its E.B.O. 188 Report on Natural Gas System Expansion.

The \$4.2 million portion of the Project attributed to system reinforcement and general distribution growth will be managed within the rolling portfolio in accordance with the E.B.O. 188 guidance.

Union presented an impact assessment of the Project on its Investment Portfolio. The inclusion of both the FNX Victoria Mine project and the system reinforcement and general service growth projects yielded a PI of 1.20 on Union's new business investment portfolio. For Union's Rolling Project Portfolio, the PI is 1.41 including the Project.

OEB staff and Energy Probe expressed a concern that Union did not expect to have its distribution contract with FNX signed until June 15, 2015 and that, given the relatively large capital contribution required from FNX, there was no evidence on the record that the contract has been executed and that FNX is contractually committed to its required share of the capital costs. OEB staff and Energy Probe suggested that, until such evidence is provided, the OEB should withhold its final approval.

In its reply submission, Union stated that the contract with FNX remains unsigned but that negotiations were ongoing with the expectation that the contract would be signed in the near future. On July 8, 2015 Union filed an update attaching a redacted copy of the signed contract with FNX. The contract shows a contribution in aid of construction requirement payable by FNX of \$4.7 million.

The OEB finds that the Project cost and associated economics, including FNX's capital contribution, acceptable given that the calculated Profitability Indices are within the tolerances set out by the OEB in its E.B.O. 188 Report on Natural Gas System Expansion.

6 ENVIRONMENTAL ASSESSMENT

An Environmental Report (ER) was completed by Azimuth Environmental on behalf of Union and was submitted as part of the application. Union provided the ER for review by the members of the Ontario Pipeline Coordinating Committee (OPCC), local municipalities, Conservation Sudbury, First Nations and Métis and other interested parties as requested. In response to an OEB staff interrogatory, Union filed a summary of the comments received and its responses.

OEB staff was concerned that Union's evidence does not show a resolution to concerns raised by a representative of the Ontario Ministry of Natural Resources and Forestry (MNRF), Sudbury Branch regarding measures to protect Species at Risk (SARs).

OEB staff also noted that the archaeological assessments required for the Project will not be completed until June 30, 2015 and invited Union in its reply submission to provide an update on the status of these assessments.

Energy Probe asked that Union provide in its reply submission the status of any outstanding concerns raised by agencies and interested parties.

In its reply submission, Union attached a copy of a letter to MNRF prepared by Azimuth Environmental, dated May 21, 2015, which addresses concerns identified by MNRF including impacts on SARs. Union stated that, based on discussions and meetings with MNRF, constructing the proposed facilities in the identified locations should not have any impacts on SARs. Union also submitted that additional monitoring will take place immediately prior to construction to confirm that no SARs can be found along the proposed pipeline route.

Union reported in its reply submission that the archaeological assessment for the Project has been completed and that it did not identify any archaeological features along the route of the proposed pipeline.

Union notified First Nations and Métis communities that would potentially be affected by the Project. These communities raised concerns about the water crossings associated with the Project; however, Union reported that these concerns were addressed to the communities' satisfaction.

Union stated in its application that it will appoint an environmental inspector during construction to ensure that all activities comply with the Conditions of Approval.

The OEB finds that Union has adequately addressed the environmental issues through its proposed mitigation and restoration program and its commitment to implement the ER and OPCC recommendations. Union is also committed to adhere to the Conditions of Approval contained in Schedule B related to mitigation and construction monitoring and reporting.

The OEB is aware that approvals from other regulatory agencies will be required for the Project. The OEB finds that Union's compliance with the Conditions of Approval will ensure that the requirements of other agencies are fully addressed.

7 LAND ISSUES

Union stated that there are no outstanding land issues.

For the portion of the Project between Frood Road and LaSalle Road, the majority of the pipeline will be constructed within Union's existing easement. A short section of new easement will be required to tie in the new pipeline with the existing NPS 12 pipeline. Temporary lands will be required along the route of this portion of the Project. All other pipelines will be constructed within road allowances in Sudbury under the terms of Union's franchise agreement with Sudbury. The only directly affected private landowner is Vale Canada Limited. Union has met with Vale Canada Limited and reports that it has identified no issues or concerns.

Section 97 of the Act requires Union to satisfy the OEB that it has offered or will offer to each owner of land affected by the pipeline route or location an agreement in a form approved by the OEB. Union filed a form of easement agreement that has been or will be offered to landowners where new permanent easements are required. The OEB approves the form of easement agreement included in the evidence. Union also stated in its application that where necessary it would offer a temporary land use agreement in a form previously approved by the OEB and used by Union on similar pipeline projects.

The OEB finds that Union has adequately addressed land issues associated with this Project.

8 CONDITIONS OF APPROVAL

In response to OEB staff interrogatory no. 10, Union accepted the draft conditions of approval proposed by OEB staff. Union proposed clarifications to condition no. 4 which would require Union to notify the OEB of any changes to OEB-approved construction or restoration practices. Union provided a list of potential construction or restoration procedures that it believed would be encompassed by condition 4.

OEB staff observed that the same set of conditions was put to Union in draft form in the Panhandle Replacement Project under OEB docket EB-2015-0041. Union later accepted those draft conditions as proposed, without any clarification or additional wording. The OEB approved the conditions, unchanged, in its decision and order on the Panhandle Replacement Project dated June 4, 2015. OEB staff proposed that the same conditions of approval be formally adopted by the OEB in this proceeding as were approved in the Panhandle Replacement Project.

Energy Probe submitted that Union's clarification for condition 4 should be included in the final conditions of approval and suggested one additional clarification to be included in condition 4.

In its reply submission, Union confirmed its acceptance of the conditions of approval as proposed by OEB staff.

The OEB finds that an attempt to provide specific clarifications to condition 4 would limit the intended general scope of this condition. Therefore, the OEB approves the conditions of approval as proposed by OEB staff.

9 ORDER

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

THE BOARD ORDERS THAT:

1. Union Gas Limited is granted leave, pursuant to subsection 90(1) of the Act, to construct three natural gas pipelines and ancillary facilities as shown in Schedule A. One pipeline is approximately 1.5 kilometres of nominal pipe size (NPS) 12 inch; the second is approximately 2.0 kilometres of NPS 10 inch; and the third is approximately 2.3 kilometres of NPS 6 inch. Leave to construct is subject to the Conditions of Approval set forth in Schedule B.
2. Union Gas Limited shall pay the OEB's costs incidental to this proceeding upon receipt of the OEB's invoice.
3. A decision regarding cost awards will be issued at a later date. Intervenors shall file with the OEB and forward to Union Gas Limited their respective cost claims by July 31, 2015. Cost claims must be prepared in accordance with the OEB's Practice Direction on Cost Awards.
4. Union Gas Limited will have until August 7, 2015 to object to any aspect of the cost claims. A copy of the objection must be filed with the OEB and one copy must be served on the party against whose claim the objection is being made.
5. Any party whose cost claim was objected to will have until August 14, 2015 to make a reply submission as to why the cost claim should be allowed. One copy of the submission must be filed with the OEB and one copy is to be served on Union Gas Limited.

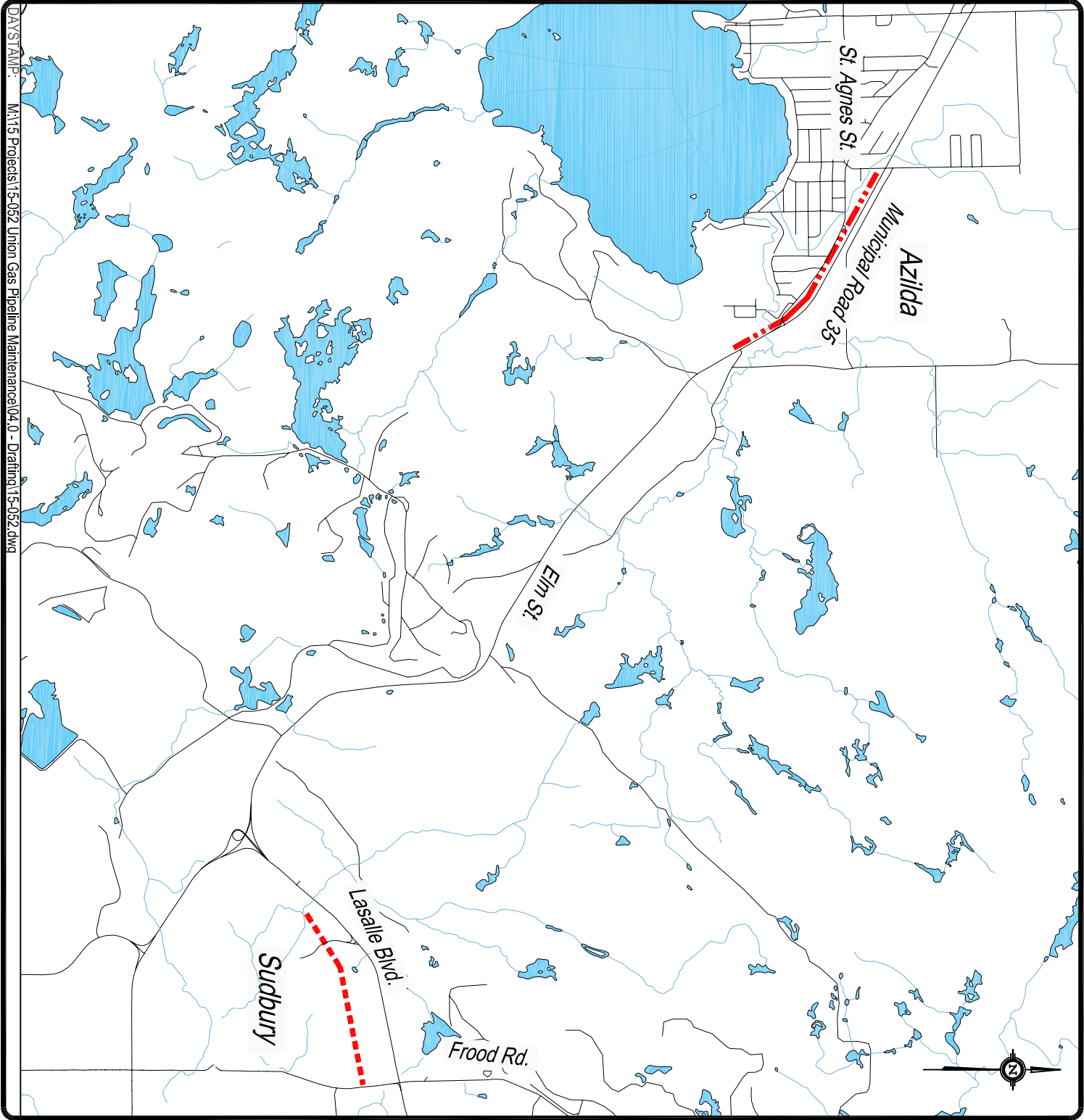
DATED at Toronto July 09, 2015.

ONTARIO ENERGY BOARD

Original signed by

Kirsten Walli
Board Secretary

SCHEDULE A
DECISION AND ORDER
UNION GAS LIMITED
EB-2015-0120
JULY 09, 2015



LEGEND:

- Proposed Pipeline Sections
- Frood Station
- Azilda Lateral

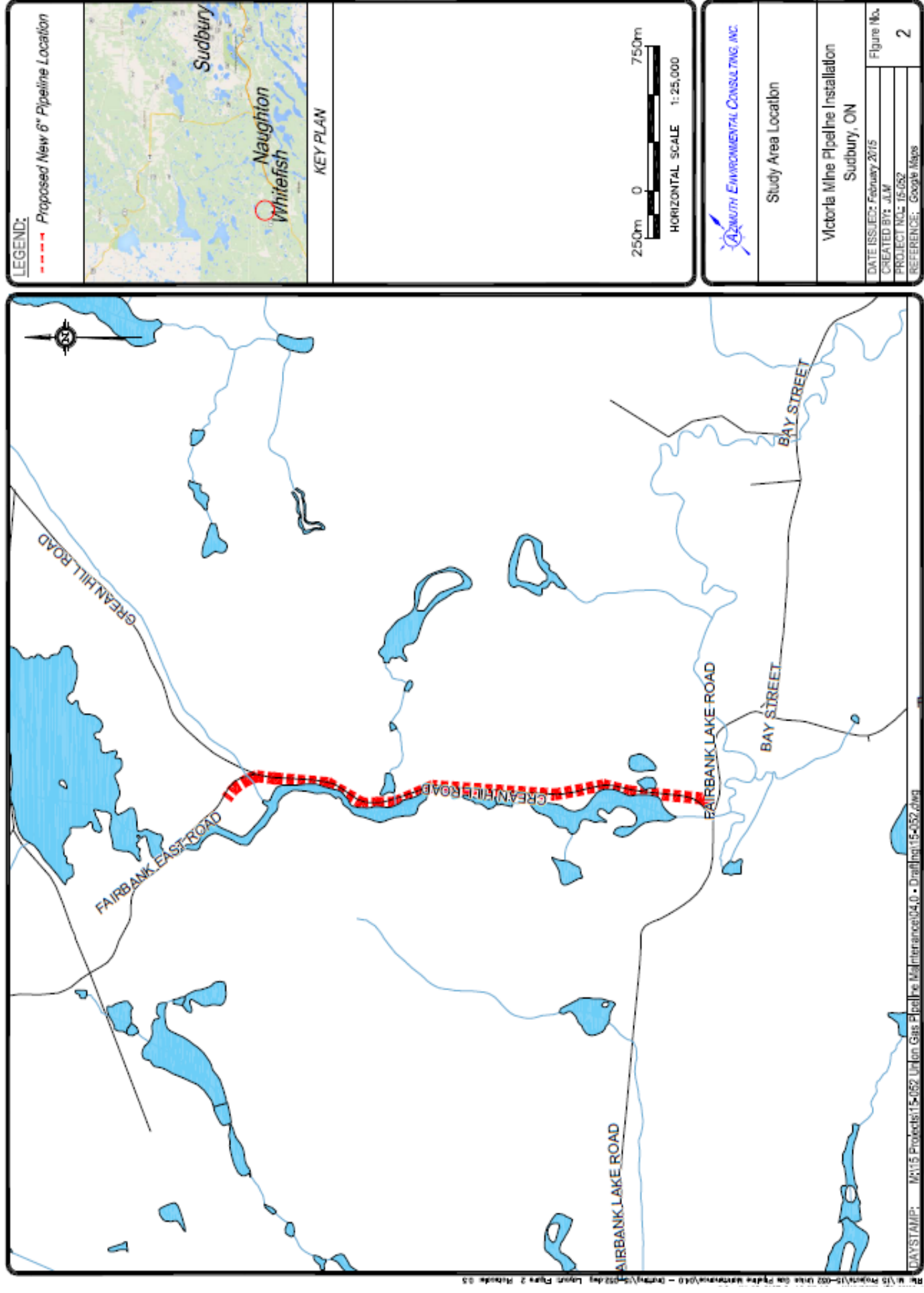


Study Area Location

Proposed Pipeline Sections for
Replacement/Installations, Sudbury, ON

DATE ISSUED: February 2015	Figure No.
CREATED BY: JLM	
PROJECT NO.: 15-052	
REFERENCE: Google Maps	1

VICTORIA MINE PIPELINE PROJECT



SCHEDULE B
DECISION AND ORDER
UNION GAS LIMITED
EB-2015-0120
JULY 09, 2015

Leave to Construct Conditions of Approval

Application under Section 90 of the OEB Act

Union Gas Limited

EB-2015-0120

1. Union Gas Limited (Union) shall construct the facilities and restore the land in accordance with the OEB's Decision and Order in EB-2015-0120 and these Conditions of Approval.
2. (a) Authorization for leave to construct shall terminate 12 months after the decision is issued, unless construction has commenced prior to that date.

(b) Union shall give the OEB notice in writing:
 - i. of the commencement of construction, at least ten days prior to the date construction commences;
 - ii. of the planned in-service date, at least ten days prior to the date the facilities go into service;
 - iii. of the date on which construction was completed, no later than 10 days following the completion of construction; and
 - iv. of the in-service date, no later than 10 days after the facilities go into service.
3. Union shall implement all the recommendations of the Environmental Report filed in the proceeding, and all the recommendations and directives identified by the Ontario Pipeline Coordinating Committee review.
4. Union shall advise the OEB of any proposed change to OEB-approved construction or restoration procedures. Except in an emergency, Union shall not make any such change without prior notice to and written approval of the OEB. In the event of an emergency, the OEB shall be informed immediately after the fact.
5. Union shall file, in the proceeding where the actual capital costs of the project are proposed to be included in rate base, a Post Construction Financial Report, which shall indicate the actual capital costs of the project and shall provide an explanation for any significant variances from the cost estimates filed in this proceeding.
6. Both during and after construction, Union shall monitor the impacts of construction, and shall file with the OEB one paper copy and one electronic (searchable PDF) version of each of the following reports:
 - a) a post construction report, within three months of the in-service date, which shall:
 - i. provide a certification, by a senior executive of the company, of Union's adherence to Condition 1;

- ii. describe any impacts and outstanding concerns identified during construction;
 - iii. describe the actions taken or planned to be taken to prevent or mitigate any identified impacts of construction;
 - iv. include a log of all complaints received by Union, including the date/time the complaint was received, a description of the complaint, any actions taken to address the complaint, the rationale for taking such actions; and
 - v. provide a certification, by a senior executive of the company, that the company has obtained all other approvals, permits, licences, and certificates required to construct, operate and maintain the proposed project.
- b) a final monitoring report, no later than fifteen months after the in-service date, or, where the deadline falls between December 1 and May 31, the following June 1, which shall:
- i. provide a certification, by a senior executive of the company, of Union's adherence to Condition 3;
 - ii. describe the condition of any rehabilitated land;
 - iii. describe the effectiveness of any actions taken to prevent or mitigate any identified impacts of construction;
 - iv. include the results of analyses and monitoring programs and any recommendations arising therefrom; and
 - v. include a log of all complaints received by Union, including the date/time the complaint was received, a description of the complaint, any actions taken to address the complaint, the rationale for taking such actions.