



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

DECISION AND ORDER

EB-2015-0212

NOVA CHEMICALS (CANADA) LTD.

**Application for Approval to Construct the Kimball Pipeline
Replacement Project**

BEFORE: Emad Elsayed
Presiding Member

October 29, 2015

1 INTRODUCTION

NOVA Chemicals (Canada) Ltd. (NOVA) applied to the Ontario Energy Board (OEB) on June 26, 2015 under section 90 of the *Ontario Energy Board Act*, (Act) for approval to construct 4 kilometres of 12 inch diameter natural gas liquids (NGL) pipeline and ancillary facilities in the Township of St. Clair, County of Lambton (the Pipeline). The purpose of the Pipeline is to connect NOVA's Corunna petrochemical facility to an existing natural gas liquids pipeline network.

The Pipeline will be located in an existing right of way with easement rights owned by NOVA. Construction is planned to commence in or about June 2017, with a planned in-service date in or about November 2017.

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 Conditions of Approval, which are attached as Schedule A. NOVA had proposed a variation in OEB's standard Condition 2 which deals with the termination date of a leave to construct authorization. This issue is addressed under a separate heading later in this Decision and Order.

2 THE PROCESS

The OEB issued Notices of Hearing on July 30, 2015 and on August 6, 2015. The notices were published, posted and served as per the direction of the OEB. There are no intervenors in the proceeding. The OEB proceeded by way of a written hearing. In accordance with the procedural order issued on September 1, 2015, the interrogatory phase was completed on September 19, 2015.

OEB staff filed a written submission on September 28, 2015 supporting NOVA's application with the exception of NOVA's request regarding Condition 2. NOVA filed its reply submission on October 9, 2015 confirming its acceptance of the OEB's standard Conditions of Approval with the exception of Condition 2.

3 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 and economics of the project, the environmental impacts, and the impacts on landowners. Each of these issues is addressed below.

4 NEED AND ECONOMICS OF THE PIPELINE

The need for the Pipeline is based on NOVA's business development plan. The estimated cost of the Pipeline is \$13.8 million. The entire cost of the pipeline will be paid by NOVA, and there are no impacts to ratepayers. Therefore, the OEB finds that NOVA does not have to justify the economics of the Pipeline.

5 ENVIRONMENTAL ASSESSMENT

An Environmental Report (ER) was completed by Stantec Consulting Ltd. on behalf of NOVA. NOVA provided the ER for review by the members of the Ontario Pipeline Coordinated Committee (OPCC), local municipalities, First Nations and Metis. There are no outstanding issues or concerns raised in the ER review. NOVA notified First Nations and Metis communities that would potentially be affected by the Project.

OEB staff submitted that it had no concerns regarding the environmental assessment and consultation subject to NOVA's commitment to implement the mitigation measures identified in the ER, the consultation, and in the OPCC review process.

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

The OEB is aware that other approvals will be required for the Pipeline. The OEB finds that NOVA's compliance with the Conditions of Approval will ensure that the requirements of other approvals, permits, licences, and certificates are fully addressed.

6 LAND MATTERS

Because the Pipeline will be located in an existing right of way with easement rights owned by NOVA, there are no outstanding land matters related to the Pipeline.

7 TERMINATION DATE FOR LEAVE TO CONSTRUCT AUTHORIZATION

Typically, the OEB's order for leave to construct requires that construction starts within 12 months from the date the decision is issued (Condition 2 in OEB's standard Conditions of Approval). The planned construction start for the Pipeline is in or about June 2017. OEB staff noted that, assuming the OEB approves the application in November 2015, NOVA's planned construction start would fall within about 20 months from the date of approval. NOVA asked that the order, if granted, expire within 36 months from the date issued.

In response to an interrogatory from OEB staff, NOVA explained that the proposed Pipeline construction schedule is closely aligned with the schedule of Kinder Morgan's Utopia East project (UTOPIA). UTOPIA is one of the projects that will complete the transportation path for NGL's to be delivered from Ohio to the Corunna site. UTOPIA is a larger and more complex project, which involves the construction of 380 kilometres of new pipeline in Ohio.

UTOPIA's current schedule calls for construction to begin in November 2016, after completion of regulatory and survey activities. UTOPIA's targeted full in-service date is currently January 2018; two months after NOVA's proposed Pipeline planned in-service date of November 2017. NOVA's objective is to complete its proposed Pipeline shortly before UTOPIA is completed, primarily for commercial reasons (i.e. cash flow optimization). Consequently, a significant delay in UTOPIA's schedule would likely lead to a corresponding delay in the Pipeline's schedule.

The 36 months term requested by NOVA is based on the following considerations:

- NOVA has filed its application now in order to obtain approval early in the UTOPIA project schedule. This will provide a higher degree of certainty to Kinder Morgan and NOVA's ethane suppliers that NOVA will be able to perform its obligations to receive ethane.
- The June 2017 start date for construction was selected to ensure that:
 - Construction is completed in late summer/early fall which is optimal from an environmental perspective.
 - The proposed Pipeline is ready to receive ethane before the completion of the UTOPIA pipeline.

- The remaining period of the 36 months term would allow for the Pipeline to be constructed during the next optimal construction period (in the summer of 2018) if UTOPIA is significantly delayed.

NOVA stated that it does not anticipate any changes to its application and evidence within the 36 months period from the date of OEB's approval.

OEB staff submitted that the requested 36 months period was too long to be approved at this time. However, OEB staff submission did not explicitly recommend an approval expiry period. OEB staff proposed that the OEB direct NOVA to file, by June 2017, a construction schedule status report identifying and explaining any changes to the originally planned construction schedule. This submission by OEB staff implies a recommended approval period of about 20 months (November 2015 assumed OEB approval to June 2017 assumed construction start). OEB staff further suggested that, if there is a delay in construction start beyond June 2017, and there are no changes to the evidence that supported the approved application, NOVA may seek an extension of an additional 12 months for the construction to commence.

In its reply submission, NOVA noted that OEB staff did not provide any rationale for concluding that the requested approval period of 36 months was "too long". NOVA provided examples of OEB's leave to construct decisions issued over the last five years where the approval expiry date ranged from 13 months to more than 3 years depending on the circumstances of these projects. NOVA further submitted that its request for the 36 months authorization has been justified based on providing NOVA and its contractual counterparties with a level of commercial certainty regarding NOVA's commitment to the NGL supply and transportation arrangements being contracted for.

NOVA also had concerns about OEB staff's suggestion that NOVA advises the OEB formally of any delay in the construction start beyond June 2017 to seek an extension for the leave to construct approval. According to NOVA, such a condition could result in the loss of a significant portion of the ideal summer construction period in 2017, particularly if such a delay is brief and occurs in the last minute. NOVA also objected to the OEB staff's suggestion that a construction schedule status report be filed by June 2017. NOVA stated that if construction is delayed beyond the expiry date and NOVA wishes to apply for an extension of its leave to construct approval, then it will file an application for extension with appropriate supporting information including a schedule update.

The OEB finds that the requested 36 months for the expiration of the OEB's order for leave to construct is reasonable and will be granted. This is based on the special circumstances of this proposed Pipeline in terms of its schedule alignment with the

UTOPIA project, including the need to provide commercial certainty, optimization of the construction period from an environmental perspective, and allowing for any significant delay in the UTOPIA project schedule which could cause the Pipeline construction to be delayed to the summer of 2018. Condition 2(a) in Schedule 2 is revised accordingly.

The OEB directs NOVA to file a construction schedule status report no later the end of June 2017 (the currently projected construction start date). The report should provide an update of the Pipeline construction schedule status including the projected in-service date. This direction of the OEB is reflected in Condition 2(b) of the Conditions of Approval attached as Schedule A.

8 ORDER

THE BOARD ORDERS THAT:

1. NOVA Chemicals (Canada) Ltd. is granted leave, pursuant to subsection 90(1) of the Act, to construct 4 kilometres of 12 inch diameter natural gas liquids pipeline and ancillary facilities in the Township of St. Clair, County of Lambton. Leave to construct is subject to the Conditions of Approval set forth in Schedule A.
2. NOVA Chemicals (Canada) Ltd. shall pay the OEB's costs incidental to this proceeding upon receipt of the OEB's invoice.

DATED at Toronto October 29, 2015

ONTARIO ENERGY BOARD

Original Signed By

Kirsten Walli
Board Secretary

SCHEDULE A
DECISION AND ORDER
NOVA CHEMICALS (CANADA) LTD.
EB-2015-0212
OCTOBER 29, 2015

**Conditions of Approval
Leave to Construct
Application under Sections 90 of the OEB Act**

NOVA Chemicals (Canada) Ltd.

EB-2015-0212

1. NOVA Chemicals (Canada) Ltd. (NOVA) shall construct the facilities and restore the land in accordance with the Board's Decision and Order in EB-2015-0212 and these Conditions of Approval.
2.
 - (a) Authorization for leave to construct shall terminate 36 months after the decision is issued, unless construction has commenced prior to that date.
 - (b) NOVA shall file a construction schedule status report no later the end of June, 2017. The report should provide an update of the Pipeline construction schedule status including the projected in-service date.
 - (c) NOVA shall give the Board 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. NOVA 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. NOVA shall advise the Board of any proposed change to Board-approved construction or restoration procedures. Except in an emergency, NOVA shall not make any such change without prior notice to and written approval of the Board. In the event of an emergency, the Board shall be informed immediately after the fact.
5. Both during and after construction, NOVA shall monitor the impacts of construction, and shall file with the Board 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 NOVA'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 NOVA, 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 NOVA'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 NOVA, 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.