



Ontario
Energy
Board

E.B.L.O. 184

IN THE MATTER OF The Ontario Energy Board Act, R.S.O. 1970, Chapter 312, as amended, and in particular sections 38 and 40 thereof;

AND IN THE MATTER OF an application by Tecumseh Gas Storage Limited for leave to construct a natural gas pipeline and facilities in the Townships of Moore and Sombra in the County of Lambton, Province of Ontario.

BEFORE: H. R. Chatterson)
Presiding Member)
J. R. Dunn) Friday, May 26, 1978.
Member)

REASONS FOR DECISION

Appearances

P. Y. Atkinson)
R. S. Paddon, Q.C.) - for Tecumseh Gas Storage Limited

L. Grahalm - for the Ontario Energy Board

A. Mudryj - for Union Gas Limited

R. Bryant - representing the Ministry of Natural Resources

G. Todd - representing the Ministry of the Environment

R. B. Gray)
E. R. Rowcliffe, Q.C.) - counsel for James Arthur Eyre

G. L. Robbins - landowner.

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The Application

These Reasons for Decision deal with an application by Tecumseh Gas Storage Limited (the "Applicant" or "Tecumseh") pursuant to sections 38 and 40 of The Ontario Energy Board Act (the "Act") for an order granting leave to construct a natural gas pipeline between the Applicant's proposed Wilkesport Storage Pool in Sombra Township and its main compressor station in Moore Township, all within the County of Lambton. The proposed 16-inch pipeline is to extend from the designated storage area lying beneath varying portions of Lots 13, 14, 15, and 16 of Concessions XIII and XIV, Sombra Township, to the Tecumseh Compressor Station located in Concession VII, Lot 19, of Moore Township, some eight miles to the north.

The application indicates that the Applicant proposes to construct the pipeline in the summer of this year and that it might be in service by September, 1978.

The application is dated April 26, 1978, and it was received in the Ontario Energy Board (the "Board") office on that date. The application was heard in the City Hall, Sarnia, Ontario, on May 26, 1978.

The Applicant's Submission

After all participants in the proceedings were identified, Mr. P.Y. Atkinson, counsel for the Applicant,

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filed affidavits proving service and publication of the Notice of Application and Hearing, indicating that interested persons who owned or had an interest in land along the proposed pipeline, had been notified and that newspaper publication had been made, all in accordance with the Board's direction. Mr. Atkinson then presented evidence in support of the transmission line application and subsequently presented witnesses to testify in support of the evidence and the application.

The witnesses all appearing on behalf of Tecumseh were, Mr. William H. Girling, Manager, Land Department of The Consumers' Gas Company; Mr. Robert J. Craig, Production Engineer, Exploration Department, The Consumers' Gas Company; Mr. Peter D. Harper, Special Projects Coordinator, Engineering Department, The Consumers' Gas Company; and Mr. James Ivan Cuthill, General Manager, Tecumseh Gas Storage Limited. There were no other witnesses presented.

Mr. Girling, the first witness for the Applicant, provided a list of all landowners (Exhibit 4, Schedule 1.2) from whom easements are required. All but one of these landowners have signed an "Agreement for Right-of-Way and Easement" form (Schedule 1.3). Those who have signed the agreement have been paid \$50. The document, in effect, represents an option held by the Applicant for a "Grant of Easement" (Schedule 1.4) to be executed by each of the

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landowners and Tecumseh, should the application for leave to construct a pipeline be successful.

It was also reported that the compensation for the granting of easement is to be calculated at the rate of \$1,100 per acre. The easement is to be 40 feet in width. The Applicant also requires an additional 25 feet of easement during construction of the pipeline. Compensation will be paid at the same rate (\$1,100 per acre); however, upon completion of construction the permanent easement reverts to a 40-foot width. The landowner will be at liberty to use the land for agricultural purposes but will be prohibited from erecting buildings upon the 40-foot easement.

The Applicant failed to come to an agreement with one of the landowners, Mr. James Arthur Eyre. He was represented by counsel, R. B. Gray and E. R. Rowcliffe throughout the hearing and their submissions will be dealt with elsewhere in these Reasons for Decision.

Mr. Robert C. Craig testified as to cost of the proposed gas transmission line. His evidence, contained in Exhibit 4 and Schedule 2.2 thereto, indicates that the cost of pipe and other material will be approximately \$689,000; easements \$90,000; and installation will be approximately \$821,000; a total of some \$1,600,000. These figures were not seriously challenged and are therefore regarded as acceptable.

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Mr. Peter D. Harper provided evidence and testified as to environmental impact and route selection. This subject is of sufficient import to justify treatment under a separate section.

Route Selection and Environmental Impact

The Applicant considered three different routing options and settled upon one of these. All three of the proposed routes coincide in a north-south direction with lot lines (boundaries), virtually throughout their length.

One of the routes considered would have run westward from the storage area to the lot line between Lots 11 and 12, Concession XIII, in Sombra Township, then due north for a distance of 40,500 feet. The easement would roughly coincide with an electric transmission line right-of-way. It would follow the lot line between Lots 19 and 20 in Moore Township and traverse Concessions I through VII. It would then follow the line dividing Concessions VII and VIII, some 2,000 feet in an easterly direction to the Tecumseh compressor station. This routing is referred to as the Western Alignment.

The Central Alignment is a possible route running south from the Tecumseh compressor station along a roadway through Moore Township. This would coincide with the lot line between Lots 18 and 19. The route continues southerly a distance of 7,000 feet along the lot line

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between Lots 12 and 13, Concessions XIV and XV, Sombra Township, thence southwesterly 3,500 feet to the boundary of the designated storage area.

The third routing option referred to as "the Eastern Alignment" follows the next lot line to the east of the Central Alignment. This alignment is the one favoured by the Applicant and it runs easterly from the Tecumseh gas compressor station a distance of approximately 2,200 feet, thence southerly along the lot line between Lots 17 and 18, Concessions I through VII, Moore Township, a distance of 30,500 feet. The line continues southerly approximately 6,500 feet along the lot line between Lots 13 and 14, Concessions XIV and XV, Sombra Township, thence southeasterly approximately 2,500 feet to the boundary of the designated storage area.

Mr. Harper, on behalf of the Applicant, has done an impact study which includes an environmental impact assessment and has recommended the Eastern Alignment. He summarized his conclusions as set out in the following paragraph:

"The selection and recommendation of the Eastern Alignment as the preferred route is based on the fact that this route appeared to minimize impacts on the agricultural, cultural, natural environment and construction constraint factors in total. In addition, impacts on agricultural land use and farm operations were felt to have the greatest significance and hence had the greatest weight in the evaluation."

The Applicant found the Central Alignment least desirable for several reasons. There are a number of

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rural residences along the roadway, and the roadway itself is a considerable constraint. The usual road maintenance, and possible relocation because of road improvements, presents risks that might otherwise be avoided by either of the other two routes.

The Western Alignment would require 5,000 feet more pipe than the route chosen. This is not a decisive factor but it does amount to some 12% more pipe. This routing would follow an electric transmission line and this involves construction constraints and some operating problems. It also involves more productive agricultural land than either of the other two options.

Mr. Todd questioned the Applicant on its construction and reparation plans. He reminded the Applicant that the Ontario Energy Board had published certain guidelines in September 1976, entitled "Environmental, Agricultural and Resource Guidelines for the Construction and Operation of Pipelines in the Province of Ontario" (the "Guidelines") and, furthermore, that the Applicant was expected to abide by the recommendations as contained in the "Route Selection and Environmental Assessment" report. Mr. Todd's concern as to the method of crossing of Bear Creek falls outside the scope of this hearing and has been dealt with in the hearing of the application for the designation of the associated storage area.

Mr. Todd seemed satisfied with the Applicant's undertakings and commitments with respect to environmental

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protection but recommended that the Applicant be required to report further in due course as to its performance of the recommendations contained in the Route Selection and Environmental Assessment report.

Mr. Graholt had the Applicant confirm its intention to comply with all undertakings, particularly those as set out in sections 4 and 5 of Mr. Harper's environmental assessment report. Board Counsel also had the Applicant file a copy of the "Contract Document for the Construction of a 16" Diameter Natural Gas Transmission Line to the Wilkesport Pool" (Exhibit 6). This document dedicates several sections to the insurance of environmental protection.

Easements and Temporary Land Use

As previously mentioned, the Applicant has obtained from all landowners, except one, signed agreements signifying their willingness to enter into a long-term agreement granting a 40-foot easement that would accommodate the proposed gas transmission line.

The long-term easement is considered to be inadequate for pipeline construction purposes so, the Applicant has made a further agreement with all landowners, except one, for an additional 25 feet of easement to be effective only for the duration of construction. The said 25 feet would,

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upon completion of construction and restoration, revert unencumbered to the landowner.

The agreements as to form have been submitted in evidence and the Board finds them to be acceptable documents.

The Applicant has come to agreement with all landowners, except one, as to the level of compensation to be paid should the application for leave to construct the proposed pipeline be approved.

The objections of the one remaining landowner are so wide-ranging that they are considered in a separate section of these Reasons for Decision.

Submission of Respondents

Mr. Gray and Mr. Rowcliffe represented Mr. James Arthur Eyre in his intervention. Mr. Gray cross-examined all witnesses, although no evidence was submitted nor were witnesses called to testify. Mr. Rowcliffe presented the final argument.

At the commencement of this proceeding, Mr. Gray questioned the Board's compliance with section 40, subsection 5, of the Act; his interpretation being that the hearing was taking place before the period of time, required by the legislation, between the date of filing of the application and the date of hearing, had passed.

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Mr. Atkinson pointed out that subsection 3 of section 40 provides for the filing of objections to applications. The subsection reads as follows:

"(3) Where an interested person desires to make objection to the application, such objection shall be given in writing to the applicant and filed with the Board within fourteen days after the giving of notice of the application and shall set forth the grounds upon which such objection is based."

No such objection was filed.

Mr. Graholt volunteered that the hearing date was derived in accordance with a counting practice adopted by the Board and was, in his opinion, in compliance with the Act.

The subject clause reads as follows:

"(5) Where an application is opposed, it shall not be heard for at least thirty days after the day on which it was filed with the Board."

The Board ruled that the regulation waiting period had been complied with and now confirms that ruling.

Mr. Eyre's position, as put forward by counsel, seems to be that he just does not want the pipeline on his property; at least on the terms proposed by Tecumseh. Mr. Gray questioned Mr. Girling at some length regarding the rigidity of the form of agreement used by the Applicant. Mr. Girling takes the position that the form, when used without alteration, treats all landowners equally, avoiding undue discrimination and, furthermore, the said form is one acceptable to the Board.

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Mr. Gray also cross-examined on the level and the derivation of compensation offered. His client's remedy may well be in this direction; however, the matter of compensation falls outside the jurisdictional scope of this hearing.

There was some objection expressed with respect to the longevity of the Grant of Easement. Mr. Rowcliffe argued that there should be a time specific and that the grant should not be in perpetuity. Failing the presentation of constructive alternatives by way of specific proposals for agreement modifications, and noting that the Applicant and its customers would be without negotiable options, if from time to time, easement grants were subject to renegotiation, the Board finds the Grant of Easement form acceptable.

This respondent was also concerned with soil reparations and restoration and in particular the fact that these obligations are in effect assigned to a contractor. The Applicant gave assurances that such responsibility would be assumed by it in the event of the contractor not fulfilling its obligation. In any event, the Guidelines and third party inspections are designed specifically to insure satisfaction in this respect. Furthermore, as Mr. Rowcliffe speculates, any landowner is at liberty to assess personally or by representation the degree of compliance and insist upon remedial action if in his judgement

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remedial action is necessary. The Board is satisfied that landowners are not exposed to unusual risk in this context.

It was also suggested that three or five feet of easement might be sufficient to enable operation and inspection of the line. Barring unusual circumstances and prior overriding rights, the Board is of the opinion that insoluble problems would be encountered if repairs were necessary requiring heavy equipment. The grantee must have access in perpetuity to the full width of the easement even though access to the full width might seldom be required.

Mr. Todd sought assurance regarding environmental protection. The Applicant was made aware of the expectations of the Ministry of the Environment and Mr. Todd seemed satisfied with the performance undertakings. The Applicant is expected and indeed plans to bore beneath all roadways, soil conditions permitting.

Mr. Gary Lee Robbins, a concerned landowner, had several questions of the full panel of witnesses. One of his concerns was that landowners might be getting unequal treatment with respect to tile and fence repairs and topsoil restoration. He was assured by Mr. Girling that the agreement forms were all identical and that there would be no intentional variation in the attention given these matters. Mr. Harper described the on-site procedures set up in order to assure satisfaction with respect to restoration of tile drains and topsoil replacement.

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Mr. Robbins had other enquiries about the outright sale to and/or purchase of land from Tecumseh, but such transactions fall outside the scope and jurisdiction of this Board.

Mr. Robbins suggested that the Tecumseh land agent may have been deceptive in obtaining signed Agreements for Right-of-Way and Easement. This was not pursued as Mr. Robbins did not express any desire to upset the contract and seemed intent only on reassurance as to his rights under his contract.

The Disposition

The Board, having considered the evidence and testimony, is of the opinion that construction of the proposed pipeline is the most appropriate option enabling Tecumseh to utilize the storage capacity of the Wilkesport Pool and satisfy the long-term requirements of its only customer, The Consumers' Gas Company. Other options that might be considered involve third parties and could conceivably result in a diminution of the quality of service the Applicant would be able to render.

The Board is sufficiently satisfied with the economic viability of the Wilkesport Pool development and the transmission line connecting it into Tecumseh's main compressor station. The Board is also satisfied with the Applicant's ability to finance the project. These subjects are more thoroughly dealt with under E.B.O. 89.

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It should be noted that Tecumseh has initiated a hearing into its rate base, rate of return and rates of charge. Some of the assumption necessarily made for purposes of this hearing will be more thoroughly investigated during that proceeding.

Of the three pipeline routes considered by the Applicant, the Board is satisfied that the routing proposed is the most acceptable. Less agricultural land will be disturbed and fewer farm complexes will be infringed upon than if either of the other two routes were chosen. Moreover, none of the easements will be along roadways to hamper future development. The Board approves the Eastern Alignment.

The Board empathizes with Mr. Eyre and the anxiety this leave to construct imposes upon him. Little more can be offered except to point out that, if the parties fail to agree, The Ontario Energy Board Act provides recourse by way of expropriation, and subsequently the fixing of compensation by another government agency.

The Board is satisfied that the Applicant is sufficiently committed with respect to drainage tile repair, fence repair or replacement, topsoil restoration, stump removal, slope stabilization, and boring under streams and roadways, that it will not condition its order to specify the undertakings made by the Applicant's witnesses with respect to construction procedure.

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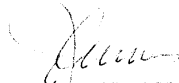
The Board is of the opinion that the construction of the pipeline and accessorial facilities is in the public interest and will make an order granting the application for leave to construct a 16-inch gas transmission line following the Eastern Alignment plan. Such leave, however, will be conditional upon the attainment of all the approvals necessary with respect to the designation of the Wilkesport Storage Pool. The order will also be conditioned to require the Applicant, upon completion of construction, restoration and clean-up, to make a report to the Board to confirm that its performance has been in accordance with the requirements and guidelines set out in the Route Selection and Environmental Assessment report and in the Environmental, Agricultural and Resource Guidelines for the Construction and Operation of Pipelines in the Province of Ontario, and particularly with respect to the effectiveness of the clean-up and restoration work.

DATED at Toronto this 23rd day of June, 1978.

ONTARIO ENERGY BOARD



H. R. Chatterson
Presiding Member



J. R. Dunn
Member