



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

DECISION AND ORDER

EB-2016-0013

UNION GAS LIMITED

**Application for leave to construct natural gas pipelines and
ancillary facilities in the Municipality of Leamington**

BEFORE: Emad Elsayed
Presiding Member

Paul Pastirik
Member

June 29, 2016

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1 INTRODUCTION AND SUMMARY

Union Gas Limited (Union) is a major Canadian natural gas storage, transmission and distribution company serving about 1.4 million residential, commercial and industrial customers in communities across northern, southwestern and eastern Ontario.

Union filed an application with the Ontario Energy Board (the OEB) on January 14, 2016, in accordance with section 90 of the *Ontario Energy Board Act, 1998* (the Act), for leave to construct a natural gas pipeline and ancillary facilities to serve the growing greenhouse market in the Municipality of Leamington. The Leamington Expansion Project (the Project) consists of 6.7 km of NPS 12 natural gas pipeline, 250 metres of NPS 16 natural gas pipeline, 60 metres of NPS 8 natural gas pipeline and ancillary facilities.¹ A map showing the location of the Project is attached as Schedule A.

The Project will provide an additional 51,900 m³/hour of firm capacity to greenhouse growers in the project area (which includes Leamington, Kingsville, Mersea Township and Gosfield South). The planned in-service date for the Project is November 1, 2016.²

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

¹ EB-2016-0013, Union Pre-Filed Evidence at p. 1.

² EB-2016-0013, Union Pre-Filed Evidence at p. 1.

2 THE PROCESS

The OEB issued a Notice of Hearing (the Notice) on January 26, 2016. Union served and published the Notice as directed by the OEB. The following parties were granted intervenor status in the proceeding:

- Enbridge Gas Distribution Inc. (Enbridge)
- Hydro One Networks Inc. (Hydro One)
- Independent Electricity System Operator (IESO)
- Ontario Greenhouse Vegetable Growers (OGVG)

The OEB initially proceeded to hear the application by way of a written hearing. However, after reviewing Union's responses to written interrogatories filed by OEB staff, OGVG and Hydro One, the OEB decided that it would benefit from further discovery on two main issues: (a) the project economics and Union's proposed method for cost recovery; and (b) the land issues raised by Hydro One (specifically, the routing proposed by Union which results in the proposed Leamington pipeline and Hydro One's previously approved SECTR transmission line being in close proximity).

On that basis, the OEB decided to hear the case by way of an oral hearing. The OEB also allowed Hydro One the opportunity to file intervenor evidence (as was requested by Hydro One). Hydro One filed intervenor evidence on April 12, 2016.

The OEB held an oral hearing on April 19, 2016. At the oral hearing, the OEB heard testimony from both Union and Hydro One regarding the land issues raised by Hydro One. Both parties agreed that an AC Interference Study would need to be completed to determine whether Union's proposed Leamington pipeline and Hydro One's SECTR transmission line could be safely constructed in close proximity.

The OEB directed that the AC Interference Study be filed with the OEB prior to parties making submissions on the land issues. On that basis, the OEB directed parties to make submissions on the non-land matters (including the project economics and Union's proposed method for cost recovery) in a first round of submissions prior to establishing a procedural schedule for addressing the land issues raised by Hydro One.

The OEB received submissions on the non-land matters from OEB staff and OGVG. The OEB also received a reply submission from Union.

The OEB received the AC Interference Study prepared on Union's behalf by Corrosive Service Company Limited (CSCL) on May 19, 2016.³

The OEB granted Union and Hydro One until June 3, 2016 to reach an agreement on the land issues and file a letter with the OEB advising whether an agreement has been reached.

On June 3, 2016, Hydro One filed a letter advising the OEB that Union and Hydro One had reached a preliminary agreement on the land issues that arose in this proceeding. On the same day, Union filed a letter advising that it was prepared to sign the agreement contemplated in Hydro One's letter.

On that basis, the OEB offered all parties the opportunity to file submissions on the land issues, the environmental assessment, First Nation and Métis consultation, and the Conditions of Approval (which were the remaining issues that were not addressed in the first round of submissions).

The OEB received submissions on the above noted matters from OEB staff. The OEB also received a reply submission from Union.

³ On May 30, 2016, Union and Hydro One held a meeting to review the AC Interference Study and its findings. After the meeting, a number of changes were made to the AC Interference Study at the request of Hydro One and the final study was filed with the OEB on June 7, 2016.

3 THE PUBLIC INTEREST TEST

This proceeding concerns an application filed by Union 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, project alternatives, the project cost and economics, the environmental impact, First Nations and Métis consultation, and impacts on land owners.

Each of these issues is addressed below.

4 NEED FOR THE PROJECT

Background

Union noted that there has been strong growth in the greenhouse market in the project area (which includes Leamington, Kingsville, Mersea Township and Gosfield South) and that the high pressure pipeline system in the area operates at capacity on a peak day. As a result, Union has been unable to provide new firm capacity, or convert existing interruptible service to firm service, in response to requests from greenhouse growers in the project area.⁴

Union held an expression of interest process for firm capacity related to the Project, which resulted in bids for firm capacity totaling 129,097 m³/hour. The bids included both requests for new firm capacity and the conversion of existing interruptible service to firm service. The requested capacity exceeded the firm capacity available from the Project (51,900 m³/hour).

As of April 8, 2016, 52 long-term contracts and 3 Letters of Agreement have been signed.⁵ These long-term contracts and Letters of Agreement account for all 51,900 m³/hour of firm capacity that is created by the Project.

Union's application also included letters of support from the Corporation of the Municipality of Leamington and from OGVG. The letters stated that a natural gas service expansion is necessary to support the region's economic growth and development.⁶

OEB staff and OGVG agreed that there is a need for the Project and generally supported the OEB granting Union leave to construct the Project.⁷

⁴ EB-2016-0013, Union Pre-Filed Evidence at pp. 1 and 4.

⁵ EB-2016-0013, Union Reply Evidence, April 15, 2016 at Schedule 6 (Updated Response to OEB Staff 3).

⁶ EB-2016-0013, Union Pre-Filed Evidence at Schedule 1.

⁷ EB-2016-0013, OEB Staff Submission, May 3, 2016 at pp. 1-2; and EB-2016-0013, OGVG Submission, May 3, 2016 at pp. 2-3.

OEB Findings

The OEB finds that Union has adequately justified the need for the Project based on the increased demand in the project area from greenhouse growers for firm capacity. This demand significantly exceeds the available firm capacity. The Project is supported by the signed long-term contracts and Letters of Agreement.

5 PROJECT ALTERNATIVES

Background

Union stated that no alternatives to the Project were considered as the Project is a continuation of the Leamington Phase I Project (EB-2012-0431).⁸

In the Leamington Phase I Project proceeding, the OEB approved the construction of 8.5 km of NPS 12 natural gas pipeline in the Municipality of Leamington. The need for the Project is the same as the Leamington Phase I Project (i.e. providing requested incremental capacity to greenhouse growers in the region).⁹

OEB staff submitted that it has no concerns with Union not considering alternatives to the Project in this instance as the Project is a continuation of the Leamington Phase I Project and the requests for capacity exceed the firm capacity available from the Project.¹⁰

OEB Findings

Given that the Project is a continuation of the OEB-approved Leamington Phase I Project and that there is growing demand for incremental firm capacity in the project area, the OEB finds that there was no need for Union to consider alternatives.

⁸ EB-2016-0013, Union Pre-Filed Evidence at p. 5.

⁹ EB-2012-0431, Decision and Order, March 28, 2013.

¹⁰ EB-2016-0013, OEB Staff Submission, May 3, 2016 at p. 3.

6 PROJECT COSTS AND ECONOMICS

Background

Union noted that the estimated capital cost for the Project (including pipeline and stations) is \$12.3 million.¹¹ In addition, Union estimated \$1.7 million in costs for the individual distribution facilities required to connect customers.¹²

Union included the total \$14 million in capital costs (i.e. project costs of \$12.3 million and individual distribution facility costs of \$1.7 million) in the Discounted Cash Flow (DCF) analysis that Union completed for the Project. The DCF analysis completed provides a Profitability Index (P.I.) value of 1.11 and Net Present Value (NPV) of \$1.5 million using a revenue term of 10 years.¹³ The DCF analysis does not include any aid to construct payments.

The Project creates 17,500 m³/h of incremental interruptible capacity and allows for currently contracted interruptible capacity to be re-sold as customers convert their existing interruptible service to firm service.¹⁴

The DCF analysis does not include any forecast revenues from the 17,500 m³/h of incremental interruptible capacity created by the Project as customers did not contract for this capacity and Union stated that future demand in the region will be for firm capacity (which will be met through a system expansion in 2017). However, the DCF analysis does include revenues arising from the re-sale of converted interruptible capacity.^{15 16}

The DCF analysis highlights that the Project is economically feasible as the forecast revenues will more than fully recover the costs of the Project over a 10-year period.

Union proposed to recover from each customer their allocated portion of the pipeline expansion costs and the individual distribution facility costs through an aid to construct

¹¹ EB-2016-0013, Union Pre-Filed Evidence at pp. 5-6.

¹² EB-2016-0013, Union Pre-Filed Evidence at p. 7.

¹³ EB-2016-0013, Union Pre-Filed Evidence at p. 7.

¹⁴ EB-2016-0013, Union Interrogatory Responses, March 24, 2016 at OEB Staff 1(e).

¹⁵ Union noted that it was able to re-contract for 11,691 m³/h of the existing interruptible capacity made available by those customers that converted to firm service on the Project.

¹⁶ EB-2016-0013, Union Reply Submission, May 17, 2016 at pp. 2-3.

payment and / or through a long-term contract.¹⁷ In accordance with Union's original proposal, each customer would be required to pay their entire portion of the pipeline costs (and their individual distribution facility costs) within a 10-year period.¹⁸

Union used customer-specific DCF analyses to determine whether an aid to construct payment is required from the customers that will take capacity created from the Project. Each customer would be required to pay an amount over their contract term based on a minimum annual volume (MAV) and a contract duration (and in some cases an aid to construct payment) that results in a customer-specific P.I. of 1.0.¹⁹

There are three main issues that were addressed by the submissions of OEB staff and OGVG:

1. Requirements for Aid to Construct Payments
2. Union's Responsibility to Assist Customers with Long-Term Contracts associated with the Project
3. Treatment of Interruptible Revenues

Although Union's application for leave to construct the Project was filed under section 90 of the Act, OEB staff submitted that it is appropriate for the OEB to deal with the relevant rate matters in the current proceeding. OEB staff argued that the OEB has all of the necessary information to make comprehensive findings in this proceeding and there is nothing that would prohibit the OEB from making findings on rate matters, typically dealt with under section 36 of the Act, in a leave to construct proceeding.²⁰ OGVG took a similar position noting the OEB's findings in Union's 2014 rates proceeding²¹ where the OEB stated that rate matters associated with a facility project should be explored within the relevant leave to construct proceeding.²²

¹⁷ EB-2016-0013, Union Pre-Filed Evidence at p. 3.

¹⁸ There are no contracts of a duration greater than 10 years. EB-2016-0013, Undertaking Response J1.3.

¹⁹ EB-2016-0013, Union Interrogatory Responses, March 24, 2016 at OEB Staff 2(g).

²⁰ EB-2016-0013, OEB Staff Submission, May 3, 2016 at p. 7.

²¹ EB-2013-0365

²² EB-2016-0013, OGVG Submission, May 3, 2016 at pp. 4-5.

Requirements for Aid to Construct Payments

Most customers have signed long-term contracts (with MAVs and contract durations) that generate sufficient revenues to pay their allocated costs within a period of 10 years in the absence of aid to construct payments. However, three customers would be required to make aid to construct payments as the revenues generated over the term of their contracts do not generate sufficient revenues to cover their allocated costs within a 10-year period. For these three customers, contract durations of 12 years, 13 years, and 25 years would be required to achieve a P.I. of 1.0 in the absence of aid to construct payments.²³

OEB staff submitted that the EBO 188 Guidelines do not contemplate requirements for aid to construct payments from customers in situations where the P.I. of a project is greater than 1.0. Therefore, OEB staff submitted that no aid to construct payments should be required from any customers taking service associated with the Project.

OEB staff submitted that, instead, the contract duration for the three customers required to make aid to construct payments should be extended beyond 10-years to remove any requirement for aid to construct payments.²⁴ OGVG made similar arguments.²⁵

Union submitted that it is prepared to extend the contract term for two of the customers that are required to make aid to construct payments from 10 years to 12 years and 13 years respectively. This will remove the requirement for aid to construct payments from these two customers.

However, for the third customer, Union stated that it is prepared to extend that customer's contract to 20-years, which it submitted is the maximum period specified in the EBO 188 Guidelines for large volume customers. As the duration of the contract for this customer would need to be extended to 25 years to avoid the requirement for an aid to construct payment, this customer would still be required to make a reduced aid to construct payment. Union submitted that if this customer does not make an aid to construct payment and its contract is not extended to 25 years, the customer would be

²³ EB-2016-0013, Union Reply Evidence, April 15, 2016 at Schedule 6 (Updated Response to OEB Staff 3).

²⁴ EB-2016-0013, OEB Staff Submission, May 3, 2016 at p. 9.

²⁵ EB-2016-0013, OGVG Submission, May 3, 2016 at pp. 8-9.

treated differently than the other customers taking service on the Project as it will not contribute its allocated share of the costs of the pipeline.²⁶

Union's Responsibility to Assist Customers with Long-Term Contracts associated with the Project

OGVG and OEB staff submitted that Union should be required to assist customers that need to reduce contracted firm capacity over the term of the contract find another customer to re-contract the capacity that is no longer required. OGVG stated that given the duration of some of the contracts, the ability to transfer the firm capacity to another willing customer is an important option to have available.²⁷

OGVG also submitted that the OEB should require Union to adjust contract terms to account for Demand Side Management (DSM) activities to ensure that customers are not applied MAV-related penalty charges that are caused by their efforts to reduce consumption through DSM programs.²⁸

In addition, both parties submitted that Union should offer customers the option to extend contract terms (even for periods beyond 10 years). This would allow customers to reduce their contractual MAVs if their consumption requirements have evolved over the term of the contract.²⁹

In its reply submission, Union stated that it is willing to work with customers, if necessary, to reassign their contracts or to amend the term and volumes of those contracts. However, the assistance would be provided on a best efforts basis and the outcome of any assistance would need to be revenue neutral.³⁰

Treatment of Interruptible Revenues

OEB staff and OGVG both submitted that Union should be required to track the revenues from the sale of interruptible capacity created by the Project. The two parties proposed different treatments for the interruptible revenues. OEB staff submitted that 90% of the revenues generated from the sale of interruptible capacity (for the November

²⁶ EB-2016-0013, Union Reply Submission, May 17, 2016 at pp. 3-4.

²⁷ EB-2016-0013, OEB Staff Submission, May 3, 2016 at p. 9; and EB-2016-0013, OGVG Submission, May 3, 2016 at p. 9.

²⁸ EB-2016-0013, OGVG Submission, May 3, 2016 at p.10.

²⁹ EB-2016-0013, OEB Staff Submission, May 3, 2016 at pp. 9-10; and EB-2016-0013, OGVG Submission, May 3, 2016 at pp. 9-10.

³⁰ EB-2016-0013, Union Reply Submission, May 17, 2016 at pp. 5-6.

1, 2016 to December 31, 2017 period) should be credited to the customers that will take firm service on the Project.³¹ OGVG submitted that if any of the customers taking firm service on the Project incur charges as a result of falling below their contracted MAV, the interruptible revenues should be used to offset those charges.³²

Union stated that it was willing to track the revenues from the sale of interruptible capacity from November 1, 2016 to December 31, 2018. Union submitted that, at the end of 2018, it would apply the interruptible revenues to the contracts held by customers taking firm service associated with the Project in order to reduce the term of those contracts on a going forward basis.³³

OEB Findings

The OEB finds that the estimated capital costs for the Project are reasonable and it has no concerns with the overall economics of the Project.

The OEB finds that it has the necessary jurisdiction to determine the appropriateness of aid to construct payments in situations where the P.I. of a project is greater than 1.0. As set out in its February 7, 2013 Decision with Reasons in the EB-2012-0396 proceeding, the OEB determined that a capital contribution is a rate.³⁴ Rate setting is squarely in the jurisdiction of the OEB.

The OEB also finds that there is nothing to prohibit the OEB from making findings on rate matters (such as aid to construct payments), typically dealt with under section 36 of the Act, in a leave to construct proceeding. The OEB will therefore consider the appropriateness of the proposed aid to construct payments in this proceeding. Other rates matters (for example the amounts that will ultimately close to rate base) will be addressed in subsequent proceedings.

The OEB finds that Union's revised proposal regarding aid to construct payments, as articulated in its reply submission, is acceptable. The OEB notes that Union's proposal limits the requirement for an aid to construct payment to a single customer and offers that customer an extended 20-year contract duration.

³¹ EB-2016-0013, OEB Staff Submission, May 3, 2016 at pp. 10-11.

³² EB-2016-0013, OGVG Submission, May 3, 2016 at p. 7.

³³ EB-2016-0013, Union Reply Submission, May 17, 2016 at p. 7.

³⁴ EB-2012-0396, Decision and Order, February 7, 2013 at p. 14.

However, for future expansion projects where the project-level P.I. is greater than 1.0 and customers are required to sign long-term contracts, Union shall apply mitigating measures to avoid requiring any customers to make aid to construct payments (e.g. extending the duration of the contract). In situations, where these mitigating measures are not sufficient to avoid aid to construct payments, Union shall seek OEB approval to require such payments as part of its leave to construct application.

The OEB also accepts Union's proposal, as set out in its reply argument, to assist customers that may need to release some, or all, of their contracted capacity related to the Project on a "best efforts" basis (including allowing for the extension of contracts beyond the initial 10-year term).

The OEB finds that Union's proposal is reasonable and will provide customers with the flexibility to adjust contracting terms when there are options for re-assignment or contract extensions that result in a revenue neutral outcome for Union and Union's other customers.

Finally, in regard to the appropriate treatment of interruptible revenues created by the Project, the OEB agrees with Union's proposal, as set out in its reply argument, to track the sale of interruptible capacity for the period November 1, 2016 to December 31, 2018 and to apply these revenues to the contracts held by customers at the end of 2018. The OEB notes that Union's proposal operates to reduce the contract terms for customers taking service on the Project on a going forward basis. The OEB finds that Union's proposal is reasonable as it has the same impact on customers' contracts as if the interruptible revenues were included in the economic analysis at the outset.

7 LAND MATTERS

Background

Union noted that the Project will be constructed on private easement lands, road allowances and an abandoned railway corridor owned by the Municipality of Leamington.³⁵ Union also stated that it has all of the necessary land rights required for the construction and operation of the pipeline.³⁶

Union also filed the form of easement in its application.³⁷ Union noted that the form of easement will be offered to all new landowners where permanent easements are required.³⁸ Union stated that the form of easement filed in its application was previously approved by the OEB in the EB-2014-0261 proceeding.³⁹ Union also stated that, where necessary, it will offer a form of temporary land use agreement previously approved by the OEB and used by Union in the past on similar pipeline projects.⁴⁰

Hydro One raised some concerns with the proposed pipeline routing for the Project. The proposed pipeline routing places the Project and Hydro One's previously approved SECTR project in close proximity to each other.⁴¹

At the oral hearing, the OEB heard testimony from both Union and Hydro One regarding the land issues raised by Hydro One. Both parties agreed that an AC Interference Study would need to be completed to determine whether Union's proposed Leamington pipeline and Hydro One's SECTR transmission line could be safely constructed in close proximity.

The OEB received the AC Interference Study prepared on Union's behalf by Corrosive Service Company Limited (CSCL) on May 19, 2016.⁴²

Hydro One filed a letter noting that it had come to an agreement with Union regarding the co-location of each company's facilities. Hydro One stated that, based on the AC

³⁵ EB-2016-0013, Union Pre-Filed Evidence at p. 12.

³⁶ EB-2016-0013, Union Interrogatory Responses, March 24, 2016 at OEB Staff 6(a).

³⁷ EB-2016-0013, Union Pre-Filed Evidence at Schedule 17.

³⁸ EB-2016-0013, Union Pre-Filed Evidence at p. 13.

³⁹ EB-2016-0013, Union Interrogatory Responses, March 24, 2016 at OEB Staff 6(d-e).

⁴⁰ EB-2016-0013, Union Pre-Filed Evidence at p. 13.

⁴¹ EB-2016-0013, Hydro One Intervenor Evidence, pp. 1-2.

⁴² A final version of the study was filed on June 7, 2016.

Interference Study, there is very low risk to the co-location of both facilities, subject to a mandatory minimum separation of 4 metres between the edge of the tower footing and the edge of the pipeline wall. Hydro One stated that there is low risk to the co-location due to the low ground resistivity, low short-circuit levels at the location, and the planned provision of two skywires / shieldwires on the transmission towers.⁴³ Union filed a letter agreeing with the facts set out in Hydro One's letter and noting that it is prepared to sign the agreement contemplated in Hydro One's letter.⁴⁴

OEB staff submitted that Union has adequately addressed all of the land issues associated with the Project as Hydro One no longer opposes the pipeline routing and Union has all of the necessary land rights to construct and operate the pipeline.⁴⁵

OEB Findings

Given the agreement between Union and Hydro One regarding the conclusions of the AC Interference Study, the OEB finds that the pipeline routing issue raised by Hydro One has been reasonably addressed. As noted by Union in its reply submission, Union will construct the pipeline in the location identified in its pre-filed evidence, which ensures a 4 metre separation from Hydro One's SECTR facilities.⁴⁶

The OEB also finds that Union has adequately addressed the other land issues associated with the Project by obtaining all of the necessary land rights required for the construction and operation of the pipeline.

Section 97 of the Act requires Union to satisfy the OEB that it has offered or will offer to each landowner 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 offered to landowners where new permanent easements are required. The OEB approves the form of easement agreement included in the evidence and notes that it is the same form of easement as was approved by the OEB in the EB-2014-0261 proceeding.

⁴³ EB-2016-0013, Hydro One Letter, June 3, 2016.

⁴⁴ EB-2016-0013, Union Letter, June 3, 2016.

⁴⁵ EB-2016-0013, OEB Staff Submission, June 14, 2016 at p. 2.

⁴⁶ EB-2016-0013, Union Reply Submission, June 17, 2016 at p. 1.

Overall, the OEB finds that Union has adequately addressed the land issues associated with the Project.

8 ENVIRONMENTAL ASSESSMENT

Background

The Environmental Report (ER) prepared for the Leamington Expansion Project indicated that the environmental and socio-economic effects associated with the project are short-term and minimal. Union noted that there are no significant cumulative effects as a result of the pipeline construction.⁴⁷

Union noted that it submitted a copy of the ER to the Ontario Pipeline Coordination Committee (OPCC), local municipalities, the Essex Region Conservation Authority, First Nations and Métis.⁴⁸ Union filed a summary of comments received from interested parties related to the ER and provided its planned actions to mitigate those concerns.⁴⁹

Union received a letter from the Ministry of Tourism, Culture and Sport (MTCS), which advised that the Criteria for Evaluating Potential for Built Heritage Resources and Cultural Heritage Landscapes as provided in the ER for the Project did not encompass the full footprint of the Project and required resubmission.⁵⁰ Union noted that it retained the services of AECOM Environmental to reevaluate and resubmit a cultural heritage assessment to the MTCS.⁵¹

OEB staff submitted that, with the exception of the cultural heritage assessment, Union adequately addressed the concerns set out in the comments received from interested parties related to the ER.

With regard to the cultural heritage assessment, OEB staff asked that Union advise the OEB of the outcome if its revised submission to the MTCS as part of its reply submission. OEB staff submitted that, even if the cultural heritage assessment has not been approved by the MTCS, it has no concerns with the OEB granting leave to construct for the Project as Union will be required to certify that all of the necessary approvals have been obtained in order to satisfy the Conditions of Approval.⁵²

⁴⁷ EB-2016-0013, Union Pre-Filed Evidence at p. 12.

⁴⁸ EB-2016-0013, Union Pre-Filed Evidence at p. 11.

⁴⁹ EB-2016-0013, Union Interrogatory Responses, March 24, 2016 at OEB Staff 5(a), Schedule 1.

⁵⁰ EB-2016-0013, Ministry of Tourism, Culture and Sport Letter, February 4, 2016.

⁵¹ EB-2016-0013, Union Interrogatory Responses, March 24, 2016 at OEB Staff 4(a).

⁵² EB-2016-0013, OEB Staff Submission, June 14, 2016 at p. 3.

Union stated that the revised cultural heritage assessment was completed and sent to the MTCS in May 2016. Union noted that it expects a response from the MTCS in the near future. Union confirmed that all necessary permits and approvals will be place for the construction of the Project.⁵³

OEB Findings

The OEB finds that the Union has adequately addressed the environmental issues associated with the Project through its proposed mitigation measures documented in its ER and subsequent interrogatory responses.

The OEB notes that, as discussed in more detail later in the Decision, Union has committed to adhere to the Conditions of Approval set out in Schedule B, which require Union to implement all of the recommendations of the ER and as identified by the Ontario Pipeline Coordinating Committee review. The Conditions of Approval also establish construction monitoring and reporting requirements.

The OEB is aware that there may be some outstanding approvals required for the Project. However, the OEB finds that Union's compliance with the Conditions of Approval will ensure that the requirement to obtain all necessary approvals, permits, licenses and certificates required to construct, operate and maintain the Project will be fully addressed. This will include obtaining approval of the cultural heritage assessment.

⁵³ EB-2016-0013, Union Reply Submission, June 17, 2016 at p. 1.

9 FIRST NATIONS AND MÉTIS CONSULTATION

Background

Notice of the proceeding was given to the potentially impacted First Nations and Métis groups. Union described the consultation process undertaken with the First Nations and Métis in its application and interrogatory responses. Union noted that no issues had been raised regarding the project and that it is not expecting any issues to be brought forward by the First Nations and Métis due to the location and specifics of the Project.⁵⁴

Union stated that it will continue to monitor and ensure communication is maintained with the First Nations and Métis for the duration of the project.⁵⁵

OEB staff submitted that Union made adequate attempts to engage with the First Nations and Métis and no concerns have been raised. Therefore, OEB staff submitted that the duty to consult has been sufficiently discharged for the Project unless any new information is received before the OEB issues its decision.⁵⁶

OEB Findings

The OEB is satisfied that Union has followed the OEB's Environmental Guidelines⁵⁷ regarding consultation with First Nations and Métis communities and that the duty to consult has been sufficiently discharged for the Project as of the time of this approval.

The OEB encourages Union to continue its communication with the First Nations and Métis for the duration of the Project and attempt to address any concerns that may arise.

⁵⁴ EB-2016-0013, Union Pre-Filed Evidence at pp. 14-15.

⁵⁵ EB-2016-0013, Union Interrogatory Responses, March 24, 2016 at OEB Staff 7(a).

⁵⁶ EB-2016-0013, OEB Staff Submission, June 14, 2016 at p. 4.

⁵⁷ Ontario Energy Board, Environmental Guidelines for the Location, Construction and Operation of Hydrocarbon Pipelines and Facilities in Ontario, 2011.

10 CONDITIONS OF APPROVAL

OEB staff proposed draft Conditions of Approval for the Project. Union originally stated that it was willing to accept all of the draft Conditions of Approval set out in OEB staff's interrogatory.⁵⁸

Hydro One also requested that the OEB add the following conditions if it decides to grant Union leave to construct the Project:

- a) the edge of the Union pipeline wall, for the entire co-location of the Union pipeline and the Hydro One transmission towers, be at least 4 metres from the footing of each Hydro One tower; and
- b) Union and Hydro One enter into a written agreement whereby Union agrees to the commitment stated in (a) above.⁵⁹

OEB staff submitted that the draft Conditions of Approval set out in its interrogatory should be included as part of the OEB's final Conditions of Approval and accepted that the two additional conditions requested by Hydro One are also appropriate in the circumstances.⁶⁰

Union submitted that it will construct the pipeline in the location that was identified in its pre-filed evidence, which ensures a 4 metre separation from Hydro One's SECTR facilities. Therefore, Union submitted that it does not believe that it is necessary to add further Conditions of Approval to confirm what it has committed to do in evidence, testimony and in correspondence subsequent to the oral hearing.

In addition, Union proposed to start construction within three days of the OEB's decision and therefore requested that the draft condition 2(b)(i), which requires that Union provide the OEB with notice 10 days prior to the date that construction commences, be removed from the final Conditions of Approval for the Project.⁶¹

⁵⁸ EB-2016-0013, Union Interrogatory Responses, March 24, 2016 at OEB Staff 8.

⁵⁹ EB-2016-0013, Hydro One Letter, June 3, 2016.

⁶⁰ EB-2016-0013, OEB Staff Submission, June 14, 2016 at p. 4.

⁶¹ EB-2016-0013, Union Reply Submission, June 17, 2016 at pp. 1-2.

OEB Findings

Union shall adhere to the Conditions of Approval attached in Schedule B.

The Conditions of Approval consist of the conditions proposed by OEB staff and agreed to by Union as part of the interrogatory response⁶² with the following exceptions:

- a) Condition 2(b)(i) has been removed from the final Conditions of Approval. Union stated that it will begin construction of the Project within three days of the OEB's decision and therefore the OEB finds that condition 2(b)(i) is no longer appropriate (as it requires that Union provide the OEB with notice 10 days prior to the date that construction commences).
- b) The two conditions proposed by Hydro One have been added to the final Conditions of Approval. However, the OEB has made minor adjustments to the language as follows:
 - i. The edge of the pipeline wall, for the entire co-location of Union's pipeline and Hydro One's transmission towers, shall be at least 4 metres from the footing of each Hydro One tower;
 - ii. Union and Hydro One shall enter into a written agreement whereby Union agrees to the commitment set out in Condition of Approval 7.

Although Union submitted that the two conditions proposed by Hydro One do not need to be included in the final Conditions of Approval as the evidence shows that Union has already agreed to those conditions, the OEB prefers to have all the relevant conditions consolidated in one document for ease of reference.

⁶² EB-2016-0013, Union Interrogatory Responses, March 24, 2016 at OEB Staff 8.

11 COST AWARDS

The OEB may grant cost awards to eligible parties pursuant to its power under section 30 of the *Ontario Energy Board Act, 1998*. When determining the amount of the cost awards, the OEB will apply the principles set out in section 5 of the OEB's *Practice Direction on Cost Awards*. The maximum hourly rates set out in the OEB's Cost Awards Tariff will also be applied. The OEB notes that filings related to cost awards shall be made in accordance with the schedule set out in the Order section of this Decision.

12 ORDER

THE OEB ORDERS THAT:

1. Union Gas Limited is granted leave, pursuant to subsection 90(1) of the Act, to construct the Leamington Expansion Project, which consists of 6.7 km of NPS 12 natural gas pipeline, 250 metres of NPS 16 natural gas pipeline, 60 metres of NPS 8 natural gas pipeline and ancillary facilities, in the Municipality of Leamington, in the County of Essex. Leave to construct is subject to the Conditions of Approval set forth in Schedule B.
2. Intervenor shall file with the OEB, and forward to Union, their respective cost claims by **July 14, 2016**.
3. Union shall file with the OEB, and forward to intervenors, any objections to the claimed costs by **July 21, 2016**.
4. Intervenor shall file with the OEB, and forward to Union, any responses to any objections for cost claims by **July 28, 2016**.
5. Union shall pay the OEB's costs incidental to this proceeding upon receipt of the OEB's invoice.

DATED at Toronto June 29, 2016

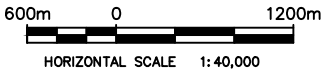
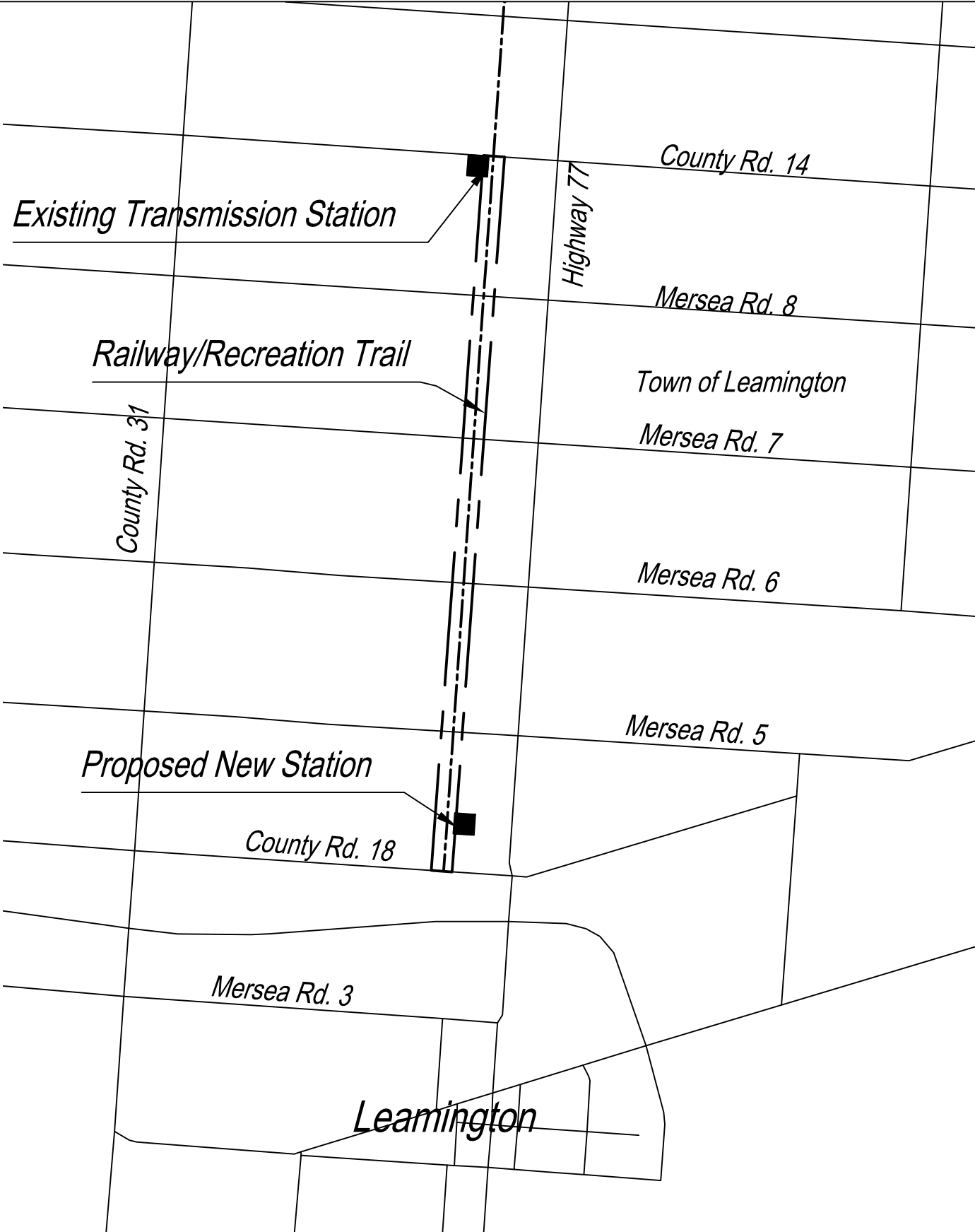
ONTARIO ENERGY BOARD

Original signed by

Kirsten Walli
Board Secretary

SCHEDULE A
DECISION AND ORDER
UNION GAS LIMITED
EB-2016-0013
JUNE 29, 2016

Town of Leamington Phase II Pipeline Project



LEGEND:
--- Proposed Pipeline Route

SCHEDULE B
DECISION AND ORDER
UNION GAS LIMITED
EB-2016-0013
JUNE 29, 2016

Leave to Construct

Conditions of Approval

Application under Section 90 of the OEB Act

Union Gas Limited

EB-2016-0013

1. Union Gas Limited (Union) shall construct the facilities and restore the land in accordance with the OEB's Decision and Order in EB-2016-0013 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 planned in-service date, at least ten days prior to the date the facilities go into service;
 - ii. of the date on which construction was completed, no later than 10 days following the completion of construction; and
 - iii. 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.
7. The edge of the pipeline wall, for the entire co-location of Union's pipeline and Hydro One's transmission towers, shall be at least 4 metres from the footing of each Hydro One tower.
8. Union and Hydro One shall enter into a written agreement whereby Union agrees to the commitment set out in Condition of Approval 7.