



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

DECISION AND ORDER

EB-2015-0179

UNION GAS LIMITED COMMUNITY EXPANSION APPLICATION

BEFORE: Ken Quesnelle
Presiding Member and Vice Chair

Cathy Spoel
Member

Paul Pastirik
Member

October 5, 2017

1 INTRODUCTION AND PROCESS

In response to the Ontario Government's desire to expand natural gas service to Ontario communities that are not currently served, Union Gas Limited (Union) filed an application¹ in July 2015 with the Ontario Energy Board (OEB) under sections 36 and 90 of the *Ontario Energy Board Act, 1998*, seeking approval to provide natural gas service to certain communities that do not have access to natural gas. In that application, Union proposed new approaches to recover revenues for the expansion projects, including a surcharge from new customers and contributions from existing customers.

In order to address certain generic issues on community expansion, the OEB decided to put Union's application on hold until the completion of the generic hearing². On November 17, 2016, the OEB issued its Decision on the Generic Community Expansion Proceeding (Generic Decision). The Generic Decision provided certain direction and guidelines to facilitate the expansion of natural gas service to communities that do not have access to natural gas and are uneconomic to serve under the existing E.B.O. 188 Guidelines.

The OEB resumed the review of Union's Community Expansion Application. Union filed its updated evidence on March 31, 2017. Union's updated application proposed four expansion projects to serve the following communities:

1. Kettle and Stony Point First Nation and Lambton Shores
2. Milverton, Rostock and Warburg;
3. Prince Township ; and
4. the Delaware Nation of Moraviantown First Nation.

On May 18, 2017, the Batchewana First Nation of Ojibways requested intervenor status and cost eligibility. The Batchewana First Nation claimed that its rights and interests trigger the Crown's duty to consult and argued that consultation on the Prince Township expansion project had thus far been deficient. The OEB determined that it would review the Prince Township leave to construct at a future date pending the outcome of further consultations between the Batchewana First Nation and Union.

¹ EB-2015--0179

² Letter of the OEB dated January 20, 2016

The OEB issued its Decision on Union's community expansion application on August 10, 2017. In that Decision, the OEB approved the rate surcharge proposal for all the four communities including Prince Township and granted leave to construct approval for two of the three communities that required a leave to construct. The OEB deferred its final decision on the Prince Township leave to construct application pending the outcome of discussions between the Batchewana First Nation of Ojibways and Union.

Both Union and Batchewana First Nation filed updates with the OEB in September. The OEB has determined that based on the record of the proceeding, the consultation with the Batchewana First Nation has been adequate and accordingly grants Union the necessary leave to construct for the Prince Township project.

2 THE PROCESS

On May 18, 2017, the Batchewana First Nation of Ojibways requested intervenor status and cost eligibility. Batchewana First Nation claimed aboriginal and treaty rights in the areas served by the proposed Prince Township expansion. The Batchewana First Nation claimed that its rights and interests trigger the Crown's Duty to Consult and argued that consultation had thus far been deficient.

In response, Union filed a letter dated May 24, 2017 indicating that it did not object to the intervention request of the Batchewana First Nation. However, it submitted that the intervention request applied only to the section 90 leave to construct proposal to serve Prince Township and did not impact the remaining three proposed projects or the section 36 rate surcharge proposal for each project.

In Procedural Order No. 8 issued on May 25, 2017, the OEB approved the intervention request of the Batchewana First Nation and its request for cost eligibility under the OEB's *Practice Direction on Cost Awards*. The OEB agreed with Union that the Batchewana First Nation's interest was limited to Union's leave to construct application to service the Prince Township, and did not impact the other proposed projects or the section 36 rate surcharge proposal of the proposed projects.

The OEB encouraged Union to engage the Batchewana First Nation with a view to resolving any potential issues on the Prince Township leave to construct application. The OEB directed both parties to provide an update to the OEB and intervenors on the consultations undertaken with respect to the Prince Township leave to construct by June 26, 2017.

Pursuant to Procedural Order No. 8, Union filed an update on its engagement with Batchewana First Nation on June 26, 2017. In its letter, Union indicated that it first notified the Batchewana First Nation of the Prince Township project in June 2015. At that time, Union also provided Batchewana with a copy of the Environmental Protection Plan (EPP) for the project. Union noted that over the past month, there had been a constructive and meaningful dialogue between Union and Batchewana and a mutually agreeable process was reached for consultation going forward. Union subsequently re-sent the EPP, Project Description, the Archaeology and Cultural Heritage Reports and related mapping to Batchewana. In addition to the letter, Union filed an interaction log detailing its engagement with the Batchewana First Nation.

The Batchewana First Nation filed an update on the same day as Union. In its letter, Batchewana confirmed that Union had engaged with the First Nation on the Prince

Township natural gas expansion. There was broad agreement on a list of specific tasks and Batchewana provided their Engagement and Accommodation Protocol that was to be reviewed by Union Gas. Batchewana noted that Union had provided a series of documents, as mentioned in Union's letter, and was committed to submission of a Consultation/Consent Plan to the Batchewana Natural Resources Department. The parties agreed to continue their dialogue but the Batchewana First Nation could not commit to meeting Union's requested deadline of the end of July 2017 for a decision by Chief and Council. Batchewana noted that it would be able to advise on a precise timeline when the final list of activities that had been agreed to by both parties have been confirmed and the Chief and Council had received input from the First Nation residents.

On September 8, 2017, the Batchewana First Nation filed a letter indicating that it had reached an agreement on how to deal with potential issues and it was satisfied that Union had met its obligations to engage and accommodate the community's concerns. Accordingly, the Batchewana First Nation agreed that the Prince Township project could proceed.

Union filed a letter on September 14, 2017 describing its level of engagement with the Batchewana First Nation and requested the OEB issue leave to construct approval.

3 EVIDENCE

Union filed its updated application on March 31, 2017 under section 36 and section 90 of the *Ontario Energy Board Act, 1998* to reflect the findings of the OEB in the Generic Proceeding. Union's updated application proposed four expansion projects. The OEB granted approval for all expansion projects, with the exception of Prince Township leave to construct, on August 10, 2017.

Prince Township

Prince Township is located to the west and north of the City of Sault Ste. Marie, near the Sault Ste. Marie airport. Union is seeking a leave to construct approval under section 90(1) of the *Ontario Energy Board Act* to construct pipelines in Prince Township and Sault Ste. Marie. The project consists of a proposed pipeline approximately 22.5 kilometres in length, including 7.9 kilometres of nominal pipe size (NPS) 4 inch plastic pipeline and 12.3 kilometres of NPS 2 inch plastic pipeline, and 2.3 kilometres of 1 ¼ inch plastic pipeline. A map showing the proposed installation is attached as Schedule A to this Decision and Order.

The total estimated capital cost of the project is \$2.17 million. Union has forecasted 291 potential customers by year 10 of the project. Union currently holds the Certificates of Public Convenience and Necessity and Franchise Agreements for Prince Township and the City of Sault Ste. Marie.

An EPP for the project was prepared by Union's Environmental Planning Department in 2015. The EPP was updated in 2017 for the recent application. Union hired external consultants to complete archeological assessments for the project and an Environmental Constraints Screening Report. The proposed facilities will be constructed using Union's standard practices and procedures and Union has noted that construction will be in compliance with the mitigation measures identified in the EPP. Union has confirmed that the pipelines will be constructed in the manner recommended and described in the OEB document, "*Environmental Guidelines for Locating, Constructing and Operating Hydrocarbon Pipelines in Ontario*"³. Union has confirmed that all comments received from the Ontario Pipeline Coordinating Committee (OPCC), First

³ https://www.oeb.ca/oeb/_Documents/Regulatory/Enviro_Guidelines_HydrocarbonPipelines_2016.pdf

Nations and other relevant agencies regarding the project and/or the EPP have been noted and addressed as required⁴.

The proposed facilities will be located within road allowances and no permanent or temporary land rights will be required. A standalone Discounted Cash Flow (DCF) analysis was completed for the project consistent with the OEB's recommendations in the E.B.O. 188 Report on Natural Gas System Expansion.

Union engaged the Batchewana First Nation and provided the relevant materials to the First Nation community. Union held three open houses for the Batchewana First Nations community members. The comments from the Batchewana First Nations community were addressed by Union and the two parties reached agreement on how to deal with them as the project moved forward to construction.

⁴ EB-2015-0179, Revised Application, March 31, 2017, Exhibit A, Tab 2, Section D, Schedule 11, page 2

4 OEB FINDINGS

The OEB has already approved Union's application with respect to the three communities and the surcharge proposal for all communities, including Prince Township. The only remaining issue is the Prince Township leave to construct application.

Prince Township

The OEB finds that the construction of the project is in the public interest and grants leave to construct, subject to the Conditions of Approval attached as Schedule B to this Decision and Order.

The OEB finds that Union's EPP adequately addresses the environmental issues. The OEB will impose Conditions of Approval relating to environmental mitigation and construction monitoring and reporting.

Union has provided the record of consultation and engagement with the Batchewana First Nation. The Batchewana First Nation filed a letter dated September 8, 2017 confirming that it had reached agreement with Union on how to deal with a range of issues. The First Nations community was satisfied with the level of engagement and accommodation with respect to the Prince Township project and agreed that the project could proceed.

The OEB is satisfied with the extent of engagement and accommodation by Union with respect to its consultation with the Batchewana First Nation. Based on the record of the proceeding, the OEB has determined that consultations with the Batchewana First Nation have been adequate and grants Union leave to construct approval.

5 ORDER

1. Union Gas Limited is granted leave, pursuant to sections 90(1) and 91 of the Act to construct pipelines approximately 22.5 kilometres in length, in the community of Prince Township, subject to the conditions of approval set out in Schedule B to this Decision and Order.

ADDRESS

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Attention: Board Secretary

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DATED at Toronto, **October 5, 2017**

ONTARIO ENERGY BOARD

Original Signed By

Kirsten Walli
Board Secretary

SCHEDULE A
DECISION AND ORDER
UNION GAS LIMITED
EB-2015-0179
OCTOBER 5, 2017
MAP OF PRINCE TOWNSHIP

Prince Township – Community Expansion Key Plan



SCHEDULE B
DECISION AND ORDER
UNION GAS LIMITED
EB-2015-0179
OCTOBER 5, 2017
LEAVE TO CONSTRUCT
CONDITIONS OF APPROVAL

Leave to Construct Conditions of Approval
Application under Section 90 of the *Ontario*
Energy Board Act, 1998

Union Gas Limited

EB-2015-0179

1. Union Gas Limited (Union) shall construct the facilities and restore the land in accordance with the OEB's Decision and Order in EB-2015-0179 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 10 days prior to the date construction commences;
 - ii. of the planned in-service date, at least 10 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 Protection Plan filed in the proceeding.
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 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 of 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 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, licenses, and certificates required to construct, operate and maintain the proposed project.
- b) a final monitoring report, no later than 15 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 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