

**Ontario Energy
Board**

**Commission de l'énergie
de l'Ontario**



EB 2008-0270

BOARD STAFF SUBMISSION

September 16, 2008

1. Background

Sun-Canadian Pipe Line Company Limited (“Sun-Canadian”) filed an application with the Board, dated July 31, 2008, pursuant to section 95 of the *Ontario Energy Board Act, 1998*, S.O. 1998, c.15, Schedule B, (the “Act”) seeking an exemption from Leave to Construct to relocate a hydrocarbon line in the City of Sarnia, Ontario.

In its application, Sun-Canadian is seeking to relocate a 760-metre portion of its Nominal Pipe Size (“NPS”) 12-inch Toronto hydrocarbon liquids line (the “Vidal Street Relocation”) which crosses southern Ontario from Sarnia to Metro Toronto (the “Toronto Line”). The Toronto Line supplies a large volume of gasoline, diesel, furnace oil, kerosene and jet fuel to four terminals in London and Toronto. The maximum operating pressure of the Vidal Street Relocation pipeline is 9,930 kPA.

In its application, Sun-Canadian asserts that the Vidal Street Relocation is required because of the expiration of an occupancy permit for a portion of the Toronto Line located on Aamjiwnaang First Nation lands.

In its application, Sun-Canadian sets out the reasons why the proposed relocation is in the public interest and the special circumstances under which Sun Canadian seeks exemptive relief.

This document is Board Staff’s submission on the application.

2. The Test for Exemption under Section 95

The Act requires Leave to Construct under section 90 if a proposed hydrocarbon line exceeds certain threshold criteria. The Vidal Street Relocation requires leave to construct under section 90 (1) (c) in that its NPS will be 12 inches and its maximum operating pressure will exceed the Act’s defined operating pressure of 2,000 kPA. The Board has within its authority under section 95 of the Act to grant an exemption from the requirements of section 90 without a hearing.

Section 95 of the Act states as follows:

The Board may, if in its opinion special circumstances of a case so require, exempt any person from the requirements of section 90 or 92 without a hearing.

The Ontario Energy Board Act does not define special circumstances. However, the Board has considered the meaning of the term in earlier proceedings.¹ The Board has determined that the term “special circumstances” should be given its ordinary meaning within the context of the Act, and that circumstances are “special” if they are “unusual, uncommon or exceptional.”

The special circumstances submitted by Sun-Canadian relate to a resolution of the Aamjiwnaang First Nation Band council that directs that the Applicant remove their pipeline by October 31, 2008 on Band lands. Therefore, the short time line for the Board decision for the applicant to get approval to relocate the pipeline could be considered special circumstances. Special circumstances also relate to the impact on energy consumers. This pipeline is important for the supply of oil and gasoline to the Ontario market. The short section of pipe is an integral part of the 300 km Sarnia-to-Toronto oil/gasoline pipeline and interruption of that flow is at risk.

Such a circumstance could be viewed as unusual and exceptional because of the timing and the potential impact on the energy consumers in Ontario.

3. Typical Board Reviews under Section 90

The Board typically determines a proposed project should proceed if it is in the public interest. That public interest review includes pipeline design, environmental assessment, financial feasibility; land Issues and form of easement and aboriginal consultation.²

- In terms of pipeline design, the application shows that the design will follow regulatory standards.

¹ See the decisions of the Board in proceeding RP 2003-0239/EB 2003-0299; proceeding RP 2004-0204/EB 2004-0412 and EB 2005-0273

² See 2008-0139

- In terms of environmental assessment the application is consistent with regulatory requirements
- In terms of financial impacts the applicant is not rate regulated by the Board
- In terms of land use matters the land owners on the new route are in agreement with this proposal
- In terms of aboriginal consultation the application is predicated on those consultations being respected and the applicant being required to relocate its pipeline

Board staff are unaware of any outstanding issues that would warrant the need for a section 90 review of this application.