



**EB-2008-0270**

**IN THE MATTER OF** the Ontario Energy Board Act,  
1998, S.O. 1998, c.15, Schedule B;

**AND IN THE MATTER OF** an application by Sun-  
Canadian Pipe Line Company Limited, under section 95  
of the *Ontario Energy Board Act, 1998*, requesting  
exemption from the requirements of section 90(1) for an  
Order granting leave to construct a hydrocarbon line in  
the City of Sarnia.

**BEFORE:** Paul Sommerville  
Presiding Member

### **DECISION AND ORDER**

Sun-Canadian Pipe Line Company (Sun-Canadian) Limited filed an application with the Ontario Energy Board (the "Board") dated July 31, 2008, under section 95 of the *Ontario Energy Board Act, 1998*, S.O. 1998, c.15, Schedule B, (the "Act"). Sun-Canadian is seeking an exemption from the requirements for leave to construct under Section 90 (1) of the Act to relocate 0.76 km of 12 inch diameter hydrocarbon liquids pipeline in the City of Sarnia.

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. Sun-Canadian's evidence is that the 0.76 km pipeline relocation is necessary because the Aamjiwnaang First Nation Band council has directed the Applicant to remove the pipeline from Band lands by October 31, 2008. This outcome followed unsuccessful negotiations between the applicant and the Aamjiwnaang First Nation for renewal of an expired pipeline occupancy permit on Aamjiwnaang First Nation lands. The section of pipe is an integral part of the 300 km Sarnia-to-Toronto

petroleum products pipeline and interruption of that flow is at risk. The proposed 0.76 km relocation would bypass the section of the existing line on the Aamjiwnaang First Nations land.

The Board required the applicant to provide a copy of its proposal for an exemption to affected landowners, the Aamjiwnaang First Nation, Hydro One Networks Inc, and the Municipality.

The relocated line will start at a tie-in point close to Sun-Canadian's Sarnia pump station, on Suncor and Dow lands, cross an overpass, then run parallel to and over the CSX railroad, along City of Sarnia road allowance, cross Vidal street and tie in to the Sarnia-to-Toronto pipeline (see map). These landowners are Suncor Energy Inc., Dow Chemical Company Limited, CSX Transportation Inc. and the City of Sarnia. Each of the four landowners has confirmed, in writing, its respective approval in principal to the project. No party has objected to the proposed relocation. Hydro One did file a letter of comment respecting some technical issues which will be addressed later in this decision.

### **Board Findings**

The Board considers it appropriate to grant the exemption, subject to the conditions attached as Appendix "A".

### **Test for Exemption under Section 95**

The Act requires that proponents procure Leave to Construct approval from the Board 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.

Under Section 95 of the Act the Board can 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.*

Accordingly, in determining whether to grant an exemption under Section 95, the Board must first determine whether special circumstances exist. The Board has considered the meaning of the term “special circumstances” in earlier proceedings.<sup>1</sup> 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.” In this proceeding the Board has determined there is no evidence to suggest this meaning should not be used. Accordingly, the test that is being used in this case will consider “special circumstances” as previously defined.

The Board recognizes that there are two special circumstances that provide support for this application for a Section 95 exemption. These are:

- the very short time line available to the applicant to get approval to relocate the pipeline, and to complete the construction associated with the relocation. The applicant's evidence states that it has been required to remove the pipeline no later than **October 31, 2008**. In order to achieve this objective, construction must begin within September.
- the pipeline is crucial to the supply of oil and gasoline to the central Ontario market. The 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. There is apparently no genuinely effective alternative means of delivering the oil and gas conveyed by the pipeline to central Ontario.

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<sup>1</sup> 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

<sup>1</sup> See 2008-0139

## Typical Board Reviews under Section 90

In considering whether or not to grant the exemption, the Board has examined the typical elements of a Section 90 assessment. This was done to identify any issues that might not be addressed if a Section 95 exemption were to be granted.

The Board typically determines a proposed project should receive Section 90 approval if it is in the public interest. That public interest review includes a consideration of pipeline design, environmental assessment, financial feasibility, landowner issues and the form of easement. The Board also considers whether the proponent has consulted with aboriginal organizations potentially effected by the subject project.<sup>2</sup>

- In terms of pipeline design, the application shows that the design will conform to applicable technical and regulatory standards. The Board is satisfied that this commitment meets the requirement for the review of the pipeline design. The Board has also required such conformity as one of the Conditions to which our approval is subject.
- As to the environmental issues, the evidence indicates that the applicant has considered the potential environmental issues associated with the project, and is in a position to address any which may be reasonably expected to arise. The route of the relocation has been chosen in part to minimize environmental impacts. The Board has determined that a Section 90 review is not necessary to address environmental concerns. Once again, the Board has imposed Conditions to this approval which addresses this subject matter.
- In terms of financial impacts the applicant is not rate regulated by the Board. As such, the financial impacts of this project will be solely the responsibility of the shareholder.
- As noted above, the land owners along the new route are in agreement with this proposal. Documentation has been provided that shows all affected landowners approve of the repositioning of the pipeline. A Section 90 review would provide no additional value for the Board in this regard.

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<sup>2</sup> See 2008-0139

- The application is predicated on the direction from the Aamjiwnaang First Nation to the applicant to relocate its pipeline. As noted above, the Board required the applicant to provide a copy of its application for exemption to the First Nation. The First Nation did not file any objection or comment of any kind to the application. Given this circumstance, the Board finds that the obligation with respect to aboriginal consultation has been satisfied in this case, and that nothing would be gained by a Section 90 review.

The letter of comment from Hydro One raised a number of technical issues associated with the proximity of the proposed relocated line to a Hydro One transmission line. Hydro One's comment did not indicate that the proposed relocation could not be safely or reliably accommodated, simply that there were issues that needed to be addressed in the implementation of the relocation. Accordingly, the Board has imposed Conditions to this approval which requires the applicant to address these issues.

Based on this assessment, the Board finds there are no outstanding issues that would benefit from a Section 90 review.

**THE BOARD ORDERS THAT:**

1. Sun-Canadian Pipe Line Company Limited is granted an exemption from the requirements of Section 90(1) of the Act, with respect to the construction of 0.76 kilometres of 12 inch diameter hydrocarbon liquids pipeline and ancillary facilities in the City of Sarnia
2. Sun-Canadian Pipe Line Company Limited project to move the pipeline will be subject to the Conditions of Approval attached as Appendix A to this Decision and Order.

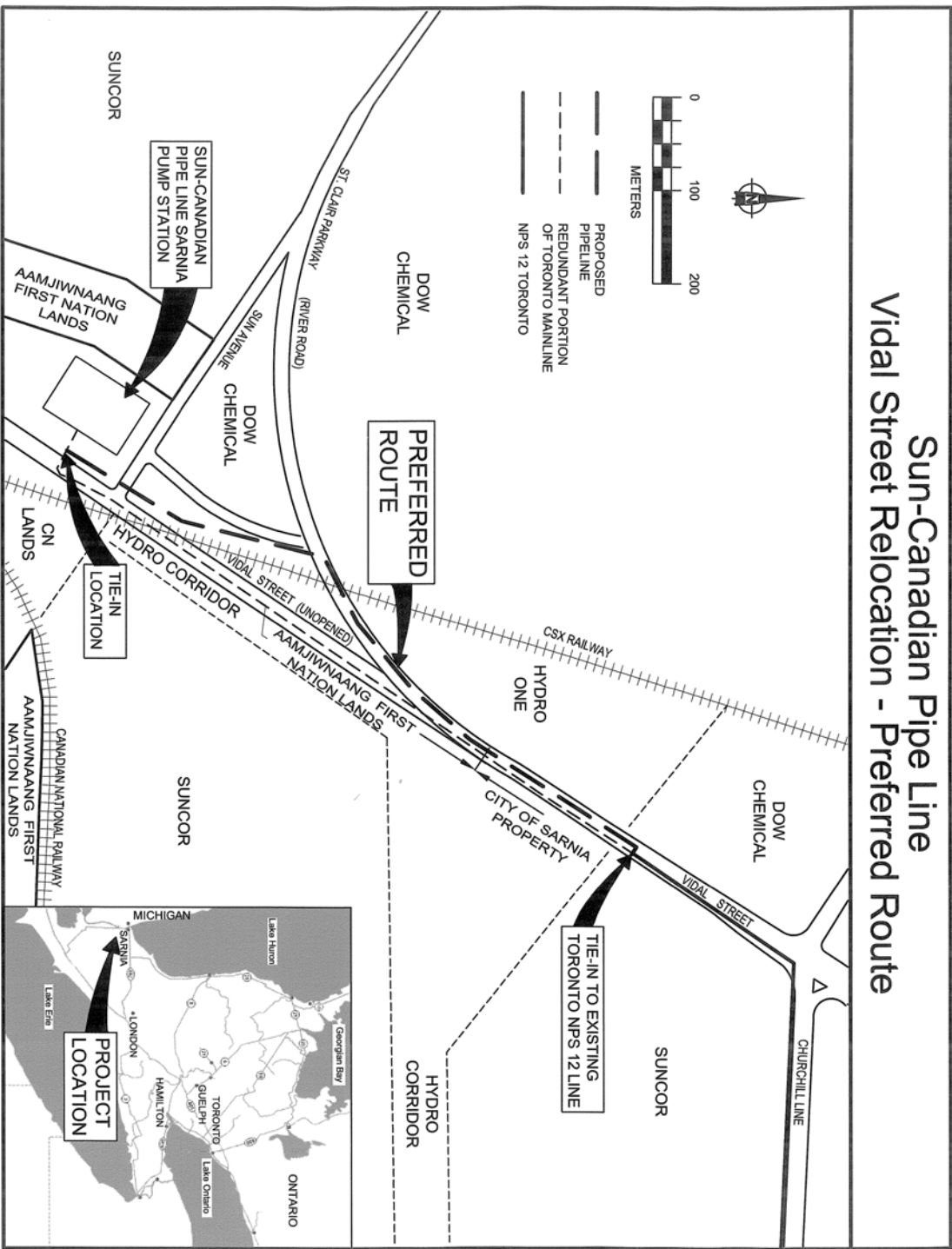
**DATED** at Toronto September 18, 2008

**ONTARIO ENERGY BOARD**

*Original Signed By*

John Pickernell  
Assistant Board Secretary

MAP OF THE RELOCATED PIPELINE  
ROUTE



**APPENDIX A**  
**TO BOARD DECISION AND ORDER**  
**IN THE MATTER OF EB-2008-0270**  
**DATED September 18, 2008**  
**CONDITIONS OF APPROVAL**

**EB-2008-0270**

**Sun-Canadian Pipe Line Company Limited**

**Pipeline Replacement Project, Vidal Street, City of Sarnia**

**Conditions of Approval**

**1. General Requirements**

- 1.1 Sun-Canadian Pipe Line Company Limited ("Sun-Canadian") shall construct the facilities and restore the land in accordance with its application and the evidence filed in EB-2008-0270, except as modified by this Order and these Conditions of Approval.
- 1.2 Unless otherwise ordered by the Board, exemption from authorization for Leave to Construct shall terminate December 31, 2010, unless construction has commenced prior to that date.
- 1.3 Except as modified by this Order, Sun-Canadian shall implement all the recommendations of the Environmental Screening filed in the pre-filed evidence, and all requirements of applicable Ontario and Federal regulations and codes.
- 1.4 Sun-Canadian shall advise the Board's designated representative of any proposed material change in construction or restoration procedures and, except in an emergency, Sun-Canadian shall not make such change without prior approval of the Board or its designated representative. In the event of an emergency, the Board shall be informed immediately after the fact.
- 1.5 Sun-Canadian shall construct the pipeline in accordance with the applicable CSA, Ontario and company standards and legislation.

**2. Project and Communications Requirements**

- 2.1 The Board's designated representative for the purpose of these Conditions of Approval shall be the Manager, Facilities Applications.
- 2.2 Sun-Canadian shall designate a person as project engineer and shall provide the name of the individual to the Board's designated representative. The project engineer will be responsible for the fulfilment of the Conditions of Approval on the construction site. Sun-Canadian shall provide a copy of the Order and Conditions of Approval to the project engineer, within seven days of the Board's Order being issued.



- 2.3 Sun-Canadian shall give the Board's designated representative and the Chair of the OPCC one days notice in advance of the commencement of the construction.
- 2.4 Sun-Canadian shall furnish the Board's designated representative with all reasonable assistance for ascertaining whether the work is being or has been performed in accordance with the Board's Order.
- 2.5 Sun-Canadian shall file with the Board's designated representative notice of the date on which the installed pipelines were tested, within one month after the final test date.
- 2.6 Sun-Canadian shall furnish the Board's designated representative with five copies of written confirmation of the completion of construction. A copy of the confirmation shall be provided to the Chair of the OPCC.
- 2.7 Sun-Canadian shall furnish the Board's designated representative environmental reports for the project.

### **3. Other Approvals and Agreements**

- 3.1 Sun-Canadian shall obtain all other applicable approvals, permits, licences, and certificates required to construct, operate and maintain the proposed project, shall provide a list thereof, and shall provide copies of all such written approvals, permits, licences, and certificates upon the Board's request.