



EB-2010-0154

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 Union Gas 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 natural gas pipelines and ancillary facilities in the City of Greater Sudbury.

BEFORE: Gordon Kaiser
Vice-Chair and Presiding Member

DECISION AND ORDER

Background

[1] Union Gas Limited (“Union”) filed an application with the Ontario Energy Board, (the “Board”) on April 6, 2010, under section 95 of the *Ontario Energy Board Act, 1998* (the “Act”), requesting an exemption from the requirements of Section 90 of the Act for an Order granting Leave to Construct natural gas pipeline and ancillary facilities in the City of Greater Sudbury (the “City”).

[2] Union stated that the City is proposing to construct a four lane extension to Maley Drive in Northern Sudbury with the work to commence in 2010 and be completed by 2014. In order to facilitate the construction of the roadways, the City needs Union to relocate those portions of its NPS 10 and NPS 12 Sudbury Laterals pipelines (“Sudbury Laterals”) that conflict with the new location of Maley Drive. Union proposes to replace /

relocate 1,580 metres of NPS 10 pipeline and 493 metres of NPS 12 pipeline. The pipeline relocation is scheduled to begin in mid-August 2010 and be completed by the end of November 2010.

[3] Section 90(1) of the *Ontario Energy Board Act* states the following:

No person shall construct a hydrocarbon line without first obtaining from the Board an order granting leave to construct the hydrocarbon line if,

- (a) the proposed hydrocarbon line is more than 20 kilometres in length;
- (b) the proposed hydrocarbon line is projected to cost more than the amount prescribed by the regulations¹;
- (c) any part of the proposed hydrocarbon line,
 - (i) uses pipe that has a nominal pipe size of 12 inches or more, and
 - (ii) has an operating pressure of 2,000 kilopascals or more; or
- (d) criteria prescribed by the regulations are met. 2003, c. 3, s. 63 (1).

[4] Union's proposed pipeline construction project uses pipe that has a nominal pipe size of 12 inches and the estimated construction costs are in excess of \$2 million. Accordingly, leave to construct pursuant to section 90(1) of the Act would ordinarily be required for the proposed construction.

[5] However, section 95 of the Act provides that "the Board may, if in its opinion special circumstances of a particular case so require, exempt any person from the requirements of section 90 or 92 without a hearing". Union requested an exemption pursuant to section 95 of the Act for the following reasons:

1. Union holds the Franchise and Certificate of Public Convenience and Necessity for this area.
2. There are no residential landowners directly affected by the project. Union has or will obtain the necessary land rights from commercial or government agencies prior to construction.

¹ Ontario Reg. 328/03 made under the Act states in section 3, "The amount for the projected cost of a proposed hydrocarbon line for the purposes of clause 90(1)(b) of the Act is \$2 million."

3. Union has completed an environmental review of the Project. The Project can be completed without creating any long term significant environmental impacts.
4. Given the pending construction of a four lane extension of Maley Drive, there is a demonstrated immediate need for the pipeline construction.
5. The existing pipes will be abandoned in compliance with TSSA guidelines.
6. The landowners have no significant concerns regarding the project.

[6] Union states that there are three landowners directly affected by the project. These landowners are the City of Greater Sudbury, the Nickel District Conservation Authority (the “Conservation Authority”), and Vale Inco Limited (“Vale Inco”). Union stated that all three landowners have been notified of the project and the affected landowners have raised no significant concerns regarding the project. Union has signed Letters of Intent from the City and the Conservation Authority stating that each of these organizations will grant Union the right construct a natural gas pipeline and other necessary facilities at a location mutually agreed upon by the parties. Union does not have a signed Letter of Intent from Vale Inco. However, Union noted that it does not foresee any issues with Vale Inco signing the necessary easements once Vale Inco has completed its discussions with the City².

Board Findings

[7] The Board accepts Union’s evidence that the pipeline replacement / relocation project is essential to the City’s four lane extension of Maley Drive, that there are no long-term environmental impacts of the construction project, and that the affected landowners have raised no significant concerns related to the construction project. Therefore, the Board finds that there are special circumstances that warrant exemption of the project from the requirements of section 90(1) of the Act. As Union did not file a signed Letter of Intent from Vale Inco in its Application, the Board has included as a Condition of Approval that Union obtain all necessary easements and provide these easement agreements to the Board prior to construction. The Board has set out the Conditions of Approval that will apply to this project in Appendix “A”.

² See Union’s evidence filed with the Board on May 11, 2010 under Board File No. EB-2010-0154.

[8] Given the Board's decision to grant Union an exemption from Section 90 of the Act, it is not necessary for the Board to make any further findings in this proceeding. However, for ease of reference, the Board has set out Union's evidence as it relates to project need, design and construction, project costs and economics, environmental assessment and land issues in Appendix "B".

THE BOARD ORDERS THAT:

The application by Union Gas Limited for an exemption from the requirements of section 90(1) of the Act, with respect to the construction of 1,580 metres of NPS 10 and 493 metres of NPS 12 natural gas pipeline and ancillary facilities in the City of Greater Sudbury is approved subject to the Conditions of Approval attached as Appendix A to this Decision and Order.

DATED at Toronto May 13, 2010

ONTARIO ENERGY BOARD

Original Signed By

Kirsten Walli
Board Secretary

APPENDIX A
TO BOARD DECISION AND ORDER
BOARD FILE NO.: EB-2010-0154
DATED May 13, 2010
CONDITIONS OF APPROVAL

EB-2010-0154

Union Gas Limited

Sudbury Replacement

Conditions of Approval

1 General Requirements

1.1 Union Gas Limited ("Union") shall construct the facilities and restore the land in accordance with its application and the evidence filed in EB-2010-0154, except as modified by this Order and these Conditions of Approval.

1.2 Unless otherwise ordered by the Board, authorization for Leave to Construct shall terminate December 31, 2011, unless construction has commenced prior to then.

1.3 Union shall implement all the recommendations of the Environmental Screening filed in the pre-filed evidence, and all the recommendations identified in the City of Greater Sudbury's Environmental Assessment.

1.4 Union shall advise the Board's designated representative of any proposed material change in construction or restoration procedures and, except in an emergency, Union 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.

2 Project and Communications Requirements

2.1 The Board's designated representative for the purpose of these Conditions of Approval shall be the Manager, Natural Gas Applications.

2.2 Union 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. Union 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 Union shall give the Board's designated representative and the Chair of the Ontario Pipeline Coordinating Committee ("OPCC") ten days written notice in advance of the commencement of the construction.
- 2.4 Union 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 Union 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 Union 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.

3 Monitoring and Reporting Requirements

- 3.1 Both during and after construction, Union shall monitor the impacts of construction, and shall file four copies of both an interim and a final monitoring report with the Board. The interim monitoring report shall be filed within six months of the in-service date, and the final monitoring report shall be filed within fifteen months of the in-service date. Union shall attach a log of all complaints that have been received to the interim and final monitoring reports. The log shall record the times of all complaints received, the substance of each complaint, the actions taken in response, and the reasons underlying such actions.
- 3.2 The interim monitoring report shall confirm Union's adherence to Condition 1.1 and shall include a description of the impacts noted during construction and the actions taken or to be taken to prevent or mitigate the long-term effects of the impacts of construction. This report shall describe any outstanding concerns identified during construction.
- 3.3 The final monitoring report shall describe the condition of any rehabilitated land and the effectiveness of any mitigation measures undertaken. The results of the monitoring programs and analysis shall be included and recommendations made as appropriate. Any deficiency in compliance with any of the Conditions of Approval shall be explained.

4 Easement Agreements

4.1 Union shall file with the Board, prior to construction, all easement agreements related to the project.

5 Other Approvals and Agreements

5.1 Union 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.

APPENDIX B
TO BOARD DECISION AND ORDER
BOARD FILE NO.: EB-2010-0154
DATED May 13, 2010

Project Need

The City is proposing to construct a four lane extension to Maley Drive in Northern Sudbury. The City is proposing to commence this work in 2010 and complete it by 2014. In order to facilitate the construction of the roadways, the City needs Union to relocate those portions of the Sudbury Laterals that are in conflict with the new location of Maley Drive. The Maley Drive extension proposed by the City requires Union to replace 1,580 meters of NPS 10 pipeline and 493 meters of NPS 12 pipeline in 2010.

Design and Construction

All the design specifications for the pipeline replacement are in accordance with Ontario Reg. 210/01 under the *Technical Standards and Safety Act 2001, Oil and Gas Pipeline Systems*. The proposed pipeline is designed to meet Class 3 location requirements. The existing pipelines will be abandoned in compliance with the relevant TSSA guidelines.

The construction is scheduled to begin in the middle of August 2010 and be completed by the end of November 2010. The pipeline is expected to be in-service in early December 2010.

Project Costs and Economics

Union has not conducted a Discounted Cash Flow (“DCF”) analysis for this project as the project is underpinned by the City’s relocation requirements. The total estimated costs for the project are \$2,595,001.

Environmental Assessment

The City has completed an environmental assessment for the proposed road work. As Union’s work is in the zone of influence of the study, the features identified in the report will also be impacted by the work Union is required to complete. Union commissioned Stantec Consulting (“Stantec”) to review the environmental documents prepared by the City. No environmental concerns were identified that could not be mitigated. Union has also completed an environmental screening for the project consistent with the requirements of E.B.O. 188.

Union indicated that by following its standard construction practices and utilizing the standard mitigation measures that have been identified in its Application there will be no

long term significant environmental impacts as a result of this project. Union also noted that it will obtain all necessary environmental permits prior to construction.

Land Issues

There are three landowners who will be directly affected by the proposed project. These landowners are the City of Greater Sudbury, the Nickel District Conservation Authority, and Vale Inco Limited. Union noted that none of the landowners have any significant concerns with the proposed project.

City of Greater Sudbury

Union will require two different land rights from the City. For sections of the pipeline that will be constructed within municipal road allowances, these pipelines will be constructed in accordance with Union's franchise agreement. For sections of pipe in city lands outside of the road allowance, Union will obtain permanent and temporary easements from the City. Union will require one permanent easement and seven temporary easements from the City. Union and the City have agreed in principle to the proposed location of the pipeline. A Letter of Intent signed by the City was included with the Application.

Nickel District Conservation Authority

Union has discussed the project with the Conservation Authority and the Conservation Authority has agreed to provide Union with easements necessary for the proposed project where it crosses Authority lands. Union will require one permanent and two temporary easements from the Authority. A letter of Intent signed by the Authority was included with the Application.

Vale Inco Limited

Union has discussed the project with Vale Inco and they have not identified any significant concerns with the project. Vale Inco is currently in discussions with the City regarding the road construction project and until those discussions are finalized easements will not be signed. Union will require three permanent and seven temporary easements from Vale Inco. Union does not foresee any issues with Vale Inco providing easements once discussions with the City are completed.