



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

DECISION AND ORDER

EB-2018-0013

UNION GAS LIMITED

Application for leave to construct a natural gas transmission pipeline and associated facilities in the Town of Lakeshore and the Town of Kingsville in the County of Essex

BEFORE: Susan Frank
Presiding Member

Allison Duff
Member

September 20, 2018

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1 INTRODUCTION AND SUMMARY

Union Gas Limited (Union) applied to the Ontario Energy Board (OEB) under section 90(1) of the *Ontario Energy Board Act, 1998 (Act)* for an order granting leave to construct approximately 19 kilometers of natural gas transmission pipeline in the Town of Lakeshore and the Town of Kingsville in the County of Essex (Kingsville Reinforcement Line or Project). Union proposed an in-service date of November 1, 2019 with construction beginning in the summer of 2019.

A map of the proposed Kingsville Reinforcement Line is in Schedule A.

The OEB approved the Building Owners and Managers Association, Greater Toronto (BOMA), Industrial Gas Users Association (IGUA) and the Ontario Greenhouse Vegetable Growers (OGVG) as intervenors, eligible to apply for cost awards. The OEB approved the City of Kitchener, an embedded gas distributor in Union's south franchise territory, as a late intervenor.

Pursuant to section 90 (1) of the Act, the OEB grants Union leave to construct the Kingsville Reinforcement Line, subject to the Conditions of Approval in Schedule B.

2 THE PROCESS

Union filed its application on January 26, 2018 and included a request for recovery of project costs through application of an Incremental Capital Module (ICM) mechanism. For reasons explained in the OEB's letter to Union dated February 27, 2018, the OEB decided not to hear issues related to an ICM mechanism in this proceeding and asked Union if it still wished to proceed with the remainder of the application. Union confirmed its intention to proceed with its application and seek leave to construct the Kingsville Reinforcement Line.

The OEB commenced its review of Union's leave to construct application on March 5, 2018. The OEB issued a Notice of Hearing on March 21, 2018.

In Procedural Order No. 1, the OEB approved the Building Owners and Managers Association, Greater Toronto (BOMA), Industrial Gas Users Association (IGUA) and the Ontario Greenhouse Vegetable Growers (OGVG) as intervenors, eligible to apply for cost awards.

The OEB proceeded by way of a written hearing. Intervenors and OEB staff filed questions regarding Union's application on May 7, 2018 and Union filed its answers on May 22, 2018.

After reviewing Union's evidence and interrogatory responses, the OEB determined that it required additional information and issued Procedural Order No. 2 with questions to Union on three issues:

1. Long-term system expansion plans for the Panhandle System
2. Multiple needs served by the Project
3. Economics of the Project

Union filed responses to the OEB's questions on July 9, 2018.

In Procedural Order No. 3, the OEB approved the City of Kitchener's request for late intervenor status and made provision for all parties to file written submissions. Union filed its reply submission on August 28, 2018.

3 LEAVE TO CONSTRUCT

Union's application seeks an order for leave to construct a natural gas pipeline under section 90 of the Act. Section 96 of the OEB 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 cost and economics, alternatives considered, environmental impacts, Indigenous consultation, and landowner impacts.

3.1 Need for the Project

Union indicated that the Project was needed to respond to increasing natural gas demand in the Kingsville-Leamington market as well as increasing demand on the overall Panhandle Transmission System. The Panhandle Transmission System is the primary pipeline to transport gas from Dawn to the Ojibway Valve Site in Windsor. It feeds high pressure distribution pipelines servicing residential, commercial and industrial customers.

Union submitted that the Project reinforces the high-pressure Panhandle Transmission System to serve customers in the Kingsville-Leamington market area and serve future development in the market served by the Panhandle Transmission System.

Union confirmed that the forecast volumes supporting the need for the Project were distinct from the volumes that supported its reinforcement of the Panhandle Transmission System in 2016¹. Union indicated that forecast design day capacity demand on the Panhandle Transmission System had accelerated since 2016, which advanced the timing of this Project from 2022 to 2020. To alleviate the forecasted constraint on the Kingsville-Leamington distribution system, Union proposed to move the Project's in-service date to 2019.

No party raised concerns with the need for the Project.

OGVG emphasized the importance of the 2019 proposed in-service date. OGVG submitted that to maintain growth in Ontario's greenhouse sector, it is important that the natural gas infrastructure is available on a timely basis.

¹ OEB Decision and Order, EB-2016-0186

Findings

The OEB finds that Union has demonstrated the need for this Project - a transmission line with broad benefits to the Panhandle Transmission System. The OEB is aware that Union has filed another leave to construct application for the Chatham-Kent area, which relies on the incremental capacity provided by this Project².

The Project addresses the forecast load growth in the Kingsville-Leamington area, growth that cannot be accommodated with the existing distribution system. Union identified 14 executed contracts for firm service and an additional 20 contracts under negotiation that were dependent on the in-service date of November 1, 2019.

3.2 Project costs and economic tests

Union estimated a total cost of \$105.7 million to construct the Project. While the OEB deferred hearing Union's ICM request for recovery of this cost, a cost-benefit economic evaluation is in scope for this proceeding.

Union applied the OEB's economic test for transmission pipeline applications³ (E.B.O. 134 test). Union's stage 1 discounted cash flow analysis indicated a profitability index (PI) of 0.44 and a net present value of negative \$59.2 million. Given the PI was less than one, Union undertook a stage 2 analysis which considered the estimated energy cost savings as a result of customers using natural gas instead of other fuels to meet their energy requirements. The stage 2 net present value results over 20 years ranged from \$283 million to \$472 million, depending on the assumptions for the alternative fuel mix.

As the Project addressed both transmission and distribution needs, the OEB questioned Union's use of the E.B.O. 134 test exclusively, with no reference to the OEB's economic test for distribution applications⁴ (E.B.O. 188 test). The OEB also asked Union whether it had sought contributions-in-aid of construction, an element of the E.B.O. 188 test.

Union responded that the E.B.O. 188 test for distribution applications did not apply to this application for a transmission line. Union stated that it was not appropriate to apply

² EB-2018-0188

³ Economic Test for Transmission Line Applications, E.B.O. 134, dated June 1, 1987, and amended on February 21, 2013 (EB-2012-0092), and referred to as the *Filing Guidelines on the Economic Tests for Transmission Pipeline Applications*

⁴ *Guidelines for Assessing and Reporting on Natural Gas System Expansion in Ontario*, E.B.O. 188, January 20, 1998

the E.B.O. 188 test as the incremental forecast demand extended throughout the Panhandle service area and no distribution customers would be connected directly to the new pipeline.

OEB staff submitted that it was appropriate for Union to apply the E.B.O. 134 test as the Project is defined as a transmission asset and results in a total positive net present value at a stage 2 analysis.

OGVG indicated that the OEB raised the possibility of contributions-in-aid-of construction for the first time in this application process, an issue not associated with transmission investments under the E.B.O. 134 test. OGVG submitted that its members need to know in advance their obligations with respect to the cost of natural gas infrastructure and that those obligations are based on consistent regulatory treatment of similar projects.

IGUA submitted that if the OEB concludes that the Project serves both transmission and distribution functions, a more nuanced approach to economic evaluation and associated cost responsibility requirements might be warranted. IGUA provided an example whereby 10% of the cost was recovered through contributions-in-aid of construction from the 34 customer contracts dependent on capacity enabled by the Project. IGUA submitted that contributions-in-aid of construction would reduce the shortfall in the stage 1 analysis and improve the PI for the Project.

Findings

The OEB finds that Union appropriately followed the OEB's E.B.O. 134 test for transmission projects. While the stage 1 analysis results in a net present value of negative \$59.4 million and a P1 of only 0.44 over 40 years, broader economic benefits identified in the stage 2 analysis support the approval of the Project.

While the OEB has approved the Project, there are some concerns that the OEB would like to observe.

First, the new pipeline has ancillary distribution benefits according to Union in addition to the transmission functions. The distribution benefits are evident as Union identified 14 firm customer contracts executed and 20 customer contracts being negotiated which rely on the approval and construction of the Project. The OEB finds that the Project meets both distribution and transmission needs, yet the OEB's economic tests are exclusive, applicable to either distribution or transmission lines.

Second, the economic test for transmission, E.B.O. 134, does not attribute who should pay with each stage of testing. For distribution pipelines, the more recent E.B.O. 188 test recognizes that if there is insufficient new revenue generated by the project to cover its costs, capital contributions are required from the benefiting parties. Under E.B.O. 134, the stage 2 benefiting parties would be downstream connecting customers and the local economy. Currently there is no mechanism to have these parties make a contribution to the costs despite their substantial benefit.

For natural gas in Ontario, no economic test or ratemaking mechanism exists today to allow these discrepancies to be addressed.

The OEB acknowledges the creative thinking included in IGUA's submission. While it is not appropriate to split the costing between transmission and distribution pipelines as proposed by IGUA in this proceeding, such proposals may help inform future thinking on the treatment of dual function pipelines.

3.3 Alternatives

Union considered four alternatives to the Project by evaluating the capital costs, net present values, in-service dates and future facilities requirements from 2024 to 2036. The alternatives explore various sizes of pipe, increased deliveries from Ojibway and distribution options. Union submitted that the Project is the preferred alternative to address the need in both the five-year and longer-term horizon.

In defense of the proposed timing, Union submitted that if the Project were completed by November 1, 2019 additional distribution costs of \$10.4 million could be avoided.

No party raised concerns with Union's evaluation of alternatives. OGVG was concerned that if the Project were delayed, then \$10.4 million of additional distribution assets would be required.

Findings

The OEB finds that the Project is the preferred alternative. The Project has the highest net present value, addresses incremental demand in the Kingsville-Leamington area in 2019 and is consistent with other, longer-term considerations for the Panhandle Transmission System.

3.4 Environmental Assessment

Union filed an Environmental Report prepared by Stantec Consulting Ltd. supporting the Project. Union submitted that it had followed the OEB's *Environmental Guidelines for the Location, Construction and Operation of Hydrocarbon Pipelines and Facilities in Ontario*. Union indicated that the Ontario Pipeline Coordinating Committee had reviewed the Environmental Report and there were no outstanding issues.

No party raised concerns with Union's environmental assessment.

Findings

The OEB finds that Union has satisfied the OEB's environmental assessment requirements. The OEB expects Union to adhere to the Conditions of Approval for this Decision and Order relating to mitigation, construction monitoring and reporting found in Schedule B.

3.5 Indigenous Consultation

Union was delegated the duty to consult with specific communities in a letter from the Ministry of Energy, Indigenous Energy Policy (Ministry) on June 15, 2017.

Union filed its Indigenous Consultation Report and indicated that its staff will be available to meet with Indigenous and Métis Nation organizations to discuss any issues that arise during construction. In addition, when the archaeological assessments for the Project are complete, Union will consult with and provide the result of the surveys to any Indigenous or Métis Nation, if requested.

On March 5, 2018, the Ministry confirmed that it was satisfied with Union's consultation.

Findings

The OEB is satisfied that the duty to consult has been adequately discharged up to this stage of the project. The OEB expects Union will continue to work closely with any potentially impacted Indigenous communities as the project moves forward.

3.6 Land Matters

Union indicated that it met with all directly affected landowners and acquired options for all permanent easements and temporary land use agreements required. Union filed copies of its forms of agreement, which were previously approved by the OEB in the Panhandle System Reinforcement Project proceeding⁵, and submitted that no landowners objected to the forms.

Findings

The OEB approves the forms of agreement that Union has provided landowners, which are consistent with prior leave to construct approvals.

3.7 Conditions of Approval

OEB staff proposed a standard set of Conditions of Approval for leave to construct pipeline projects. Union accepted those Conditions of Approval for the Project.

Findings

The OEB approves the Conditions of Approval for the Project as accepted by Union and copied in Schedule B to this Decision and Order.

⁵ EB-2016-0186

4 ORDER

THE ONTARIO ENERGY BOARD ORDERS THAT:

1. Union Gas Limited (Union) is granted leave, pursuant to subsection 90(1) of the OEB Act, to construct 19 kilometres of 20 inch diameter pipeline in the Town of Lakeshore and the Town of Kingsville in the County of Essex as described in its application. Leave to construct is subject to the Conditions of Approval set out in Schedule B.
2. Cost eligible intervenors shall file with the OEB, and serve on Union, their cost claims in accordance with the OEB Practice Direction on Cost Awards within 7 days from the date of issuance of this Decision and Order.
3. Union shall file with the OEB and serve on the party against whose claim the objection is being made its objections to any claimed costs within 17 days from the date of issuance of this Decision and Order.
4. An intervenor whose cost claim was objected to shall file with the OEB and serve on objecting party a reply submission as to why its cost claim should be allowed within 24 days of the date of issuance of this Decision and Order.
5. Union shall pay the OEB's costs incidental to the proceeding upon receipt of the OEB's invoice.

DATED at Toronto September 20, 2018

ONTARIO ENERGY BOARD

Original Signed By

Kirsten Walli
Board Secretary

SCHEDULE A - MAP OF THE PROJECT

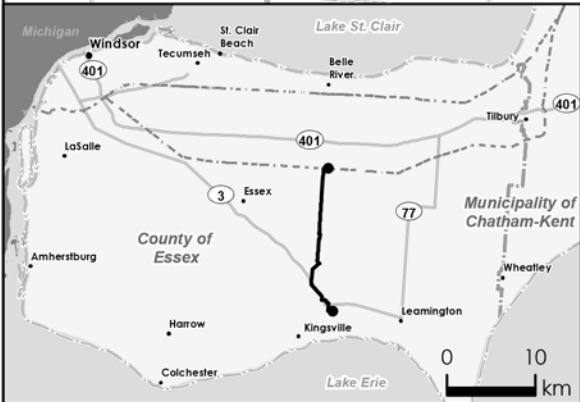
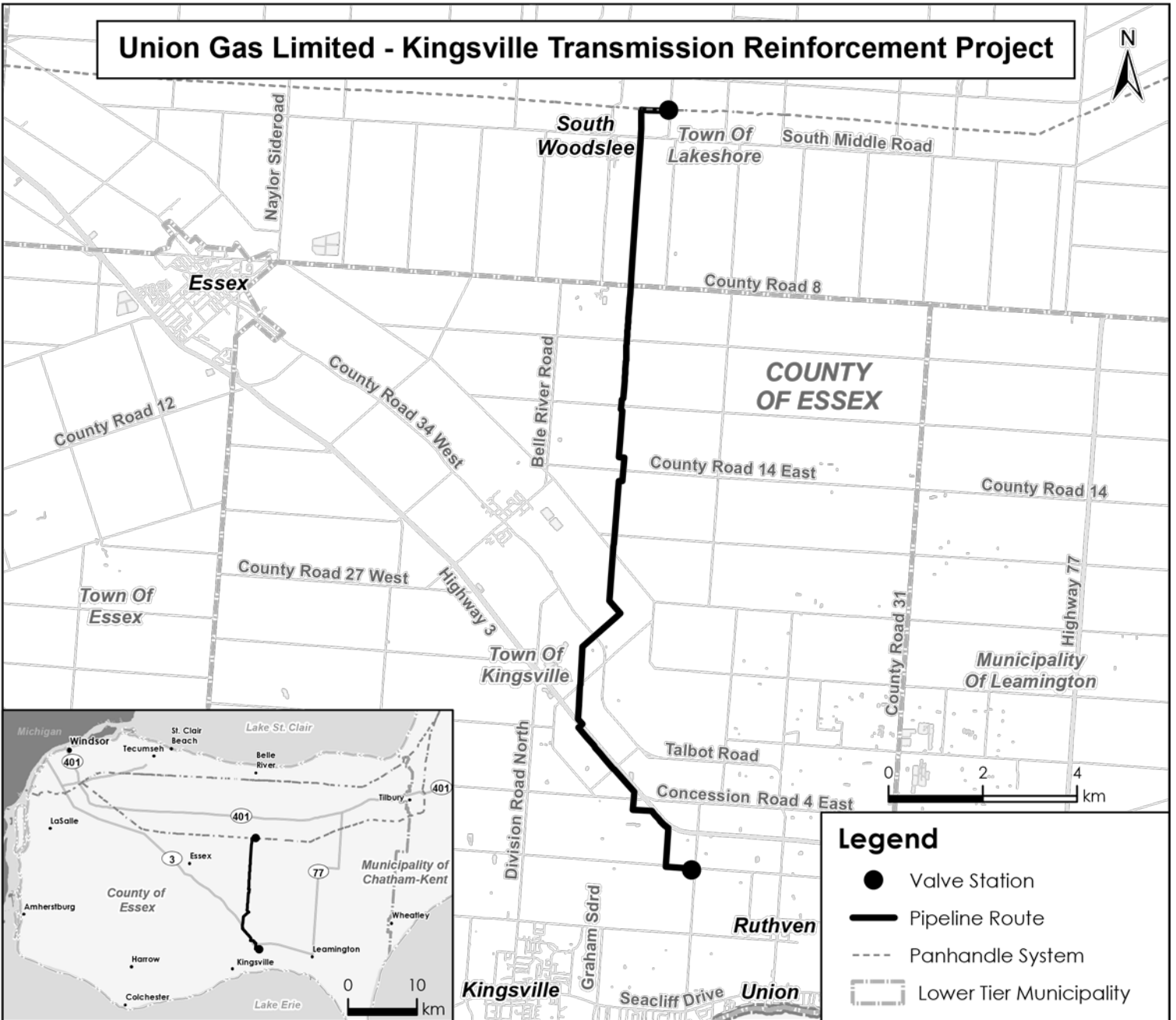
DECISION AND ORDER

UNION GAS LIMITED

EB-2018-0013

SEPTEMBER 20, 2018

Union Gas Limited - Kingsville Transmission Reinforcement Project



Legend

- Valve Station
- Pipeline Route
- - - Panhandle System
- ⋯ Lower Tier Municipality

SCHEDULE B - CONDITIONS OF APPROVAL

DECISION AND ORDER

UNION GAS LIMITED

EB-2018-0013

SEPTEMBER 20, 2018

Leave to Construct Conditions of Approval
Union Gas Limited
EB-2018-0013

1. Union Limited (Union) shall construct the facilities and restore the land in accordance with the Board's Decision and Order in EB-2018-0013 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 commencement of construction, at least ten days prior to the date construction commences;
 - ii. of the planned in-service date, at least ten 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, 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. Concurrent with the final monitoring report referred to in Condition 6(b), Union shall file 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. Union shall also file a copy of the Post Construction Financial Report in the proceeding where the actual capital costs of the project are proposed to be included in rate base or any proceeding where Union proposes to start collecting revenues associated with the project, whichever is earlier.

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 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.