



CITY OF HAMILTON
PLANNING AND ECONOMIC DEVELOPMENT DEPARTMENT
Growth Management Division
and
CITY MANAGER'S OFFICE
Legal Services Division

TO:	Mayor and Members General Issues Committee
COMMITTEE DATE:	December 2, 2015
SUBJECT/REPORT NO:	Enbridge Pipelines Inc. Line 10 Westover Segment Replacement Project (PED15208 / LS15036) (City Wide)
WARD(S) AFFECTED:	City Wide
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SUBMITTED BY:	Jason Thorne General Manager Planning and Economic Development Department Janice Atwood-Petkovski City Solicitor Legal Services Division City Manager's Office
SIGNATURES:	

RECOMMENDATION

- (a) That Council authorize City staff to raise potential municipal issues of concern for the City of Hamilton relating to the Enbridge Line 10 Westover Segment Replacement Project directly with Enbridge Pipelines Inc. (Enbridge), and to submit a Letter of Comment outlining these concerns to the National Energy Board (NEB) once Enbridge has filed its Line 10 project application with the NEB.
- (b) That the General Manager of Public Works be authorized to negotiate and enter into, on behalf of the City of Hamilton, an agreement with Enbridge Pipelines Inc. and any necessary ancillary documents which set out the roles, responsibilities and obligations of the parties with respect to the Enbridge Line 10 Pipeline where it crosses City-owned right-of-ways, in a form satisfactory to the City Solicitor and with content satisfactory to the General Manager of Public Works.

EXECUTIVE SUMMARY

At its General Issues Committee meeting of November 4, 2015, Council directed staff to report back to the General Issues Committee by December 2, 2015 outlining options available to the City respecting Enbridge's Line 10 Westover Segment Replacement Project.

To date, Enbridge has not yet filed its formal Line 10 project application with the NEB, which is the approval authority for the project. With the details currently known about Enbridge's proposed Line 10 project application, it is anticipated that a public hearing will not be held. Staff from Community and Emergency Services, Planning and Economic Development and Public Works have identified preliminary issues with respect to the proposed project. Approval of this Report will authorize City staff to raise municipal concerns relating to emergency response, natural heritage, sourcewater protection and corridor management to Enbridge, and to submit a Letter of Comment to the NEB once Enbridge has filed its formal application. This will help to ensure that issues of concern for the City are identified to Enbridge and the NEB in a timely manner.

Approval of this Report will also authorize the General Manager of Public Works to negotiate and execute an agreement with Enbridge which governs the relationship of the parties as it relates to the crossing of Enbridge's Line 10 Pipeline with City-owned roadways. An agreement will set out the roles and responsibilities of the parties, and help to ensure that issues such as liability, insurance and notice requirements are adequately addressed.

Alternatives for Consideration – See Page 7

FINANCIAL – STAFFING – LEGAL IMPLICATIONS

Financial: N/A

Staffing: N/A

Legal: N/A

HISTORICAL BACKGROUND

Enbridge's Line 10 Pipeline is a 143 km export pipeline that carries a variety of crude oils from Western Canada and the Bakken Region. Enbridge is preparing to replace a 35 km segment of Line 10, from the Westover Terminal to the Nanticoke Junction (see Appendix "A" – Location Map). The existing 12 inch diameter steel pipeline will be replaced with a 20 inch diameter line. Enbridge indicates that the pipeline replacement is meant to enhance safety, address future maintenance requirements, and restore the capacity of Line 10 to more closely approximate what it has carried in the past, up to 74,200 barrels per day of oil.

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Enbridge is preparing to replace this segment of the pipeline, which dates from 1962, in order to address any future concerns that could pose a threat to the public or the environment. According to Enbridge, this segment has experienced an increase in integrity digs and has reached the threshold for replacement.

Through the majority of its length, the replacement pipeline will run parallel to the existing line, within the same right-of-way. However, Enbridge is proposing to re-route the line in three areas, which amounts to approximately 11 km in total, along new right-of-ways. The areas that the replacement pipeline deviates around the existing pipeline are at the Copetown Woods and Flamborough Hills Golf Club, the Knollwood Golf Club, and the Mount Hope subdivision and Southern Pines Golf and Country Club (see Appendix “A” – Location Map).

Enbridge intends to decommission a segment of the existing pipeline in place by leaving it in the ground. Enbridge indicates that the benefits of leaving the pipeline in the ground are that there will be no additional disturbance from excavation and removal activities, and less risk of future soil and slope instability, settlement and compaction issues. The decommissioned portion of the pipeline will continue to be monitored by Enbridge, and Enbridge, not the landowners, will remain responsible for the pipeline.

POLICY IMPLICATIONS AND LEGISLATED REQUIREMENTS

N/A

RELEVANT CONSULTATION

Further to Council direction, staff from:

- Planning and Economic Development – Growth Management Division;
- City Manager’s Office – Legal Services Division;
- Community and Emergency Services – Hamilton Fire Department;
- Planning and Economic Development – Planning Division – Community Planning and Design Section;
- Public Works – Engineering Services Division – Geomatics and Corridor Management Section; and,
- Public Works – Hamilton Water – Sustainable Initiatives Section

have assembled comments regarding Enbridge’s proposed Line 10 Westover Segment Replacement Project. The comments will be submitted to Enbridge and a Letter of Comment will be submitted to the NEB for consideration at the appropriate time once Enbridge has filed its project application with the NEB.

ANALYSIS AND RATIONALE FOR RECOMMENDATION

NEB Review and Approval Process

Enbridge has indicated that it will apply under Section 58 of the *National Energy Board Act (NEB Act)* for approval to replace a portion of the Line 10 pipeline, and under Section 45.1 of the *NEB Onshore Pipeline Regulations (OPR)* to decommission a portion of the pipeline that is being replaced.

For projects less than 40 km in length, Section 58 of the *NEB Act* permits the NEB to make an Order exempting certain facilities from any or all of the provisions of Sections 29 to 33 and Section 47 of the *NEB Act*. Section 45.1 of the *OPR* requires a company to submit an application for decommissioning to the NEB if a company proposes to decommission a pipeline or part of one.

Section 58 and Section 45.1 applications do not automatically trigger a public hearing. However, the NEB has discretion to order a public hearing, and may do so where it determines one is required to gather and review relevant information, including information from the public, which the NEB finds is necessary to make their decision. If the NEB makes a decision to hold a hearing for the project's assessment, the NEB has discretion to determine who can participate and may require an application before participatory status is granted.

Once an application is made under Section 58 of the *NEB Act* and subject to any necessary modifications permitted under the Act, the NEB will render a decision (make an Order or dismiss the application) within certain time limits:

Section 58 Non-hearing Applications		
*3 categories of time limits depending on the complexity of issues, estimated number and type of information requests that may be generated and probability of third-party interest		
Category A – Minor	Category B – Moderate	Category C – Major
130 days	210 days	300 days
*typically 40 calendar days	*typically 90 calendar days	*typically 120 calendar days
Section 58 Hearing Applications		
15 month maximum time limit which commences with the Board's decision that an application is complete.		

Since Enbridge has not yet filed its formal Line 10 project application with the NEB, it is not yet known what timelines will be applicable to the project's assessment. Given the current uncertainty in applicable timelines, it is recommended that Council approve the recommendations in this Report, and authorize City staff to submit comments to Enbridge and a Letter of Comment to the NEB once Enbridge has filed its Line 10

project application with the NEB. A letter will enable the City to raise concerns directly to Enbridge and the NEB.

Enbridge's proposed Line 10 project does not automatically trigger an Environmental Assessment (EA) under the *Canadian Environmental Assessment Act, 2012* (CEAA), as it is not a designated physical activity under the *Regulations Designating Physical Activities*. The proposed project is less than 40 km in length, and the proposed decommissioning portion is also less than 40 km in length.

While an EA is not required under the CEAA, the NEB, in its assessment of the project, is tasked with reviewing associated environmental effects. As part of its regulatory application for the project, Enbridge will need to complete an environmental and socio-economic impact assessment describing the predicted beneficial and potential adverse effects over the life of the project, including any mitigation measures that may be required.

Potential Municipal Issues of Concern

Staff from Community Services (the Hamilton Fire Department), Planning and Economic Development (Planning – Community Planning and Design), and Public Works (Hamilton Water – Sustainable Initiatives and Engineering Services – Geomatics and Corridor Management) have identified potential municipal issues regarding the proposed project.

Emergency Response Issues

The Hamilton Fire Department is requesting the following in relation to potential emergency response concerns regarding the Line 10 project:

- That Enbridge provide a copy of the emergency response plan specific to the construction and cutover activities;
- That Enbridge provide contact information for their site commander relative to the cutover of the replacement line so that consultation and co-ordinated planning can take place;
- Given that the diameter of the pipe is being increased for this project, the Hamilton Fire Department is looking for Enbridge to provide information relative to the installation of control valves on the replacement line and to confirm the quantity of product that will be transported through the pipeline;
- That Enbridge to provide adequate access points / routes to the replacement section of the pipeline;
- Traffic plan – there are some critical intersections from an emergency response perspective that could be affected as part of the project. The Hamilton Fire Department should be consulted on developing traffic plans given these concerns;

- Emergency response equipment – given the potential for increase in levels of product being transported, Enbridge must ensure that the levels of emergency response equipment stored at the Westover site are maintained and or increased at adequate levels; and,
- Financial assurance – allocation of financial responsibility for costs that may be incurred for emergency response, clean-ups and other required action, such as evacuation in the event of a spill, particularly costs which may be in excess of Enbridge's commercial liability insurance coverage limits.

Natural Heritage Issues

The rerouting of the pipeline to the west around Copetown Woods Golf Club has potential for environmental impacts. There are a number of natural heritage features (Provincially Significant Wetlands, Significant Woodlands, streams, and Environmentally Significant Areas) on the Golf Club property and to the west of it. The by-pass may impact natural heritage features within the Greenbelt Plan. A detailed project plan will be required to determine what the potential impacts on natural heritage will be.

Sourcewater Protection Issues

Staff emphasize that activities related to commissioning or decommissioning of a pipeline should always consider possible impacts to surface and groundwater resources, and that the establishment of a monitoring and water quality testing program by Enbridge is essential to assess any changes to local conditions.

The definition of “decommissioning” by Enbridge does not include the removal of the pipeline that is programmed to be decommissioned. Considering that there may be residue left in the decommissioned pipeline, Sustainable Initiatives supports the position that Enbridge should remove the decommissioned pipeline assuring that site remediation is performed as required.

Where the pipeline crosses a vulnerable area such as open water bodies, Hamilton Water requests that Enbridge:

- Considers drinking water source protection and therefore includes appropriate design standards, monitoring and maintenance practices that when implemented will prevent a pipeline from becoming a drinking water threat;
- Conduct inline pipeline integrity testing and visual inspections every three years;
- Provide the Source Protection Department of the Conservation Authorities with the report on the findings of the integrity testing and visual inspections, and actions taken; and,
- Includes the mapping of the vulnerable area in the spill prevention plans and spill contingency plans.

A more comprehensive analysis of City-related sourcewater protection concerns can be provided once the completed application is filed by Enbridge with the NEB.

Corridor Management Issues

The following comments relate to the road crossing portions of the proposed project.

Engineering Services has been involved in some preliminary meetings with Enbridge and its consultants. To date, Engineering Services considers this project to be at a high level study phase as Enbridge has not yet fully defined the alignment of the project. Engineering Services has supplied Enbridge and their consultant group access to the on-line drawing archive tool, SPIDER, and supplied access to any other data to support the optimal location of the pipeline.

It is recommended that the City and Enbridge negotiate an agreement which sets out the responsibilities of the parties as they relate to the crossing of Line 10 with City-owned right-of-ways. This would be consistent with the direction given in Report PW14073, where Council authorized the City to negotiate satisfactory agreements with utility companies. The agreement would address issues such as liability, insurance, work-around costs, and notice. Currently, there are no existing agreements relating to these crossings which define the responsibilities of the parties.

Engineering Services remains concerned about decommissioning pipelines, and is of the view that more consideration needs to be given to the impacts both in the short-term and long-term. It should be noted that leaving a decommissioned pipeline installed in place could have significant implications such as increased costs for future City capital works projects (work-around costs).

The City will be seeking a detailed project plan that satisfactorily identifies material storage, haul routes, coordination with City projects, coordination with Forestry, Operations, and Traffic programs, and any other project-specific details that may arise. These details will arise once the final project plan is formalized and understood beyond the current high level study phase.

On November 11, 2015, Enbridge wrote a letter to City staff broadly speaking to some of the issues identified in this Report (see Appendix “B” – Enbridge November 11, 2015 Letter). However, given that Enbridge’s formal application has not been made to the NEB and the exact route of the pipeline has not been finalized, staff are recommending that a Letter of Comment be submitted to NEB for consideration once the application has been made and assessed by City staff.

ALTERNATIVES FOR CONSIDERATION

Alternative 1: Council could direct staff to report back to the General Issues Committee on Enbridge's application before a formal response is submitted to the NEB. This option is not recommended as the timelines for review of the project by the NEB are not certain and may result in a relatively short turnaround time to submit comment to the NEB.

Alternative 2: If there is a public hearing held for the project, Council could direct staff to take steps to participate either orally or apply to be an Intervenor. A Letter of Comment is being recommended instead of the options below as it is an effective and efficient way of identifying potential City-related concerns to Enbridge and the NEB.

Oral Statement – Similar to a Letter of Comment, but is presented in-person (orally) at a public hearing. If the City wishes to provide an oral statement, it must advise the NEB of its intention in advance of the public hearing. This may require travel to the hearing location.

Intervenor Status – This is the most involved level of participation where people directly affected by a project can participate in a NEB hearing. Intervenors can file written evidence, directly receive all documents filed by the proponent and other intervenors, comment on evidence and ask questions of all parties involved, and make a final argument. The NEB may or may not grant Intervenor status to everyone who applies. This could involve retaining lawyers and subject experts to assist the City.

ALIGNMENT TO THE 2012 – 2015 STRATEGIC PLAN

Strategic Priority #1

A Prosperous & Healthy Community

WE enhance our image, economy and well-being by demonstrating that Hamilton is a great place to live, work, play and learn.

Strategic Objective

1.6 Enhance Overall Sustainability (financial, economic, social and environmental).

Strategic Priority #2

Valued & Sustainable Services

WE deliver high quality services that meet citizen needs and expectations, in a cost effective and responsible manner.

Strategic Objective

- 2.2 Improve the City's approach to engaging and informing citizens and stakeholders.

Strategic Priority #3

Leadership & Governance

WE work together to ensure we are a government that is respectful towards each other and that the community has confidence and trust in.

Strategic Objective

- 3.1 Engage in a range of inter-governmental relations (IGR) work that will advance partnerships and projects that benefit the City of Hamilton.
- 3.4 Enhance opportunities for administrative and operational efficiencies.

APPENDICES AND SCHEDULES ATTACHED

Appendix "A" – Location Map

Appendix "B" – Enbridge Letter dated November 11, 2015

MA/LP/mh