



CITY OF HAMILTON
PLANNING AND ECONOMIC DEVELOPMENT DEPARTMENT
Growth Management Division

TO:	Mayor and Members General Issues Committee
COMMITTEE DATE:	June 20, 2018
SUBJECT/REPORT NO:	Proposed Sale of Enbridge Pipelines Inc. Line 10 Pipeline to Westover Express Pipeline Limited (wholly owned subsidiary of United Refining Company) (PED18130) (Wards 12 and 14) (Outstanding Business List)
WARD(S) AFFECTED:	Wards 12 and 14
PREPARED BY:	Guy Paparella (905) 546-2424 Ext. 5807
SUBMITTED BY:	Tony Sergi Senior Director, Growth Management Planning and Economic Development Department
SIGNATURE:	

RECOMMENDATIONS

- (a) That Council authorize City staff to raise potential municipal issues of concern to the City of Hamilton relating to the sale of Enbridge Line 10 Pipeline directly with Enbridge Pipelines Inc. and the proposed purchaser of Line 10, Westover Express Pipeline Limited, and to submit a Letter of Comment outlining these concerns to the National Energy Board (NEB) if provided the opportunity to do so by NEB;
- (b) That the municipal issues of concerns referred to in recommendation (a) may include:
 - (i) that National Energy Board mandate that Westover Express Pipeline Limited to be bound to comply with all regulatory requirements, approvals, agreements, easements and permits set out by National Energy Board and with the City of Hamilton;
 - (ii) that National Energy Board require Westover Express Pipeline Limited to assume, by way of an Agreement, the responsibilities and obligations of Enbridge Pipelines Inc. under an existing Licence Agreement dated May 9, 2017, as amended, and ancillary agreements as they relate to the Line 10 Pipeline crossings of City of Hamilton right-of-ways;

- (iii) that representatives of Westover Express Pipeline Limited meet with the Hamilton Fire Department prior to the handover of operations of Line 10 Pipeline to provide for review and input into their emergency response and emergency resource plan for the Westover Site and Line 10 Pipeline; and,
- (iv) that the onsite emergency response resources currently maintained at the Line 10 Pipeline Westover Site by Enbridge Pipelines Inc. be maintained at the current or enhanced level after handover of operations to Westover Express Pipeline Limited;
- (c) That subject to the approval of the sale of Line 10 by Enbridge Pipelines Inc. to Westover Express Pipeline Limited by the National Energy Board, the General Manager of Public Works be authorized to negotiate and execute, on behalf of the City of Hamilton, a Crossing Licence Agreement for the Line 10 Pipeline and any ancillary documents which set out the roles, responsibilities and obligations of the parties with respect to the 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 and General Manager of Planning and Economic Development, as applicable;
- (d) That the matter respecting Proposed Sale of Enbridge Pipelines Inc. Line 10 Pipeline to Westover Express Pipeline Limited, a wholly owned subsidiary of the United Refining Company, be identified as complete and removed from the Planning Committee Outstanding Business List.

EXECUTIVE SUMMARY

City staff have informed representatives of Enbridge Pipelines Inc. of direction provided by Council on April 26, 2018, to investigate any potential impacts the proposed sale of the Enbridge Pipelines Inc. Line 10 Pipeline to Westover Express Pipeline Limited may have to existing City agreements and / or easements and any potential disruption. City Staff requested a response to the City's concerns and received a reply from Enbridge Pipelines Inc. (see Appendix "A" attached to Report PED18130). In addition, City staff have reviewed the full and joint application to the National Energy Board (NEB) seeking to transfer ownership of Line 10 Pipeline from Enbridge Pipelines Inc. to Westover Express Pipeline Limited (Westover Express), a wholly owned subsidiary of United Refining Company (United) of Warren, Pennsylvania, USA (see online at <https://apps.neb-one.gc.ca/REGDOCS/Item/Filing/A91854>).

Currently the roles, responsibilities and obligations of the parties with respect to Enbridge Line 10 Pipeline where it crosses City-owned right-of-ways is governed by a Master Licence Agreement dated May 9, 2017, as amended, and ancillary permits

SUBJECT: Proposed Sale of Enbridge Pipelines Inc. Line 10 Pipeline to Westover Express Pipeline Limited (United Refining Company) (PED18130) (Wards 12 and 14) - Page 3 of 7

(which include Access Permits, Noise Exemption Permit, and Waterline Crossing Permission). Given that the Master Agreement applies to a number of pipeline crossings unrelated to the Line 10 Pipeline sale, a new Licence Agreement dedicated to the Line 10 Pipeline crossing will need to be entered into with Westover Express Pipeline Limited if the sale is approved by the NEB.

There are no existing Easement agreements relating to the Line 10 Pipeline. There are a number of existing ancillary permits and consent agreements with Enbridge Pipelines Inc. relating to the Line 10 Pipeline. All are listed in Appendix "A" attached to Report PED18130. If the sale is approved, staff will ensure that the subject matter of the ancillary permits or agreements is either addressed in the new Crossing Licence Agreement with Westover, where appropriate, or that the prospective purchaser, Westover Express Pipeline Limited, obtains its own permits, as needed.

Additionally, Council directed that City Staff request that representatives from Enbridge Pipelines Inc. be invited to provide an update to General Issues Committee (GIC). In response to this request Enbridge states that it is their understanding that the document submitted to the City on May 9, 2018 (see Appendix "A" attached to Report PED18130) addresses the questions expressed by members of Council. Therefore, they do not see the need to attend a GIC unless further questions remain which cannot be answered through written correspondence.

Further, as it is Enbridge's understanding that the request to appear before the GIC was initiated by Councillor Matthew Green, Enbridge's Director of Eastern Region Operation, Mr. Jeff Paetz, would be available to personally meet with Councillor Green as his schedule permits to answer any remaining questions he may have regarding the proposed sale of Line 10 to Westover Express Pipeline. Enbridge indicated that its Senior Community Engagement Strategist, Mr. Herb Shields, will contact Councillor Green's office to extend this offer.

Approval of this Report will authorize City staff to raise issues of municipal concern with Enbridge and Westover Express, and to submit a Letter of Comment to NEB to be considered in the application to approve the sale of the Line 10 Pipeline, if given the opportunity to do so by the NEB. Approval of this Report will also authorize the General Manager of Public Works to negotiate and execute a Crossing Licence Agreement with Westover Express which will govern the relationship of the parties as it relates to the crossing of 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.

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Alternatives for Consideration – Not Applicable

FINANCIAL – STAFFING – LEGAL IMPLICATIONS

Financial: N/A

Staffing: N/A

Legal: Enbridge Pipelines Inc. and Westover Express Pipeline Limited brought a joint application for Sale and Purchase of the Line 10 Pipeline under subsection 21(1) and paragraphs 74(1)(a) and (b) of the *National Energy Board Act*. In determining whether to issue approval of the sale, the NEB will consider whether it continues to be in public interest to operate the Line 10 facilities having regard to whether the facilities:

- i) would be constructed and operated in a safe and an environmentally sound manner; and,
- ii) are required for the present and future public convenience and necessity.

While NEB does not set up formal process for comment on section 74 applications, the City may submit a letter of comment to the Secretary of NEB for consideration by NEB in this application. If the sale is approved, the Line 10 Pipeline will continue to be regulated by the NEB after the sale and will be subject to the same operating and maintenance requirements under the new owner, Westover Express.

Currently the roles, responsibilities and obligations of the Enbridge Pipelines Inc. and the City of Hamilton with respect to Enbridge Line 10 Pipeline where it crosses City-owned roadways are governed by a Master Licence Agreement dated May 9, 2017, as amended, and ancillary agreements and permits. Given that the Master Licence Agreement applies to a number of pipeline crossings unrelated to the Line 10 Pipeline or its sale (i.e. crossings related to Lines 7, 8, 9, and 11), a new Licence Agreement dedicated to the Line 10 Pipeline crossing will need to be entered into with Westover Express Pipeline Limited if the sale is approved by the NEB. The terms and conditions of this new agreement are anticipated to be similar to the terms of the existing Master Licence Agreement with Enbridge, with such modifications as are necessary to reflect the new ownership. If the sale is approved, the existing Master Licence Agreement with Enbridge Pipelines Inc. will also need to be amended to remove its references to the Line 10 Pipeline, which would be covered under a separate agreement with Westover Express.

There are no existing Easement agreements relating to the Line 10 Pipeline. There are a number of existing permits and consent agreements with Enbridge Pipelines Inc. relating to the Line 10 Pipeline which are listed in Appendix “A” attached to Report PED18130. If the sale is approved, staff will ensure that the subject matter of the

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ancillary permits or agreements is either addressed in the new Crossing Licence Agreement with Westover, where appropriate, or that the prospective purchaser, Westover Express Pipeline Limited, obtains its own permits, as needed.

HISTORICAL BACKGROUND

Enbridge's Line 10 Pipeline is 143 km of 12" and 20" pipe that transports crude oil from Enbridge's terminal in Westover, Ontario to United's Kiantone Pipeline in West Seneca, New York. Enbridge has elected to sell Line 10 to Westover Express Pipeline Limited, incorporated in British Columbia, Canada, a company which is one hundred percent owned subsidiary of United. Enbridge and Westover Express have brought a joint application for sale and purchase of Line 10 to the NEB.

At its meeting of April 25, 2018, Hamilton City Council approved Item 5.1, which reads as follows:

5.1 Correspondence from Enbridge Pipelines Inc. respecting the Proposed Sale of Enbridge Line 10 Pipeline to United Refining Company Notification of Future Assignment of Permanent Pipeline Crossings.

Recommendation: Be received and referred to staff to report to the General Issues Committee respecting any potential impacts the proposed sale of the pipeline may have on existing City agreements and / or easements and any potential disruption and that representatives from Enbridge Pipelines Inc. be invited to provide an update to Committee.

POLICY IMPLICATIONS AND LEGISLATED REQUIREMENTS - *Not Applicable*

RELEVANT CONSULTATION

Staff consulted with Healthy and Safe Communities, Legal Services and Public Works in the preparation of this Report who provided comments on this Report.

ANALYSIS AND RATIONALE FOR RECOMMENDATION

Westover Express Pipeline Limited and United Refining Company:

Westover Express Pipeline Limited, a British Columbia corporation, is a wholly owned subsidiary of United. United is an independent refiner and marketer of petroleum products based out of Warren, Pennsylvania, USA. It currently owns and operates the Kiantone interstate pipeline in United States. Their oil refinery in Warren has a processing capacity of 70,000 barrels of oil per day which produces gasoline including

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SUBJECT: Proposed Sale of Enbridge Pipelines Inc. Line 10 Pipeline to Westover Express Pipeline Limited (United Refining Company) (PED18130) (Wards 12 and 14) - Page 6 of 7

ethanol blends, diesel fuel and other petroleum products. United distributes its oil products through its line of owned and operated convenience stores, totalling about 375 throughout upstate New York, Pennsylvania, and Northeast Ohio. The convenience stores operate under the names Kwik Fill, Red Apple and Country Fair which also operates under the Citgo brand name. United is not based in Canada; the proposed purchase of Line 10 Pipeline will be through its wholly owned Canadian subsidiary Westover Express.

NEB Application A91854 Review:

The sale, purchase or transfer of Line 10 Pipeline does require the approval of the NEB even though it is strictly a financial transaction. The transfer of Line 10 Pipeline is not an expansion application before the NEB. No changes or amendments to the operational parameters of Line 10 or the NEB approved capacity of 74,500 barrels per day are included in the application for approval of the sale and purchase. There are no environmental permits or approvals required since there is no physical impact to the Line 10 Pipeline asset. In addition, Enbridge advises that no changes to Enbridge's workforce are expected as a result. Municipal property taxes will be paid by Westover Express after the transfer date.

Westover Express will be bound to comply with all regulatory requirements and approvals set out by the NEB for Line 10.

Enbridge Pipelines Inc. Correspondence of May 9, 2018 Review:

Appendix "A" attached to Report PED18130 is Enbridge's response to the concerns raised by the City of Hamilton.

Enbridge has committed to ensure a seamless transition of ownership of Line 10 to Westover Express. Enbridge advises that under the terms of the transfer agreement, Enbridge will continue to maintain and operate Line 10 Pipeline until at least the fall of 2022 in accordance with the regulatory requirements and standards set by the NEB and expected by all stakeholders along the Line 10 corridor. Enbridge and Westover have stated they will ensure that all current agreements or commitments made to the City of Hamilton, Line 10 Pipeline landowners, indigenous communities, Municipal and Provincial Agencies are honoured. The agreements and permits with the City of Hamilton are listed on pages 3 and 4 of Appendix "A" attached to Report PED18130. Enbridge further states that they do not anticipate any impacts or changes to the ongoing relationship with the City of Hamilton.

SUBJECT: Proposed Sale of Enbridge Pipelines Inc. Line 10 Pipeline to Westover Express Pipeline Limited (United Refining Company) (PED18130) (Wards 12 and 14) - Page 7 of 7

Enbridge states that its continued operation of Line 10 until 2022 will provide time for Westover Express to ensure it will meet all NEB requirements when it becomes operator.

ALTERNATIVES FOR CONSIDERATION – *Not Applicable*

ALIGNMENT TO THE 2016 – 2025 STRATEGIC PLAN

Economic Prosperity and Growth

Hamilton has a prosperous and diverse local economy where people have opportunities to grow and develop.

APPENDICES AND SCHEDULES ATTACHED

Appendix “A” – Enbridge Letter of Response to the City of Hamilton

Appendix “B” – Line 10 Pipeline Replacement

GP/as/sd