



LETTER DECISION

File OF-Fac-Oil-W170-2018-01
3 May 2019

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Dear Ms. Fowke, Mr. Ho, and Mr. Wagner:

**Enbridge Pipelines Inc. (Enbridge) and Westover Express Pipeline Limited
(Westover Express)
Joint Application for Sale and Purchase of Line 10 (Application) Pursuant to
paragraphs 74(1)(a) and (b) and subsection 21(1) of the *National Energy Board Act*
(NEB Act)**

The National Energy Board (NEB or Board) has considered the 8 May 2018 Application by Enbridge and Westover Express. Pursuant to paragraphs 74(1)(a) and (b) of the NEB Act, the Board has issued the attached Order MO-014-2019 which grants Enbridge leave to sell, and Westover Express leave to purchase, the Canadian portion of Line 10. The Board's decision is subject to the terms and conditions included Order MO-014-2019 and, as well, will be subject to the terms and conditions that will be included in the amending orders of the various regulatory instruments that must be varied.

The Board's reasons for its decision are set out below. In reaching its decision, the Board considered all of the evidence on the record related to this matter, including comments received from interested parties.

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1.0 Project Overview and the NEB Process

1.1 Application and Project Overview

On 8 May 2018, Enbridge and Westover Express (Applicants) filed an Application for approval of the sale and purchase of the Canadian portion of Line 10 from Enbridge to Westover Express. Enbridge is incorporated under the *Canada Business Corporations Act*. Westover Express is incorporated in British Columbia and is registered to carry on business in Ontario. Westover Express is a one hundred percent owned subsidiary of United Refining Company (United).

Together, the Canadian and American portions of Line 10 comprise of approximately 143 km of NPS 12 (324 mm) and NPS 20 (308 mm) pipe that transport crude oil from Enbridge's terminal in Westover, Ontario to United's Kiantone Pipeline in West Seneca, New York to supply United's approximately 70,000 barrel-per-day (bpd) refinery in Warren, Pennsylvania.

At issue in this Application is the Canadian portion of Line 10. It is approximately 105.41 km in length within Ontario. It crosses under the Niagara River and terminates at the international border.

In December 2015, Enbridge applied to decommission approximately 32 km of existing Line 10 pipe and replace it with 35 km of new pipe, to restore the segment of Line 10 to its original capacity of 74,200 bpd. On 26 January 2017, the Board issued Reasons for Decision OH-001-2016 approving Enbridge's application for the Line 10 Westover Segment Replacement Project. Along with the Reasons for Decision, the Board issued Order XO-E101-001-2017, the effect of which was to authorize the construction and operation of the replacement pipeline. The Board also issued Order MO-001-2017 which authorized the decommissioning of the then-existing Line 10 pipeline. The Board found the Line 10 Westover Segment Replacement Project to be in the public interest, subject to conditions. The Board was also satisfied that, subject to the conditions, Enbridge's proposal to leave the existing Line 10 pipeline in-place was appropriate.

The assets included in the sale of Line 10 include the mainline pipe, the mainline pump station at Westover, the sectionalizing valves along the pipeline, the sending and receiving traps, and pipeline instrumentation. The sale of Line 10 would include the decommissioned line described above.

Enbridge will continue to operate and maintain the pipeline and right of way (ROW) following the sale until at least 2022.

The Application requested the Board:

- a) grant leave to Enbridge, pursuant to paragraph 74(1)(a) of the NEB Act, to sell the Canadian portion of Line 10 to Westover Express;
- b) grant leave to Westover Express, pursuant to paragraph 74(1)(b) of the NEB Act, to purchase the Canadian portion of Line 10 from Enbridge;

- c) vary NEB Certificate OC-10, AO-1-OC-10 and AO-2-OC-10, NEB Orders OPL-1-6-61, AO-1-OPL-1-6-61, OP-191-62, OP-17-63, OPLO-1-1-63, OPLO-1-2-63, AO-1-OPLO-1-2-63, OPLO-1-3-63, OPSO-1-3-64, OPSO-1-13-68, OPSO-1-18-68, OPLO-J1-1-81, OPS-1-2-62, XO-7-63, OPS-1-1-67, OPS-1-9-67, XO-5-74, MO-4-81, XO-J1-35-97, XO-E101-18-2003, XO-E101-001-2017, MO-001-2017 and all other orders related to Line 10, pursuant to subsection 21(1) of the NEB Act, to reflect the change in ownership of the Canadian portion of Line 10;
- d) vary NEB Certificate OC-23 to remove the sections of pipeline listed in (A)(iv), (v) and (vi) that are part of Line 10 being transferred to Westover Express in the sale;
- e) issue a new Certificate to Westover Express for the sections of pipeline listed in (A)(iv), (v) and (vi) of NEB Certificate OC-23 that are part of Line 10;
- f) issue new orders to Westover Express to replace Order OPL-J1-14-80 and Order OP-58-75 for the Welland Canal crossings and the Order dated 1963-02-18 for the Niagara River crossing;
- g) grant leave to Westover Express to be regulated by the NEB as a Group 2 company for traffic, tolls, tariff and financial regulation on a complaint basis;
- h) issue an order approving the abandonment cost estimate proposed by Westover Express for Line 10 and the trustee, trust agreement and statement of investment policies and procedures (“SIPP”) for the new Line 10 Trust;
- i) issue an order or direction pursuant to the directions contained in the MH-001-2013 Decision and Section 4.2(d) of the Amended and Restated Trust Agreement for the Enbridge Abandonment Trust (“EPI Abandonment Trust”):
 - i) directing the Trustee to transfer the Line 10 Collected Abandonment Funds to the new Line 10 Trust following approval by the NEB of sale and purchase of Line 10, and
 - ii) designating that Westover Express is responsible for discharging the Beneficiary’s Reclamation Obligations related to Line 10 upon closing of the sale as the capitalized terms are defined in this Application and in the EPI Abandonment Trust;
- j) issue an order approving the revised Amended and Restated Trust Agreement for the EPI Abandonment Trust; and
- k) grant such further and other related relief as Enbridge or Westover Express may request or the Board may deem appropriate.

1.2 The NEB Process

Following receipt of the Application, the Board received several letters from interested parties.

On 4 June 2018, the Board received a letter from Dr. Ruth Pickering about public participation prior to a decision on the Application.

On 7 June 2018, the Board issued Information Requests (IRs) to the Applicants. In response, on 21 June 2018 they submitted supplemental information about financial matters, abandonment costs funding, statement of investment policies and procedures, rate base and currency.

On 3 July 2018, the Board received a letter from Knollwood Golf Limited (Knollwood) stating it had a number of concerns about the proposed sale of the decommissioned portions of the Line 10 pipeline. Knollwood requested that the Board exercise its discretion under subsection 24(3) of the NEB Act to hold an oral hearing and to establish a participant funding program for the hearing under section 16.3 of the NEB Act.

On 4 July 2018, the Board received a letter from the City of Hamilton that set out issues for the Board's consideration of the Application relating to emergency response, sourcewater protection, and corridor management. The City of Hamilton also requested that the Board impose appropriate conditions if the sale is approved.

On 11 July 2018, the Board received a second letter from Dr. Pickering, this time on behalf of Hamilton 350.org, Hamilton Chapter of the Council of Canadians, and Environment Hamilton, that outlined a number of issues that they asserted must be examined, and encouraged the Board to offer a full public process prior to any decision on the Application.

On 18 July 2018, the Board established a public hearing process to solicit comments on the Application. The Board also requested comments on whether additional process steps were required. The Board stated that after reviewing the comments, it may issue its decision on the Application, or carry out additional process steps to aid in its assessment of the Application. The Board noted at the time that some of the previously filed comments raised issues that were outside of the scope of the Application and reiterated that this was not an opportunity to raise matters previously considered by the Board in separate regulatory processes.

On 7 August 2018, the Board received letters of comment from Don McLean, Dr. Pickering and the Hamilton 350 Committee. On 8 and 9 August 2018, respectively, the Board received letters of comment from Ms. Louise Lanteigne and from Knollwood.

On 23 August 2018, Enbridge and Westover Express submitted reply comments.

On 4 September 2018, the Board issued a second round of IRs to the Applicants. In response, on 18 September 2018, Enbridge and Westover Express submitted further supplemental information about financial matters and an updated table of relevant Orders and Certificates.

Also on 18 September 2018, Westover Express filed a Notice of Motion for Confidential Filing to ensure the confidentiality of information filed in response to IR No. 2.2.b (the recent annual report of United). On 18 September 2018 and 19 October 2018, Ms. Lanteigne filed comments regarding this request. On 19 September 2018, Knollwood filed a second letter reiterating its concerns regarding the decommissioned portion of Line 10 and its request that the Board hold an oral public hearing.

On 2 November 2018, Westover Express filed its responses to the Board's IR No. 3. On 16 November 2018, the Board issued its ruling regarding the Westover Express motion. On 23 November 2018, Westover Express filed a response to the Board's ruling. On 17 December 2018, Westover Express filed certain Consolidated Financial Statements of United and subsidiaries in response to the Board's ruling and IR No. 2.2(b).

On 27 December 2018, Ms. Lanteigne filed an additional letter of comment.

2.0 Assessment of the Application and Additional Information and Comments Received

The Application was filed under sections 74 and 21 of the NEB Act. Guide R of the NEB's Filing Manual identifies the information that the Board would typically expect to see addressed by divesting and acquiring companies in an application for leave to sell and purchase NEB-regulated pipeline facilities and assets.

The Board finds there is sufficient information on the record to make a determination on the Application and that further process steps are not necessary. In making this determination, the Board has considered the nature of the Application; the type of information required to assess the Application under sections 74 and 21 of the NEB Act; the information provided by the Applicants in the Application and in response to the Board's IRs; and the comments provided by interested parties.

The Board finds that a number of the comments received from interested parties were outside the scope of an Application of this type. The Board also notes that several letters were submitted well after the Board's comment period ended. Where comments were made that fell within the scope of the Application, the Board has detailed and considered them in the relevant sections below.

2.1 Operations Matters

Views of the Applicants

Enbridge and Westover Express asserted that they are committed to ensuring a seamless transition of ownership of Line 10 to Westover Express.

Enbridge will continue to operate and maintain the pipeline and ROW following the sale until at least 2022. Enbridge will remain the contact for emergency situations, and signage will only be changed when that contact information changes. Enbridge confirmed that a copy of the construction and equipment records set out in section 10.4 of CSA Z662 and paragraphs 56(e) to 56(g) of the *National Energy Board Onshore Pipeline Regulations* (OPR) would be made available to Westover Express in hard copy and electronic format by 31 May 2018.

The Application indicated that Enbridge's Integrated Management System (IMS) details all activities associated with the control of Line 10. It includes governing processes associated with sections 6.1 to 6.6 of the OPR which are used to coordinate the protection programs identified within the OPR to promote safety and environmental protection. These protection programs include the Emergency Management Program, Integrity Management Program, Safety Management Program, Security Management Program, Damage Prevention Program and Environmental Protection Program.

The IMS at Enbridge applies to the entire lifecycle of its pipeline system, from planning and design, through construction and operation, to abandonment, and will continue to apply in full to the operation of Line 10 until such time that Enbridge is no longer the contract operator.

The Application notes that United, the parent company of Westover Express, currently owns and operates the Kiantone interstate pipeline in the United States.

Views of the Interested Parties

Several interested parties queried how regulatory oversight would continue on Line 10 and how conditions imposed on Enbridge in previous Board Orders would be fulfilled by the new owner, Westover Express. Knollwood commented that a number of components of the Line 10 decommissioning project were ongoing and remained outstanding. Further, Knollwood noted that Condition 14 of Board Order MO-001-2017 requires Enbridge to file an application for leave to abandon when future operating conditions or circumstances change. Knollwood submitted that a public hearing process is necessary to test the application, including with respect to issues, among other things, the interaction of the leave to sell application with Condition 14 of the Decommissioning Order MO-001-2017. Knollwood submitted that the sale of the decommissioned Line 10 pipeline to Westover Express "would constitute a change in circumstances, apparently requiring an abandonment application to be filed".

The City of Hamilton requested on behalf of its fire department that the onsite emergency response resources currently at the Line 10 Pipeline Westover Site be maintained at the current or an enhanced level after the operations of the line are turned over to Westover Express, should the sale proceed. Further to this, the City of Hamilton requested representatives from Westover Express meet with the fire department prior to the handover of operations to review and have input into the emergency response plan and emergency resource plan. The City of Hamilton also requested Westover Express be required to remove all decommissioned portions of Line 10 to avoid potential significant and long-term implications on future city capital works projects.

Dr. Pickering asserted that Enbridge had previously committed to permanently maintain the decommissioned portions of Line 10. Dr. Pickering questioned how the Board will retain its lifecycle oversight of Line 10 if the new owner is an American company and asserted that any future requests for expansion in capacity of Line 10 should be examined by and regulated by the Board.

Mr. Don McLean, on behalf of Hamilton 350 Committee, requested that Enbridge disclose the condition and size of all segments of Line 10, including the year in which each segment was replaced and Enbridge's assessment of each segment. Mr. McLean also requested that Westover Express disclose what plans it has to expand sections of Line 10 and the timing of any expansion.

Reply of the Applicants

Enbridge and Westover Express committed to continue ongoing engagement with the City of Hamilton and other municipalities to ensure any concerns or issues are fully addressed before such time when operations are handed over to Westover Express. The Applicants also reiterated

that the new corporate owner will be subject to the same regulations, including abandonment, as the existing owner. The Applicants noted that this Application is not an opportunity to raise matters that were part of a previous regulatory process or could be subject to future applications or processes and that the Board's regulatory process will assure the pipeline will be operated safely and abandoned appropriately.

Views of the Board

The Board finds that many comments received from interested parties were matters outside of the scope of the Application. These include issues relating to the Board's previous approval to decommission certain existing Line 10 pipeline segments in-place, Enbridge's corporate structure, the potential future expansion of Line 10 capacity, the physical condition of the pipeline, and environmental impacts of the pipeline including upstream and downstream impacts.

The Board notes that the Line 10 pipeline is already regulated by the Board, and has been previously determined to have been constructed and operated in a safe and environmentally sound manner, and required for the present and future public convenience and necessity. Similarly, the Board has previously made a determination to allow the decommissioning of certain Line 10 segments in-place.

The Board further notes that Line 10 will continue to be regulated by the Board, and lifecycle oversight over Line 10 will continue. Conditions previously imposed by the Board on Enbridge with respect to the Line 10 pipeline will apply to Westover Express which is, as the Application indicates, a company incorporated in British Columbia and registered to carry on business in Ontario. Westover Express will be subject to the NEB's regulatory framework including, as discussed further in Section 2.3, abandonment funding and financial resource requirements. Westover Express will be responsible for the decommissioned portions of Line 10, and the future abandonment of the facilities as required in Condition 14 of Board Order MO-001-2017.

Condition 14 of MO-001-2017 states:

Enbridge shall file with the Board an application for leave to abandon the Existing Line 10 Pipeline or such part of it, as applicable:

- a) if the Board notifies Enbridge that it must apply for leave to abandon; or
- b) when future operating conditions or circumstances change (for example, the status of other pipelines in close proximity to the Existing Line 10 Pipeline; or the safety and environmental risks associated with removing or leaving the pipeline).

The Board is not satisfied that operating conditions or circumstances (for example, as identified in the condition, the status of other pipelines in close proximity to the existing Line 10 pipeline; or the safety and environmental risks associated with removing the leaving the pipeline) would change as a result of the transaction. Line 10 and Line 11 remain in operation subsequent to the transaction, and as noted in the OH-001-2016

Reasons for Decisions, the safety and environmental risks associated with excavating and removing the decommissioned pipeline from the ground remain, including the possibility of damage or ruptures to the adjacent active Line 11 pipeline and resulting environmental damage.

The Board is of the view, however, that a new condition is necessary to support the functioning of Condition 14 which presumed that Enbridge would have the knowledge to comply with paragraph (b) of the Condition. After the sale and purchase is complete, Enbridge and Westover Express must co-operate and pool their knowledge in order for Condition 14 to be fulfilled. Therefore, the Board's order granting leave for the purchase and sale and amending orders that vary certain regulatory instruments are subject to the requirement that Enbridge and Westover Express, as appropriate, file an annual report with the Board advising about the status of the operating conditions or circumstances under Condition 14(b).

Further, the Board notes that Westover Express, as the new the owner, is retaining Enbridge as the contract operator of the pipeline until at least 2022. To promote seamless oversight, the Board's order granting leave for the purchase and sale and amending orders that vary certain regulatory instruments are subject to conditions that require Enbridge and Westover Express, as appropriate, to provide information to the Board on the status of and timing of change of operatorship.

Lastly, for the Board to issue varied Certificates and Orders, the Board requires current information to populate the Schedule A that identifies the pipeline and associated facilities that are subject to each authorization. As a result, the Board's order granting leave for the sale and purchase includes a condition requiring Enbridge and Westover Express to jointly file that information in the form of a Schedule A.

As discussed later in this letter decision, the Board has decided to vary Certificates OC-23 and OC-10 to remove the Line 10 facilities from Certificate OC-23 and place them under Certificate OC-10. The Schedule A information for the varied Certificate OC-10 should distinguish between the original and new facilities.

Comments relating to engagement with municipalities are discussed further in Section 2.2 of this decision.

2.2 Consultation and Socio-economic Matters

Views of the Applicants

Public Consultation

The Applicants stated that they undertook consultation in support of the transfer of ownership of Line 10 with all municipalities between Enbridge's Westover terminal in Hamilton, Ontario and Niagara Falls, Ontario. Meetings were held with officials from: The City of Hamilton; the City of Thorold; the Township of West Lincoln; the Town and Pelham; the Region of Niagara; the County of Haldimand; and the Flamborough Chamber of Commerce. Enbridge also consulted

with a number of provincial and federal authorities regarding the sale, and with the Hamilton, Grand River and Niagara Peninsula Conservation Authorities.

In the Application, Enbridge noted a number of concerns that were raised by stakeholders. Stakeholders want Westover Express to demonstrate it will be as responsive and proactive as Enbridge has been in communicating with stakeholders, especially since United, the parent company of Westover Express, is not based in Canada. Stakeholders also requested to be updated regularly on the regulatory process and timeline of the sale. Some stakeholders requested an opportunity to meet Westover Express representatives for formal introductions and to begin relationship building. Enbridge also noted that municipal leaders wanted assurances that landowner interests will be respected by the new owner/operator.

In response to the concerns raised, the Applicants stated all stakeholders have been advised that Enbridge will continue to operate and maintain Line 10 until at least 2022 and that Line 10 will continue to be regulated by the Board after the sale and will be subject to the same operating and maintenance requirements when Westover Express takes over operation and maintenance. After the sale, Westover Express will be subject to the Board's oversight, including for stakeholder consultation requirements. Enbridge also committed to informing stakeholders about the Application, including the Board's decision, when it is announced. Finally, Enbridge committed to facilitating introductions between stakeholders and Westover Express.

Consultation with Landowners

Enbridge contacted all directly affected landowners and adjacent landowners within 60 metres of the existing ROW in January 2018, providing a notification letter of the proposed sale. At the time of application, Enbridge confirmed it had been successful in consulting with 1061 of 1125 directly affected landowners with existing land interests affected by the proposed sale. Enbridge confirmed that the existing easement agreements for the ROWs include specific clauses regarding notices related to assignment of the asset. As such, Enbridge will provide a written form of notice to be given to the transferor/grantor within 10 days following the actual assignment. No consent or signoff is required from the landowner for assignment of the easement.

Consultation with Indigenous Peoples

Three Indigenous groups are located in proximity to the Line 10 ROW: Six Nations of Grand River (Six Nations); Haudenosaunee Development Institute (HDI); and Mississaugas of the New Credit First Nation (MNCFN). In January 2018, Enbridge notified representatives from each of these Indigenous communities about the sale of Line 10, and held individual meetings with representatives of Six Nations, MNCFN, and HDI in January and February 2018 to discuss the sale:

- **Six Nations of the Grand River:** Enbridge met with a Six Nations representative on 19 February 2018 to discuss the sale, and no specific concerns about the sale were raised.
- **Haudenosaunee Development Institute:** Enbridge met with the Executive Director for the HDI on 23 January 2018, to discuss the sale, and no specific concerns about the sale were raised.

- **Mississaugas of the New Credit First Nation:** Enbridge met with MNCFN representatives on 23 January 2018 to discuss the sale of Line 10. Enbridge confirmed with MNCFN that the sale of Line 10 will not affect or alter any commitments made by Enbridge regarding Line 10 but more specifically, regarding the archaeological work remaining on tract 73 related to the Line 10 Westover Segment Replacement Project. Enbridge reaffirmed that the working relationship between Enbridge and MNCFN will be ongoing regardless of the sale. MNCFN did not express any specific concerns regarding the sale.

Enbridge committed to meaningful engagement throughout the sale process and to continue to offer opportunities to meet and discuss any issues, concerns or questions that arise.

Views of the Interested Parties

Knollwood Golf Limited

Knollwood stated that the sale by Enbridge of a decommissioned pipeline would amount to a *de facto* abandonment of the pipeline in place and would be contrary to the public interest. Knollwood further stated that the sale would permit Enbridge to avoid its maintenance and reclamation obligations to Knollwood and other similarly-affected landowners. Knollwood also raised concerns about the potential interference of the decommissioned Line 10 Pipeline with future development on its properties, including a desired hotel resort development, and the expansion of water retention and irrigation facilities on the properties.

City of Hamilton

The City of Hamilton stated that it wishes to have a representative of Westover Express meet with the Hamilton Fire Department prior to the handover of operations to Westover Express to provide for review and input into their emergency response and emergency resource plan.

Reply of the Applicants

In response to the concerns raised by the City of Hamilton, Enbridge and Westover Express stated that they intend to continue ongoing engagement with the City of Hamilton including arranging meetings between Westover Express and the City of Hamilton, and all other municipalities and other groups along the route, to ensure any concerns or issues are discussed and fully addressed before such time when operations are handed over to Westover Express.

In response to Knollwood's concern about the potential abandonment of the pipeline, Enbridge and Westover Express stated that, following an approved sale, the pipeline and the new corporate owner will be subject to the Board's rules and requirements for abandonment. At the time when Line 10 is considered for abandonment, the abandonment methodology for the decommissioned and operating pipeline will be considered by the NEB.

Views of the Board

The Board finds that the public and landowner consultation activities undertaken by Enbridge for the purposes of the sale are adequate. The Board is satisfied with the design and implementation of Enbridge's consultation activities to date, as well as its

commitment to continue consultation activities, including arranging meetings between Westover Express and the City of Hamilton and all other municipalities and groups along the route, and to facilitate engagement between stakeholders and Westover Express. The Board notes that after the sale, Westover Express will be subject to the NEB's oversight for all operational matters. The Board also notes that the existing easement agreements for the ROWs include specific clauses regarding notices related to assignment of the asset, and that Enbridge will provide written notice to all affected landowners following the assignment.

Regarding the concerns raised by Knollwood, the Board notes that prior to abandoning a facility, all regulated companies must apply to the Board, at which time matters related to the abandonment will be considered by the Board. The funding of abandonment costs is discussed in Section 2.3.

The Board has considered Enbridge's and Westover Express' evidence relating to activities to engage Indigenous communities and to learn about their concerns and interests. The Board notes that the record demonstrates that no Indigenous community engaged by Enbridge raised any specific concerns with respect to the sale with either Enbridge or directly with the Board. The Board is therefore satisfied that the design and implementation of Enbridge's activities to consult with Indigenous communities for the purposes of the sale have been adequate. The Board is satisfied that, with the Applicants' commitment to continue consultation activities, future issues or concerns can be adequately addressed.

2.3 Economic and Financial Matters

2.3.1 Proposed Sale

Views of the Applicants

The Applicants stated that Enbridge has elected to sell Line 10 to Westover Express for a price of \$1 plus the entire cost of the Line 10 Westover Segment Replacement Project, currently estimated at \$272.19 million. Westover Express, a one hundred percent owned subsidiary of United, is incorporated in British Columbia and registered to carry on business in Ontario. Westover Express will have ultimate financial responsibility for Line 10.

The Applicants stated that Line 10 transports crude oil from Enbridge's terminal in Westover, Ontario to United's Kiantone Pipeline in West Seneca, New York to supply United's approximately 70,000 barrel-per-day refinery in Warren, Pennsylvania. The Applicants said that the sole purpose of Line 10 is to deliver feedstock to United's refinery and the sale of Line 10 from Enbridge to United's wholly owned subsidiary, Westover Express, supports the business objectives of both parties.

Enbridge said that it notified the Representative Shippers Group (RSG) regarding the sale on 5 December 2017 and provided more information, based on RSG/shipper feedback, to the RSG at a meeting on 7 February 2018. Pursuant to the Competitive Toll Settlement (CTS), Enbridge and the RSG must agree on changes to the Receipt and Delivery points contained in Schedule A

and Schedule B of the CTS as a result of the Line 10 sale. Enbridge said that the agreement was obtained by Enbridge under the RSG Agreement procedures.

Enbridge stated that it consulted with Line 10 shippers that are not part of the RSG and who could be directly impacted by the sale of Line 10. At meetings on 15 February 2018, Enbridge said that it provided an opportunity, to those shippers who expressed interest, to review the materials provided to the RSG and raise any concerns with Enbridge. There were no concerns raised either at or after the meetings with respect to the Line 10 sale.

Views of the Interested Parties

Dr. Pickering stated that Westover Express should be evaluated in public to confirm its financial capability to operate a pipeline in Canada. Dr. Pickering said that this would be in the public interest, as there is increasing economic risk of stranded assets of pipeline infrastructure.

Knollwood submitted that for its properties and a number of other properties, Enbridge is proposing to sell a decommissioned pipeline located within an easement held by Enbridge and adjacent to Enbridge's operating Line 11 Pipeline to a third-party that has no easement and no operating pipeline on the lands. Knollwood submitted that the sale of the decommissioned portions of Enbridge's Line 10 Pipeline, at the very least in the deviation locations where the Line 10 Replacement Pipeline was not constructed, should not be permitted by the Board. Knollwood submitted that the sale by Enbridge of a pipeline decommissioned in place to a shell company as proposed in the Application would amount to a *de facto* abandonment of the pipeline in place, and would be contrary to the public interest.

Ms. Lanteigne questioned whether the sale and purchase of Line 10 was good for the Applicants and their investors, and if it was good for the public interest. Ms. Lanteigne also raised a variety of issues regarding Enbridge's, and its affiliates, corporate structure, financing, and rationale for business decisions.

Views of the Board

Guide R of the NEB's *Filing Manual* indicates that when a pipeline is already regulated by the Board, an Order or a Certificate of Public Convenience and Necessity would have been issued once the Board had determined that the facilities:

- would be constructed and operated in a safe and an environmentally sound manner; and
- were required for the present and future public convenience and necessity.

The *Filing Manual* further indicates that, when a transaction involving the sale and purchase of an NEB-regulated pipeline is to occur, the Board needs assurance that, notwithstanding any changes in operation or configuration that are expected to occur, it would continue to be in the public interest to operate the facilities.

With respect to Knollwood's assertion that the sale of the decommissioned assets would amount to a Board approval to abandon these facilities in-place, the Board notes that Board approval of decommissioned facilities in-place, and of Westover Express'

Abandonment Cost Estimate assumptions and set-aside and collection mechanisms, do not constitute Board approval to abandon these facilities in-place. Westover Express must apply to the Board with its proposed abandonment plan when facilities will be abandoned. Westover Express would be wholly responsible for any and all abandonment work that may be approved, or directed, by the Board.

The Board has considered Knollwood's submission that the sale of the decommissioned pipeline in the deviation locations where the Line 10 Replacement Pipeline was not constructed should not be allowed. The Board is of the view that the Board's regulatory requirements for abandonment funding adequately address concerns regarding the transfer of the decommissioned pipeline to Westover Express. As described in Section 2.3.2, the Board will require Westover Express to re-file its Abandonment Cost Estimate to account for costs associated with removing the decommissioned pipeline left in-place.

The Board heard questions regarding whether the sale was in the interests of the Applicants. The Board notes that the Applicants assert that the sale supports the business objectives of both parties, while submissions from interested persons did not persuade the Board that the sale is against the Applicants' interests.

The Board is satisfied that the Applicants notified third party shippers on Line 10. The Board notes that no shippers raised concerns with the Application. The Board is also satisfied that as Enbridge will remain the contract operator until at least 2022 and no change in long-term use or conditions of service are anticipated at this time.

The Board finds that the ongoing operation of the facilities will continue to be in the public interest. Also, the Board is not persuaded that it should deny leave under section 74 for the sale and purchase of the Line 10 pipeline or for all or a portion of the facilities decommissioned in-place.

The Board's order granting leave is subject to the conditions set out in sections 2.1 and 3.0 of this decision. The Board will also include conditions when the varying the relevant regulatory instruments, subject to GIC approval as applicable, as set out in Appendix A of this decision. As a result, Westover Express will be subject to all the original conditions regarding Line 10 for both the operating and the decommissioned segments, in addition to being subject to new conditions attached to the leave granted under section 74 and the orders varying the relevant regulatory instruments.

2.3.2 Westover Express' Ability to Finance the Pipeline

As a life-cycle regulator, the Board assesses the ability of a prospective pipeline owner to finance the pipeline over its entire life. This includes the day-to-day operations of the pipeline, financial resources to address a possible incident on the pipeline, and its ability to finance the eventual abandonment of the pipeline.

The NEB Act includes financial resource requirements for companies, to cover the costs of an unintended or uncontrolled release from their pipelines. As a company authorized to transport at least 250,000 barrels of oil per day, Enbridge must maintain financial resources of one billion

dollars for its pipeline system, which currently includes Line 10. For companies that do not transport 250,000 barrels of oil per day, the NEB Act specifies that the amount of financial resources they must maintain is to be set by regulation. The *Pipeline Financial Requirements Regulations*, which specifies these amounts, comes into force on 11 July 2019.

NEB-regulated pipeline companies must have a mechanism in place that will provide adequate funds to pay for pipeline abandonment. Companies are required to file an Abandonment Cost Estimate for Board approval. The Board regularly reviews company abandonment mechanisms to verify that material changes to a pipeline are reflected in the Abandonment Cost Estimate and an appropriate level of funds is being set aside.

Views of the Applicants

The Applicants stated that the conditions of service of the pipeline would not change and that Line 10 would continue to serve third-party shippers. Westover Express stated that it will establish a toll for service on the Line 10 Pipeline in Canada. It will file its tolls and tariff with the Board prior to the effective date of the transfer.

Westover Express indicated that, at this time, it has no assets or liabilities. Westover Express stated that after the completion of its purchase of Line 10 it would own significant assets and that it is projected that the expenses of Westover Express for operating the pipeline will be fully paid through the imposition of a tariff. Westover Express also said that if necessary it may rely on shareholder infusions from United. United filed its financial statements on the record. The financial statements detail the financial strength of United as of 30 November 2018, including significant assets and cash reserves.

Westover Express stated that once the *Pipeline Financial Requirements Regulations* come into force, it will be required to maintain financial resources of \$300,000,000, based on Line 10's maximum capacity of 74,200 bpd of oil. Westover Express stated that it anticipates using a combination of authorized instruments to meet the five per cent "readily accessible" financial resource requirement as well as to meet the remaining amounts of the absolute liability limit of \$300,000,000. Westover Express stated that it is in the process of assessing the various options and the types of instruments. Westover Express stated that it is considering a "pooled fund" as will be permitted by *Pipeline Financial Requirements Regulations*. In order to facilitate such a fund, it has reached out to other companies to initiate dialogue on this option. Alternatively, it is also considering an insurance policy providing at least CAD \$285,000,000 in needed coverages, together with cash or a line of credit in the amount of CAD \$15,000,000 to address the remainder.

Enbridge and Westover Express requested specific relief related to the abandonment funds that have been collected and set aside in the EPI Abandonment Trust to ensure that the funds that have been set aside for abandonment of Line 10 are transferred to Westover Express to be used for that purpose. A portion of the funds collected and set aside in the EPI Abandonment Trust is allocable for the abandonment of the Line 10 assets in Canada.

The Applicants stated that a trust will be established for the setting aside of abandonment funds for the Line 10 Pipeline (Line 10 Trust). The form of the trust will be substantively the same as

the EPI Abandonment Trust agreement previously approved by the Board for Enbridge in respect of the setting aside of abandonment funds for the Enbridge mainline pipeline system. The trustee for the Line 10 Trust will be Royal Trust Corporation of Canada, which is regulated under the *Trust and Loan Companies Act*.

Enbridge and Westover Express proposed initially establishing the Line 10 Trust with Enbridge as the contributor and beneficiary; transferring a pro-rata share from the current balance of the Enbridge trust to the Line 10 Trust prior to closing; and amending the Line 10 Trust after closing so that Westover Express becomes the contributor and beneficiary. The Applicants stated this method would maintain funds previously set aside within an abandonment trust structure and maximize the funds available for transfer through avoiding potential tax risks.

Enbridge stated that alternative methods of trust fund transfers place it at risk for an adverse tax ruling whereby it is deemed to have withdrawn the funds from its abandonment trust, incurring a corresponding tax liability. Enbridge stated that it would only undertake such an approach under a scenario where it withdraws money from its abandonment trust and withholds from these proceeds an amount equal to its tax liability and forwards the balance to the Westover Express abandonment trust.

Westover Express stated that it will collect abandonment funds from shippers. After approval of this application and the Line 10 Abandonment Cost Estimate, Westover Express will file with the Board its Annual Contribution Amount.

Westover Express filed its Statement of Investment Policies and Procedures (SIPP), setting out how investments in the Line 10 Trust would be governed. The SIPP provides policy guidelines to the Trustee, the Investment Manager, and the Board of Directors regarding the management and investment of the assets of the Line 10 Trust.

Views of the Interested Parties

Knollwood said that Westover Express is a shell company with significantly fewer resources than Enbridge has to manage the decommissioned Line 10, and it is not clear that Westover Express would have been granted leave to decommission the line in place.

Knollwood stated that Enbridge has premised its abandonment cost estimates (and its collection of abandonment funds) on abandoning the entirety of the decommissioned portion of the Line 10 Pipeline in place. As such, the abandonment funds transferred to Westover Express will be insufficient to fund the cost of removal of the Line 10 Pipeline from the Knollwood properties. Knollwood submitted that while Enbridge has previously advised the Board that any shortfall in abandonment funding would be covered by “its substantial assets”, Westover Express will have no assets apart from the Line 10 pipeline itself.

Knollwood submitted that while the operating portion of Line 10 may currently have value as alleged by Enbridge and Westover Express, the Line 10 pipeline will have negligible or negative value at the time that it is fully decommissioned and/or abandoned. Knollwood concluded that Westover Express’ abandonment funds will be insufficient to cover the cost of removal of the Line 10 Pipeline from the Knollwood properties, and that Westover Express will have no

additional assets or funds to make up the shortfall. Knollwood asserted that the sale of the line decommissioned in place to Westover Express would amount to a *de facto* abandonment of the Line 10 pipeline in place.

Views of the Board

The Board is of the view that the regulatory requirements for financial resources and abandonment funding address the concerns related to Westover Express' ability to finance costs associated with the Line 10 pipeline. Westover Express will be required to comply with the Board's requirements for setting aside funds for abandonment and for demonstrating sufficient financial resources. The Board has enforcement tools in the event of any non-compliance including, ultimately, the revocation or suspension of any authorization.

The Financial Resources Regulations, which would require Westover Express to maintain \$300 million in financial resources to be able to address liabilities that may arise from an incident on Line 10, have not yet come into effect. However, the Board has issued its Financial Requirements Guidelines and the timeline for implementation of financial requirements¹. The Board expects Westover Express to be prepared to submit its Financial Resources Plan to the Board promptly should GIC approve the amended certificates.

The Board heard concerns that Westover Express, with Line 10 as its only asset, would have insufficient resources to perform abandonment work that goes beyond the assumptions of its Abandonment Cost Estimate, or the funding level of its trust. The Board notes that it conducts periodic reviews of set-aside and collection mechanisms and monitors the funding level of the trust on an annual basis. Assumptions in the Abandonment Cost Estimate calculations do not prescribe the ultimate method of physical abandonment that may be undertaken by a company², and are reviewed on a regular basis. If, in the Board's view, there is significant risk that adequate funds will not be set aside, the Board may, on its own initiative, require further coverage of any unfunded future costs through a secondary mechanism, such as a letter of credit for the unfunded balance.³

Given the concerns raised by interested parties regarding the sale of the decommissioned pipeline to Westover Express, the Board requires Westover Express to refile its Abandonment Cost Estimate that accounts for costs associated with the removal of at least a portion of the Line 10 pipeline decommissioned in-place. While the estimates do not prescribe the ultimate abandonment method, in the Board's view a degree of these potential costs should be accounted for in the setting aside of abandonment funds. The Board includes a condition in this regard to Order MO-015-2019.

¹ See [Board letter dated 29 March 2019](#)

² See the [MH-001-2012 Reasons for Decision](#), PDF page 38

³ See Section 6.2.4, Reviews of Annual Amount Set aside, of the [MH-001-2013 Reasons for Decision](#), Set-Aside and Collection Mechanisms, at PDF page 122 of 176.

The Board is of the view that the proportional treatment of the abandonment funds collected to date, relative to Abandonment Cost Estimates for specific facilities, to calculate the funds collected for Line 10 up to the point of the sale is appropriate. The amount that Westover Express will be required to contribute to the Line 10 Trust on an annual basis going forward will be determined by its Annual Contribution Amount as determined by the calculation set out in Appendix XIV of MH-001-2013. Westover Express announced its intent to collect abandonment funds from shippers. The Board reminds Westover Express that, in accordance with MH-001-2013, it must file its tariff incorporating the Annual Contribution Amount at least 30 days before the implementation date of the new tariff. The requirements for such filings are set out in Section 6.1.1 of the MH-001-2013 Reasons for Decision.

The Board approves Royal Trust Corporation of Canada as the trustee for the Line 10 Trust. Royal Trust Corporation of Canada is regulated under the *Trust and Loan Companies Act*, as required by the Board's May 2014 set-aside and collection mechanisms decision (MH-001-2013).

The Board approves the Applicants' proposed method for the establishment of the Line 10 trust to be established initially with Enbridge as the contributor and beneficiary. The Board issues Order MO-015-2019 authorizing the transfer of funds between trusts as described in the Application. Westover Express will be responsible for discharging the beneficiary's reclamation obligations related to Line 10 upon closing of the sale and the issuance of the Amending Orders.

The Board is of the view that Westover Express' SIPP meets the requirements set out in section 3.4.1 of the Board's MH-001-2013 Reasons for Decision, except that it did not specify trust investment and incentive fees. However, the Board is of the view that the SIPP is complete enough to proceed with the transfer and the transfer of trust funds to the proposed Line 10 trust.

The Board's order with respect to the transfer of funds between trusts requires Westover Express to refile with the Board its Statement of Investment Policies and Procedures, within 30 days after the sale closing. As set out in the order, the filing must specify the fee structure, including investment management and any incentive fees, and Westover Express must also notify all shippers and interested parties of the filing.

The Board also notes Westover Express' commitment to file tolls prior to the effective date of the transfer. The NEB Act requires that a company must not charge any tolls except tolls that are specified in a tariff that has been filed with the Board and is in effect.

2.3.3 Ongoing Financial Regulation

Pipeline companies regulated by the Board are divided into two groups, Group 1 or Group 2 companies, for financial regulation purposes. Group 1 companies are generally those with extensive systems under the Board's jurisdiction. Any pipeline company regulated by the Board which is not a Group 1 company is a Group 2 company.

Views of the Applicants

Westover Express requested to be regulated by the NEB on a complaint basis as a Group 2 company for traffic, tolls, tariff and financial regulation. Westover Express submitted that designation as a Group 2 pipeline is reasonable and warranted in the circumstances of the Line 10 Pipeline; the Canadian portion of Line 10 is approximately 105 km in length and has approximately 12 shippers. Westover Express said it understands the Board regulates other pipeline systems of comparable scale as Group 2 companies.

Views of the Interested Parties

The Board did not receive comments from interested parties regarding Westover Express' classification for financial regulation purposes.

Views of the Board

The Board has decided to regulate Westover Express as a Group 2 company on a complaint basis for financial regulatory purposes.

The Board advises that while Group 2 companies are not normally required to provide detailed information to support a tariff filing, as is required of Group 1 companies, it is the responsibility of a Group 2 company to provide its shippers and interested parties with sufficient information to enable them to determine whether the tolls and transportation requirements are reasonable or whether a complaint is warranted. Further, the following wording must be included in any tariff(s):

The NEB regulates the tolls of Westover Express on a complaint basis. The Company must make copies of tariffs and supporting financial information readily available to interested persons. Persons who cannot resolve toll and tariff issues with the Company may file a complaint with the Board. In the absence of a complaint, the Board does not normally undertake a detailed examination of the Company's tolls.

The Board also advises that pursuant to subsection 5(2) of the Board's *Oil Pipeline Uniform Accounting Regulations*, Group 2 companies are required to maintain separate books of account in Canada in a manner consistent with Generally Accepted Accounting Principles.

3.0 Regulatory Instruments

Order MO-014-2019 requires Enbridge and Westover Express to file confirmation with the Board once the sale and purchase of Line 10 is complete. On receipt of this notification, the Board will take the appropriate steps to vary the Certificates and Orders.

Firstly, the Board will vary Certificate OC-10 pursuant to subsection 21(2) of the NEB Act to change the name of the holder from Interprovincial Pipe Line Company to Westover Express Pipeline Limited. The change to the name of the holder of Certificate OC-10 does not require Governor in Council (GIC) approval, so it would be effective immediately.

Secondly, the Board will vary Certificates OC-10 and OC-23 to remove the Line 10 facilities from OC-23 and place them under OC-10. This variation requires GIC approval. Certificate OC-10, when varied as AO-4-OC-10, will contain a Schedule A that describes the Line 10 facilities originally authorized by the Certificate and the Line 10 facilities removed from OC-23 and placed under OC-10.

Thirdly, once GIC approves the variations of OC-10 and OC-23, the Board will vary the remaining orders that require regulatory changes to effect the sale and purchase.

The Board will vary Order XO-E101-28-99 to remove the sections of pipeline transferred to Westover Express. The Board will then issue a new order, the effect of which will be to authorize Westover Express to operate those sections of pipeline.

The Board will also vary the following instruments to change the name of the holder of each instrument:

- XO-7-63
- XO-5-74 (AO-1-XO-5-74); (AO-2-XO-5-74)
- MO-4-81
- XO-J1-35-97
- XO-E101-18-2003
- XO-E101-001-2017 (AO-001-XO-E101-001-2017)
- MO-001-2017
- XO-5-66

The regulatory instruments, once varied, will be subject to terms and conditions, as discussed in this letter decision. The terms and conditions are summarized in Appendix A to this letter.

The Board will then notify Enbridge and Westover Express and will forward the amended Certificates and Orders.

The Board has decided not to vary certain Regulatory Instruments which authorized events that have already been completed. Approvals for Leave to Open, Plans Profiles and Books of Reference, Drawings, and Leave to Carry are specific events in time. In all of the instances below, these have already occurred. In the Board's view, it is not necessary to vary regulatory instruments for which there is no ongoing regulated activity.

The Board has decided not to vary the following regulatory instruments:

- OPLO-1-1-63
- OPLO-1-2-63 (AO-1-OPLO-1-2-63)
- OPLO-1-3-63
- OPLO-J1-1-81
- OPSO-1-3-64
- OPSO-1-13-68

- OPSO-1-18-68
- OPS-1-2-62
- OPS-1-1-67
- OPS-1-9-67
- OPL-J1-14-80
- OPL-1-6-61 (AO-1-OPL-1-6-61)
- OP-191-62
- OP-17-63
- OP-58-75
- Order Dated 1963-02-18

The Board notes that Enbridge requested that the Board issue new Orders to Westover Express to replace Order OPL-J1-14-80 (pipeline deviation) and Order OP-58-75 (utility crossing). The Board would vary the name of the holder of these Orders, if more rationale is provided, but not issue new ones. The basis for and under what authority new orders would be issued is not clear. Also, it is not clear what would be appropriate content for any new orders. Further, there may be potentially impacted third parties when new authorizations are issued.

4.0 Conclusion

The Board directs Enbridge and Westover Express to serve a copy of this letter and the attached Order MO-014-2019 to all interested parties to the application, including shippers, and to file notification with the Board within 7 days after completion of service.



L. Mercier



R. R. George



S. Parrish

May 2019
Calgary, Alberta

Attachments

Appendix A to Board letter decision dated 3 May 2019
Terms and Conditions to Regulatory Instruments to be varied under
Section 21 of the *National Energy Board Act*

Westover Express must file with the Board, at least six months prior to any change in operatorship of any of the facilities that are subject to this Order, a notification containing the following information:

- a) name, mailing address, contact information, Accountable Officer and other pertinent details about the new operator; and
- b) date when the change in operatorship will come into effect.

If no notification is filed pursuant to [preceding clause] by 31 January 2022, Westover Express must file with the Board no later than 31 January 2022 a notification that confirms that Enbridge remains the operator, and every year thereafter, until such time that Enbridge is no longer the operator.

Westover Express must file with the Board a report about the status of the operating conditions or circumstances under Condition 14 b) of Order MO-001-2017. The report must be filed each year commencing on 1 June 2020, and every year thereafter.