



ONTARIO ENERGY BOARD

OEB STAFF SUBMISSION

March 11, 2015

**Union Gas Limited
2016 Dawn Parkway Expansion Project
EB-2014-0261**

Introduction

The submission of Ontario Energy Board (OEB) staff will focus only on the issue of pipeline abandonment procedure. All parties to the proceeding recognize that the appropriate method of pipeline abandonment is a 'live issue' and that work has been done on this issue by the National Energy Board (NEB), the Technical Safety and Standards Association (TSSA) and the Canadian Standards Association (CSA).

Pipeline Abandonment - Legal Framework and Jurisdiction

In final submissions, counsel for the applicant referred to various sources of authority with respect to pipeline abandonment which should be taken into consideration, namely:

- The *Technical Standards and Safety Act, 2000*, S.O. 2000, ch.16 (*TSS Act*);
- Ontario Regulation 210/10 (Oil and Gas Pipeline Systems) (*TSS Regulation*);
- Canadian Standards Association Draft Standard Z-662 (*CSA Draft Standard*);¹

Applicant's counsel also referred to the *National Energy Board Act*, R.S.C. 1985, c.N-7 (*NEB Act*), in particular Section 74. While this proceeding falls within the jurisdiction of the Ontario Energy Board and not the NEB, it is worthwhile to look at other regulatory regimes and how they deal with the issue of pipeline abandonment.

Section 74(1) of the *NEB Act* states:

74. (1) A company shall not, without the leave of the Board,
- (a) sell, transfer or lease to any person its pipeline, in whole or in part;
 - (b) purchase or lease any pipeline from any person;
 - (c) enter into an agreement for amalgamation with any other company; or
 - (d) abandon the operation of a pipeline. (emphasis added)

Under the NEB regime, a company must apply to the NEB to abandon a pipeline and there are certain filing requirements for such an application which require the filing of information pertaining to engineering, environment and socio-economic assessment, economics and finance, and lands information.²

¹ EB-2014-0261, Oral Hearing, Exhibit K.1.2

² <https://www.neb-one.gc.ca/bts/ctrg/gnnb/flngmnl/fmgdb-eng.html>

Applicant's counsel argued that, since the *OEB Act* does not have provisions pertaining to pipeline abandonment then the applicable legislation is the *TSS Act* and regulations under the *TSS Act*, namely the TSS Regulation.

The *TSS Act* is applicable to natural gas as part of the Act's general application to 'fuels' referenced in Section 2:

2. This Act applies with respect to amusement devices, boilers and pressure vessels, elevating devices, fuels, operating engineers and upholstered or stuffed articles, as referred to in the regulations. (emphasis added)

The TSSA jurisdiction, with respect to 'fuels', is described on its website as follows:

TSSA's Fuels Safety Program regulates the transportation, storage, handling and use of fuels as to ensure conformance to the Technical Standards and Safety Act, 2000, and applicable regulations, codes and standards. These fuels include natural gas, propane, butane, hydrogen, digester gas, landfill gas, fuel oil, gasoline, and diesel. TSSA licenses fuel facilities, registers contractors and certifies tradespersons who install and service equipment.

Additionally, TSSA reviews and approves facility plans for sites licensed by TSSA, and performs custom equipment approvals and inspection services to ensure fuel is handled and used safely.

The three stages of the fuels life cycle that fall under TSSA's jurisdiction are:

- transmission, distribution and transportation;
- storage and dispensing; and
- utilization (burning).³ (emphasis added)

It does not appear that the TSSA's jurisdiction, at this time, extends to regulating abandonment or disposal of pipelines, but rather to the *active* life cycle of the fuel.

The TSSA Regulation states:

Application

2. (1) This Regulation applies to the design, construction, operation and maintenance of oil and gas industry pipeline systems that convey,

³ <https://www.tssa.org/regulated/fuels/Default.aspx>

- (a) liquid hydrocarbons, including crude oil, condensate, liquid petroleum products, natural gas liquids and liquefied petroleum gas; and
- (b) gas.⁴

General requirement for compliance

3. (1) Every person engaged in an activity, use of equipment, process or procedure to which the Act and this Regulation apply shall comply with the Act and this Regulation.⁵

(2) For the purposes of subsection (1), the reference to an activity, use of equipment, process or procedure includes, but is not limited, to design, construction, erection, maintenance, alteration, repair, service or disposal.⁶ (emphasis added)

While section 3(2) indicates that compliance with the regulation is required in respect of “disposal” as well as other pipeline activities, there are actually no specific provisions in the TSS Regulation dealing with pipeline disposal. Hence, in OEB staff’s view the TSS Regulation, in its current form, only regulates the pipeline system during its *active operation*, and not at the time of its discontinuation or abandonment.

The content of the TSS Regulation includes prescriptive requirements, for example with respect to “testing and approval” of gas appliances and equipment (sections 12, 13), “activation” (section 15) and “use” (section 16) of pipelines but no provisions with respect to deactivation or abandonment. Hence, while there are mandatory, enforceable provisions with respect to some activities, such as the active life cycle of the pipeline, there are no such enforceable provisions when the pipeline is deactivated.

Applicant’s counsel did not refer to any other regulations under the *TSS Act*, and Board staff is not aware of any other regulation, code or other enforceable provision that deals with pipeline abandonment. In OEB staff’s view, and contrary to the applicant’s submission there do not appear to be any enforceable provisions dealing with pipeline disposal.

OEB staff does not agree with the submission of Applicant’s counsel that, “it would be inappropriate and wrong for the Board to step in where the TSSA has the jurisdiction

⁴ O. Reg. 210/01, s. 2 (1)

⁵ O. Reg. 210/01, s. 3 (1)

⁶ O. Reg. 210/01, s. 3 (2)

and is clearly going about exercising it.”⁷ While the TSSA has a Pipeline Abandonment “Checklist”, which is appended to this submission, compliance may be expected but is not mandatory.

Applicant’s counsel also referred to the CSA Draft Standard Z662 which deals with, among other things, pipeline abandonment. The CSA Draft Standard states:

10.16 Abandonment of pipelines and pipe-type storage vessels

10.16.1 General

The decision to abandon a section of a pipeline, whether in place or through removal, shall be made on the basis of a documented abandonment plan that includes the rationale for the abandonment, consideration of regulatory requirements, landowner consultation, effect on terrain and water, road and railway crossings, as well as current and potential land use. The plan shall consider the potential for safety hazards and environmental damage that could be created by ground subsidence, soil admixing or contamination, groundwater contamination, erosion, and the creation of water conduits.

It was noted in the hearing that this is a *draft* standard although it may be adopted later in 2015. OEB staff points out that not all CSA standards are part of an enforceable regulatory regime; some serve as a ‘best practices’ standard with voluntary compliance while other standards are mandatory but only if they are included in statute, regulation, by-law or other enforceable legal instrument or in an enforceable order of a court or tribunal such as the OEB. If a standard becomes widely adopted it could eventually become an enforceable requirement in statute, regulation or codes. However, there is no way to determine whether that will be the case with respect to the CSA Draft Standard.

Where a legislative regime does not provide authority to an entity such as the TSSA to enforce industry standards with respect to activities such as pipeline abandonment, and land matters are within the OEB’s jurisdiction in an application for leave to construct a gas pipeline, then the OEB is not encroaching on another regulator’s jurisdiction if it makes prescriptive orders with respect to the method of pipeline abandonment.

OEB staff submits that, in its Decision and Order in this proceeding, the OEB should require that the applicant comply with the TSSA Pipeline Abandonment Checklist and the CSA Draft Standard, when it comes into effect.

⁷ Transcript vol. 1, page 163. Lines 14-17 and page 165, lines 15-19

OEB staff also agrees that the decision with respect to the appropriate method of abandonment – on site or removal – should be made at the time of abandonment. The parties have not referenced any legal requirements or standards indicating when the abandonment method should be determined but some guidance may be had from the NEB Act, which requires that an application for leave to abandon a pipeline be made at the time of abandonment.

Staff Submission Regarding Abandonment Method

As indicated above, all parties recognize that pipeline abandonment is a ‘live issue’ and in the present situation, there is, on the one hand, Union which wants to be able to make a determination as to the appropriate abandonment method, at the time of abandonment, in accordance with prevailing standards such as the TSSA and CSA and its internal practices and policies. On the other hand, there is the landowners’ association (GAPLO) which wants to have the option to make the final determination as to the abandonment method.

OEB staff submits that there can be an inherent bias or a lack of expertise by having one party making this determination over the other. OEB staff believes that a more balanced approach would be for an independent third party consultant (Independent Consultant) to conduct appropriate analysis, and make a determination, at the time of abandonment, taking into account the prevailing requirements and standards, as well as other relevant technical and environmental issues on the appropriate abandonment method. The scope of the analysis would be the same as currently contemplated in section 10.16.1 of the CSA Draft Standard. OEB staff submits that the Independent Consultant must have the requisite expertise, be free from bias and would be jointly appointed by Union, the landowner representative(s), and OEB staff. The recommended process would be similar to the role of the construction monitor which is jointly selected by the company, the landowner and OEB staff.

OEB staff submits that the requirement for an Independent Consultant should be part of the OEB’s Decision and Order in this proceeding, and not included in the Letter of Understanding or Easement Agreement.

Staff Submission on Letter of Understanding and Easement Agreement

OEB staff has no position or submissions on the Letter of Understanding (LOU). OEB staff is not convinced that the OEB has jurisdiction to approve or not approve the LOU itself, which is consistent with the OEB Issues List Decision in EB-2005-0550.⁸

⁸ Procedural Order No. 2 and Decision on Issues List (EB-2005-0550) in which the OEB stated, at page 3: “The Board finds that it does not have the authority to approve or not approve the Letter of

However, OEB staff notes that, in the 2005 Decision the OEB did approve certain provisions and conditions which were part of the LOU in that case and agreed upon by the parties. OEB staff suggests that the panel in this case can approve particular provisions / terms of the LOU even if it declines to approve the entire form and content of the LOU. However, OEB staff submits that the OEB has oversight in approving the form of the easement agreement pursuant to Section 97 of the *OEB Act*.

With respect to the changes to the easement agreement requested by GAPLO, and particularly the additional terms in sections 1 and 3 of the Easement Agreement,⁹ OEB staff does not take a position. However, if the panel declines to grant the changes requested by GAPLO, then OEB staff submits that the panel should add certain conditions to its Decision and Order which are set out above.

----- ALL OF WHICH IS RESPECTFULLY SUBMITTED -----

Understanding. This agreement deals with compensation matters in great detail, both the framework and the amounts, and therefore is not appropriately included in the Board's consideration of section 97, but rather is related to the other compensation related provisions of Part VI."

⁹ As set out in GAPLO Evidence, page 40-41, Attachment 3

Appendix A
OEB Staff Submission
EB-2014-0261
TSSA Pipeline Abandonment Checklist



PIPELINE ABANDONMENT CHECKLIST

PLANNING

1. Has subsidence been considered for pipelines having a diameter greater than 323.9 mm (12 inches)?
2. Has the pipeline company notified the landowners and proper authorities (municipalities, MOE, MTO, MNR, etc.) of the abandonment?
3. Have abandonment procedures for crossings been agreed upon by utilities (road, railway, pipelines, etc.) and authorities responsible for rivers and streams crossed by the pipeline?
4. Has consideration been given to the effect of drainage in the area surrounding the abandoned pipeline, which may act as a conduit for ground water after the pipe is perforated by corrosion?
5. Has consideration been given to the removal of all the aboveground facilities?
6. Has consideration been given to any hazards posed to people, equipment, wildlife or livestock by any apparatus left in place above or underground?

IMPLEMENTATION

1. Has the abandoned pipeline been physically isolated from the live pipeline?
2. Has the pipeline been drained of all fluids and adequately cleaned to prevent ground water contamination from hydrocarbon residue on the pipe wall after the pipe is perforated by corrosion?
3. Have all aboveground facilities been removed and has consideration been given to removing underground facilities such as anode beds and tanks?

LIABILITY/RISK MANAGEMENT

1. Does the pipeline company have a contingency plan to remedy any contamination caused by the abandoned pipeline?
2. Has consideration been given to conducting post-abandonment surveillance programs?
3. Has consideration been given to maintaining signage after the pipeline is abandoned?
4. Has consideration been given to providing a locate service after the pipeline is abandoned?