



LETTER DECISION

File OF-Fac-Gas-A174-2016-01 01
27 February 2017

Mr. Roger Dlugosz
Manager Pipeline Operations
AltaGas Holdings Inc.
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Calgary, AB T2P 0J1
Facsimile 403-691-7576

Dear Mr. Dlugosz:

**Abandonment Hearing MHW-003-2016
AltaGas Holdings Inc. on behalf of AltaGas Pipeline Partnership (AltaGas)
Application to Abandon the John Lake Pipelines (Project)**

The National Energy Board (NEB or Board) has considered the above-referenced application dated 16 March 2016 (Application). Pursuant to paragraph 74(1)(d) of the *National Energy Board Act* (NEB Act), the Board has issued the attached Order ZO-A174-001-2017 (Order), the effect of which is to grant AltaGas leave to abandon the John Lake Pipelines (Pipelines). The attached Order sets out the conditions the Board has imposed on the Project.

The Board's analysis and conclusions in support of its decision to issue the Order are set out below. In reaching its conclusions, the Board considered all of the evidence on the record related to this matter. The regulatory documents on file in the MHW-003-2016 proceeding are available on the Board's website, www.neb-one.gc.ca.

In conducting its assessment of the Project, the Board considered paragraph 67(a) of the *Canadian Environmental Assessment Act, 2012* (CEAA 2012), since the Project is carried out on federal lands. In particular, AltaGas proposed to abandon in-place approximately 2.80 km of the North John Lake Pipeline and 2.40 km of the South John Lake Pipeline located within Onion Lake Cree Nation's (OLCN) Reserve Land. The Board has concluded, pursuant to paragraph 67(a) of CEAA 2012, that carrying out this Project on these federal lands is not likely to cause significant adverse environmental effects. The Board's analysis and conclusions regarding the environmental and socio-economic effects for the entire Project are discussed in Sections 2.3 and 2.5 of this decision.

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1.0 Project Overview and the NEB Process

1.1 Application and Project Overview

On 16 March 2016, AltaGas filed its Application pursuant to paragraph 74(1)(d) of the NEB Act and section 50 of the *National Energy Board Onshore Pipeline Regulations* (OPR) to abandon the Pipelines at a total estimated cost of \$153,290. AltaGas also filed an environmental and socio-economic assessment, as well as supplemental information about lands, environment and socio-economic matters.

The Pipelines are located approximately 60 km east of Elk Point, Alberta, and include a 3.7 km John Lake North pipeline from 06-04-057-27 W3M in Saskatchewan to 07-01-057-01 W4M in Alberta, and a 3.0 km John Lake South pipeline from 12-04-056-27 W3M in Saskatchewan to 10-01-056-01 W4M in Alberta. The Pipelines have an outside diameter of 114.3 mm and were used to transport sweet natural gas.

AltaGas submitted in its Application that the Pipelines' right-of-way (RoW) are located entirely on Crown land, and that abandonment activities will be carried out entirely within AltaGas' existing RoWs. AltaGas stated that the land use in proximity to the RoWs is primarily oil and gas activity with no additional land access being required for abandonment activities.

AltaGas proposed to abandon the Pipelines in-place. Once the abandonment activities are completed, AltaGas will maintain the easement for the abandoned Pipelines.

1.2 The NEB Process

Under the NEB Act, the Board must hold a public hearing to consider an application for leave to abandon a pipeline. The Board issued a Notice of Abandonment Hearing MHW-003-2016 for the Project (Notice) on 20 May 2016, which set out how the Board would consider the Application. The Board directed AltaGas to serve a copy of the Notice on all persons potentially impacted by the Project, including:

- landowners;
- tenants;
- lessees;
- users and occupants;
- interested government bodies (for example, municipalities, provinces);
- Aboriginal groups;
- third party shippers; and
- other persons identified by AltaGas.

The Notice indicated that any member of the public could be involved in the Board's written public hearing process by filing a letter and any supporting documents with the Board. The Board received letters of interest from OLCN on 27 June 2016. The Notice provided an

opportunity for AltaGas to file a reply to the OLCN letters by 12 July 2016; however, the Board did not receive a reply. The Board solicited written comments from both AltaGas and OLCN on the potential conditions that the Board may include in any abandonment order it issues. Only AltaGas submitted comments on the potential conditions. These matters are discussed below.

2.0 Assessment of the Application

2.1 Engineering Matters

AltaGas proposed to abandon the Pipelines in-place with abandonment work including:

- emptying the Pipelines of any liquids;
- cleaning the Pipelines;
- removal of risers and isolation by mechanical capping or spectacle blind (below ground); and
- disconnecting the cathodic protection from the Pipelines.

AltaGas stated that the abandonment activities will be carried out in accordance with the *Canadian Standards Association (CSA) Z662-15, Oil and Gas Pipeline Systems*, and the OPR.

Views of the Board

The Board is of the view that the Project's abandonment activities as described above are consistent with the legislative requirements, which includes the latest version of CSA Z662-15 related to abandonment of piping. The Board is also of the view that abandoning the Pipelines in-place is acceptable in this instance. The Board expects subsidence to be minimal given the small diameter of the Pipelines. Accordingly, the Board is of the view that the abandonment activities to be conducted by AltaGas are appropriate in the circumstances and will be carried out in a technically safe manner.

2.2 Economics Matters

AltaGas filed an abandonment cost estimate for the Project that totaled \$153,290. This estimate included costs for land, environment, materials, construction, post-abandonment monitoring and a contingency. AltaGas also acknowledged its ongoing financial responsibility, for as long as it retains ownership of the Pipelines, for abandonment, monitoring and any potential remediation required in the future. In addition, AltaGas indicated that there are no current customers on these Pipelines.

Views of the Board

The Board has no concerns with the abandonment cost estimate filed by AltaGas. The Board notes that AltaGas currently has a surety bond with the Board for \$30.3 million. Once AltaGas has complied with all conditions of the Abandonment Order, it may apply to the Board for a reduction of the surety bond amount to reflect the abandoned Project.

2.3 Environment and Socio-Economic Matters

AltaGas said that the Pipelines to be abandoned in-place are located on Crown Land in the Boreal Forest Region. Features of this area include large watercourses and wetlands, coniferous forests, and a diverse ecosystem.

AltaGas said that the Pipelines would be abandoned in-place with abandonment activities occurring within the lease boundaries of existing facilities located at each of the Pipeline's extents. AltaGas indicated the lands on which the abandonment activities are proposed to occur are previously disturbed and are clear of trees. Two sites where abandonment activities are proposed (07-01-057-01 W4M and 10-01-056-01 W4M) are vegetated with native grasses, forbs, and shrubs. The 10-01-056-01 W4 site includes a graveled teardrop for site access. Two other sites are located on OLCN Reserve Land. One of those sites (06-04-057-27 W3M site) is vegetated with native grasses, forbs, and shrubs, while the other site (12-04-056-27 W3M site) is a graveled pad.

AltaGas conducted a site assessment during which low-lying poorly-drained areas were observed. AltaGas said that water features are scattered throughout the area and are in close proximity to the Pipelines, but the Pipelines do not cross any waterbodies.

AltaGas said that evidence of beaver, ducks and crows were observed during its site assessment, but no other wildlife species tracks, scat, or other visual indicators were observed within or adjacent to the RoWs. No federal species at risk were present.

AltaGas said that the landscape, soils, and vegetation parameters assessed along the Pipelines' RoW were comparable to the surrounding control areas. Several waterbodies were observed along the RoWs but did not appear to be negatively impacted by the presence of the Pipelines' RoW. Vegetation communities consisted of species common with two-tiered forested vegetation. Weeds were observed along the RoWs, in the control areas, and along the roadways.

AltaGas indicated no new land or facilities are required for the Project. No new roads or RoWs will be constructed to gain access to the Project, and existing winter access roads may be used.

AltaGas said that the Project elements proposed on OLCN Reserve Land could affect soil (soil loss, degradation or contamination), vegetation (spread of weeds and invasive species), and waterbodies (migration of purged liquids). AltaGas proposed standard mitigation measures including topsoil salvage, ensuring vehicles arrive and leave the sites clean and free of debris, and having spill prevention and response materials onsite during abandonment activities. AltaGas further said that it would have spill containment tubs in place during pipeline evacuation and pigging activities.

AltaGas said that during abandonment activities, natural gas may be flared in accordance with provincial regulations. Any liquids encountered during pigging (cleaning) activities will be captured and transported to an approved disposal facility.

AltaGas said that all work will be carried out per its Environmental Health and Safety Construction Program, which addresses issues of soil conservation, revegetation, wildlife protection, and water quality protection. AltaGas said that there will be no impacts to regional water quality or quantity, and though noise can be expected to be generated from vehicles and equipment, noise impact will be of low magnitude and short duration.

OLCN said it has a unique interest in ensuring the lands are free from contamination and are restored to the best possible condition. OLCN also said it has concerns about contamination of its lands arising from the proposal to abandon the Pipelines in-place.

AltaGas said that there is no known contamination along the RoWs and it would reclaim any disturbed areas to match the surrounding land use.

Views of the Board

The Project is not subject to the requirement of an Environmental Assessment under CEAA 2012 as it is not a designated project under that Act. However, the Board did assess, as per section 67 of CEAA 2012, whether the carrying out of the Project is likely to cause significant adverse environmental effects on the federal lands.

The Project involves the abandonment in-place of two small-diameter gas Pipelines, with all work proposed along the existing disturbed AltaGas RoWs. Previously disturbed lands provide only limited wildlife habitat. Disturbance to soil and vegetation from the Project will be limited to these previously disturbed locations. No instream work is proposed as part of the Project. The Board notes that AltaGas proposes to carry out all work as per its Environmental Health and Safety Construction Program, which would address issues of soil conservation, revegetation, wildlife protection, and water quality protection. The Board is satisfied that these measures, which will be conducted to avoid or minimize the effects of the Project, are appropriate.

The Board notes concerns raised by OLCN related to contamination of lands arising from the proposal to abandon the Pipelines in-place, and appropriate restoration of the land. Although AltaGas noted that there is no known contamination on the RoWs, the Board requires assurance that any contamination (historic or unknown) will be identified before AltaGas commences abandonment activities. Condition 4 of the Order requires AltaGas to file a Phase 1 Environmental Site Assessment (ESA) to investigate and describe any potentially hazardous materials and the likelihood of any historical contamination with the sites where the Project is located. Condition 5 of the Order requires AltaGas to provide a Phase II ESA, unless AltaGas can confirm that Phase II ESA is not required, based on the results of its Phase I ESA. Condition 5 of the Order further requires AltaGas to provide a Remediation Action Plan in accordance with the *NEB's Remediation Process Guide*, unless AltaGas can confirm that remediation is not required, based on the results of its Phase II ESA.

Condition 6 of the Order requires AltaGas to file a Project-specific Environmental Protection Plan (EPP) with the Board, for approval, at least 45 days prior to commencing the abandonment activities to describe all of its proposed environmental protection procedures and mitigation measures that will be implemented during abandonment activities. Condition 6 also requires AltaGas to confirm that it will notify the Board if any contamination is identified during abandonment activities, and to provide a contingency plan to be implemented in the event that potential contamination is encountered.

The Board notes that AltaGas, in response to potential draft conditions for the Project, requested that it complete and file the EPP and Phase I ESA after completion of the abandonment process. The purpose of the EPP is to communicate AltaGas' Project-specific environmental protection commitments, procedures, and mitigation measures to employees and contractors for implementation in the field during abandonment activities. Accordingly, AltaGas must file the EPP prior to commencing abandonment activities.

Similarly, the Phase I ESA is required prior to AltaGas conducting abandonment activities. The Phase I ESA identifies any historical or unknown contamination that may be present at a project site before abandonment activities are conducted.

The Board further notes that AltaGas refers to the EPP and the Phase I ESA as required for the area being disturbed as part of the Project. While the EPP is specific to environmental protection commitments, procedures, and mitigation measures for the proposed ground disturbance sites, the Phase I ESA, as well as the Phase II ESA and the Remediation Action Plan, if warranted, are required for the entire RoWs.

AltaGas committed to reclaiming disturbed areas to match the surrounding land use. Condition 8 of the Order requires AltaGas to file a Post-Abandonment Monitoring Plan and Report to provide for monitoring post-abandonment, and to demonstrate that the areas disturbed during abandonment activities have been remediated, and are restored to equivalent land capability.

Given the nature and scope of the Project as applied for, and the implementation of the Board's mitigative conditions, the Board anticipates that any residual environmental effects would be of limited geographic extent, of low magnitude, and that effects would return to pre-disturbance conditions (similar to conditions prior to commencing the abandonment activities) and restored to equivalent land capability in the order of years.

The Board is satisfied that AltaGas has identified and addressed all relevant socio-economic effects associated with the Project, including those discussed in Section 2.5 of this decision. The Board notes the limited scope and duration of abandonment activities and that the Project is located on previously disturbed lands.

The Board has determined that the carrying out of the Project is not likely to cause significant environmental and socio-economic effects.

2.4 Public Consultation

This section addresses AltaGas' public consultation program. AltaGas' Aboriginal engagement and consultation are discussed in Section 2.5, Aboriginal Matters.

The Project is located on Crown land, with a portion of both Pipelines located on Indian Reserve Land, specifically those of OLCN. AltaGas stated in its application that it would commence its Consultation and Notification Program in late March 2016. As per the Notice, on 6 June 2016, AltaGas filed with the Board a list of potentially impacted persons upon which it served the Notice. This list included landowners, Aboriginal groups, interested government bodies and other interested parties. The Notice set out the Board's hearing process and required those interested in participating in that process to indicate their intention to do so by 27 June 2016.

Views of the Board

The Board's expectations for an applicant regarding public consultation are set out in the Board's *Filing Manual*. Applicants are expected to initiate project-specific consultation activities as soon as possible in the planning and design phase of a Project. The Board notes that AltaGas did not initiate consultation with potentially affected persons or groups until after it filed its Application with the Board. However, the Board is satisfied that, regarding public consultation, anyone potentially affected by the Project was given notice of the Project and had the opportunity to voice their concerns to AltaGas or the Board. Therefore, the Board is of the view that the design and ultimate implementation of consultation activities was appropriate for the scale and scope of the Project. The Board notes that under the NEB Act, the Board has jurisdiction to oversee the prevention, mitigation, and remediation of any post-abandonment impacts. Accordingly, landowners and land users can contact the Board if any issues or concerns arise.

2.5 Aboriginal Matters

A portion of the proposed Project is located within OLCN Reserve Land. On 27 June 2016, the Board received two letters from OLCN regarding the Project. OLCN stated that it had concerns about contamination of its lands arising from the proposal to abandon the Pipelines in-place. OLCN also stated that appropriate reclamation standards, outcomes, and methodology should be developed in conjunction with OLCN. OLCN further stated that the abandonment and reclamation plans should include community-based monitoring informed by Indigenous knowledge. On 18 January 2017, AltaGas filed a letter of non-objection from OLCN dated 10 January 2017 regarding the Application. In the letter, OLCN submitted that it had discussed the Project with AltaGas and that based on those discussions and the mitigation options agreed to by AltaGas, it did not object to the Project.

Views of the Board

As noted in the Public Consultation section above, applicants are expected to initiate project-specific consultation activities as soon as possible in the planning and design phase of a Project. The Board notes that AltaGas did not initiate consultation with Aboriginal groups, including OLCN, until after it filed its Application with the Board.

The Board is of the view that based on the evidence as a whole, and through the Board's process, AltaGas did ultimately carry out sufficient consultation with OLCN. The Board is satisfied that any Aboriginal group potentially affected by the Project was given notice and had the opportunity to voice their concerns both to the Proponent and through the Board's abandonment hearing process.

In assessing the Project's potential impacts on Aboriginal interests, the Board considered all of the evidence provided. The Board assessed how AltaGas identified and evaluated the Project's potential impacts, the concerns raised by OLCN, and the measures AltaGas has proposed to mitigate those impacts. In the Board's view, with the implementation of AltaGas' environmental protection procedures and mitigation measures, and the inclusion of the Board's conditions, any potential Project impacts on Aboriginal groups are likely to be minimal and will be appropriately mitigated.

To facilitate continued consultation efforts between AltaGas and OLCN, and to ensure OLCN's concerns regarding abandonment and reclamation are addressed, the Board is imposing a number of conditions:

- **Condition 4** includes a requirement that AltaGas confirm that a copy of the Phase I ESA has been provided to OLCN;
- **Condition 5** includes a requirement that AltaGas confirm that the results of the Phase II ESA, or a statement indicating that it was not required, has been provided to OLCN;
- **Condition 5** includes a requirement that if the results of the Phase II ESA identify that remediation is required, AltaGas file a Remediation Action Plan in accordance with the *NEB's Remediation Process Guide*, which includes a summary of AltaGas' consultations with OLCN regarding the Remediation Action Plan. In its summary, AltaGas must provide a description and justification for how it has incorporated the results of its consultation, including any recommendations from OLCN into the Plan;
- **Condition 7** includes a requirement that AltaGas provide OLCN a copy of AltaGas' plan describing participation by OLCN in monitoring of Abandonment Activities for the Project; and
- **Condition 8** includes a requirement that AltaGas confirm that a copy of the Post-Abandonment Report has been provided to OLCN.

3.0 Decision

Having considered the evidence submitted in this proceeding, the consultation undertaken with Aboriginal groups, the impacts on Aboriginal groups' interests, and the proposed mitigation measures, including the Board-imposed conditions, the Board is satisfied that its decision is consistent with the *Constitution Act, 1982*, including section 35(1), which recognizes and affirms the existing Aboriginal and treaty rights of Aboriginal peoples. Based on all of the foregoing considerations and reasons, the Board is of the view that the Application is in the public interest and grants AltaGas leave to abandon the Pipelines, as set out in the attached Order.



K. Chaulk
Member

February 2017
Calgary, Alberta

Attachment

c.c. Ms. Annemarie Clarke, Onion Lake Cree Nation, Email aclarke@wittenlaw.com