

July 12, 2022

## OEB grants Sun-Canadian Pipe Line leave to construct a replacement pipeline in Milton

### DECISION

Today the Ontario Energy Board (OEB) issued its Decision and Order granting Sun-Canadian Pipeline Company Limited's (Sun-Canadian) application for leave to construct approximately 480 metres of 12-inch pipeline in the vicinity of the East Sixteen Mile Creek crossing in the Town of Milton (Project).

The OEB found that the Project is in the public interest based on an examination of the Project need, cost and economics, environmental impacts, landowner agreements and Indigenous consultation. The leave to construct is subject to the OEB's conditions of approval, attached as Schedule B to the Decision and Order.

### ABOUT THE PROJECT

Sun-Canadian operates a pipeline that delivers refined petroleum products from refineries in Sarnia to plants in London, Hamilton, and the Toronto area. The pipeline was established in 1953.

Sun-Canadian's 2019 annual water survey identified three locations with low or no cover where the pipeline crosses East Sixteen Mile Creek in Milton. At that time, Sun-Canadian implemented mitigation measures to temporarily stabilize and protect the pipeline infrastructure. Sun-Canadian stated that the Project is needed to maintain compliance with section 4.11 of the Canadian Standards Authority (CSA) Z662-19 which requires water crossings to be buried to a depth of at least 1.2 metres below the water body.

The Project is intended to replace approximately 480 metres of the existing pipeline with a new section of pipe where it crosses East Sixteen Mile Creek, which will be installed at a depth that will eliminate the identified areas of shallow depth of cover. The planned construction is to be undertaken using horizontal directional drilling. The existing section will be decommissioned by isolating it, removing any remaining product from it, capping it, and filling it with concrete.

### CONSIDERATIONS

When determining whether a project is in the public interest, the OEB typically examines the factors that comprise the OEB's standard [Leave to Construct Issues List](#). In this case, the OEB considered the following issues:

1. Need for the Project
2. Project Cost and Economics
3. Environmental Impacts
4. Landowner Agreements

5. Indigenous Consultation
6. Conditions of Approval

## **OEB FINDINGS**

A summary of the OEB's key findings as they relate to its determination that the Project is in the public interest follows below.

### **Need for the Project** (*Section 3.1, pp. 7-8*)

The OEB found that the Project is needed.

The evidence established that there are three sections of the existing pipeline with low or no cover where it crosses East Sixteen Mile Creek that pose potential risk to the creek and the integrity of the pipeline. The Project addresses this risk appropriately, in compliance with the CSA requirement, and allows for the continued safe operation of the pipeline.

The OEB accepts that action by Sun-Canadian was required at this point to ensure the well-being and integrity of the pipeline. The Project avoids the need for temporary and emergency type mitigation measures that would be required this summer and the potential environmental impacts from those emergency measures.

### **Project Cost and Economics** (*Section 3.2, p.9*)

The OEB determined that it does not need to consider the Project costs as part of its review of this application. A review of project costs and an economic feasibility assessment would be required to assess the impact on ratepayers if those costs are being recovered from ratepayers. In this case, the cost of the Project will be fully financed by Sun-Canadian, and Sun-Canadian does not recover the cost to operate and maintain the pipeline through OEB approved rates.

Furthermore, since the pipeline is not used for the transmission or distribution of natural gas it is not subject to rate regulation by the OEB.

### **Environmental Impacts** (*Section 3.3, pp. 10-11*)

The OEB found that the environmental aspects of the Project have been assessed appropriately. Sun-Canadian has conducted its environmental review and public consultation process in accordance with the OEB's [Environmental Guidelines](#).

The Environmental Report and consultation records establish that Sun-Canadian engaged appropriately with Indigenous communities, landowners, and all relevant federal and provincial agencies and authorities. Subject to the discussion on Indigenous consultation (see below), no one has challenged the conclusions reached in the work undertaken to assess the environmental impacts of the Project and the proposed mitigation of construction impacts.

The OEB also noted the following:

- Sun-Canadian has entered into environmental and archeological monitoring agreements with the Haudenosaunee Development Institute (HDI) and has agreed to the participation of representatives of the Huron-Wendat Nation, the Mississaugas of the Credit First Nation and Six Nations of the Grand River in monitoring the construction from an environmental and archeological perspective.



- Any environmental impacts of the Project are temporary, making use of a construction approach that limits the surface disturbance to a horizontal directional drill entry and exit point on one existing and one proposed private landowner easement.
- The mitigation measures set out in the Environmental Report requiring Sun-Canadian to obtain and adhere to all necessary permits and approvals needed to construct, operate and maintain the Project are adequate to avoid or reduce potential impacts on the environment as a result of the Project, subject to the OEB's conditions of approval set out in Schedule B to the Decision and Order.

#### **Landowner Agreements** *(Section 3.4, pp. 11-12)*

The OEB approved the form of easement agreement as proposed by Sun-Canadian, noting that it is suitable for both the permanent and temporary easements required for the Project.

The OEB noted that the new permanent easements that are required are on two privately owned parcels that already have existing Sun-Canadian pipeline easements in place and that both property owners have indicated their general support for both the Project and the new easement agreement.

#### **Indigenous Consultation** *(Section 3.5, pp. 13-22)*

The OEB found that, to the extent that the duty to consult has been triggered by the Project, it has been discharged sufficiently to allow the OEB to approve the Project. In coming to this conclusion, the OEB noted that the Ministry of Energy issued a letter of opinion to Sun-Canadian, dated June 28, 2022, in which the Ministry of Energy expressed its opinion that Sun-Canadian had carried out the consultation activities required by the Ministry of Energy's Delegation Letter satisfactorily. The OEB carried out its own review of these activities, along with all the evidence and submissions received from Sun-Canadian and HDI, including HDI's criticisms of the Crown's process and its argument that engagement has been inadequate, to form its own opinion on whether the duty to consult has been properly discharged in the context of the Project.

#### **Conditions of Approval** *(Section 3.6, pp. 22-23)*

The OEB approved the standard conditions of approval with the exception of the condition that requires the applicant to file a post-construction financial report. Given that the Project is financed by Sun-Canadian, this condition is not required.

The OEB also approved Sun-Canadian's proposal to change the timing for notification to the OEB of the commencement of construction from the usual 10 days to three days.

#### **About the OEB**

The OEB is the independent regulator of Ontario's electricity and natural gas sectors. It protects the interests of consumers and supports the collective advancement of the people of Ontario. Its goal is to deliver public value through prudent regulation and independent adjudicative decision-making which contributes to Ontario's economic, social and environmental development.

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*Ce document est aussi disponible en français.*

*This Backgrounder was prepared by OEB staff to inform Ontario's energy consumers about the OEB's decisions and is not for use in legal or regulatory proceedings. It is not part of the OEB's reasons for the decision; those may be found in the Decision and Order issued today, which is the official OEB document.*

