



500 Consumers Road  
North York, Ontario M2J 1P8  
PO Box 650  
Scarborough ON M1K 5E3

Robert Rowe  
Manager, Upstream Regulation  
Phone: (416) 495-5738  
Fax: (416) 495-6072  
Email: robert.rowe@enbridge.com

2007-07-23

Ms. Kirsten Walli  
Board Secretary  
Ontario Energy Board  
2300 Yonge Street, Suite 2700  
Toronto, ON M4P 1E4

Dear Ms. Walli:

**Re: Enbridge Gas Distribution ("Enbridge")  
Toronto Portlands Energy Centre ("PEC") Reinforcement Project  
Expropriation Application  
Ontario Energy Board File No. EB-2007-0692 - Corrected Evidence**

Enclosed please find copies of the following corrected evidence filed in the above noted proceeding:

Exhibit A, Tab 2, Schedule 1, page 3  
Exhibit A, Tab 3, Schedule 1, page 2, and  
Exhibit A, Tab 3, Schedule 4, page 2.

Please call the undersigned if you have any questions regarding this material.

Yours truly,

A handwritten signature in black ink that reads 'Robert Rowe'.

Robert Rowe  
Manager, Upstream Regulation

CC: EB-2007-0692 (Interested Parties)

500 Consumers Road  
North York ON M2J 1P8  
Canada

Patrick Hoey  
Director, Regulatory Affairs  
Tel 416-495-5555  
Fax 416-495-6072  
Email [patrick.hoey@enbridge.com](mailto:patrick.hoey@enbridge.com)

**ENBRIDGE**

**VIA EMAIL AND COURIER**

July 20, 2007

Ms. Kirsten Walli  
Board Secretary  
Ontario Energy Board  
2300 Yonge Street, Suite 2700  
Toronto, Ontario  
M4P 1E4

Dear Ms. Walli:

**Re: Enbridge Gas Distribution Inc.  
Toronto Portlands Reinforcement - Expropriation Application  
Ontario Energy Board File No. EB-2007-0692**

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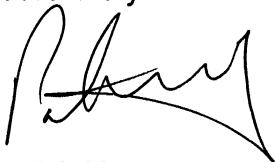
Enclosed are ten paper copies of an Application and supporting evidence by Enbridge Gas Distribution Inc. (the "Company") for an order for authority to expropriate land needed for easements for the construction of the natural gas pipeline that will serve Portlands Energy Centre ("PEC") electricity generating station (the "pipeline").

The Applicant seeks authority to expropriate certain lands owned by the City of Toronto Economic Development Corporation ("TEDCO") along the route approved for the pipeline in the Company's leave to construct application (EB-2006-0305). As detailed in this Application, the Company seeks an easement for the pipeline as well as working easements to allow the pipeline to be installed. Despite significant effort by the Company, it has been unsuccessful in concluding its negotiations to acquire these easements from TEDCO and is therefore proceeding with this Application.

As was made clear in the leave to construct application, PEC intends to be operable in an interim phase in the summer of 2008. In order to accomplish this, PEC will require gas for commissioning by February 2008. The Company requires access to those lands by no later than October 1, 2007 in order to meet the February 2008 date. In these circumstances, the Company respectfully requests that the Board consider this matter and issue a decision as soon as is possible.

Ms. Kirsten Walli  
July 20, 2007  
Page 2

Yours Truly

A handwritten signature in black ink, appearing to read 'Patrick Hoey', with a stylized, sweeping flourish at the end.

Patrick Hoey  
Director, Regulatory Affairs

cc: Scott A. Stoll, Aird & Berlis LLP  
Interested Parties

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## **ONTARIO ENERGY BOARD**

**IN THE MATTER OF** the *Ontario Energy Board Act, 1998*, S.O. 1998, c. 15 (Schedule B);

**AND IN THE MATTER OF** an application by Enbridge Gas Distribution Inc. for authority to expropriate land for the purposes of a natural gas pipeline in respect of which the Ontario Energy Board granted leave to construct in EB-2006-0305.

### **APPLICATION**

1. The Applicant, Enbridge Gas Distribution Inc. ("Enbridge"), is an Ontario corporation with its head office in the City of Toronto. It carries on the business of selling, distributing, transmitting and storing natural gas within Ontario.
2. Enbridge applied to the Ontario Energy Board (the "Board") under subsection 90(1) of the *Ontario Energy Board Act, 1998*, S.O. 1998, c. 15, Sched. B (the "Act") for leave to construct certain facilities, further described in paragraph below, to connect to the proposed 550 megawatt electricity generating station, known as the Portlands Energy Centre. The application for leave to construct the pipeline was heard by the Board under docket number EB-2006-0305. The Board issued a Decision and Order on June 1, 2007 granting Enbridge leave to construct the requested facilities.
3. Enbridge received leave to construct two segments of pipeline and related facilities. The first segment, and the subject of this application, is approximately 2,900 metres of NPS 20 inch natural gas pipeline and related facilities (the "Pipeline") in the City of Toronto. A

map showing the route of the Pipeline is included at Exhibit A, Tab 1, Schedule 2 from leave to construct proceeding EB-2006-0305. The second segment of pipeline that formed part of the leave to construct application was approximately 6,500m of NPS 36 pipeline and facilities to loop a portion of Enbridge's existing NPS 30 XHP Don Valley Line.

4. The Pipeline is to be constructed within existing road allowances and on private lands. In order to construct the pipeline, Enbridge requires certain easements in respect of land owned by the City of Toronto Economic Development Corporation ("TEDCO"). The need for easements from TEDCO was identified in the leave to construct hearing and TEDCO was an intervenor in that hearing. Enbridge has attempted to acquire such easements for the pipeline from TEDCO, but it has been unable to successfully conclude negotiations to acquire the necessary easements.
5. Enbridge therefore applies to the Board pursuant to subsection 99(1) of the Act for authority to expropriate land owned by TEDCO for the purposes of the Pipeline.
6. Attached as Exhibit A, Tab 2, Schedules 3, Schedule 4, and Schedule 5 to this Application are three reference plans: 66R-23139, 66R-23130, and 66R-23128 showing the land required for the construction of the Pipeline. The easements on the land owned by TEDCO and required for the Pipeline is:

Reference Plan Number	Permanent Easement	Temporary Working Easement
66R-23139	Part 13	None Required
66R-23130	Part 2	None required
66R-23128	Parts 1,2,3,4,5,6	Part 7

7. The description of the pipeline easement which Enbridge seeks authority to expropriate from TEDCO is as follows:

Part of Block 2 of Registered Plan 540 E in the City of Toronto being part 2 on Reference Plan 66R-23130.

Part of Blocks G of Registered Plan 675 E in the City of Toronto being part 13 on Reference Plan 66R-23139.

Part of Blocks X & J of Registered Plan 675 E and part of Lot 63 and Reserve for Park Development of Registered Plan 520 E in the City of Toronto being parts 1, 2, 3, 4, 5, and 6 on Reference Plan 66R-23128.

8. The description of the temporary working easement which Enbridge seeks authority to expropriate from TEDCO is as follows:

Part of Blocks X and J, Registered Plan 675E and Part of Lot 63 and Reserve for Park Development, Registered Plan 520E, City of Toronto, designated as Part 7, Reference Plan 66R-23128. /c

9. The only persons having an apparent interest in the lands which Enbridge seeks authority to expropriate are TEDCO, Hydro One, the Toronto Port Authority and Ontario Power Generation Inc. Others with an interest in this application include Portlands Energy Centre. Attached as Exhibit A, Tab 2, Schedule 6 to this application is a list of the names and addresses of those who, to the best of Enbridge's knowledge, are

affected by the application for authority to expropriate. In addition, Enbridge has provided all intervenors and observers in EB-2006-0305 with a copy of this Application.

10. Enbridge requests that copies of all documents filed with the Board in connection with this proceeding be served on it and on its counsel, as follows:

(a) The applicant:	Patrick Hoey Director, Regulatory Affairs Enbridge Gas Distribution Inc.
Address for personal service:	500 Consumers Road Toronto, Ontario M2J 1P8
Mailing Address:	P. O. Box 650 Scarborough, Ontario M1K 5E3
Telephone:	(416) 495-5555
Fax:	(416) 495-6072
E-Mail:	patrick.hoey@enbridge.com

(b) The Applicant's counsel:	Scott Stoll Aird & Berlis LLP
Address for personal service and mailing address:	Suite 1800, Box 754 BCE Place 181 Bay Street Toronto, Ontario M5J 2T9
Telephone:	(416) 865-4703
Fax:	(416) 863-1515
E-Mail:	sstoll@airdberlis.com



11. Enbridge requests that the Board grant authority to expropriate the easements described above at the earliest possible opportunity so that Enbridge will be able to meet the needs of PEC for gas distribution services to the proposed generating facility.

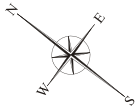
DATED July 20, 2007 at Toronto, Ontario.

**ENBRIDGE GAS DISTRIBUTION INC.**

By its counsel

**AIRD & BERLIS LLP**

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- Study Area
- Final Route

Base Map Source: Northway-Photomap Inc.

REVISION NO.	REVISION DATE	DESCRIPTION	REVISION BY:

PROJECT NAME:	ENBRIDGE NATURAL GAS PIPELINE
CLIENT NAME:	ENBRIDGE
DATE INITIATED:	NOVEMBER, 2006
FILENAME:	60960211_07.cdr
FIGURE NO.	A-4

# FINAL ROUTE

SCALE:	PROJECT NO.:
1:12,000	160960211
REV. NO.:	SHEET NO.:
0	1 OF 1
	MA
	DPW
	JLW



**SURVEY PLAN – 66R-23139**

Survey Plan – 66R23139 is available upon request.

**SURVEY PLAN – 66R-23130**

Survey Plan – 66R23130 is available upon request.

**SURVEY PLAN – 66R-23128**

Survey Plan – 66R23128 is available upon request.

**LIST OF INTERESTED PARTIES**

<p><b>City of Toronto Economic Development Corporation</b> Metro Hall, 55 John St. 7<sup>th</sup> Floor Toronto, ON M5V 3C6 Attention: Mr. Alan Kearsey, Property Manager</p> <p><b>Counsel to TEDCO</b> Tom Brett Gowling Lafleur Henderson LLP Barristers &amp; Solicitors Patent &amp; Trade Mark Agents Suite 1600 1 First Canadian Place 100 King Street West Toronto, Ontario</p>	<p><b>TransCanada Energy Ltd.</b> 55 Yonge Street 8<sup>th</sup> Floor Toronto, ON M5E 1J4 Attention: Margaret Duzy, Regulatory Affairs</p>
<p><b>Ontario Power Generation Inc.</b> 700 University Avenue Toronto, ON M5G 1X6 Attention: Jason Rioux , Senior Advisor Business Development</p>	<p><b>Hydro One Networks Inc.</b> Facilities and Real Estate P.O. Box 4300 Markham, ON L6G 1B7 Attention: Mr. Les Hart, Sr. Real Estate Coordinator</p>
<p><b>Ontario Power Generation</b> 700 University Avenue Toronto, Ontario M5G 1X6</p> <p>Attention: Mr. Norm Brignall Real Estate Consultant</p>	<p><b>Toronto Port Authority</b> 60 Harbour Street Toronto, ON M5J 1B7 Attention: Ms. Seema Seth Legal Counsel</p>

### **OVERVIEW**

1. Enbridge Gas Distribution Inc. ("Enbridge" or the "Company") is proceeding with construction of an NPS 20 inch natural gas pipeline and related facilities (the "Pipeline") in the City of Toronto to connect with the proposed 550 megawatt electricity generating station, known as the Portlands Energy Centre. The Pipeline will be approximately 2,900 metres in length and will be located within existing road allowances and on private land.
2. Enbridge applied to the Ontario Energy Board (the "Board") under subsection 90(1) of the *Ontario Energy Board Act, 1998*, S.O. 1998, c. 15 (Schedule B) (the "Act") for leave to construct the pipeline. The application for leave to construct the pipeline was heard by the Board under docket number EB-2006-0305 and, on June 1, 2007, the Board issued a Decision and Order granting Enbridge leave to construct the pipeline. Attached as Exhibit A, Tab 3, Schedule 2 hereto is a copy of the Board's Decision and Order.
3. The Preferred Route originates at Enbridge's Regulator Station 'B' located at 405 Eastern Avenue in the City of Toronto. The pipeline proceeds east along Eastern Avenue for approximately 300 m to Booth Avenue. At Booth Avenue the pipeline heads south for 430 m and proceeds east along Lake Shore Boulevard for 80 m to Logan Avenue. The pipeline then proceeds along the west side of Logan Avenue for approximately 350 m, crossing beneath Lake Shore Boulevard. At Commissioners Street, the pipeline heads west for 210 m to Bouchette Street and heads south for 130 m to Basin Street. At Basin Street, the pipeline continues south for approximately 650 m, along private property owned by the Toronto Economic Development Corporation ("TEDCO"), beneath the Shipping Channel (Toronto Port Authority), and across Ontario Power Generation land to Unwin Avenue. The pipeline proceeds east along Unwin Avenue for 530 m, then heads north 160 m along land owned by TEDCO where it terminates at the future Enbridge meter station. Attached as Exhibit A, Tab 3, Schedule 3 hereto is a sketch showing the Board-approved route for the pipeline.
4. This route was selected by Stantec Consulting Limited, in consultation with Enbridge, and was considered by the Board in EB-2006-0305. In its Decision and Order in that case, the Board found that Enbridge had conducted the routing and environmental assessment for

5. the pipeline in accordance with the Board's *Environmental Guidelines* and that no outstanding issues remained. The Board went on to approve the form of easement filed by Enbridge and offered to all directly affected landowners along the approved route.
6. As part of the hearing, Enbridge identified seven parties from whom it would require easement agreements. To date, Enbridge is near completion regarding negotiations with Hydro One Networks Inc., Ontario Realty Corporation, City of Toronto, Ministry of Transportation (Ontario), Ontario Power Generation Inc. and its tenant Studios of America. The Board-approved pipeline route contemplates that the pipeline will occupy land that is currently owned by TEDCO.
7. In order to complete the construction of the pipeline, Enbridge requires both permanent easements and temporary working easements on the land owned by TEDCO.
8. The permanent easements required by Enbridge from TEDCO are:

Part of Block 2 of Registered Plan 540 E in the City of Toronto being part 2 on Reference Plan 66R-23130.

Part of Blocks G of Registered Plan 675 E in the City of Toronto being part 13 on Reference Plan 66R-23139.

Part of Blocks X & J of Registered Plan 675 E and part of Lot 63 and Reserve for Park Development of Registered Plan 520 E in the City of Toronto being parts 1, 2, 3, 4, 5, and 6 on Reference Plan 66R-23128.

9. The temporary working easement required by Enbridge from TEDCO is:

Part of Blocks X and J, Registered Plan 675E and Part of Lot 63 and Reserve for Park Development, Registered Plan 520E, City of Toronto, designated as Part 7, Reference Plan 66R-23128.

/c

10. TEDCO intervened in the leave to construct proceeding and made submissions about the form of easement that was eventually approved by the Board. TEDCO did not object to the route proposed by Enbridge in the leave to construct proceeding. Enbridge has attempted to acquire the required easements from the landowner, but it has been unable to come to any agreement to acquire the easements



11. Counsel for TEDCO has, to the best of Enbridge's knowledge, agreed to all terms of the easement except compensation. TEDCO has refused an offer to permit Enbridge immediate access to the lands on the terms negotiated with the parties submitting to binding arbitration on the issue of compensation.
12. Because the pipeline must cross the Shipping Channel to supply PEC and TEDCO owns strips of land on both sides of the Shipping Channel and by the Discharge Channel there are no realistic options for Enbridge to construct the pipeline without crossing the lands of TEDCO.
13. The TEDCO lands for which Enbridge seeks the easements are already encumbered with 999 year easements to Ontario Power Generation and Hydro One.
14. PEC has informed Enbridge that it requires gas distribution service by February 2008. Enbridge has endeavoured to plan its construction activities so that work can proceed on other parts of the pipeline before entry on the lands of TEDCO is required. Nevertheless, in order to meet PEC's expectation of service, Enbridge need access to the portion of the route crossing TEDCO's property, and the associated working easements, by no later than October 1, 2007.
15. Enbridge therefore requests that the Board grant authority to expropriate the pipeline easements and temporary working easements at the earliest possible opportunity. Attached hereto as Exhibit A, Tab 3, Schedule 4 is the definition of the limited estate, right and interest that Enbridge requires by the way of pipeline easement and temporary working easements.

Ontario Energy  
Board

Commission de l'Énergie  
de l'Ontario



**EB-2006-0305**

**IN THE MATTER OF** the *Ontario Energy Board Act 1998*,  
S.O.1998, c.15;

**AND IN THE MATTER OF** an Application by Enbridge Gas  
Distribution Inc. for an Order pursuant to Section 90(1) of the  
*Ontario Energy Board Act, 1998*, granting leave to construct natural  
gas pipelines in the City of Toronto.

**BEFORE:** Gordon Kaiser  
Vice Chair and Presiding Member

Paul Vlahos  
Member

Ken Quesnelle  
Member

### **DECISION AND ORDER**

Enbridge Gas Distribution Inc. ("Enbridge") filed an application with the Ontario Energy Board on December 7, 2006, under section 90 of the *Ontario Energy Board Act, 1998*, S.O. 1998, c.15, Schedule B, for an Order for Leave to Construct natural gas pipelines for the purpose of supplying gas to the already approved Portlands Energy Centre generating station ("Portlands") in the City of Toronto. Construction is scheduled to start in the summer of 2007, with a planned in-service date of February 2008.

For the reasons set out below, the Board finds the construction of the proposed pipelines to be in the public interest and grants the Leave to Construct on the terms and conditions set out in this Decision.

## **The Proposed Pipelines**

The project involves the construction of two sections of pipeline. The north section consists of approximately 6.5 kilometres of pipeline parallel to a portion of Enbridge's existing Don Valley Line. The south section consists of approximately 2.9 kilometres of pipeline that would interconnect the Don Valley Line at Enbridge's station B regulator station and end at Portlands.

The north section route is located primarily on land in the former Hydro One corridor currently owned by Enbridge (north of Sheppard Avenue to the north limit of Highway 401) and the Hydro One corridor presently owned by the Ontario Realty Corporation ("ORC") (from the south limit of Highway 401 to Eglinton Avenue). The majority of the south section is on land located on road allowances with the exception of certain locations owned by the City of Toronto Economic Development Corporation, the Toronto Port Authority and Ontario Power Generation Inc.

Maps showing the location of the two proposed pipelines are attached as Appendix "A".

## **The Parties**

Three parties requested and were granted Intervenor status: Portlands Energy Centre, Toronto Economic Development Corporation ("TEDCO") and Union Gas Limited ("Union"). A late Intervenor status was granted to Mr. Paul Beatty, a resident of Scarborough, whose residence bordered to the eastern boundary of the northern section of the pipeline project. Mr. Beatty opposed the proposed location of the pipeline. The other Intervenor generally supported the project although TEDCO had concerns with certain aspects of the form of easement agreement. Both these matters are dealt with later in this Decision.

The Board granted Observer status to the City of Toronto ("the City"), Mr. John Butler and Mr. David Elder, both local residents. The City requested undertakings from Enbridge with respect to the type of drawings to be provided. That request will be dealt with later in this Decision.

Board Staff Counsel made written submissions on the legal test to be applied in Applications for Leave to Construct under sections 90 and 91 of the Act, which were circulated to the Applicant and all Intervenor. Board Staff Counsel also submitted proposed conditions of approval.

The Board also received a letter of comment from Mr. Peter Tabuns, MPP for Toronto-Danforth and Mr. Jack Layton, MP for Toronto-Danforth and the Toronto Energy Coalition ("TEC") and a letter of comment from Ms. Christine Becker, an affected resident. TEC requested that the Board deny the Application based upon the emissions that would be created by the generating facility. Ms. Becker commented on the public consultation and notification and on the proposed location of the pipeline.

### **The Public Interest Test**

This is an Application under section 90 of the Ontario Energy Board Act seeking a Leave to Construct Order with respect to two natural gas pipeline projects. Section 96 of the Act provides that the Board shall make an Order granting leave if the Board finds that "the construction, expansion or reinforcement of the proposed work is in the public interest". When determining whether a project is in the public interest, the Board typically examines the need for the project, the economics of the project, the environmental impact and the impact on land owners. Each of these factors will be considered in turn.

### **The Need for the Project**

Portlands is in the process of constructing a new 550 Megawatt high-efficiency natural gas fired generation plant and has signed a 20 year Accelerated Clean Energy Supply agreement with the Ontario Power Authority. The anticipated construction cost is \$730 million with an initial in-service date of June 1, 2008. When fully complete, the Portlands facility will be capable of providing 25% of Central Toronto's electricity needs (Ex. A, Tab 3, Schedule 4, p. 2 of 4).

Enbridge and Portlands have entered into a 20 year gas delivery agreement (Ex. A, Tab 3, Schedule 5) based upon the Board approved Rate 125<sup>1</sup>. The hourly contract demand is 116 079 m<sup>3</sup> and the daily demand for the Portlands is 2 785 885 m<sup>3</sup>. In addition, the customer requires a minimum pressure of 200 psi or 1379 kPa in order to operate its facility. The Gas Delivery Agreement requires Enbridge to deliver gas to Portlands on February 1, 2008 (Ex. A, Tab 3, Schedule 5, p. 56 of 58).

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<sup>1</sup> *Enbridge Gas Distribution Inc.*, Decision with Reasons, EB-2005-0001, (February 9, 2006)

Enbridge's existing high pressure distribution system is supplied by the TransCanada Pipelines ("TCPL") system at the Victoria Square Gate Station. In 1971, a NPS 30 pipeline (the "Don Valley Line") was constructed from Victoria Square Gate Station to Enbridge's Station B located on Eastern Avenue (Ex. A, Tab 3, Schedule 2).

The Don Valley Line requires reinforcement, or looping to provide adequate pressure at Station B to meet Portlands' needs. In addition, the existing distribution system downstream of Station B does not have the ability to meet Portlands' requirements. Enbridge embarked on a process of developing a project that would meet the needs of Portlands in an environmentally acceptable and cost-effective manner.

**The North Section:** The maximum operating pressure of the Don Valley Line is 450 psi (3100 kPa). Station B has a minimum inlet pressure of 225 psi (1550 kPa). The minimum inlet pressure is required for the station to have the capability to supply natural gas in sufficient quantities and at sufficient pressures to the downstream distribution pipeline system. Without the Portlands load, the existing Don Valley Line is able to provide the required minimum inlet pressure at Station B with a Victoria Square Gate Station outlet pressure of 405 psi (2709 kPa) under Enbridge's system design conditions.

Enbridge examined the impact on pressures if the Portlands load is added and no reinforcement was undertaken. With an outlet pressure of 450 psi (3100 kPa) at Victoria Square Gate Station (the maximum operating pressure of the Don Valley Line) the pressure at Station B inlet pressure drops to 210 psi (1445 kPa) with the addition of the Portlands load. Unless reinforcement of the Don Valley Line was to occur, the Portlands load would remove any existing flexibility in the distribution system and the inlet pressure would be unacceptably low at Station B. As such, it was necessary for Enbridge to consider various alternatives to deliver gas in the required quantity and at the required pressure to Station B. Enbridge determined that the proposed North Section was the optimal choice.

After considering alternatives, Enbridge chose the North Section as the preferred alternative because the Environmental Assessment Reports identified the North Section as the preferred route. It also meets the contractual demands of Portlands and maintains the operational characteristics of the distribution system. In addition, it does not conflict with possible future use of the Hydro One corridor. It is lower in cost and it can meet the required timeline.

**The South Section:** Enbridge's current high pressure distribution system includes a NPS 24 pipeline approximately 3 500 m in length from Station B to the now abandoned R.L. Hearn Generating Station that was installed in 1971. This existing pipeline network downstream of Station B is not adequate to meet the requirements of Portlands as it currently operates with a maximum pressure of 125 psi (860 kPa). Portlands' minimum required delivery pressure is 200 psi (1378 kPa). Enbridge considered pressure elevating the existing piping infrastructure. The evidence (Ex. C, Tab 1, Schedule 1, pp. 4 - 6) described several issues with the pressure elevation option. In the end, the option to pressure elevate was not acceptable to Enbridge.

The evidence clearly supports a finding that there is a need for both north and south pipeline projects. The existing pipelines do not have the capacity to support Portlands' requirements. The need for new generation to meet the growing electricity requirements of Toronto is serious and well recognized.

### **The Proposed Routing**

The routing of the northern section of pipeline was contested by Paul Beatty, a resident of the area. The proposed route as indicated in Appendix "A" is in a Hydro One transmission corridor. The current pipe is on the western side of the transmission corridor and Mr. Beatty argues that the new pipe should be in the east side of the corridor.

The Enbridge response was that Hydro One was not prepared to route the pipeline on the eastern side of the right-of-way because they wished to preserve that space for future development. Accordingly, locating the new pipe on the eastern portion of the Hydro One right-of-way was not something that was investigated further.

Mr. Beatty also argued that the proposed location was too close to properties on the western perimeter of the corridor. He noted that when the Board approved the original pipeline in 1971, it imposed a condition that the pipe be no closer than 35 feet to the property line.

With respect to the 35 ft. buffer that the Board mandated in 1971<sup>2</sup> Enbridge noted that the Technical Standards Safety Authority ("TSSA") does not provide any recommendation for set back on pipelines operating at less than 40% Specified Minimum Yield Strength ("SMYS") and therefore permits development up to edge of the

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<sup>2</sup> *The Consumers' Gas Company*, Order Granting Leave to Construct, EBLO 142, (April 8, 1971)

pipeline right-of-way<sup>3</sup>. Accordingly, the proposed route which was reviewed as part of the Ontario Pipeline Coordinating Committee (“OPCC”) process was endorsed by the TSSA:

“We have reviewed the documentation related to the EB-2006-0305 Application received from Enbridge Consumers Gas and found that the design specifications for the pipeline meet or exceed the requirements of the Ontario Regulation on Oil and Gas Pipeline Systems. (O.Reg. 210/01). We also agree with the route selected, as it appears as the best alternative for the pipeline installation.” (Ex. J.1, p. 22 of 99).

The Board appreciates the submissions made by Mr. Beatty, and the time spent compiling the materials that he shared with the Board. While the Board notes the concerns expressed by Mr. Beatty, the Board is satisfied that the evidence establishes that the route selected was the best alternative for the location of the northern section of the pipeline.

No intervenor objected to the location of the southern section of the pipeline. The Board is satisfied that the evidence establishes that the route selected was the best alternative for the location of the southern section of the pipeline.

### **Environmental Assessment**

Both the North and South Pipeline Projects meet all the environmental assessment requirements. Enbridge was required to conduct a Category B Environmental Assessment pursuant to the Class Environmental Assessment Act for Management Board Secretariat and the Ontario Realty Corporation Act (April, 2004) because of the need to require an easement from the ORC.

Enbridge retained Dillon Consulting Ltd (“Dillon”) and Stantec Consulting Ltd. (“Stantec”) to undertake an environmental and socio-economic impact assessment to select preferred routes for north and south sections respectively. The assessment was carried out in accordance with the Board’s *Environmental Guidelines for the Location, Construction and Operation of Hydrocarbon Pipelines and Facilities in Ontario* (May 2003) (the “Board’s Environmental Guidelines”). The results of the assessment are documented in “Toronto Portlands System Reinforcement Project: South Section”, Stantec Consulting Ltd., December 2006 (“Stantec Report”) (Ex. B, Tab 2, Schedule 4) and in “Updating Study-Environmental and Socio-economic Impact Assessment, Toronto

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<sup>3</sup> PI-98/01 “Guidelines for Locating New Oil and Gas Pipeline Facilities”, August 19, 1998.

Portlands System Reinforcement Pipeline: North End", Dillon Consulting Ltd., November 2006 ("Dillon Report") (Ex. B, Tab 2, Schedule 3).

Both the Stantec Report and the Dillon Report were reviewed by the OPCC.

Regarding the north section Mr. Guiseppe Muraca, the Environmental Consultant from Dillon, stated that the proposed route was environmentally acceptable and the environmental assessment was complete and it accords with the Board's Environmental Guidelines. Enbridge indicated that it was committed to implementing the mitigation recommended by Dillon.

With respect to the routing of the south section of the pipeline, Enbridge engaged an independent consultant, Stantec with extensive experience to develop the preferred route. Stantec undertook this work in compliance with the Board's Environmental Guidelines. As part of this process, Stantec undertook extensive consultation with government agencies and the public. Three public meetings were held to inform the public of the project and solicit input. Details of public consultation program may be found at section 4.0 of the Environmental Report prepared by Stantec. The Stantec Report indicates that nine pipeline segments were considered and in the end the route indicated in Appendix "A" was chosen because it was located in an existing roadway, minimized disruptions to socio-economic features and had public support. Mr. David Wesenger the Environmental Consultant from Stantec confirmed that the proposed route was an environmentally acceptable alternative using the proposed mitigation techniques included in the Stantec Report and rigid construction practice. Enbridge indicated that it was committed to implementing the mitigation measures in the Stantec Report.

### **Economics of the Project**

Enbridge originally estimated that the project cost was \$41.7 million but later advised that the cost had increased by \$6.8 million due to an increase in the cost of acquiring land rights from the Ontario Realty Corporation and Hydro One. However, Enbridge advised that the economic feasibility of the project would not be impacted negatively because the increased costs would be added to the contribution in aid of construction made by Portlands.

The economic feasibility of the Project was determined in accordance with the Board's approved procedures as established in EBO 188 and the Board's approval in EB-2005-0001. The economic analysis indicated that a contribution in aid of construction is



required from Portlands in order for the net present value ("NPV") to equal zero or the profitability index ("PI") to equal one. A PI of 1.0 indicates that the Project is economic for Enbridge.

In order to ensure that the Project remains economic regardless of increases in cost, Enbridge has negotiated with Portlands a term in the Gas Delivery Agreement that provides that the "contribution in aid of construction will be re-calculated at the end of the Project based upon the actual cost of construction". Enbridge confirmed that the contribution in aid of construction will be re-calculated or increased to ensure that a PI of 1.0 is maintained. Accordingly, other ratepayers are not at risk and there is no concern with cross-subsidization. Put differently other ratepayers are not at risk for any costs overruns associated with this Project given the automatic adjustment clause that is found in the Gas Delivery Agreement (Ex. A, Tab 3, Schedule 5, p. 39 of 58, section (f)).

It is also important to note that the revenue stream from Portlands is not subject to variability because of variability in gas consumption by Portlands. The revenues to be earned by Enbridge are based on contract demand volumes, not actual consumption. This ensures Portlands' predicted revenues going forward and recovery over the 20 year horizon.

Enbridge has also secured financial assurances from Portlands in the form of guarantees from the parents of Portlands, that ensure that Enbridge is protected through to the conclusion of the Gas Delivery Agreement. In its argument, Enbridge filed a letter from Portlands responding to issues raised by the Board during a hearing. The letter confirmed the allocation of risk and Portlands' commitment to the Project.

### **Land Issues and Form of Easement**

TEDCO is an Intervenor in this proceeding and participated in the oral hearing. Enbridge requires an easement from TEDCO with respect to three sections of land. Two sections are located immediately north and south of the shipping channel where Enbridge will be using a horizontal directional drill to cross underneath the shipping channel. The remaining easement required by Enbridge is within the Portlands generating facility where Enbridge currently has an existing distribution pipeline.

Section 97 of the OEB Act provides that a leave to construct will not be granted until the Applicant has satisfied the Board that it has offered or will offer to each owner of land affected by the approved route or location an agreement in a form approved by the Board.

TEDCO asked the Board to modify the form of agreement proposed by Enbridge with respect to two clauses. First, TEDCO took issue with the environmental cause, (clause 7) in the Standard Form Agreement whereby the landowner represents and warrants that the lands do not contain hazardous substance. Enbridge responded that the Board should not be concerned about the specific terms of the form of easement at this point stating that the form was simply “a starting point” in the negotiations.

Enbridge submits that it is not the Board’s role in a leave to construct proceedings to intervene in the negotiations between the Applicant and the landowners. In the event that the parties are unable to negotiate an agreement, then alternatives are considered which may include different routes or even expropriation. The OEB Act provides a mechanism to resolve such disputes through an expropriation proceeding. That mechanism provides for compensation under the Expropriation Act by the Ontario Municipal Board (“OMB”) and not the OEB. Accordingly, Enbridge argues that the legislation limits this Board’s role to the determination of whether expropriation of land is required, not to determine whether the amount of compensation is appropriate. Enbridge also points out that the form of easement being proposed in this proceeding was the form approved by the Board in Scarborough System Reinforcement Application EB-2006-0066<sup>4</sup> as well as the Goreway Station Application in EB-2005-0539<sup>5</sup>.

With respect to the environmental clause, Enbridge says that the Transferor is in the best position to know the environmental condition of the property in question. Accordingly, to the extent that representation is false, the Transferor should be responsible for the removal of hazardous substances. With respect to the indemnity, Enbridge says that the landowner is free to negotiate additional terms with Enbridge and the absence of such clause in the proposed Agreement in no way prohibits TEDCO from negotiating such a clause.

Section 97 of the Ontario Energy Board Act reads:

“In an application under section 90, 91 or 92, leave to construct shall not be granted until the applicant satisfies the Board that it has offered or will offer to each owner of land affected by the approved route or location an agreement in a form approved by the Board.”

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<sup>4</sup> *Enbridge Gas Distribution Inc.*, Decision and Order, EB-2006-0066, (November 30, 2006)

<sup>5</sup> *Enbridge Gas Distribution Inc.*, Decision and Order, EB-2005-0539, (July 10, 2006)

In the course of cross-examination, Enbridge testified that:

- The form of easement agreement filed by Enbridge is offered to all landowners (Transcript Vol. 1, p.92);
- The standard form agreement filed by Enbridge is generally the same agreement that the utility files with the Board on every leave to construct application (Transcript Vol. 1, p. 96);
- The agreement is considered a 'benchmark' and is in all respects open to negotiation between the parties (Transcript Vol. 1, p. 97);
- In most cases changes are made as a result of negotiations (Transcript Vol. 1, pp. 98-99);
- The agreement filed by Enbridge does not contain an indemnification paragraph (Transcript Vol. 1, pp. 102-103);
- The agreement filed by Enbridge contains paragraphs which permit Enbridge to select the route and obtain an indemnity from the landowner for the removal of any hazardous substances found on the land (Transcript Vol. 1, pp. 99-100).

When considering the standard form agreement to be offered to affected landowners, the Board considers the agreement anew and in the context of the application in which it has been filed. The Board approves a standard form agreement which represents the initial offering to the affected landowner. Once the Board is satisfied with the standard form agreement, and in this case the Board is satisfied with the form as filed by Enbridge, the parties are free to negotiate whatever terms they believe to be necessary to protect their specific interests. The Board does not become involved in the detailed negotiation of the clauses in the agreements between one landowner and the Applicant. It is also accepted that a review by this Board under Section 97 does not extend to the amount of compensation or the structure of compensation arrangements.<sup>6</sup>

At the time of the hearing Enbridge had not finalized any of the landowner easement agreements but remained optimistic that they would be concluded well in advance of the planned construction start on July 1, 2007. The only possible exception was Studios of America. Enbridge advised the Board that the Board would be updated on the status of all easement agreements.

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<sup>6</sup> *Union Gas Limited*, Decision and Order, EB-2005-0550, (June 12, 2006)

## The Emissions Issue

The Board received a letter of public comment on February 7, 2007 from Mr. Peter Tabuns, (MPP Toronto-Danforth), Mr. Jack Layton, (MP Toronto-Danforth) and the Toronto Energy Coalition ("TEC"). TEC requested the Board to deny this Application based upon the potential environmental impacts of the Portlands generating facility. Enbridge asked the Board to disregard these comments because "a [belief] that the construction operation of a plant will result in emissions has nothing to do with the pipeline application before the Board".

A similar concern was raised in the Application by the Greenfield Energy Centre Limited in a Leave to Construct a natural gas pipeline in the Township of St. Clair, Ontario. In the Board's Decision Order dated January 6, 2006, the Board clearly separated the environmental aspects of the pipeline construction from those related to the power station itself. The Board stated:

"To be clear, only those effects that are additive or interact with the effects that have already been identified as resulting from the pipeline construction are to be considered under cumulative effects."<sup>7</sup>

The Board further stated that it has no jurisdiction to consider the arguments of the Intervenor in this regard:

"In the Board's view, the law is clear that the jurisdiction on environmental matters associated with the power station falls under the *Environmental Assessment Act* administered by the Ministry of the Environment, and not the Ontario Energy Board. The process under the provincial Environmental Assessment Act in relation to the GEC generating station has been concluded ." (pp. 17-18)

This Decision was upheld by the Divisional Court.<sup>8</sup>

The Board Staff Counsel filed as part of its argument draft conditions of approval. The last draft condition was unique to this proceeding and resulted from a request by the City of Toronto, an Observer in this case, that the condition be followed including:

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<sup>7</sup> *Greenfield Energy Centre Limited Partnership*, Decision and Order, RP-2005-0022/EB-2005-0441/EB-2005-0442/EB-2005-0443/EB-2005-0444, (January 6, 2006) at p.10.

<sup>8</sup> *Power Workers' Union, CUPE Local 1000 v. Ontario Energy Board* (2006), 214 O.A.C. 208, [2006] O.J. No. 2997 (Div. Ct.)

“That Enbridge Gas Distribution Inc. provide, within thirty (30) days of the completion of its construction (defined for the purposes of the public highway as the backfill and temporary patch of any excavation) to the City of Toronto and the property owners over which the pipeline will be built:

- Drawings certified by an Ontario Land Surveyor accurately showing the location of the constructed pipeline; or
- A record drawing as defined by the Association of Professional Engineers of Ontario accurately showing the location of the constructed pipeline.”

Enbridge did not oppose a condition but noted that the cost of Ontario Land Surveyor would be approximately \$240,000. Under the terms of the Gas Delivery Agreement this cost would become part of the project. As a result, neither Enbridge nor the ratepayers would incur the costs. Enbridge did state that they did not support the inclusion of this condition as a standard practice in other projects. Finally, Enbridge noted that the option for surveyor drawings, rather than engineer record drawings would appear to better meet the City of Toronto’s request to tie the location of the pipeline into the property bars (Transcript Volume 1, p. 119).

While this additional cost may not be immediately borne by Enbridge or Enbridge’s other ratepayers, in the long run such costs form part of utility’s cost of service and are ultimately paid by ratepayers. There is not sufficient evidence before us to justify this additional cost. The interests of the City of Toronto can be protected through less costly means. It is significant that the City of Toronto did not appear at the hearing to support its position or present argument. In the circumstances the Board is not prepared to grant the request by the City of Toronto and directs that the last paragraph contained in the draft conditions of approval, filed by Board Staff Counsel, be removed.

### **Orders Granted**

For the Reasons indicated, the Board finds that the two pipeline projects being proposed by Enbridge in this proceeding are in the public interest and grants the Leave to Construct subject to the conditions set out in Appendix “B”.

**THE BOARD ORDERS THAT:**

1. Enbridge Gas Distribution Inc. is granted leave, pursuant to subsection 90 (1) of the Act, to construct approximately 6.5 kilometres of NPS 36 pipeline to parallel a portion of Enbridge's existing NPS 30 XHP Don Valley Line and approximately 2.9 kilometres of NPS 20 XHP steel pipeline that would interconnect the Don Valley Line at Enbridge's Station B regulator station and would terminate at the Portlands Energy Centre in the City of Toronto, subject to the conditions of approval set forth in Appendix "B".
2. Eligible intervenors who seek an award of costs incurred to date shall file their cost submissions in accordance with the *Practice Direction on Cost Awards* with the Board Secretary and with Enbridge Gas Distribution Inc. within 15 days of the date of this Decision. Enbridge Gas Distribution Inc. may make submissions regarding the cost claims within 30 days of the Decision and the intervenors may reply within 45 days of the Decision. A decision and order regarding cost awards will be issued at a later date. Upon receipt of the Board's cost award decision and order, Enbridge Gas Distribution Inc. shall pay any awarded costs with dispatch.
3. Enbridge Gas Distribution Inc. shall pay the Board's costs incidental to this proceeding upon receipt of the Board's invoice.

**DATED** at Toronto, June 1, 2007

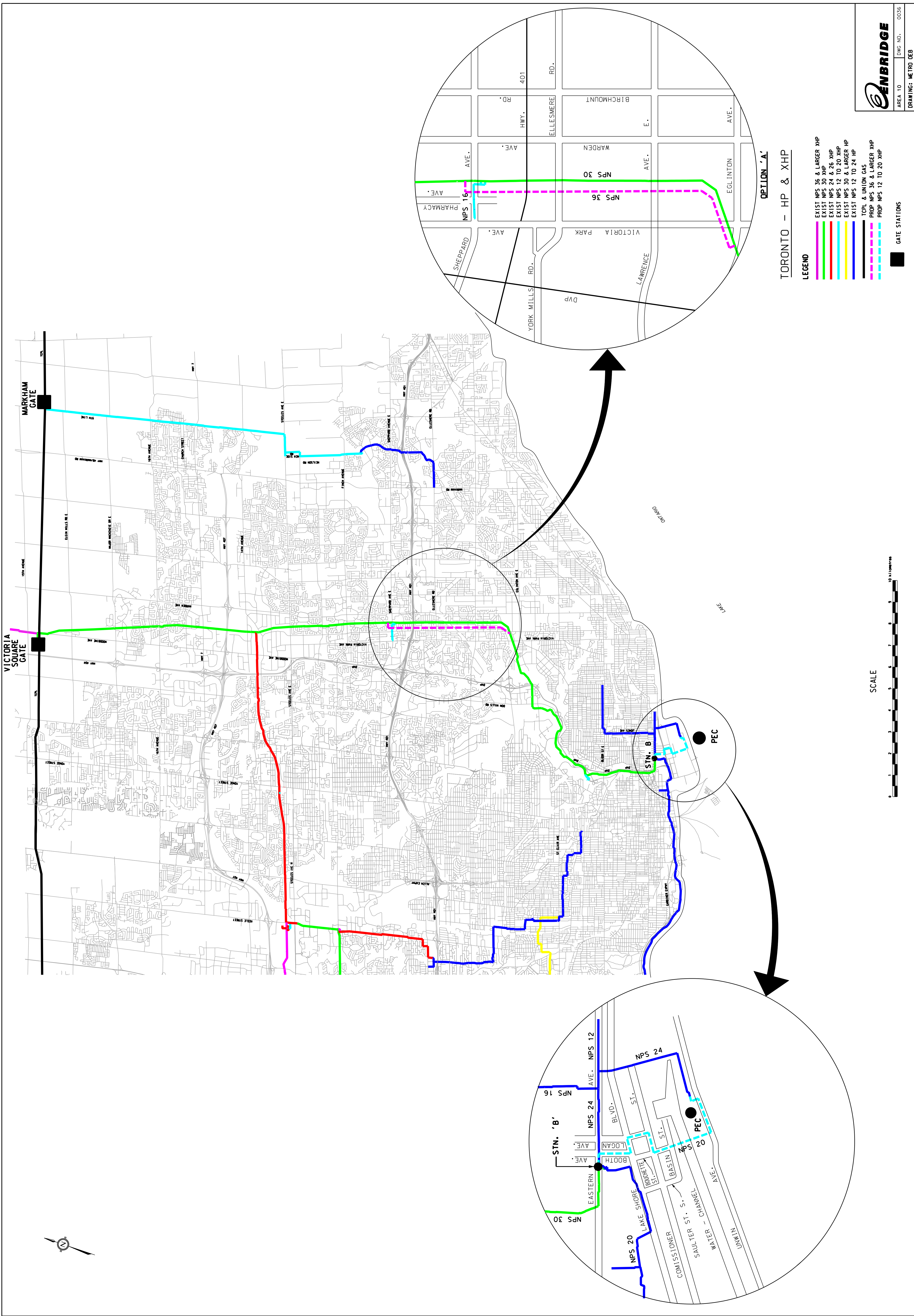
ONTARIO ENERGY BOARD

*Original signed by*

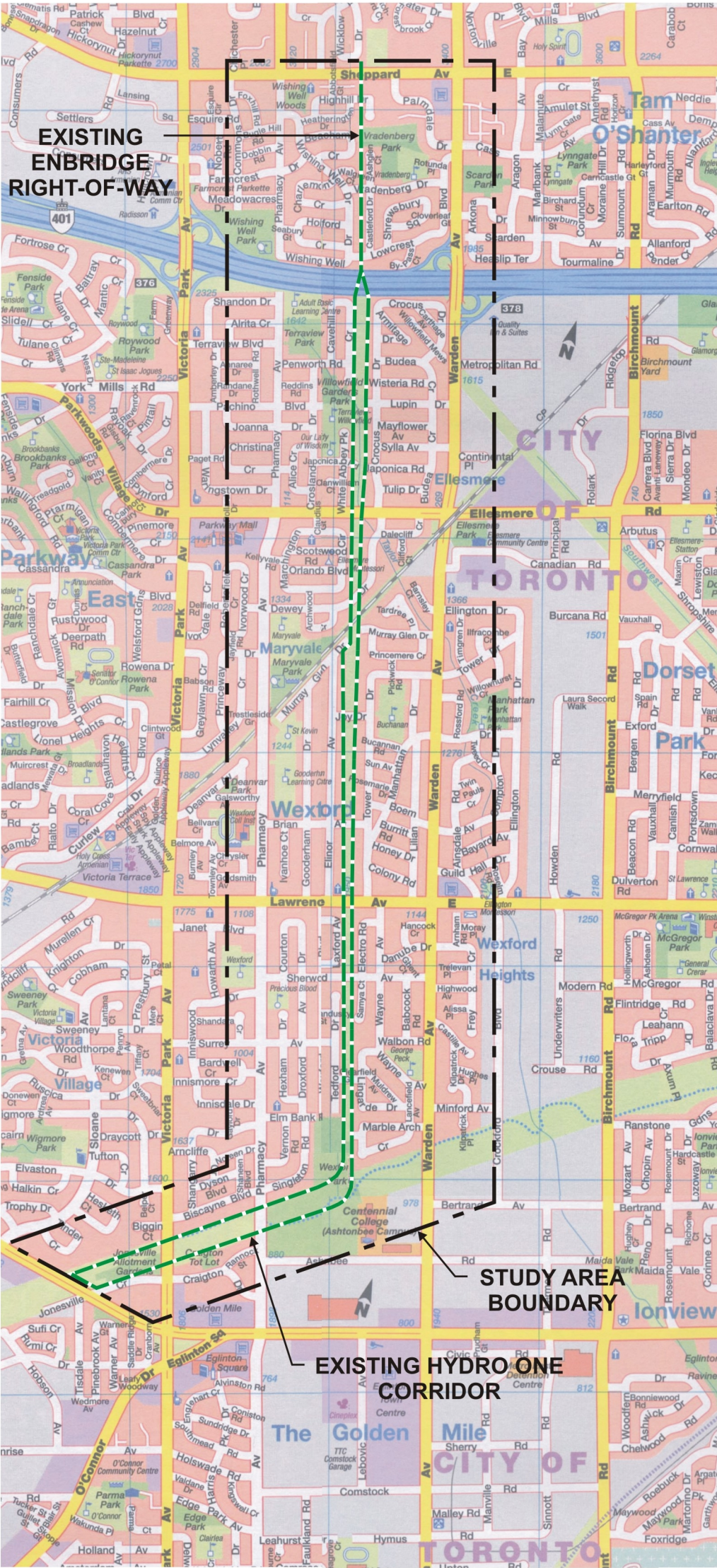
Peter H. O'Dell  
Assistant Board Secretary

**APPENDIX "A"**  
**TO BOARD DECISION AND ORDER**  
**IN THE MATTER OF EB-2006-0305**  
**DATED June 1, 2007**  
**MAPS OF THE PIPELINE ROUTES**









1:25,000 (Approx.)



TORONTO SYSTEM  
REINFORCEMENT STUDY  
**STUDY AREA A**

	Project Number 33485	Figure 4
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*Note: The features on this map are for illustrative purposes only. Original source should be referenced for actual location and boundaries.*





**Stantec**

- Study Area  
Preferred Route  
Alternate Routes

Base Map Source: Northway-Photomap Inc.

REVISION NO.	REVISION DATE	DESCRIPTION	REVISED BY:
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PROJECT NAME: ENBRIDGE NATURAL GAS PIPELINE

# THE UNIVERSITY OF CHICAGO

CLIENT NAME: **ENBRIDGE**

DATE INITIATED: \_\_\_\_\_ FILENAME: \_\_\_\_\_

OCTOBER, 2006 60960211\_05.cdr

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# PRELIMINARY PREFERRED ROUTE AND ROUTE SEGMENTS

SCALE:	PROJECT NO.:	DRAWN BY:
1:12,000	160960211	CEW
REV NO.	CHECKED BY:	APPROVED:
0	MA	DPW
	SHEET NO.	
	1 OF 1	



**APPENDIX "B"**  
**TO BOARD DECISION AND ORDER**  
**IN THE MATTER OF EB-2006- 0305**  
**DATED JUNE 1, 2007**  
**CONDITIONS OF APPROVAL**

**EB-2006-0305**

**Enbridge Gas Distribution Inc.  
Toronto Portlands Reinforcement  
Leave to Construct Application**

**Conditions of Approval**

**Leave to Construct**

**1 General Requirements**

- 1.1 Enbridge Gas Distribution Inc. ("Enbridge") shall construct the facilities and restore the land in accordance with its application and evidence filed in EB-2006-0305, except as modified by this Order and these Conditions of Approval.
- 1.2 Unless otherwise ordered by the Board, authorization for Leave to Construct shall terminate December 31, 2008, unless construction has commenced prior to then.
- 1.3 Except as modified by this Order, Enbridge shall implement all the recommendations of the Environmental Study Reports filed in the pre-filed evidence, and all the recommendations and directives identified by the Ontario Pipeline Coordinating Committee ("OPCC") review.
- 1.4 Enbridge shall advise the Board's designated representative of any proposed material change in construction or restoration procedures and, except in an emergency, Enbridge shall not make such change without prior approval of the Board or its designated representative. In the event of an emergency, the Board shall be informed immediately after the fact.

**2 Project and Communications Requirements**

- 2.1 The Board's designated representative for the purpose of these Conditions of Approval shall be the Manager, Facilities.
- 2.2 Enbridge shall designate a person as project engineer and shall provide the name of the individual to the Board's designated representative. The project engineer will be responsible for the fulfilment of the Conditions of Approval on the construction site. Enbridge shall provide a copy of the Order and Conditions of Approval to the project engineer, within seven days of the Board's Order being issued.

- 2.3 Enbridge shall give the Board's designated representative and the Chair of the OPCC ten days written notice in advance of the commencement of the construction.
- 2.4 Enbridge shall furnish the Board's designated representative with all reasonable assistance for ascertaining whether the work is being or has been performed in accordance with the Board's Order.
- 2.5 Enbridge shall file with the Board's designated representative notice of the date on which the installed pipelines were tested, within one month after the final test date.
- 2.6 Enbridge shall furnish the Board's designated representative with five copies of written confirmation of the completion of construction. A copy of the confirmation shall be provided to the Chair of the OPCC.

### **3 Monitoring and Reporting Requirements**

- 3.1 Both during and after construction, Enbridge shall monitor the impacts of construction, and shall file four copies of both an interim and a final monitoring report with the Board. The interim monitoring report shall be filed within six months of the in-service date, and the final monitoring report shall be filed within fifteen months of the in-service date. Enbridge shall attach a log of all complaints that have been received to the interim and final monitoring reports. The log shall record the times of all complaints received, the substance of each complaint, the actions taken in response, and the reasons underlying such actions.
- 3.2 The interim monitoring report shall confirm Enbridge's adherence to Condition 1.1 and shall include a description of the impacts noted during construction and the actions taken or to be taken to prevent or mitigate the long-term effects of the impacts of construction. This report shall describe any outstanding concerns identified during construction.
- 3.3 The final monitoring report shall describe the condition of any rehabilitated land and the effectiveness of any mitigation measures undertaken. The results of the monitoring programs and analysis shall be included and recommendations made as appropriate. Any deficiency in compliance with any of the Conditions of Approval shall be explained.

### **4 Easement Agreements**

- 4.1 Enbridge shall offer the form of agreement approved by the Board to each landowner, as may be required, along the route of the proposed work.

## **5 Other Approvals**

- 5.1 Enbridge shall obtain all other approvals, permits, licences, and certificates required to construct, operate and maintain the proposed project, shall provide a list thereof, and shall provide copies of all such written approvals, permits, licences, and certificates upon the Board's request.





Definition of Limited Estate, Right and Interest Taken

I Permanent Easement

1. An unencumbered easement in favour of Enbridge Gas Distribution Inc. (the "Company"), its successors and assigns, in, over, upon, under and/or through the lands described in the order to which this appendix is attached described as the permanent easement lands (the "Easement Lands"), to survey, lay, construct, install, operate, use, inspect, remove, renew, replace, alter, enlarge, reconstruct, repair, expand and maintain a pipeline and all works, appurtenances, attachments, apparatus, appliances, markers, fixtures and equipment (collectively, the "Works") which shall remain the property of the Company notwithstanding the extent to which they are affixed to the Easement Lands together with the right and easement to use the surface of the Easement Lands for ingress and egress on foot and/or with vehicles, supplies, machinery and equipment at any time and from time to time.
2. The Company shall have the right at any time and from time to time to remove any boulder or rock and to sever, fell, remove or control the growth of any roots, trees, stumps, brush or other vegetation on or under the Easement Lands.
3. The Owner shall have the right to use and enjoy the surface of the Easement Lands except that such use and enjoyment shall not interfere with the rights of the Company and, without limitation, the Owner shall not, without the prior written consent of the Company, place or erect on the Easement Lands any building, structure or fence and shall not excavate, alter the grading, drill, install thereon any pit, well, foundation and/or pavement which will obstruct or prevent the exercise and enjoyment of the Company's rights.



## II Temporary Easement

1. An unencumbered easement in favour of the Company, its successors and assigns, in, over, upon, under and/or through the lands described in the order to which this appendix is attached described as the temporary working easement lands for ingress and egress on foot and/or with vehicles, supplies, machinery and equipment; for staging, laying, constructing, installing, surveying, a pipeline and for the placing of soil/spoil during the period of time that the Works are being constructed and installed in the Easement Land.

/c

