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October 2, 2007

SENT VIA COURIER AND E-MAIL

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

Dear Ms. Walli:

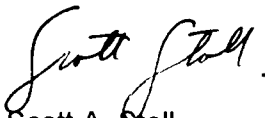
**Re: Enbridge Gas Distribution Inc. ("Enbridge") – Application for
Expropriation
Toronto Portlands Energy Centre ("PEC") Reinforcement Project
Ontario Energy Board File No. EB-2007-0692
Argument-in-Chief**

Please find enclosed the Argument-in-Chief of Enbridge Gas Distribution Inc. in the above-noted proceeding. An electronic copy is being sent to the board secretary and all intervenors in the proceeding.

If you have any questions, please call the undersigned at your earliest convenience.

Yours very truly,

AIRD & BERLIS LLP



Scott A. Stoll
SS:kp
Encl.

P. Hoey
R. Rowe
Intervenors
T. Brett
C. Mathias
Union Gas

2349332.1

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.

ARGUMENT IN CHIEF OF ENBRIDGE GAS DISTRIBUTION INC.

Introduction

1. Enbridge Gas Distribution Inc. ("Enbridge") applied to the Ontario Energy Board on July 20, 2007 for an order to expropriate certain lands owned by the City of Toronto Economic Development Corporation ("TEDCO"). Enbridge requires these rights in order to construct a natural gas pipeline to supply the Portlands Energy Centre ("PEC"), a 550MW natural gas co-generation facility that is being constructed on Unwin Avenue in the City of Toronto.
2. To date, Enbridge has been able to secure all of the necessary land rights necessary to complete the pipeline with the lone exception being TEDCO. Despite extensive discussion, Enbridge has been unable to conclude an agreement with TEDCO. Granting the order requested by Enbridge is in the public interest and necessary to complete the pipeline which is needed by PEC.

The Lands

3. On June 1, 2007 in the Decision with Reasons in EB-2006-0305 the OEB granted Enbridge leave to construct 2 sections, the North and the South Section. The request for expropriation concerns three pieces of land owned by TEDCO and required to complete the South Section.
4. Enbridge requires permanent and temporary working easements as described below:

Reference Plan Number	Permanent Easement	Temporary Working Easement	Area (sq. metres)	Evidence Reference
66R-23139	Part 13	None Required	84.6	Ex. A, Tab 2, Sch. 3
66R-23130	Part 2	None Required	84.5	Ex. A, Tab 2, Sch. 4
66R-23128	Parts 1,2,3,4,5,6	Part 7	782.6 (Perm) 1,192 (Temp)	Ex. A, Tab 2, Sch. 5

5. It should be noted that Enbridge 66R-23128, Parts 2 and 5 (445.1 sq. metres) are subject to an existing easement owned by Enbridge for an existing distribution pipeline.
6. The lands on either side of the Shipping Channel (66-R-23139 and 66R-23130) are subject to 999 year leases in favour of Hydro One Networks Inc. and Ontario Power Generation Inc., respectively.

Expropriation - The OEB Act

7. Section 99 of the Ontario Energy Board Act (the "OEB Act") provides the Board with the power to grant a person the authority to expropriate land.

99. (1) The following persons may apply to the Board for authority to expropriate land for a work:

1. Any person who has leave under this Part or a predecessor of this Part.....

(2) The Board shall set a date for the hearing of the application, but the date shall not be earlier than 14 days after the date of the application.

(3) The applicant shall file with the Board a plan and description of the land required, together with the names of all persons having an apparent interest in the land.....

(5) If after the hearing the Board is of the opinion that the expropriation of the land is in the public interest, it may make an order authorizing the applicant to expropriate the land.

8. Enbridge was granted leave to construct by the Board in its Decision with Reasons in EB-2006-0305 and is eligible to request an order of expropriation. In addition, the procedural requirements have also been satisfied.

9. The statute is clear. This proceeding is not about compensation. The Board expressly stated in the Notice of Direction that compensation was not before the Board.

The “Public Interest” Test

10. The primary issue in expropriation proceedings is whether such an expropriation is in the public interest. As noted in previous Board decisions, “public interest” can be difficult to define. However, in the present case Enbridge feels the granting of expropriation is in the public interest and that the reasons are compelling.

11. Enbridge agrees with the Board's recent decision in EB-2006-0352 in which the Board panel quoted the Divisional Court's decision in *Union Gas Ltd. v. Dawn* in which it stated,

"in the public interest....would seem to leave no room for doubt that it is the broad public interest that must be served."

12. In EB-2006-0352 the Board went on to list certain considerations in determining the public interest in such proceedings:

- (i) The broad public interest;
- (ii) The interests of each of the parties; and
- (iii) The obligation to serve imposed upon the Applicant.

13. Enbridge is not submitting that the list is exhaustive but does provide a useful process to analyze the issue.

The Broad Public Interest

14. The broad public interest is served by the installation of the pipeline. In the Leave to Construct proceeding the Board specifically commented on the need for the pipeline and the broad public interest:

"The evidence clearly supports a finding that there is a need for both north and south section pipeline projects.....The need for new generation to meet the growing electricity requirements of Toronto is **serious and well recognized**."¹
[emphasis added]

15. Simply put, the supply of natural gas to PEC is in the public interest. Further, Enbridge has no ability to construct a pipeline to PEC without crossing lands owned by TEDCO.

¹ EB-2006-0305, page 5 or Ex. A, Tab 3, Sched. 2, p. 5.

16. The broad public interest requires the pipeline to be constructed. Crossing the lands of TEDCO is a necessary requirement to complete such construction.

The Private Interests

17. Enbridge has an interest in serving PEC and a statutory obligation to fulfill. This is dealt with later in the submissions. The existing pipeline network is inadequate to meet the needs of PEC (Ex. A, Tab 3, Sched. 2, Pg. 5). The pipeline is needed to serve PEC.
18. PEC requires the pipeline be constructed. As discussed, it entered a contract with Enbridge and has made a significant financial commitment to the pipeline and its own generating facility, which is currently being constructed. This was covered in detail during the leave to construct proceeding. PEC requires natural gas to be available by February 1, 2008 as provided for in its contract with Enbridge.
19. TEDCO was a intervenor in the leave to construct proceeding and exercised its right of cross-examination of the Applicant's witness panels. TEDCO did not challenge the need for the project, the public interest that is being served, nor did it challenge the route selected.
20. In fact the evidence indicated that Enbridge selected the route in consultation with TEDCO and that Enbridge had selected the best route. The Board noted: "*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."*²

21. Enbridge has requested permanent easements that are approximately 5 metres wide across each of three pieces of land, a total area of approximately 0.24 acres of land. As noted above, the majority of these lands are already encumbered.
22. In addition, TEDCO led no evidence as to any other potential use for any of the lands forming the subject matter of this proceeding and therefore no alternative use can be presumed.
23. The extent of the rights requested by Enbridge represent a minimal intrusion into the private rights of TEDCO.
24. TEDCO can be appropriately compensated through the expropriation process provided in the Expropriations Act.

Obligation to Serve

25. Enbridge is obligated to serve by the OEB Act, section 42(2). During the Leave to Construct proceeding considerable evidence was filed in respect of the financial contribution in aid of construction that is provided by the customer to ensure the pipeline is economic to the utility and is fair to the other ratepayers. Enbridge must cross the TEDCO lands to serve PEC, it has no alternative route.

² Ex. A, Tab 3, Sched. 2, Pg. 6.

26. Therefore, to comply with its statutory obligation, Enbridge requires the requested expropriation order.

Relief Requested

27. Enbridge requests an order to permit it to expropriate from TEDCO the lands necessary for the temporary and permanent easements required by the Applicant and described in:

Plan 66R-23128 which was Received and Deposited on June 14, 2007 by the Land Registrar for the Toronto Registry Office #66.

Plan 66R-23130 which was received and deposited on June 15, 2007 by the Land Registrar for the Toronto Registry Office #66.

Plan 66R-23139 which was Received and Deposited on June 18, 2007 by the Land Registrar, Toronto Registry Office #66

28. Enbridge respectfully requests the Board render a decision in this proceeding by October 15th, 2007 in order that Enbridge may complete the pipeline construction in a timely manner.
29. Enbridge submits that the order, as requested, is in the public interest should be granted by this Board.

ALL OF WHICH IS RESPECTFULLY SUBMITTED.

DATED October 2, 2007 at Toronto, Ontario.

ENBRIDGE GAS DISTRIBUTION INC.
By its counsel

AIRD & BERLIS LLP

Aird & Berlis LLP by [Signature]