

# **FEEHELY, GASTALDI**

Barristers and Solicitors

JAMES J. FEEHELY  
PAUL F. GASTALDI  
JERRY W. SWITZER  
COLLEEN E. BUTLER

5 Mill Street East, P.O. Box 370  
Tottenham, Ontario L0G 1W0  
Telephone: (905) 936-4262  
Fax: (905) 936-5102  
E-Mail: [jfeehely@feehelygastaldi.com](mailto:jfeehely@feehelygastaldi.com)

November 3, 2010

**VIA OVERNIGHT COURIER &**

**E-MAIL: [Boardsec@oeb.gov.on.ca](mailto:Boardsec@oeb.gov.on.ca)**

Ms. Kirsten Walli  
Board Secretary  
Ontario Energy Board  
2300 Yonge Street  
27<sup>th</sup> Floor, Box 2319  
Toronto, Ontario  
M4P 1E4

Dear Ms. Walli:

***Re: Township of King;  
Enbridge Gas Distribution Application;  
Board File No. EB-2009-0187 (York Energy Centre Project);***

***And Re: Ontario Energy Board Decision and Order  
Dated April 5, 2010***

***And Re: Enbridge Gas Distribution Application  
To Vary a Condition of Approval;  
Board File No. EB-2010-0310  
Our File No. 6956JF06***

I am the solicitor for the Township of King regarding the above-noted matters. Pursuant to its Decision and Order of April 5, 2010, the Ontario Energy Board approved the application of Enbridge Gas to construct a 406 mm. (16") diameter Extra High Pressure steel pipeline to deliver natural gas to the York Energy Centre Project. The Township is of the opinion that the impact of the routing on existing residences was not sufficiently and appropriately addressed prior to the Board's Decision and Order. In addition, the Township has just become aware of the application by Enbridge Gas to vary Condition 1.2 relating to the December 31, 2010 start date.

This letter is being forwarded on behalf of the Township as a formal application to be granted intervenor status in relation to both of the above-noted Board matters under File No. EB-2009-0187 and File No. EB-2010-0310. As an intervenor party, the Township will be making the following requests of the Board:

1. To reconsider the route for the proposed pipeline, if the pipeline is to proceed; and
2. To refuse the request to extend the start date set out in Condition 1.2 in the Board Decision and Order of April 5, 2010.

The reasons for the requests in relation to the above two matters are hereinafter set out.

**Background:**

The Township has an existing Franchise Agreement with Enbridge Gas (formerly Consumers Gas) which Agreement is dated May 20, 1997 and was passed pursuant to By-Law 97-73. The Franchise Agreement gives the right to Enbridge "to supply gas in the Municipality to the Corporation and to the inhabitants of the Municipality". While the Agreement does not specify the type or restrict the size of pipeline, it does reserve to the Municipality the right to organize the layout of the gas line in conjunction with the other infrastructure of the road allowance.

It must be noted throughout the development of the total YEC Project process, the Township has been an unwilling host. The Project is located in the Greenbelt on lands that are in close proximity to the sensitive areas of both the Holland Marsh and the settlement of Ansnorveldt. It was also the Township's position that such a Project should be subject to appropriate land use controls, including an appropriate Zoning By-Law and Site Plan. However, the Province of Ontario exempted this Project from all planning controls by virtue of Regulation 305/10. Notwithstanding the exemption granted, the Township continues to be an unwilling host for this Project, given the significant potential environmental impacts by placing such a large Project in an environmentally-sensitive area.

It is recognized that the Township does not have the jurisdiction to prevent the installation of a pipeline in its road allowances at this time. However, it is now clear that the route of the pipeline will have the potential for significant negative impacts. Further, in the event the applicant is unable to comply with the original Decision and Order of the Board to commence construction, it is the position of the Township that no extension should be granted and the application be allowed to lapse.

**Basis of the Requests:**

1. The approved route for the pipeline will not only take the pipeline passed the Kettleby Public School, but it will also proceed through the community of Pottageville, with adjacent homes on both sides of the approved route over an extended area. The comments received from the public by the applicant (Enbridge) at the two public meetings clearly indicated that the public objected to the routing of the gas pipeline through Kettleby and Pottageville. The Township

believes that the selection criteria did not place sufficient weight on the social-economic and public safety concerns.

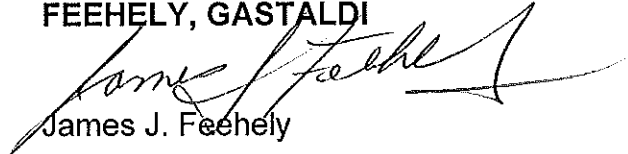
2. The approved pipeline poses significant potential danger in the form of a public safety issue as it is a single purpose dedicated high pressure line. Further, there are alternative routes available that would not require the pipeline to proceed through Pottageville and other built-up areas along the current route. These routes would involve, in part, Municipal Road Allowances and as there is an existing Franchise Agreement with the Township, it would be both possible and feasible to re-route the pipeline so as to avoid the Pottageville Community and take a less populated route. Given the potential risks and impacts, the Township respectfully requests the Board to grant a reconsideration of the route to take into account the significant public interest.
3. In relation to the request to amend Condition 1.2 of the Board Order of April 5, 2010, the Township disputes the need for such an extension. At the time of the issuance of the Board Decision, Enbridge Gas was well aware of the opposition of the Township to the Project and the Hearings that were scheduled with the Ontario Municipal Board both in relation to conformity of the YEC Project with the Greenbelt Plan and the status of the Township's Interim Control By-Law. The Hearing on Greenbelt conformity was completed in May, 2010 and the Interim Control By-Law Hearing was scheduled for August, 2010. The passage of Ontario Regulation 305/10 considerably shortened any delay in relation to the YEC Project and in fact, expedited its approval.

The Ontario Government announced the proposed Regulation on May 28, 2010 and subsequently passed the Regulation on July 29, 2010. As a result, Enbridge Gas has had more than sufficient time to implement its construction project and in the event it is unable to do so, its application should expire. Enbridge Gas was certainly aware of the concern over the negative impact of this pipeline in connection with the YEC Project and should be required to strictly comply with the Board Decision and Order dated April 5, 2010. Extending the Order would be contrary to the public interest.

Pursuant to the Board's letter of October 28, 2010 to Enbridge Gas, and in expectation of being granted intervenor status, the Township hereby requests a copy of the Application evidence and any amendments thereto as set out in paragraph 4 of the said letter.

The foregoing is hereby respectfully submitted on behalf of the Township of King.

Yours truly,  
**FEEHELY, GASTALDI**



James J. Feehely

JJF/jl

- cc: Mr. Scott Somerville  
Chief Administrative Officer  
Township of King  
**Fax No. 1-905-833-2300**
- cc: The Honourable Dalton McGuinty  
Premier of Ontario  
**Fax No. 416-325-3745**
- cc: The Honourable Brad Duguid  
Minister of Energy  
**Fax No. 416-327-6754**
- cc: The Honourable Bob Chiarelli  
Minister of Infrastructure  
**Fax No. 416-327-6754**
- cc: The Honourable John Wilkinson  
Minister of the Environment  
**Fax No. 416-314-7337**
- cc: Mr. Norm Ryckman  
Enbridge Gas Distribution Inc.  
**Fax No. 416-495-6072**
- cc: Mr. Scott Stoll  
Legal Counsel, External  
Aid & Berlis LLP  
**Fax No. 416-863-1515**