



EB-2011-0024

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 an Order pursuant to Section 90(1) of
The Ontario Energy Board Act, 1998, granting leave to
Construct a natural gas pipeline in the Region of York.

AND IN THE MATTER OF Rule 42 of the Rules of
Practice and Procedure of the Ontario Energy Board.

**NOTICE OF MOTION FOR LEAVE TO BRING A MOTION TO REVIEW AND MOTION
TO REVIEW AND VARY THE BOARD'S DECISION IN EB-2009-00187 AND
PROCEDURAL ORDER NO. 1**

The Township of King ("Township") filed with the Ontario Energy Board on January 24, 2011, a Motion for Leave to bring a Motion to Review under Rule 42 of the Board's *Rules of Practice and Procedure* ("Motion"). The Motion by the Township consists of: (1) "Motion for Leave to bring a Motion to Review" which, if granted, would allow the Township to bring a motion for a review of the Board's Decision and Order EB-2009-0187 dated April 5, 2010; and (2) a "Motion for Review" request for a review of the Board's Decision and Order in EB-2009-0187 dated April 5, 2010 and for an oral hearing of the review of the Decision ("Motion for Review"). The Board has assigned both requests file number EB-2011-0024.

Motion for Leave to Bring a Motion to Review

As the Township was not a party to the proceeding EB-2009-0187, it must, under Rule 42.02 of the Board's *Rules of Practice and Procedure*, obtain the leave of the Board by

way of a motion before it may bring a motion requesting the Board to review all or part of a final order or decision, and to vary, suspend or cancel the order or decision.

On February 4, 2011, Enbridge Gas Distribution Inc, filed with the Board a letter requesting that the Board deny granting the Township the leave to bring the motion.

A copy of the Motion by the Township and a copy of Enbridge's February 4, 2011 letter are attached as Appendix A to this Notice.

As a preliminary matter, the Board has determined that it will proceed with a written hearing and that it wishes to receive submissions from the parties on the question of whether the Township should be granted leave to bring a motion to review the Decision in EB-2009-0187. Subject to the determination of the preliminary matter the Board may conduct a review.

The Board will adopt as intervenors in this proceeding, the intervenors and any other parties of record from the EB-2009-0187 proceeding. A list of the parties of record in that proceeding is attached as Appendix B to this Notice.

The Board considers it necessary to make provision for the following procedural matters. The Board may issue further Procedural Orders from time to time.

THE BOARD THEREFORE ORDERS THAT:

1. Enbridge Gas Distribution Inc., intervenors and Board Staff may file submissions on the question of whether or not the Township should be granted leave to bring a motion to review. The submissions shall be filed with the Board and copied to all parties of record in the EB-2009-0187 proceeding, and any new parties that the Board may adopt, on or before **February 17, 2011**.
2. If the Township wishes it may file a reply submission which shall be filed with the Board and copied to all parties of record in the EB-2009-0187 proceeding, on or before **February 23, 2011**.

All written submissions sent to the Board will be placed on the public record, which means that the written submissions will be available for viewing at the Board's offices and will be placed on the Board's website.

If the written submission is from a private citizen (i.e., not a lawyer representing a client, not a consultant representing a client or organization, not an individual in an organization that represents the interests of consumers or other groups, and not an individual from a regulated entity), before placing the written submission on the public record, the Board will remove any personal (i.e., not business) contact information from the written submission (i.e., the address, fax number, phone number, and e-mail address of the individual). However, the name of the individual and the content of the written submission will become part of the public record.

As stated elsewhere in this notice, you must provide a complete copy of your written submission (including your name, contact information, and everything written in the submission) to the applicant.

All filings to the Board must quote file number EB-2011-0024, and consist of two paper copies and one electronic copy in searchable / unrestricted PDF format filed through the Board's web portal at www.errr.oeb.gov.on.ca. Filings must clearly state the sender's name, postal address and telephone number, fax number and e-mail address. Please use the document naming conventions and document submission standards outlined in the RESS Document Guideline found at www.oeb.gov.on.ca. If the web portal is not available you may e-mail your document to Boardsec@oeb.gov.on.ca. Those who do not have internet access are required to submit all filings on a CD in PDF format, along with two paper copies. Those who do not have computer access are required to file 7 paper copies. All communications should be directed to the attention of the Board Secretary, and be received no later than **4:45 p.m.** on the required date.

ISSUED at Toronto, February 9, 2011

ONTARIO ENERGY BOARD

Original signed by

Kirsten Walli
Board Secretary

APPENDIX “A”

TO

Notice of Motion and Procedural Order No 1

Motion Document

Board File No.: EB-2011-0024

DATED: February 9, 2011



TOWNSHIP OF KING

Municipal Offices
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King City, Ontario
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RECEIVED

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JAN 24 2011

EB-2011-0024

ONTARIO ENERGY BD

January 20, 2011

Kirsten Walli, Board Secretary
Ontario Energy Board
2300 Yonge Street
27th Floor
TORONTO ON M4P 1E4

Dear Ms Walli,

**RE: Motion Requesting Leave to have the Right to get a Hearing
Enbridge Gas Distribution Inc.
Extra High Pressure Pipeline to York Energy Centre**

With regard to the above-noted matter, and further to your correspondence of January 6th, 2011 which advised that "if the Township is seeking that the Board re-consider its Decision of April 5, 2010, the Township will have to make a formal request to that effect", Council at its meeting of January 17, 2011 considered Administration Report ADM-2011-01 regarding this matter and adopted the recommendation therein, as follows:

"That the Council of the Township of King authorize the filing of a Motion to the Ontario Energy Board (OEB) requesting leave of the Board to have the right to get a Hearing on the merits for re-consideration of the route chosen and authorized by the OEB for the Enbridge Gas Distribution Extra High Pressure Pipeline to the York Energy Centre in its Decision/Order of April 05, 2010; it being pointed out that, of necessity, the Motion must be accompanied by an Affidavit attesting to the facts that support a re-consideration and ultimately a variance in the Order."

A copy of Report ADM-2011-01 and the related extract of the minutes of the January 17th, 2011 meeting are enclosed, for your information. Accordingly, please find enclosed the required Motion and attachments completed by Scott Somerville, Chief Administrative Officer.

Yours truly

Chris Somerville
Township Clerk

Ms Walli
January 20, 2011
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c.c. To all on Applicant List & List of Intervenors as attached to the Enclosed Motion
The Honourable Brad Duguid, Minister of Energy
Julia Munro, MPP York Simcoe
Helena Jaczek, MPP Oak Ridges-Markham
Members of Council
Scott Somerville, CAO

Encls.

- Report ADM-2011-01
- Extract of Minutes January 17th, 2011
- Motion requesting Leave to have the right to get a Hearing on merits
- Applicant & List of Intervenors
- Affidavit of Scott Somerville

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 an Order pursuant to Section 90(1) of
The *Ontario Energy Board Act, 1998*, granting leave to
Construct a natural gas pipeline in the Region of York.

AND IN THE MATTER OF Rule 42 of the Rules of
Practice and Procedure of the Ontario Energy Board.

The Township of King ("King Township") will make a motion to the Ontario Energy Board ("OEB") at its offices at 2300 Yonge Street, Toronto on a date and time to be fixed by the Board.

The Motion is for:

1. Leave of the OEB to permit King Township to bring a motion for a review and variance of OEB's decision and order of April 5, 2010 in EB-2009-0187 (the "Decision") approving Enbridge Gas' application to construct a 406 mm (16") diameter Extra High Pressure steel pipeline to deliver natural gas to the York Energy Centre Project.
2. An Order:granting leave for King Township to bring a motion for a review and variance of the Decision and, ultimately, for an oral hearing of the motion on the merits requesting that the OEB review and vary the proposed route for the proposed pipeline as approved in its Decision;
3. Such further and other relief as Counsel may advise and the OEB may permit.

The Grounds for the Motion are:

1. King Township was not a party to the EB-2009-0187 proceeding and, pursuant to the OEB's Rules of Practice and Procedure, requires leave of the OEB to bring a motion to request a review of all or part of the Decision;
2. King Township and its residents are directly impacted by the Decision and, in particular, the proposed route of the pipeline through the Hamlet of Pottageville;
3. King 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 Enbridge the right to supply gas to the inhabitants of King Township but reserves to King Township the right to organize the layout of the gas line in conjunction with the other infrastructures of the road allowance.
4. The Decision, and in particular the approval of the proposed route of the pipeline, will have the potential for significant negative impacts on the residents of King Township, including the following:
 - a. the proposed route passes within 90 metres of the Kettleby Public School and will proceed through the community of Pottageville, with adjacent homes on both sides of the approved routes, of which for some the setback from the pipeline is less than 30 metres; and
 - b. the approved pipeline poses a significant potential danger in the form of a public safety issue as it is a single purpose dedicated high pressure line that will be in close proximity to residences and an elementary school;

5. There exist substantial questions as to the correctness of the Decision, including:
 - a. the OEB erred in fact and in law in failing to place sufficient weight on the social-economic and public safety concerns in approving the proposed pipeline route and, in particular, failing to consider appropriate setbacks of the pipeline from residences and the elementary school;
 - b. the OEB further erred in failing to provide due diligence in the consideration of alternate routes available to Enbridge that would fall within either Region of York or King Township's Municipal Road Allowance(s) yet avoid the Pottageville Community and the Kettleby Public School thus taking less populated route;
 - c. the OEB decision on the Enbridge pipeline routing decision was in its entirety premature in that the Decision was made and delivered prior to the completion of the Province of Ontario's mandated Planning Act Ontario Municipal Board Hearing Process and Decision the subject of which was whether or not the YEC Gas Fired Generation Plant would legally be allowed to be constructed in the Provincial Greenbelt. An OMB Decision that disallowed the YEC Plant would have made the Enbridge pipeline routing issue redundant and unnecessary (It must be assumed that at the date the OEB rendered its decision on April 5, 2010 on the routing matter that the Board was unaware that a July, 2010 Order in Council of the Provincial Cabinet would be forthcoming the result of which would exempt YEC from all municipal control that could be exercised by the Ontario Planning Act.....in addition the OMB was negated from rendering its Decision on the allowability of the Generating Station in the Provincial Greenbelt).

6. The OEB's inherent powers, under Rule 43, to review all or part of any order or decision at any time and to vary, suspend or cancel that order;
7. The OEB's Rules of Practice and Procedure, in particular:
 - a. Rule 1.03 which provides that the OEB may dispense with, amend, vary or supplement, with or without a hearing, all or part of any rule at any time, if it is established that the circumstances of the proceedings so require, or it is in the public interest to do so;
 - b. Rule 2.01 which provides that the Rules shall be liberally construed in the public interest to secure the most just, expeditious, and efficient determination on the merits of every proceeding before the OEB;
 - c. Rule 2.02 which provides that where procedures are not provided for in the Rules, the OEB may do whatever is necessary and permitted by law to enable it to effectively and completely adjudicate on the matter before it; and
 - d. Rules 5, 7, 8 and 42 to 45 of the Rules; and
8. Such further and other grounds as counsel may advise and the OEB may permit.

Documentary Support

The documentary support upon which King Township intends to rely will consist of the Decision and the Affidavit of Scott Somerville.

TO: ONTARIO ENERGY BOARD
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 Toronto, Ontario
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Boardsec@oeb.gov.on.ca (E-MAIL)

AND TO: MR. NORM RYCKMAN
DIRECTOR, REGULATORY AFFAIRS
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Applicant

AND TO: AIRD & BERLIS LLP
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Applicant Counsel

AND TO: ALL INTERVENORS IN OEB'S
APPLICANT & LIST OF INTERVENORS
IN ATTACHED LIST (EB-2010-0310)

Enbridge Gas Distribution Inc.
EB-2010-0310

APPLICANT & LIST OF INTERVENORS

December 2, 2010

APPLICANT

Rep. and Address for Service

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Norm Ryckman

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Enbridge Gas Distribution Inc.
EB-2010-0310

APPLICANT & LIST OF INTERVENORS

- 2 -

December 2, 2010

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Group**

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Enbridge Gas Distribution Inc.
EB-2010-0310

APPLICANT & LIST OF INTERVENORS

- 3 -

December 2, 2010

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York Region District School
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TOWNSHIP OF KING

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DATE: JANUARY 17, 2011

TO: COUNCIL

SUBJECT: Administration Report ADM 2011-01
Re: Enbridge Gas Distribution Inc.
Extra High Pressure Pipeline to York Energy Centre

1. RECOMMENDATION

That the Council of the Township of King authorize the filing of a Motion to the Ontario Energy Board (OEB) requesting leave of the Board to have the right to get a Hearing on the merits for re-consideration of the route chosen and authorized by the OEB for the Enbridge Gas Distribution Extra High Pressure Pipeline to the York Energy Centre in its Decision/Order of April 05, 2010; it being pointed out that, of necessity, the Motion must be accompanied by an Affidavit attesting to the facts that support a re-consideration and ultimately a variance in the Order.

2. BACKGROUND

On December 20, 2010 Council of the Township of King adopted the following resolution which was forwarded to the Ontario Energy Board under date of December 22, 2010.

1. That notwithstanding that Enbridge Gas Distribution has followed the Ontario Energy Board's dictated process for selecting routes for new pipelines, Council of the Township of King requests that the Ontario Energy Board direct Enbridge Gas Distribution to reconsider the route for the gas pipeline to service York Energy Centre such that risk to the population is minimized; and
2. That the Region of York be advised of the concerns of King Township Council and endorse the request to the Ontario Energy Board to re-consider the proposed route for the gas pipeline;
3. That this Resolution be circulated to the Hon. Brad Duguid, Minister of Energy, Julia Munro, MPP York Simcoe, and Helena Jaczek, MPP Oak Ridges-Markham.

On January 6, 2011 a response was received from the OEB advising, among other things that **"If the Township is seeking to the Board re-consider its Decision of April 5, 2010, it will have to make a formal request to that effect"**.

In consultation with legal counsel, and following OEB rules of procedure it has been determined that a two (2) step process is required:

- a) A Motion/Affidavit requesting leave to have the right to get a Hearing on merits.
- b) The formal re-consideration Hearing (Oral) with a further Affidavit providing leave is granted by the Board.

The attached documentation to this Report is supporting the first step in this process of requesting reconsideration of the pipeline routing and it is this evidence that forms the substance of the Motion for leave and it is this evidentiary material that Council is being requested to authorize for submission to the Ontario Energy Board at this time.

The Region of York Transportation Services Committee received the above noted Township Resolution and the OEB Response at its January 12, 2011 Meeting.....no action was taken.

Respectfully submitted by:



Scott Somerville
Chief Administrative Officer

Cc. Mrs. C. Somerville
Township Clerk

TOWNSHIP OF KING

COMMITTEE OF THE WHOLE REPORT

The following item from the Committee of the Whole Report of January 17th, 2011 was adopted by Council at its meeting of January 17th, 2011.

C.O.W. #2011-13

Administration Department Report Number ADM 2011-01

Re: Enbridge Gas Distribution Inc.

Extra High Pressure Pipeline to York Energy Center

Committee considered Administration Department Report Number ADM2011-01 regarding the filing of a Motion to the Ontario Energy Board (OEB) with regards to the extra high pressure pipeline to the York Energy Center.

Committee recommends that Administration Department Report Number ADM2011-01 be received, and the recommendations therein be approved, as follows:

That the Council of the Township of King authorize the filing of a Motion to the Ontario Energy Board (OEB) requesting leave of the Board to have the right to get a Hearing on the merits for re-consideration of the route chosen and authorized by the OEB for the Enbridge Gas Distribution Extra High Pressure Pipeline to the York Energy Centre in its Decision/Order of April 05, 2010; it being pointed out that, of necessity, the Motion must be accompanied by an Affidavit attesting to the facts that support a re-consideration and ultimately a variance in the Order.

CHRIS SOMERVILLE
CLERK

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 an Order pursuant to Section 90(1) of
The *Ontario Energy Board Act, 1998*, granting leave to
Construct a natural gas pipeline in the Region of York.

AND IN THE MATTER OF Rule 42 of the Rules of
Practice and Procedure of the Ontario Energy Board.

AFFIDAVIT OF SCOTT SOMERVILLE

I, SCOTT SOMERVILLE, of the Township of King, in the Regional
Municipality of York, HEREBY MAKE OATH AND SAY AS FOLLOWS:

1. I am the Chief Administrative Officer of the Township of King and, as such, have personal knowledge of the matters hereinafter deposed to. Where I do not have personal knowledge of a matter, I have stated the source of my information and verily believe it to be true.
2. I have reviewed the Ontario Energy Board's Decision and Order dated April 5, 2010 that approved the construction of approximately 16.7 kilometres of 406 millimetre (16 inch) diameter Extra High Pressure steel pipeline to deliver natural gas to the York Energy Centre LP ("YEC Project"), a natural gas generating facility (the "Decision").
3. At the time of the OEB's Decision, King Township was vigorously opposing the location of the YEC Project and was engaged in a hearing before the Ontario Municipal Board ("OMB") regarding the conformity of the Project with the Greenbelt Plan and the status of the Township's

Interim Control-By-Law. The Project was to be 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. After the conclusion of the OMB Hearing on Greenbelt conformity, which was completed in May 2010, but before the commencement of the Interim Control By-Law Hearing scheduled for August 2010, the Ontario Government announced and passed Regulation 305/10 that exempted the Project from the *Planning Act*. The effect of the Regulation was to approve the location of the YEC Project. A copy of the Regulation is attached as **Exhibit A**.

4. At the time of the OEB Decision, the YEC Project's location was opposed by King Township and subject to review by the OMB. As a result, the YEC Project was, at that time, only a proposed facility. In light of the Ontario Regulation, the YEC Project will proceed at its current location.
5. While King Township remains an unwilling host for the YEC Project, it is imperative that it have input into the location of the pipeline that will run to the YEC Project to ensure that the social-economic and public safety concerns of King Township's inhabitants are addressed.
6. King Township is concerned that the impact of the routing on existing residences and school was not sufficiently and appropriately addressed prior to the Decision and requests that the Township be permitted to bring a motion to review and vary the Decision with respect to the route.
7. I have reviewed Appendix "B" to the Decision which depicts the proposed route of the pipeline. The route runs from the Schomberg Gate Station for approximately 5.5 kilometres along Lloydtown-Aurora Road to Jane Street. It is this section of the proposed route that causes significant concern to the Township as the pipeline will be in close proximity to

numerous residences in the Pottageville Community and to the Kettleby Public School.

8. I have also reviewed Appendix "A" to the Decision which sets out the Conditions of Approval. Section 1.4 states as follows:

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....

It is my understanding from reading section 1.4 as well as the Decision in its entirety, that only the OEB can approve a change in the proposed route of the pipeline.

Requests to the OEB to Review its Decision

9. The Solicitor for King Township has made several requests to the OEB to review its Decision and, in particular, the proposed route of the pipeline that passes through Pottageville Community and by the elementary school. The first such request was made on November 3, 2010, a copy of which is attached as **Exhibit B**. This request arose from an Application by Enbridge to vary a condition of approval, being a request for an extension of time to commence construction (File No. EB-2010-0310). The Township requested intervenor status for both the Application to vary and for the Decision regarding the route of the pipeline.
10. The OEB granted the Township intervenor status for Enbridge's Application to vary a condition but denied the request to be granted intervenor status on the issue of routing of the pipeline. A copy of the OEB's correspondence dated November 5, 2010 is attached as **Exhibit C**.

11. A subsequent request was made by the Township Solicitor on November 12, 2010 to reconsider its decision denying submissions regarding the pipeline route. It was the Township's position that it would be procedurally unfair to permit Enbridge to amend a condition while denying the Municipality the opportunity to address a matter of public impact. A copy of the request is attached as **Exhibit D**.
12. The OEB again denied the Township's request to review the issue of routing the pipeline and limited the Township's participation in the Application to the issue of Enbridge's variance request for an extension of time to commence construction. A copy of the OEB's position is attached as **Exhibit E**.
13. At the end of November, Enbridge withdrew its Application seeking a variance of the Decision as it no longer required an extension of time to commence construction of the pipeline. A copy of the correspondence from Enbridge's counsel requesting the withdrawal is attached as **Exhibit F**.
14. Following Enbridge's withdrawal of the Application to vary a condition of the Decision, Council for King Township passed a resolution that it request the OEB to direct that Enbridge reconsider the route for the pipeline to service the YEC Project such that risk to the population is minimized. This resolution was sent to the OEB on December 22, 2010 with a request that the pipeline route be reconsidered. A copy of the correspondence with resolution is attached as **Exhibit G**.
15. The OEB responded to King Township's request on January 6, 2011 informing the Township that, as it was not a party to the EB-2009-0187 proceeding, it would need leave of the OEB to make any request to review

the Decision. A copy of the OEB's January 6, 2011 letter is attached as **Exhibit H**.

Reasons to Review or Vary the Decision

1. Public Safety

16. The proposed route of the pipeline has the potential for significant negative impacts on the residents who live along approximately 5.5 kilometre stretch of Lloydtwon Aurora Rd and the students who attend the Kettleby Public School. The pipeline poses a significant potential danger as it is a single purpose dedicated high pressure line that will be in close proximity to residences and an elementary school. Although the proposed pipeline is designed in accordance with requirements of Ontario Regulation 210.01, Oil and Gas Pipeline Systems, under the *Technical Standards and Safety Act, 2008* and the CSA Z662-07 Oil and Gas Pipeline Systems standard, there is no guarantee against explosions. In order to properly address the risks associated with pipelines, it is prudent to ensure significant setbacks from residences and school property.
17. A Private Member's Bill was introduced to the Ontario Legislative Assembly in 2010 as Bill 8 referred to as the Separation Distances for Natural Gas Power Plants Act, 2010. This Bill sought to prohibit the construction of a natural gas power plant within 1,500 metres of land zoned residential or for a school, day nursery or health care facility. This Bill addressed the inherent risk in natural gas power plants and the need to have a buffer zone between such facilities and residences. King Township believes that the same principle applies to a single purpose dedicated high pressure line and precautions need to be put in place to minimize the risk to the public. Such precautions include a significant

buffer zone between the pipeline and residences and schools. A copy of the Bill is attached as **Exhibit I**.

18. The King Township is also aware that the province of Alberta mandates a setback of 1,500 metres from the property line of a rural school when routing a 16 inch sour gas pipeline. The current routing of the pipeline is only approximately 90 metres from the Kettleby Public School. To be clear, this is 90 metres from the school and not the property line of the school. Children playing in the schoolyard may be in closer proximity to the pipeline.
19. The proposed routing of the pipeline also passes by approximately 100 homes in the rural community of Pottageville. For some of these homes, the pipeline will be less than 30 metres from their home.
20. The pipeline route does not account for the close proximity of residences and a school. The Township has great concern that the public safety of the inhabitants of the Township were not adequately addressed in the submissions made to the OEB and in its Decision.

2. The Franchise Agreement

21. King 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. This Agreement gives Enbridge the right to supply gas in the Township and to the inhabitants of the Township but reserves to the Township the right to organize the layout of the gas line in conjunction with other infrastructure of the road allowance. A copy of the Franchise Agreement is attached as **Exhibit J**.

22. The Township was not provided a formal opportunity or requested to evaluate or express an opinion on the merits, or otherwise, of the various options considered by Enbridge Gas for the gas pipeline route. The Municipality, like the public, was simply advised as to Enbridge's preferred route that became the substance of its Application to the OEB for a decision. The degree to which "public consultation" took place focused more on the "public" residing near the proposed Gas Fired Generation Station (i.e. the Holland Marsh) rather than the "public" residing along the whole extended length of the pipeline from the source of supply (Pottageville) and the Plant, a distance of some 16.7 km. of which 5.5 km. traverses the rural hamlet of Pottageville along the Lloydtown-Aurora Road in front of some 100 homes. In accordance with the Franchise Agreement, the Municipality should have been consulted and added as a party to the Application, File No. EB-2009-0187. The Township is most affected by the routing of the pipeline and should be afforded every opportunity to provide input and organize the route.

3. Alternate Routes Available

23. The current route of the pipeline will have the potential for significant negative impacts which can be greatly minimized by relocating the route to areas that are less populated.
24. The Township requests the opportunity to present alternate routes for the pipeline that will not require proceeding through the Pottageville Community and other built-up areas along the current route.
25. There are Municipal Road Allowances available in the alternate routes ensuring compliance with the Franchise Agreement and the OEB's Decision that the pipeline be located within municipal road allowances.

4. Enbridge's Application was Premature

26. Enbridge brought its application (File No. EB-2009-0187) to construct the Extra High Pressure steel pipeline to deliver natural gas to the YEC Project before it had been determined that the YEC Project could proceed at the Dufferin Street location. In fact, the OEB hearing was completed and its Decision issued before the OMB Hearing on whether the YEC Project conformed to the Greenbelt Plan had been completed.
27. At the time of the Decision, it was quite possible that the OMB would make a finding that the YEC Project did not conform to the Greenbelt Plan thus disallowing the Project to be constructed at the Dufferin location. In such event, the Enbridge pipeline routing issue would be unnecessary.
28. King Township is concerned that the OEB was premature in proceeding with a hearing on a proposed pipeline when the location of the facility to which the pipeline was being routed remained an uncertainty. King Township was not in a position, and could not have been, to make submissions on the routing of the proposed pipeline when it was taking the position before the OMB that the YEC Project was not in conformity with the Greenbelt Plan.
29. As a result of Regulation 305/10, the YEC Project was exempt from the *Planning Act* resulting in the OMB losing jurisdiction to determine the issue of conformity to the Greenbelt Plan. However, King Township has an important role to play with respect to the routing of the pipeline. It is directly impacted by the routing and should have an opportunity to make submissions on the matter.

30. King Township does not seek to prevent the installation of the pipeline, but believes that it can offer valuable input on the route that will minimize the potential negative impact and risk to the public.
31. Enbridge has commenced construction of the pipeline starting at the YEC Project. King Township is not aware of any construction of the pipeline along Lloydtown-Aurora Road, which is the area of concern of King Township, and believes there remains sufficient time to reroute the pipeline to a less populated area.
32. I made this Affidavit in support of King Township's motion for leave to bring a motion to review or vary the Decision.

SWORN BEFORE ME at the
Township of King, in the Region
of York, this 19th day of January
2011.

Chris Somerville

A Commissioner, etc.

)
)
)
)

Scott Somerville
SCOTT SOMERVILLE

CHRIS SOMERVILLE
A COMMISSIONER, ETC., IN THE REGIONAL
MUNICIPALITY OF YORK WHILE CLERK
OF THE TOWNSHIP OF KING

THIS IS EXHIBIT "A"
TO THE AFFIDAVIT OF
SCOTT SOMERVILLE
SWORN BEFORE ME THIS
19th DAY OF JANUARY, 2011

Chris Somerville

A Commissioner, Etc.



ServiceOntario

e-Laws

Planning Act
Loi sur l'aménagement du territoire

ONTARIO REGULATION 305/10

ENERGY UNDERTAKINGS: EXEMPT UNDERTAKINGS

Consolidation Period: From July 29, 2010 to the e-Laws currency date.

No amendments.

This Regulation is made in English only.

York Energy Centre project

1. (1) The York Energy Centre project is prescribed for the purposes of clause 62.0.1 (1) (b) of the Act as an undertaking that is not subject to the Act if one of the conditions set out in clause 62.0.1 (1) (a) of the Act is also satisfied. O. Reg. 305/10, s. 1 (1).

(2) For the purposes of this section,

“York Energy Centre project” means the undertaking that is the natural gas-fired simple cycle peaking electrical generation facility proposed to be located on those lands legally described as being in the Township of King, York Region being Part of Lot 9 in Concession 2 Old Survey King more particularly described as:

Firstly: Parts 1, 4, 5, 6, and 7 on Reference Plan 65R-23427, further identified as Property Identifier Number 03414-0241 (LT), filed in the Land Registry Office for the Land Titles Division of York Region (No. 65), and

Secondly: Parts 4, 5, 6, 7, and 8 on Reference Plan 65R-867, save and except Parts 1, 3, 4, 5, 6, and 7 on Reference Plan 65R-23427, further identified as Property Identifier Number 03414-0243 (LT), filed in the Land Registry Office for the Land Titles Division of York Region (No. 65). O. Reg. 305/10, s. 1 (2).

2. Omitted (provides for coming into force of provisions of this Regulation). O. Reg. 305/10, s. 2.

[Back to top](#)

THIS IS EXHIBIT "B"
TO THE AFFIDAVIT OF
SCOTT SOMERVILLE
SWORN BEFORE ME THIS
19th DAY OF JANUARY, 2011

Chris Somerville
A Commissioner, Etc.

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

November 3, 2010

VIA OVERNIGHT COURIER &
E-MAIL: Boardsec@oeb.gov.on.ca

Ms. Kirsten Walli
Board Secretary
Ontario Energy Board
2300 Yonge Street
27th 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 Ansonvelde. 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.

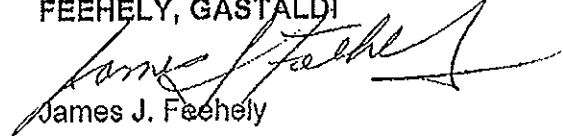
The Ontario Government announced the proposed Regulation on May 28, 2010 and subsequently passed the Regulation on July 29, 2010. As a result, Enbridge Gas has had more than sufficient time to implement its construction project and in the event it is unable to do so, its application should expire. Enbridge 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.

November 3, 2010

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
Ald & Berlis LLP
Fax No. 416-863-1515

THIS IS EXHIBIT "C"
TO THE AFFIDAVIT OF
SCOTT SOMERVILLE
SWORN BEFORE ME THIS
19th DAY OF JANUARY, 2011

Chris Somerville
A Commissioner, Etc.

Ontario Energy
Board
P.O. Box 2319
27th Floor
2300 Yonge Street
Toronto ON M4P 1E4
Telephone: 416-481-1967
Facsimile: 416-440-7656
Toll free: 1-888-632-6273

Commission de l'Énergie
de l'Ontario
C.P. 2319
27e étage
2300, rue Yonge
Toronto ON M4P 1E4
Téléphone: 416-481-1967
Télécopieur: 416-440-7656
Numéro sans frais: 1-888-632-6273



BY E-MAIL ONLY

November 5, 2010

Mr. James Feehely, Solicitor
Feehely, Gastaldi
Township of King
5 Mill Street East
Tottenham ON L0G 1W0

Dear Mr. Feehely:

**Re: Enbridge Gas Distribution Inc.
Application to Vary a Condition of Leave to Construct
Board File No. EB-2010-0310
Request for Intervenor Status**

The Board is in receipt of your letter of November 3, 2010 requesting intervenor status for the Township of King in the above-noted proceeding and in Board proceeding EB-2009-0187.

With respect to proceeding EB-2009-0187, the Board has already issued its Decision and Order on April 5, 2010. The proceeding is closed and as such your request is denied.

The Board has determined that it will grant intervenor status to the Township of King in the current application EB-2010-0310. This application requests a variance of one condition of the Board's April 5, 2010 Decision and Order and that is a one-year extension to the Leave to Construct authorization to December 31, 2011. Accordingly

-2-

the Board is limiting its consideration of the matter to this one variance request. The Board will therefore limit the scope of the participation by the Township of King to this same, single matter.

Yours truly,

Original signed by

John Pickernell
Assistant Board Secretary

Cc/ Mr. Norm Ryckman (Enbridge Gas Distribution Inc.)
Scott Stoll (Aird & Berlis)
All Parties EB-2010-0310

THIS IS EXHIBIT "D"
TO THE AFFIDAVIT OF
SCOTT SOMERVILLE
SWORN BEFORE ME THIS
19th DAY OF JANUARY, 2011

Chris Somerville
A Commissioner, Etc.

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: jfeeheley@feeheleygastaldi.com

November 12, 2010

**VIA OVERNIGHT COURIER &
E-MAIL: Boardsec@oeb.gov.on.ca**

Ms. Kirsten Walli
Board Secretary
Ontario Energy Board
2300 Yonge Street
27th 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***

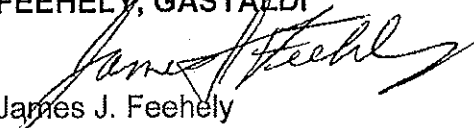
I acknowledge receipt of the e-mail letter forwarded by Mr. John Pickernell, Assistant Board Secretary, sent November 5, 2010. In relation to the confirmation of the Township having intervenor status for the variance of the construction start date, I confirm the Township's position as set out in my letter of November 3, 2010. The Township will continue to rely upon that position.

As to the issue of routing, it would seem to be procedurally unfair to permit the proponent to amend a condition on the one hand, but deny the Municipality the opportunity to address a matter of public impact on the other. Further, the issue of the extension and the routing may well be inter-connected. It is quite possible that the request for an extension arises from difficulties being encountered on the existing route. The request for the extension of construction provides an opportunity to consider

whether there are better routes available given the potential impacts of the existing route on the extensive residential areas. A further re-consideration of the denial is therefore requested.

I look forward to your response.

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
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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

THIS IS EXHIBIT "E"
TO THE AFFIDAVIT OF
SCOTT SOMERVILLE
SWORN BEFORE ME THIS
19th DAY OF JANUARY, 2011


A Commissioner, Etc.

Ontario Energy
Board
P.O. Box 2319
27th Floor
2300 Yonge Street
Toronto ON M4P 1E4
Telephone: 416-481-1967
Facsimile: 416-440-7656
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de l'Ontario
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Téléphone: 416-481-1967
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BY E-MAIL ONLY

November 17, 2010

Mr. James Feehely
Solicitor
Feehely, Gastaldi
Township of King
5 Mill Street East
Tottenham ON L0G 1W0

Dear Mr. Feehely:

**Re: Enbridge Gas Distribution Inc.
Application to Vary a Condition of Leave to Construct
Board File No. EB-2010-0310**

The Board is in receipt of your letter of November 12, 2010 requesting that the Board re-consider the issue of routing the pipeline as part of Enbridge's request for an extension of the construction period.

The issues related to the routing of the pipeline were part of the Board's consideration in the leave to construct proceeding, EB-2009-0187. That Decision and Order was issued on April 5, 2010.

As was outlined in the Board's letter to you of November 5, 2010, the scope of the matter currently before the Board is limited to the consideration of Enbridge's variance request for an extension of time to commence construction and the scope of participation by the Township of King is limited to this same single matter.

Yours truly,

Original signed by

John Pickernell
Assistant Board Secretary

cc: Mr. Norm Ryckman (Enbridge Gas Distribution Inc.)
Mr. Scott Stoll (Aird & Berlis)
All Parties EB-2010-0310

THIS IS EXHIBIT "F"
TO THE AFFIDAVIT OF
SCOTT SOMERVILLE
SWORN BEFORE ME THIS
19th DAY OF JANUARY, 2011


A Commissioner, Etc.

AIRD & BERLIS LLP

Barristers and Solicitors

Scott A. Stoll
Direct: 416.863.4703
E-mail: sstoll@airdberlis.com

November 26, 2010

BY EMAIL & COURIER

Ms. Kirsten Walli
Board Secretary
Ontario Energy Board
2300 Yonge Street
27th Floor, Box 2329
Toronto, ON M4P 1E4

Dear Ms. Walli:

**Re: Enbridge Gas Distribution Inc.
Application to Vary Condition of Order (EB-2009-0187)
Request for Withdrawal
Board No. : EB-2010-0310**

We are counsel to Enbridge Gas Distribution Inc. ("Enbridge") in the above referenced matter.

The Decision and Order in EB-2009-0187, Appendix A – Condition 2.3, required Enbridge to provide 10 days notice of the start of construction. On November 18, 2010 Enbridge delivered to the Board's designated representative and the Chair of the Ontario Pipeline Co-ordinating Committee written notice that Enbridge intended to commence construction on November 29th, 2010. The commencement of construction on such date will have fulfilled Condition 1.2 of Appendix "A" to the Board's Decision and Order dated April 5, 2010.

Given Enbridge's compliance with Condition 1.2, a variance of the Decision and Order in EB-2009-0187 is no longer required. Therefore, it is unnecessary for the Board to continue with this proceeding, EB-2010-0310, and Enbridge respectfully request the withdrawal of the application effective November 29th, 2010. This request for withdrawal is pursuant to Rule 20 of the Board's Rules of Practice and Procedure. Further, Enbridge requests direction from the Board regarding intervenor costs.

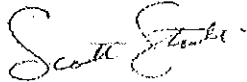
This letter is being sent electronically with hardcopies being delivered to the Board later today. A copy of the letter will be filed on the Board's RESS.

November 26, 2010
Page 2

If there are any questions please contact the undersigned at your earliest opportunity.

Yours truly,

AIRD & BERLIS LLP



Scott A. Stoll
SS/hm

cc: Intervenors
G. Dragic, Ontario Energy Board

7465598.1

THIS IS EXHIBIT "G"
TO THE AFFIDAVIT OF
SCOTT SOMERVILLE
SWORN BEFORE ME THIS
19th DAY OF JANUARY, 2011

Chris Somerville
A Commissioner, Etc.



TOWNSHIP OF KING

Municipal Offices
2075 King Road
King City, Ontario
L7B 1A1

RECEIVED

5 DEC 24 2010

Telephone: (905) 833-5321
Toll Free: 1-800-688-5013
Fax: (905) 833-2300
E-mail: online@king.ca
Website: www.king.ca

December 22, 2010

R 12/24/10
Ms. Kristen Walli, Board Secretary
Ontario Energy Board
2300 Yonge Street
27th Floor, Box 2319
TORONTO ON M4P 1E4

Dear Ms Walli,

**RE: Enbridge Gas Distribution Inc. Proposal to Construct
Extra High Pressure Pipeline to the York Energy Centre**

Throughout the development of the York Energy Centre (YEC) Project process, the Township of King has been an unwilling host, and notwithstanding the exemptions granted by Ontario Regulation 305/10, continues to be an unwilling host given the significant potential environmental impacts of placing such a large project in an environmentally sensitive area. Further, it is evident that that the route of the extra high pressure pipeline proposed to be installed by Enbridge Gas Distribution Inc. to the YEC will have the potential for significant negative impacts.

At its meeting of December 20th, 2010, Council of the Township of King considered the following Resolution moved by Councillor Debbie Schaefer and seconded by Councillor Bill Cober:

Whereas, the previous Council opposed the gas-fired generator being built in King Township;

Whereas, as a result of the October 25, 2010 municipal election, a majority of King Township's Council is new and directly opposed the gas-fired generator being built;

Whereas, concerns about safety of gas pipelines has been heightened as a result of recent explosions—specifically in San Bruno, California September 10, 2010 where six were killed and the explosion in Milton, ON December 15, 2010 where there was no fatalities but homes were destroyed;

Ms Walli, Ontario Energy Board
December 22, 2010
Page 2

Whereas, there are alternate routes for a gas pipeline to supply gas to the York Energy Centre (YEC) located at 18781 Dufferin St;

Whereas, the selected route for the gas pipeline to supply gas to the YEC passes within 90 meters of the Kettleby Public School and crosses in front of at least 100 homes in the rural community of Pottageville of which for some the setback from pipeline is less than 30 meters;

Whereas, the selection process appears to have put priority on cost and environmental impact as opposed to public safety;

Whereas, the subject gas pipeline is 16 inches in diameter and has a rated pressure of 650 pounds per square inch (psi);

Whereas, the subject pipeline is deemed to be a distribution pipeline as its diameter is less than 36 inches even though distribution pipelines typically range in size from 1 to 6 inches;

Whereas, in some jurisdictions outside of Ontario there is acknowledgment of the risk of gas pipelines and setbacks have been established after consideration of the pressure within the pipeline and the population;

Whereas, the State of California Department of Education has a regulation which stipulates the proximity to a pipeline that a school can be built according to the pressure in that natural gas pipeline. If the pressure exceeds 80 pounds per square inch (psi), then schools can be no closer than 1,500 feet (approximately 500 meters);

Whereas, in the province of Alberta if a 16 inch sour gas pipeline were to be built today, the formula that the province applies for a rural school would result in a mandated setback of 1,500 meters from the property line of the school, and not just the structure as it is recognized that children play outside in school yards;

Whereas, the population most at risk with the proposed route does not believe that they have been given adequate opportunity to provide input into the selection process;

Whereas, up until July 29, 2010 (when Regulation 305/10 exempting the project from the *Planning Act* was implemented) the attention of the public and King Township Council has been focused on addressing the gas-fired generator;

Ms Walli, Ontario Energy Board

December 22, 2010

Page 3

Whereas, sections of the proposed gas pipeline will be established within Region of York road allowances;

**THEREFORE THE COUNCIL OF THE TOWNSHIP OF KING HEREBY
RESOLVES AS FOLLOWS:**

1. That notwithstanding that Enbridge Gas Distribution has followed the Ontario Energy Board's dictated process for selecting routes for new pipelines, Council of the Township of King requests that the Ontario Energy Board direct Enbridge Gas Distribution to reconsider the route for the gas pipeline to service the York Energy Centre such that risk to the population is minimized; and
2. That the Region of York be advised of the concerns of King Township Council and endorse the request to the Ontario Energy Board to re-consider the proposed route for the gas pipeline;
3. That this Resolution be circulated to the Hon. Brad Duguid, Minister of Energy, Julia Munro, MPP York Simcoe, and Helena Jaczek, MPP Oak Ridges-Markham.

The above Resolution was carried unanimously.

Yours truly



Chris Somerville
Clerk

c.c. The Hon. Brad Duguid, Minister of Energy
Julia Munro, MPP York Simcoe
Helena Jaczek, MPP Oak Ridges- Markham
Denis Kelly, Clerk, Regional Municipality of York
Scott Somerville, Chief Administrative Officer
Mayor & Council

THIS IS EXHIBIT "H"
TO THE AFFIDAVIT OF
SCOTT SOMERVILLE
SWORN BEFORE ME THIS
19th DAY OF JANUARY, 2011

Chris Somerville
A Commissioner, Etc.

Ontario Energy
Board
P.O. Box 2319
27th. Floor
2300 Yonge Street
Toronto ON M4P 1E4
Telephone: 416- 481-1967
Facsimile: 416- 440-7656
Toll free: 1-888-632-6273

Commission de l'énergie
de l'Ontario
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2300, rue Yonge
Toronto ON M4P 1E4
Téléphone: 416- 481-1967
Télécopieur: 416- 440-7656
Numéro sans frais: 1-888-632-6273



January 6, 2011

Ms. Chris Somerville
Clerk, Township of King
Municipal Offices
2075 King Road
King City ON L7B 1A1

Dear Ms. Somerville:

**Re: Letter from the Township of King dated December 22, 2010
EB 2009-0187**

We are in receipt of your letter dated December 22, 2010 (a copy of which is attached). In your letter you set out a Resolution made by the Township of King (the "Township") which includes, at paragraph 2 of the Resolution, a request that "the Region of York be advised of the concerns of King Township Council and endorse the request to the Ontario Energy Board to re-consider the proposed route for the gas pipeline." The route for the proposed Enbridge pipeline was considered and approved by the Board in the EB 2009-0187 proceeding. That Decision and Order was issued on April 5, 2010.

It is not entirely clear from your letter exactly what the Township is seeking from the Board at this stage. If the Township is seeking to have the Board re-consider its Decision of April 5, 2010, it will have to make a formal request to that effect.

Requests for review are governed by our Rules of Practice and Procedure, specifically Rule 42. You will note that Rule 42 provides for limitation of 15 days following the Decision, and also provides some guidance as to the grounds sufficient to support a request for review. As the Township was not a party to the EB-2009-0187 proceeding, it would need leave of the Board to make any request to review.

In the interim, the Board would encourage the Township to continue to work with Enbridge regarding any specific concerns it has with the construction and operation of the pipeline.

Yours truly,

Original signed by

Kirsten Walli
Board Secretary

c. Mr. Norm Ryckman, Director, Regulatory Affairs, Enbridge Gas Distribution Inc.

THIS IS EXHIBIT "I"
TO THE AFFIDAVIT OF
SCOTT SOMERVILLE
SWORN BEFORE ME THIS
^{19th} DAY OF JANUARY, 2011


A Commissioner, Etc.



2ND SESSION, 39TH LEGISLATURE, ONTARIO
59 ELIZABETH II, 2010

2^e SESSION, 39^e LÉGISLATURE, ONTARIO
59 ELIZABETH II, 2010

Bill 8

**An Act to establish
separation distances
for natural gas power plants**

Mr. Flynn

Private Member's Bill

1st Reading March 22, 2010
2nd Reading
3rd Reading
Royal Assent

Projet de loi 8

**Loi établissant
des distances de séparation
pour les centrales électriques
au gaz naturel**

M. Flynn

Projet de loi de député

1^{re} lecture 22 mars 2010
2^e lecture
3^e lecture
Sanction royale

Printed by the Legislative Assembly
of Ontario

Imprimé par l'Assemblée législative
de l'Ontario



EXPLANATORY NOTE

The Bill enacts the *Separation Distances for Natural Gas Power Plants Act, 2010* which prohibits the construction, installation or expansion of a natural gas power plant unless the plant is at least 1,500 metres from any land zoned for residential use or any land on which an educational facility, day nursery or health care facility is located. The Bill provides an exception for persons who have obtained all necessary approvals to construct, install or expand a natural gas power plant before the Act comes into force.

NOTE EXPLICATIVE

Le projet de loi édicte la *Loi de 2010 sur l'établissement de distances de séparation pour les centrales électriques au gaz naturel*, laquelle interdit la construction, l'installation ou l'agrandissement d'une centrale électrique au gaz naturel à moins qu'elle ne soit située à au moins 1 500 mètres d'un bien-fonds désigné à usage résidentiel aux fins de zonage ou d'un bien-fonds sur lequel est situé une installation éducative, une garderie ou un établissement de soins de santé. Le projet de loi prévoit une exception pour les personnes qui ont obtenu toutes les autorisations et approbations nécessaires à de telles fins avant l'entrée en vigueur de la Loi.

**An Act to establish
separation distances
for natural gas power plants**

**Loi établissant
des distances de séparation
pour les centrales électriques
au gaz naturel**

Her Majesty, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

Definition

1. In this Act,

“natural gas power plant” means a facility used primarily to generate power from natural gas, but does not include a cogeneration power plant.

Prohibition, minimum distance

2. (1) No person shall construct, install or expand a natural gas power plant unless the property boundaries of the parcel of land on which the plant is located are at least 1,500 metres away from the property boundaries of any parcel of land that is a sensitive land use.

Sensitive land use

(2) For the purposes of subsection (1), a sensitive land use means,

- (a) land zoned for residential use; or
- (b) land on which a building or structure used as an educational facility, day nursery or health care facility is located.

Non-application, transitional period

(3) Subsection (1) does not apply to a person who constructs, installs or expands a natural gas power plant if, on a day before the day this Act comes into force, all of the approvals, permits and other instruments that are required under any Act to construct, install or expand the natural gas power plant have been obtained.

Commencement

3. This Act comes into force on the day it receives Royal Assent.

Short title

4. The short title of this Act is the *Separation Distances for Natural Gas Power Plants Act, 2010*.

Sa Majesté, sur l'avis et avec le consentement de l'Assemblée législative de la province de l'Ontario, édicte :

Définition

1. La définition qui suit s'applique à la présente loi.

«centrale électrique au gaz naturel» Installation utilisée principalement pour produire de l'électricité à partir de gaz naturel, à l'exception d'une centrale de cogénération.

Interdiction : distance minimale

2. (1) Nul ne doit construire, installer ou agrandir une centrale électrique au gaz naturel à moins que les limites de la parcelle de bien-fonds sur laquelle elle est située ne soient à au moins 1 500 mètres de celles de toute parcelle de bien-fonds qui est un usage sensible d'un bien-fonds.

Usage sensible d'un bien-fonds

(2) Pour l'application du paragraphe (1), un usage sensible d'un bien-fonds s'entend :

- a) soit d'un bien-fonds désigné à usage résidentiel aux fins de zonage;
- b) soit d'un bien-fonds sur lequel est situé un bâtiment ou une construction utilisé comme installation éducative, garderie ou établissement de soins de santé.

Non-application : période transitoire

(3) Le paragraphe (1) ne s'applique pas à quiconque construit, installe ou agrandit une centrale électrique au gaz naturel si, avant le jour de l'entrée en vigueur de la présente loi, la totalité des autorisations, des approbations, des permis et des autres actes exigés à ces fins par toute loi ont été obtenus.

Entrée en vigueur

3. La présente loi entre en vigueur le jour où elle reçoit la sanction royale.

Titre abrégé

4. Le titre abrégé de la présente loi est *Loi de 2010 sur l'établissement de distances de séparation pour les centrales électriques au gaz naturel*.

THIS IS EXHIBIT "J"
TO THE AFFIDAVIT OF
SCOTT SOMERVILLE
SWORN BEFORE ME THIS
19th DAY OF JANUARY, 2011


A Commissioner, Etc.

THE CORPORATION OF THE TOWNSHIP OF KING

BY-LAW NUMBER 97-73

**A BY-LAW TO AUTHORIZE A FRANCHISE AGREEMENT
BETWEEN THE CORPORATION AND
THE CONSUMERS' GAS COMPANY LTD.**

WHEREAS the Council of the Corporation deems it expedient to enter into the attached franchise agreement with The Consumers' Gas Company Ltd;

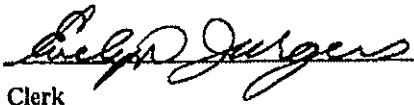
AND WHEREAS the Ontario Energy Board by its Order issued pursuant to The Municipal Franchises Act on the 14th day of April, 1997 has approved the terms and conditions upon which and the period for which the franchise provided for in the attached agreement is proposed to be granted, and has declared and directed that the assent of the municipal electors in respect of this By-law is not necessary;

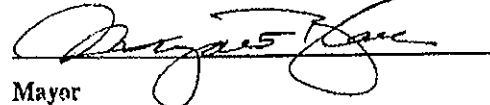
AND WHEREAS The Consumers' Gas Company Ltd. has provided the Corporation with a consent to the repeal of the By-law hereinafter referred to:

NOW THEREFORE BE IT ENACTED:

1. That the attached franchise agreement between the Corporation and The Consumers' Gas Company Ltd. is hereby authorized and the franchise provided for therein is hereby granted.
2. That the Mayor and the Clerk are hereby authorized and instructed on behalf of the Corporation to enter into and execute under its corporate seal and deliver the aforesaid agreement, which agreement is hereby incorporated into and shall form part of this By-law.
3. That the By-law referred to in Schedule "A" annexed hereto and forming part of this By-law is hereby repealed insofar as it applies to any area within the present geographic limits of the Corporation.

ENACTED AND PASSED this 20th day of May, 1997


Clerk


Mayor

SCHEDULE "A"

By-Law No. 76-115 passed by the Council of the Corporation of the Township of King on the 2nd day of
May, 1977 .

THE CONSUMERS' GAS COMPANY LTD.

FRANCHISE AGREEMENT

THIS AGREEMENT made this 20th day of May, 1997
BETWEEN:

THE CORPORATION OF THE TOWNSHIP OF KING

hereinafter called the "Corporation"

- and -

THE CONSUMERS' GAS COMPANY LTD.

hereinafter called the "Gas Company"

WHEREAS the Gas Company desires to distribute and sell gas in the Municipality upon the terms and conditions of this Agreement;

AND WHEREAS by by-law passed by the Council of the Corporation (the "By-law"), the Mayor and the Clerk have been authorized and directed to execute this Agreement on behalf of the Corporation;

THEREFORE the Corporation and the Gas Company agree as follows:

I Definitions

1. In this Agreement:

- (a) "gas" means natural gas, manufactured gas, synthetic natural gas, liquefied petroleum gas or propane-air gas, or a mixture of any of them, but does not include a liquefied petroleum gas that is distributed by means other than a pipeline;
- (b) "gas system" means such mains, plants, pipes, conduits, services, valves, regulators, curb boxes, stations, drips or such other equipment as the Gas Company may require or deem desirable for the supply, transmission and distribution of gas in or through the Municipality;
- (c) "highway" means all common and public highways and shall include any bridge, viaduct or structure forming part of a highway, and any public square, road allowance or walkway and shall include not only the travelled portion of such highway, but also ditches, driveways, sidewalks, and sodded areas forming part of the road allowance now or at any time during the term hereof under the jurisdiction of the Corporation;
- (d) "Municipality" means the territorial limits of the Corporation on the date when this Agreement takes effect, and any territory which may thereafter be brought within the jurisdiction of the Corporation;
- (e) "Engineer/Road Superintendent" means the most senior individual employed by the Corporation with responsibilities for highways within the Municipality or the person designated by such senior employee or such other person as may from time to time be designated by the Council of the Corporation.

II Rights Granted

1. To provide gas service.

The consent of the Corporation is hereby given and granted to the Gas Company to supply gas in the Municipality to the Corporation and to the inhabitants of the Municipality.

2. To use road allowances.

The consent of the Corporation is hereby given and granted to the Gas Company to enter upon all highways now or at any time hereafter under the jurisdiction of the Corporation and to lay, construct, maintain, replace, remove, operate and repair a gas system for the supply, distribution and transmission of gas in and through the Municipality.

3. Duration of Agreement and Renewal Procedures.

The rights hereby given and granted shall be for a term of twenty (20) years* from the date of final passing of the By-law.

At any time within two years prior to the expiration of this Agreement, either party may give notice to the other that it desires to enter into negotiations for a renewed franchise upon such terms and conditions as may be agreed upon. Until such renewal has been settled, the terms and conditions of this Agreement shall continue, notwithstanding the expiration of this Agreement. Nothing herein stated shall preclude either party from applying to the Ontario Energy Board for a renewal of the Agreement pursuant to section 10 of the Municipal Franchises Act.

III Conditions

1. Approval of Construction.

Before beginning construction of or any extension or change to the gas system (except service laterals which do not interfere with municipal works in the highway), the Gas Company shall file with the Engineer/Road Superintendent a plan, satisfactory to the Engineer/Road Superintendent, drawn to scale and of sufficient detail considering the complexity of the specific location, showing the highways in which it proposes to lay its gas system and the particular parts thereof it proposes to occupy. Geodetic information will not be required except in complex urban intersections in order to facilitate known projects, being projects which are reasonably anticipated by the Engineer/Road Superintendent. The Engineer/Road Superintendent may require sections of the gas system to be laid at a greater depth than required by CAN/CSA- Z184-M92 to facilitate known projects. The location of the work as shown on the said plan must be approved by the Engineer/Road Superintendent before the commencement of the work and the timing, terms and conditions relating to the installation of such works shall be to his satisfaction.

Notwithstanding the provisions of the above noted paragraph, in the event it is proposed to affix a part of the gas system to a bridge, viaduct or structure, the Engineer/Road Superintendent may, if the Engineer/Road Superintendent approves of such location, require special conditions or a separate agreement.

No excavation, opening or work which shall disturb or interfere with the surface of the travelled portion of any highway shall be made or done unless a permit therefor has first been obtained from the Engineer/Road Superintendent and all works shall be done to his satisfaction.

*The rights given and granted for a first agreement shall be for a term of 20 years. The rights given and granted for any subsequent agreement shall be for a term of not more than 15 years, unless both parties agree to extend the term to a term of 20 years maximum.

The Engineer/Road Superintendent's approval, where required throughout this section, shall not be withheld unreasonably.

2. As Built Drawings.

The Gas Company shall not deviate from the approved location for any part of the gas system unless the prior approval of the Engineer/Road Superintendent to do so is received. After completion of the construction, where plans were initially filed, an "as built" plan of equal quality to the pre-construction plan or certification that the pre-construction plan is "as built" will be filed with the Engineer/Road Superintendent.

3. Emergencies.

In the event of an emergency involving the gas system, the Gas Company will proceed with the work and in any instance where prior approval of the Engineer/Road Superintendent is normally required, shall use its best efforts to immediately notify the Engineer/Road Superintendent of the location and nature of the emergency and the work being done and, if it deems appropriate, notify the police force having jurisdiction.

4. Restoration.

The Gas Company shall well and sufficiently restore, to the reasonable satisfaction of the Engineer/Road Superintendent, all highways, municipal works or improvements which it may excavate or interfere with in the course of laying, constructing, repairing or removing its gas system, and shall make good any settling or subsidence thereafter caused by such excavation or interference. If the Gas Company fails at any time to do any work required by this paragraph within a reasonable period of time, the Corporation may do or cause such work to be done and the Gas Company shall, on demand, pay any reasonable account therefor as certified by the Engineer/Road Superintendent.

5. Indemnification.

The Gas Company shall, at all times, indemnify and save harmless the Corporation from and against all claims, including costs related thereto, for all damages or injuries including death to any person or persons and for damage to any property, arising out of the Gas Company operating, constructing, and maintaining its gas system in the Municipality, or utilizing its gas system for the carriage of gas owned by others. Provided that the Gas Company shall not be required to indemnify or save harmless the Corporation from and against claims, including costs related thereto, which it may incur by reason of damages or injuries including death to any person or persons and for damage to any property, resulting from the negligence or wrongful act of the Corporation, its servants, agents or employees.

6. Alternative Easement.

The Corporation agrees, in the event of the proposed sale or closing of any highway or any part of a highway where there is a gas line in existence, to give the Gas Company reasonable notice of such proposed sale or closing and to provide, if it is feasible, the Gas Company with easements over that part of the highway proposed to be sold or closed sufficient to allow the Gas Company to preserve any part of the gas system in its then existing location. In the event that such easements cannot be provided, the Corporation will share, as provided in clause III, 7 of this Agreement, in the cost of relocating or altering the gas system to facilitate continuity of gas service.

7. Pipeline Relocation.

If in the course of constructing, reconstructing, changing, altering or improving any highway or any municipal works, the Corporation deems that it is necessary to take up, remove or change the location of any part of the gas system, the Gas Company shall, upon notice to do so, remove and/or relocate within a reasonable period of time such part of the gas system to a location approved by the Engineer/Road Superintendent.

Where any part of the gas system relocated in accordance with this section is located on a bridge, viaduct or structure, the Gas Company shall alter or relocate, at its sole expense, such part of the gas system.

Where any part of the gas system relocated in accordance with this section is located other than on a bridge, viaduct or structure, the costs of relocation shall be shared between the Corporation and the Gas Company on the basis of the total relocation costs, excluding the value of any upgrading of the gas system, and deducting any contribution paid to the Gas Company by others in respect to such relocation; and for these purposes, the total relocation costs shall be the aggregate of the following:

- (a) the amount paid to Gas Company employees up to and including field supervisors for the hours worked on the project plus the current cost of fringe benefits for these employees,
- (b) the amount paid for rental equipment while in use on the project and an amount, charged at the unit rate, for Gas Company equipment while in use on the project,
- (c) the amount paid by the Gas Company to contractors for work related to the project,
- (d) the cost to the Gas Company for materials used in connection with the project, and
- (e) a reasonable amount for project engineering and project administrative costs which shall be 22.5% of the aggregate of the amounts determined in items (a), (b), (c) and (d) above.

The total relocation costs as calculated above shall be paid 35% by the Corporation and 65% by the Gas Company.

8. Notice to Drainage Superintendent.

In a case where the gas system may affect a municipal drain, the Gas Company shall file with the Drainage Superintendent, for purposes of the Drainage Act, or other person responsible for the drain, a copy of the plan required to be filed with the Engineer/Road Superintendent.

IV Procedural And Other Matters

1. Municipal By-laws of General Application.

This Agreement and the respective rights and obligations hereunto of the parties hereto are hereby declared to be subject to the provisions of all regulating statutes and all municipal by-laws of general application and to all orders and regulations made thereunder from time to time remaining in effect save and except by-laws which impose permit fees and by-laws which have the effect of amending this Agreement.

2. Giving Notice.

Notices may be given by delivery or by mail, and if mailed, by prepaid registered post, to the Gas Company at its head office or to the Clerk of the Corporation at its municipal offices, as the case may be.

3. Disposition of Gas System.

During the term of this Agreement, if the Gas Company abandons a part of its gas system affixed to a bridge, viaduct or structure, the Gas Company shall, at its sole expense, remove that part of its gas system affixed to the bridge, viaduct or structure.

If at any time the Gas Company abandons any other part of its gas system, it shall deactivate that part of its gas system in the Municipality. Thereafter, the Gas Company shall have the right, but nothing herein contained shall require it, to remove its gas system. If the Gas Company fails to remove its gas system and the Corporation requires the removal of all or any of the gas system for the purpose of altering or improving a highway or in order to facilitate the construction of utility or other works in any highway, the Corporation may remove and dispose of so much of the deactivated gas system as the Corporation may require for such purposes and neither party shall have recourse against the other for any loss, cost, expense or damage occasioned thereby.

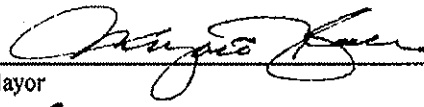
4. Agreement Binding Parties.


This Agreement shall extend to, benefit and bind the parties thereto, their successors and assigns, respectively.

IN WITNESS WHEREOF the parties hereto have duly executed these presents with effect from the date first above written.

THE CORPORATION OF THE TOWNSHIP OF KING

Authorized to be executed by
By-Law 97-73, passed on
the 20th day of May, 1997

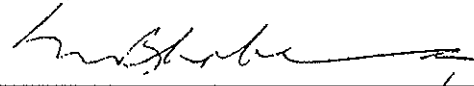


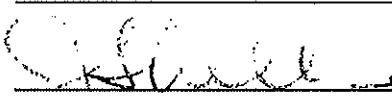
Mayor


Clerk

THE CONSUMERS' GAS COMPANY LTD.

N.B. LOBERG
VICE PRESIDENT
CORPORATE AFFAIRS





J.S. Williamson
Senior Legal Counsel and
Assistant Corporate Secretary

DATED May 20, 1997

19

THE CORPORATION OF THE TOWNSHIP OF KING

- and -

THE CONSUMERS' GAS COMPANY LTD.

FRANCHISE AGREEMENT

THE CONSUMERS' GAS COMPANY LTD.

Atria III, Suite 1100
2225 Sheppard Avenue East
North York, Ontario
M2J 5C2

Attention: Legal Department

AIRD & BERLIS LLP

Barristers and Solicitors

Scott Stoll
Direct: 416.865.4703
E-mail: sstoll@airdberlis.com

February 4, 2011

BY COURIER, EMAIL & RESS

Ontario Energy Board
P.O. Box 2319
27th Floor
2300 Yonge Street
Toronto, ON M4P 1E4

Attention: Ms. Kirsten Walli, Board Secretary

Dear Ms. Walli:

**Re: Application for Leave to Bring a Motion to Review the Board's Decision
EB-2009-0187 and a Motion to Review and Vary the Board's Decision
EB-2009-0187
Submission of Enbridge Gas Distribution Inc. to Leave Request
Board File No. EB-2011-0024**

Enbridge Gas Distribution Inc. ("**Enbridge**") is in receipt of the leave application filed by the Township of King ("**King**") seeking leave to conduct a review motion of the Board's Decision of April 5, 2010 in EB-2009-0187 (the "**Decision**"). Enbridge is very concerned about any potential for delay and the significant negative impacts that could result for the Company and its customers. For the reasons outlined herein, Enbridge requests the Board deny granting King leave to bring the motion.

Enbridge is obligated to deliver natural gas to the York Energy Centre (the "**YEC**") by December 1, 2011. Enbridge is scheduled to re-start the construction of the pipeline on March 1, 2011. Enbridge has tendered the contract for the construction of the remainder of the pipeline but has not completed the award process due to this leave request. In order for the construction crews to be mobilized March 1, 2011, the contract award should occur by February 15, 2011. Therefore, Enbridge requests the Board conclude this process prior to February 11, 2011, if possible. Should this process not be resolved prior to February 11, 2011, it is likely that gas delivery will be delayed and/or additional costs may result.

Board Process for Review and Vary Motions

The Board's Rules of Practice and Procedure (the "**Rules**") provide the Board with direction and guidance on the conduct of a request to review and vary a decision of the Board. Rule 42.02 requires a person who was not a party to first obtain leave from the Board prior to being able bring the motion to review and vary.

42.02 A person who was not a party to the proceeding must first obtain the leave of the Board by way of a motion before it may bring a motion under **Rule 42.01**.

The Board's determination of the request for leave should reflect the Board's statutory objectives, the public interest, regulatory principles and procedural fairness. In keeping with these considerations, Enbridge submits the Board should also consider King's participation in the environmental assessment and leave to construct process.

a) *The Leave to Construct Process*

The selection of the pipeline route and the leave to construct process was a robust, comprehensive approach consistent with the Board's process for locating pipelines. The materials from King acknowledge that Enbridge followed the process. The table below summarizes the points of contact between Enbridge and King.

Date	Consultation	Comments
March 24, 2009 Environmental Report, Appendix A1 page 22	Project Initiation Letter and Notice of Commencement of environmental assessment	Delivered to 9 representatives of King Township. Enbridge received a response from 2 staff members.
April 14, 2009	Public Information Centre	Meeting open to the public.
May 6, 2009	Project Meeting	Meeting with Township of King Staff (six attendees from King) to discuss the project, process and routing.
May 26, 2009	Public Information Centre	Meeting open to the public.
June 10, 2009	Project Meeting	Meeting with Township of King Staff (five attendees from King) to discuss feedback and routing.
July 22, 2009	Final Environmental Report Published and Distributed	Environmental report circulated to agencies and stakeholders.
September 24, 2009	Notice of Application of the OEB Leave to Construct Application	Delivered to 11 representatives of King Township. Affidavit of Service confirms delivery.

b) *The Broad Public Interest*

The Board's obligation is to make decisions in the broad public interest and not local or parochial interest. An excerpt from *Union Gas v. Dawn (Township)* (1977), 15 O.R. (2d) 722, 2 M.P.L.R. 23 (Div. Ct.), Mr. Justice Keith stated for the court, at p. 731 is provided below:

"These are all matters that are to be considered in the light of the general public interest and not local or parochial interests. The words "in the public interest" which appear, for example, in s. 40(8), s. 41(3) and s. 43(3), which I have quoted, would seem to leave no room for doubt that it is the broad public interest that must be served.....

In the final analysis, however, it is the Energy Board that is charged with the responsibility of making a decision and issuing an order "in the public interest".

The Board considered the broader public interest in making the Decision to grant Enbridge leave to construct the Pipeline. Specifically, the Board stated that it was obligated to grant leave where it determined the applicant had demonstrated the project was in the public interest. It then went on to indicate the criteria that it has historically applied and did apply in the proceeding. The Board stated:

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 impact on the ratepayers, environmental impact and the impact on land owners.¹

In a leave to construct application, the methodology of selecting the route must be consistent with the broader public interest. Enbridge met this requirement in its application to the Board and the route selection methodology was not challenged in EB-2009-0187. A review of the Environmental Report, section 5, provides a detailed summary of the route selection process, the factors considered and the methodology in choosing the preferred routes. Population counts for each alternative were provided to the Board². Enbridge and the independent consultant Stantec, considered routes that did not go through Pottageville yet, determined such alternatives were not preferred to the route ultimately approved by the Board. Therefore, there is no reason to believe a different result would be achieved by granting the application to bring a motion to review and vary the Decision.

c) Timing and Regulatory Certainty

The challenge of a Board's decision is to be made in a timely manner. The Rules provide an opportunity for a person to bring a motion to review within 20 days of the issuance of the decision or order. King's request for leave was filed approximately 9 months after the Board's Decision; well beyond the time in which the Rules provide for a person to bring forward a motion for review and variance.

The Board, the public, agencies, the regulated utility and ratepayers need assurance that a regulator's decision is certain and final. Enbridge and other third parties have acted upon the Board's decision in good faith and expended considerable resources to pursue

¹ EB-2009-0187, Decision and Order, pages 3 and 4.

² EB-2009-0187, Exhibit B, Tab 2, Schedule 2, Stantec, Environmental Report, pages 5-13 and 5-14.

the construction of the pipeline based upon the Decision. Quite apart from the procedural issues raised by King's current application (see below), it would be unfair to these parties, and the public interest, to revisit the Board's Decision long after it has been rendered and various parties have acted on its conclusions.

d) *Rule 44 – The Basis for Review*

The Rules provide the basis upon which the Board may grant a motion to review and vary a decision. In summary, the enumerated factors require the Board to have a material change in a factor relied upon by the Board in making the Decision. Absent such a factor, there is no reasonable expectation the Board would reach a different conclusion and no reason to review the decision.

44.01 Every notice of a motion made under **Rule 42.01**, in addition to the requirements under **Rule 8.02**, shall:

- (a) set out the grounds for the motion that raise a question as to the correctness of the order or decision, which grounds may include:
 - (i) error in fact;
 - (ii) change in circumstances;
 - (iii) new facts that have arisen;
 - (iv) facts that were not previously placed in evidence in the proceeding and could not have been discovered by reasonable diligence at the time; and
- (b) if required, and subject to **Rule 42**, request a stay of the implementation of the order or decision or any part pending the determination of the motion.

Enbridge submits King has failed to meet any of the listed factors in Rule 44.01. While King has submitted information that was not part of EB-2009-0187, it is Enbridge's view that such information is either not relevant or moot. Further, all such information was available prior to the Board's Decision on April 5, 2010.

- i) Setbacks for sour gas pipelines in Alberta are not relevant to sweet natural gas pipelines. The relevant authority, the Technical Standards and Safety Authority, has recognized the design of the Pipeline meets the applicable requirements.
- ii) Bill 8 is not a law and deals with separation distances for natural gas power plants, not natural gas pipelines. The location of the end use customer, the YEC, is not within the Board's jurisdiction. The Board's scoping of its jurisdiction to exclude considerations related to the natural gas plant was accepted by the Divisional Court in *Power Workers Union, Canadian Union of Public Employees, Local 1000 v. Ontario Energy Board*, 2006 CanLII 25267 (ON S.C.D.C.).
- iii) The prematurity issue was raised during EB-2009-0187 and is now moot. O. Reg. 305/10 Energy Undertakings: Exempt Undertakings eliminated any obstacles to the permitting of the YEC which began construction several months ago.

Concluding Remarks

Enbridge has continued to maintain a dialogue with King Staff regarding the details of the design and construction of the Pipeline. Enbridge has offered to provide certain additional measures to appease concerns raised by King and will continue to work with King through the construction of the Pipeline.

If allowed to proceed, King's request will put Enbridge and its customer at risk of considerable delay and cost.

Yours very truly,

AIRD & BERLIS LLP

A handwritten signature in black ink, appearing to read "Scott Stoll". The signature is fluid and cursive, with the first name "Scott" and last name "Stoll" clearly distinguishable.

Scott Stoll

SAS/ct

7798538.1

APPENDIX "B"

TO

Notice of Motion and Procedural Order No 1

Applicant and List of Intervenors

Board File No.: EB-2011-0024

DATED: February 9, 2011

**Township of King
EB-2011-0024**

APPLICANT & LIST OF INTERVENORS

February 9, 2011

APPLICANT

Rep. and Address for Service

Township of King

Chris Somerville

Township Clerk
Township of King
2075 King Road
King City, ON L7B 1A1

Tel: 905-833-5321
Fax: 905-833-2300
csomerville@king.ca

INTERVENORS

Rep. and Address for Service

**Enbridge Gas Distribution
Inc.**

Norm Ryckman

Director, Regulatory Affairs
Enbridge Gas Distribution Inc.

500 Consumers Road
Toronto ON M2J 1P8

Tel: 416-495-5499
Fax: 416-495-6072

EGDRegulatoryProceedings@enbridge.com

Scott Stoll

Counsel
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Toronto ON M5J 2T9
Tel: 416-865-4703
Fax: 416-863-1515
ssoll@airdberlis.com

**Township of King
EB-2011-0024**

APPLICANT & LIST OF INTERVENORS

- 2 -

February 9, 2011

Environmental Defence

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Environmental Defence
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Toronto ON M5V 1P9
Tel: 416-323-9521 Ext: 224
Fax: 416-323-9301
HHarding@environmentaldefence.ca

**Global Environmental Action
Group**

Katharine Parsons

Executive Director
Global Environmental Action Group
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Tel: 905-252-1857
Fax: Not Provided
keparsons@xplornet.com

Harten Consulting

Harvey Tenenbaum
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**Township of King
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- 3 -

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