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February 23, 2011

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

Ms. Kirsten Walli
Board Secretary
Ontario Energy Board
2300 Yonge Street
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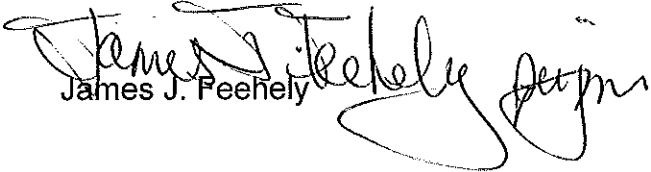
Dear Ms. Walli:

***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
Board File EB-2011-0024
Our File No. 6956JF06***

Enclosed herein please find Reply Submission on behalf of the Township of King.

Yours truly,
FEEHELY, GASTALDI


James J. Feehely

JJF/jm

cc: Scott A. Stoll – Aird & Berlis LLP – Applicant Counsel

George Vegh – McCarthy Tetrault LLP – York Energy Centre LP Counsel

All Intervenors

ONTARIO ENERGY BOARD

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

AND IN THE MATTER OF an Application by Enbridge Gas Distribution Inc. for 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;

AND IN THE MATTER OF the Township of King's Motion for Leave to bring a Motion to Review and Motion to Review and Vary the Board's Decision in EB-2009-0187

**Township of King
Reply Submission**

Extending the Timing for Filing

1. The Ontario Energy Board (the "Board") has the discretion to extend the timeline for filing a motion for review when it is in the public interest to do so. The Township of King (the "Township") submits that a review of the routing of the pipeline, as set out in the Board's Decision and Order in EB-2009-0187 dated April 5, 2010 (the "Decision"), is of significant public interest. The Township and its residents are directly impacted by the routing of the pipeline and have concerns about the close proximity of the pipeline to a number of residences and an elementary school. The purpose of the review is to determine whether the Board placed appropriate weight on the social-economic impact and public safety concerns when approving the proposed pipeline route.
2. There are other pipeline routes that are not only available but are preferred to the one approved by the Board. Enbridge's own study of

various routes confirms that an alternate route, identified by Enbridge as Route 4, has the least social-economic impact of all the proposed routes and would traverse the least number of driveways. Most importantly in considering the public interest, the alternate route would run through a less populated area and would not be in close proximity to an elementary school. It is unclear why the Board approved a pipeline route that had a greater social-economic impact and intruded upon the most number of residential properties than other available routes.

3. The Township submits that Enbridge's position that regulated utility and ratepayers need assurance that a regulator's decision is certain and final¹ is undermined by Enbridge's decision to proceed with the leave to construct at a time when there was very little certainty that the York Energy Centre LP Project ("YEC Project") would be permitted at the Dufferin Street location. The YEC Project would not be built at its current location if the Township was successful at the Ontario Municipal Board, thus negating any need for a pipeline running from Enbridge's Schomberg Gate Station to the YEC Project on Dufferin Street.
4. The issue of whether an industrial facility could be constructed on environmentally sensitive lands within the Greenbelt Plan had not been previously decided upon by the Ontario Municipal Board or the courts. Not only was this case going to be precedent setting with respect to the interpretation of the Greenbelt Plan, but, from the Township's position, there was great uncertainty as to whether the YEC Project could be constructed in the Greenbelt. YEC and Enbridge were fully aware of this uncertainty and Enbridge decided to proceed with its hearing on the construction of the pipeline in any event.

¹ Enbridge letter to the OEB dated February 4, 2011

5. With respect to YEC's submission, and in particular paragraph 15, the YEC Project was only exempt from the *Planning Act* after the Ontario Government passed Regulation 305/10. The effect of this Regulation was to oust the jurisdiction of the Ontario Municipal Board, which had the authority under the *Planning Act* to determine if the facility conformed to the Greenbelt Plan, and permitted the YEC Project to proceed at its current location. It is important to note that the Regulation was enacted after the Ontario Municipal Board hearing had concluded but before a decision had been rendered. It is very uncommon for the Ontario Government to interfere with the *Planning Act* in this way and was not something that the parties could either have expected or depended upon occurring. In fact, this was first regulation of this kind issued under the designated section of the *Planning Act*.²
6. It is only after Regulation 305/10 was passed that the YEC Project at the Dufferin location became a certainty. However, at the same time, all municipalities in Ontario were preparing for municipal elections that were scheduled for October 25, 2010. The Township was in a position commonly referred to as a "lame duck" council, which occurs when there is a chance that less than 75% of the council members will not be re-elected.³ A "lame duck" council is restricted in its ability to approve spending and give instructions on various matters. As a result of the municipal elections and its "lame duck" status, the Township was not able to obtain the necessary formal authority to seek a review of the Board's Decision.
7. On November 4, 2010, shortly after the municipal elections and a new Council was constituted, the Township, though its Solicitor, requested a review of the Board's Decision. The Township acted promptly once it was

² See s.62.0.1 of *The Planning Act*

³ Section 275, *Municipal Act, 2001*, S.O. 2001, c.25

determined that the YEC Project would proceed at its current location and Council was in a position to respond to the OEB Decision.

8. The Township's request for review of the Board's Decision is limited to the pipeline route that runs approximately 5.5 kilometres from the Schomberg Gate Station along Lloydtown-Aurora Road to Jane Street. The Township does not seek to revise or alter the proposed pipeline route along Dufferin Street and Davis Drive.
9. With the enactment of Regulation 305/10, the Township acknowledges that the YEC Project will most probably be built at the Dufferin Street location and that a pipeline must run to the facility. The Township seeks to ensure that the Board considered the social-economic impact on the community and public safety concerns of the residents fronting on the proposed high pressure pipeline when it approved the pipeline's route.
10. The Township is concerned that the Board did not properly consider the alternate routes proposed in the Environmental Assessment prepared by the engineering firm retained by Enbridge.
11. Irrespective of procedural issues and the timing of the Motion filed by the Municipality, the key concern for the Township of King, and in particular the residents that live along the proposed pipeline route, is that of public safety. A dedicated high-pressure pipeline is scheduled to be placed within close proximity to an elementary school and approximately 100 houses and will be within 30 metres of a significant number of those houses. Of great concern to the residents and the Township is that Enbridge proposed and the Board accepted a pipeline route that has greater public and safety impact than alternate available routes.

12. The central issue to be heard, should a motion be granted, is whether public safety was properly considered and addressed in Enbridge's Application for Leave to Construct. There can be no greater public interest than that of the safety of the public. The Township is not seeking to prevent the pipeline from being constructed, but is seeking to ensure that the selected route has the least amount of impact on public safety as possible. Procedural certainty, construction convenience and cost should not trump public safety.

All of which is respectfully submitted.

DATED: February 23rd, 2011

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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

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APPLICANT & LIST OF INTERVENORS

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Enbridge Gas Distribution Inc.

EB-2010-0310

APPLICANT & LIST OF INTERVENORS

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December 2, 2010

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