

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 under section 95 of the Act for an order exempting Enbridge Gas Distribution Inc. from the requirement to obtain leave to construct for a natural gas distribution pipeline and related facilities in the Regional Municipality of York.

APPLICATION FOR EXEMPTION

1. The Applicant, Enbridge Gas Distribution Inc. ("**EGD**" or "**Enbridge**"), is an Ontario corporation with its head office in the City of Toronto. It carries on the business of selling, distributing, transmitting and storing natural gas within Ontario.
2. Enbridge is applying for an exemption from the need to obtain leave to construct from the Board. This exemption application is for the construction of a replacement pipeline project (the "**Project**") described below. Further, Enbridge would request the Board grant this exemption without the need for a hearing based upon the information provided herein as permitted by sub-section 21(4) of the Ontario Energy Board Act, 1998, S.O. 1998, c. 15 Schedule B (the "**OEB Act**").

The Project

3. The Regional Municipality of York (the "**Region**") is upgrading Ninth Line from two lanes to four lanes. The Region plans to begin construction of the new road in May 2012 and has requested that all utilities complete re-location of their plant prior to the Region's work commencing.
4. The Project consists of:

- (i) the installation and tie-in of approximately 1200 metres of NPS 12 extra high pressure pipeline (“XHP”) along the west side of Ninth Line;
 - (ii) the abandonment of approximately 1200 metres of NPS 4 XHP existing pipeline along the west side of Ninth Line; and
 - (iii) the abandonment of approximately 1200 m of NPS 8 XHP on the east side of Ninth Line.
5. A map showing the location of the Project may be found at Exhibit A, Tab 3, Schedule 1.
6. As the Project is NPS 12, operates at 2758 kPa, the Project technically meets the requirements for leave to construct established by section 90 of the OEB Act.

Request for Exemption

7. Section 95 of the OEB Act permits the Board to exempt any person from the need to obtain leave to construct. The Board must be of the opinion special circumstances exist. Further, the Board may proceed in the absence of a hearing.

95. The Board may, if in its opinion special circumstances of a particular case so require, exempt any person from the requirements of section 90 or 92 without a hearing.

8. Enbridge would submit the following constitute special circumstances.
- (i) The pipeline will be installed within the future municipal right-of-way of the Region and Enbridge does not require new permanent land rights. Enbridge is the franchisee in the Region.
 - (ii) There are no private landowners impacted by the construction of the pipeline.
 - (iii) The Project is a replacement without the need for additional land rights but the Project does not fall within the “like for like” replacement exemption from the requirements for leave to construct provided in subsection 90(2) of the OEB Act.

- (iv) The cost of the proposed Project is less than \$2,000,000, the amount prescribed by Ontario Regulation – General 328/03 section 3, which provides the monetary threshold to obtain leave to construct.
 - (v) Enbridge has completed an environmental review for the proposed Project. The Region has completed an environmental review for the proposed road widening as a Schedule C project under the Municipal Class Environmental Assessment pursuant to *Environmental Assessment Act* (Ontario).
 - (vi) The existing NPS 8 and NPS 4 pipelines are in physical conflict with the proposed road widening and cannot remain in the current locations. Enbridge requires the pipelines to be replaced to continue to supply gas to the Town of Whitchurch-Stouffville and Uxbridge.
 - (vii) A single NPS 12 pipeline is a more cost effective and environmentally superior replacement option than a “like-for-like” replacement.
 - (viii) The location and routing have been selected in conjunction with the Region’s consultant.
 - (ix) The economics of the Project will adhere to the terms of the existing franchise agreement between Enbridge and the Region.
 - (x) The NPS 12 pipeline is preferred by the Region.
9. Enbridge has included information in respect of the Project to assist the Board in its evaluation of this request for exemption.
10. Enbridge will obtain the necessary permits to carry out the Project and, if a temporary working easement should be required for the railway crossing, such temporary easement will be obtained prior to construction of the crossing. All work will be completed in accordance with applicable regulations, codes and Enbridge’s construction procedures.
11. Sub-section 21(4) permits the Board to proceed without a hearing where no person requests a hearing or the Board determines that no person other than the Applicant will

be adversely affected in a material way by the outcome of the proceeding. If either criteria is met the Board may proceed without a hearing.

21(4) Despite section 4.1 of the *Statutory Powers Procedure Act*, the Board may, in addition to its power under that section, dispose of a proceeding without a hearing if,

(a) no person requests a hearing within a reasonable time set by the Board after the Board gives notice of the right to request a hearing; or

(b) the Board determines that no person, other than the applicant, appellant or licence holder will be adversely affected in a material way by the outcome of the proceeding and the applicant, appellant or licence holder has consented to disposing of a proceeding without a hearing.

12. As the construction will occur only after the Region has acquired the necessary lands no individual landowners will be impacted. The Project is being carried out as a result of the Region's road re-alignment project and the funding of the Project is consistent with the existing franchise agreement between Enbridge and the Region. As such, Enbridge does not believe any other person will be adversely affected in a material way by the outcome of the proceeding. Enbridge will send a copy of this Application package to each of the named parties identified in Exhibit A, Tab 2, Schedule 1.
13. Enbridge requests that copies of all documents filed with the Board in connection with this proceeding be served on it and on its counsel, as follows:

(a) The Applicant: Regulatory Affairs
Enbridge Gas Distribution Inc.

Address for personal service: 500 Consumers Road
Toronto, ON M2J 1P8

Mailing Address: P. O. Box 650
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(b) The Applicant's counsel: Scott Stoll
Aird & Berlis LLP

Address for personal service
and mailing address: Suite 1800, Box 754
Brookfield Place, 181 Bay Street
Toronto, ON M5J 2T9

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14. Enbridge would therefore request (a) the Board issue an order to exempt Enbridge from the requirement to seek leave to construct; and (b) to issue the order without conducting a hearing.

DATED August 26, 2011 at Toronto, Ontario.

ENBRIDGE GAS DISTRIBUTION INC.

By its counsel

AIRD & BERLIS LLP



Scott Stoll