

City of Mississauga
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Leading today for tomorrow

May 26, 2008

email address: boardsec@oeb.gov.on.ca

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

Dear Ms. Walli:

Re: Board File No. EB-2008-0091
Application by Pearson International Fuel Facilities Corporation for
Authority to construct under s. 101 of the Ontario Energy Board Act

Please accept this correspondence and the attached letter of intervention dated April 23, 2008 in support of the City's request for intervenor status in the above-captioned matter.

In addition to the submissions contained in the attached letter, please be advised that the City has just recently forwarded to the Applicant in these proceedings a draft license agreement necessary for the construction of the jet fuel pipeline. The City therefore continues to work towards the completion of a license agreement with the Applicant.

This correspondence is being delivered to you by email, and in addition, two paper copies will be hand delivered to your office shortly.

Yours Sincerely,

Michal E. Minkowski
Legal Counsel

MEM/aml

c.c. George Vegh, Counsel for Applicant
Ken Chartrand, Region of Peel
Alan Herring, Greater Transit Airport Authority

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April 23, 2008

Ontario Energy Board
2300 Yonge St.
Suite 2700
P.O. Box 2319
Toronto, ON

Attention: Board Secretary

Dear Sirs:

Re: Application by Pearson International Fuel Facilities Corporation pursuant to section 101 of the *Ontario Energy Board Act, 1998* for authority to construct a work under a highway for the purposes of constructing a jet fuel pipeline and related facilities in the City of Mississauga

Please consider this as a letter of intervention requesting intervener status on behalf of the City of Mississauga (the "City"), pursuant to Rule 23.01 of the *Ontario Energy Board Rules of Practice and Procedure*, in respect of the above-captioned Application. This Application was served upon the City on April 17, 2008.

The City has a substantial interest in this Application as the City is the owner of three public highways under which the Applicant intends to construct a jet fuel pipeline. The City also has a public interest in the proposed construction of the pipeline under its highways. The City intends to participate actively and responsibly in the proceedings.

The City is a municipal corporation exercising authority pursuant to the *Municipal Act, 2001*. The nature and scope of the City's intended participation includes the submission of evidence, cross-examination and argument, if necessary.

The grounds for the intervention are:

1. The Order requested by the Application is unnecessary, and prejudicial both to the City and to the public interest as regards the proper control over and ownership interest pertaining to public highways. Pursuant to the *Municipal Act, 2001*, the City is constituted as the road authority for its highways, with attendant responsibilities and liabilities. The City opposes the order sought by the Applicant.

2. Jet fuel is, and has been for many years, delivered to an existing storage facility and distribution system at Lester B. Pearson International Airport (the "Airport") from multiple sources, including:
 - a) a pipeline connection from Trans-Northern Pipeline;
 - b) a pipeline connection from Sarnia Products Pipeline;
 - c) delivery from multiple references via rail case to CN's rail yard at Keele Street north at Highway 7 in Concord, Ontario, where it is transferred to trucks for delivery to the existing tank farm, and
 - d) delivery via truck from VOPAC located in Hamilton, Ontario
3. Hence, there exist current jet fuel supply sources which continue to support the existing Airport operations. There has been no information provided by the Applicant that additional time to complete the license agreement with the City will result in disruption to Airport operations or otherwise result in material prejudice to the Applicant or its customers.
4. The Applicant has not furnished to date written confirmation of all other applicable approvals for its project.
5. The Applicant's project includes the construction of a new proposed fuel tank farm to be connected to the proposed jet fuel pipeline. The Applicant has not yet secured all applicable approvals for the operation of this facility, particularly, site plan approval under the *Planning Act* where, among other things, the Toronto Region Conservation Authority is still reviewing the development proposal to evaluate whether concerns it has identified have been addressed, and the TRCA has not yet given its clearance for the site plan.
6. The Applicant only received approval from the Ontario Energy Board in August of 2007 for leave to construct the jet fuel pipeline, subject to conditions. Since that time, the parties have proceeded with discussions regarding the license agreement, identified the need for detailed design specifications for the pipeline to be provided to the City for review, and have also had focused negotiations for a Consent to Enter Agreement permitting the Applicant to cross a one foot reserve portion of land privately owned by the City along the pipeline route.
7. It is in the public interest that the Applicant enter into an appropriate license agreement with the City, which can address such matters as (but not limited to):
 - a) the staging of construction to minimize disruption to abutting businesses and property owners along the public highways where the pipeline is to

be constructed, now and in the future during any repair and maintenance work;

- b) a process for public notification regarding the project;
 - c) a protocol to deal with the coordination of construction, repair and maintenance with other underground infrastructure and services;
 - d) the provision of adequate repair and maintenance systems so as not to create risks to the proper functioning of the public highways;
 - e) the allocation of responsibility for any environmental spills; and
 - f) the allocation of responsibility for property damage.
8. The Applicant and the City have been, and actively are continuing, to engage in constructive discussions regarding the development of a license agreement. The City is committed to following up on these discussions with the Applicant.
9. The Applicant's legal counsel in a telephone conference call with the City's legal counsel prior to issuance of the Application, expressed satisfaction with the City's schedule for the exchange of a draft license agreement, negotiations regarding the draft agreement, and submission of a finalized agreement to City Council for its approval. This schedule is:
- a) draft licence agreement to be delivered to Applicant's legal counsel during May or early June, 2008;
 - b) negotiations to take place as soon as possible;
 - c) submission of finalized agreement for Council's consideration either at the Council meeting of July 2, 2008 or the Council meeting of August 6, 2008, depending on when the negotiations are concluded.

As indicated, the Applicant's legal counsel did not disagree with this schedule and raised no objections to same in their telephone discussion with the City's legal counsel. It is therefore premature for the Applicant to have made the Application or for intervention by the Board.

10. Such further and other grounds as counsel may advise.

We respectfully submit should the Board give consideration to this Application, that this Application not proceed as a written hearing, but as an oral hearing, and further that the Application best proceed by way of alternative dispute resolution, failing which, we propose

a pre-hearing conference. In this context of ADR, the City does not currently anticipate seeking an award of costs.

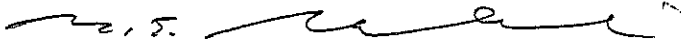
Kindly, advise of further steps which may be required of the City. We would appreciate that this Application not be processed unless proper notice is provided to the City of all applicable proceedings and ensuring that the City is afforded an opportunity to participate.

A request for written evidence which may be submitted by the Applicant, other than the Application Record, may be made at further relevant stage of the proceedings.

For the purposes of service and delivery of documents in this proceeding, please direct communications to the following:

Michal E. Minkowski
Legal Services
City of Mississauga
300 City Centre Drive, 4th Floor
Mississauga, ON L5B 3C1

Yours Sincerely,



Michal E. Minkowski
MEM/aml

c.c. George Vegh, McCarthy Tétrault
Ken Chartrand, Region of Peel