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BY E-MAIL AND OVERNIGHT COURIER

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

Attention: Ms. Kirsten Walli
Board Secretary

**Re: Pearson International Fuel Facilities Corporation
Authority to Construct Jet Fuel Pipeline
Pursuant to Section 101 of the OEB Act
Board File Number: EB-2008-0091**

Introduction and Summary

The Applicant Pearson International Fuel Facilities Corporation (“PIFFC”) has reviewed the responses to the Board’s Notice of Application by the City of Mississauga (“Mississauga”) and the Region of Peel (“Peel”). Although both Mississauga and Peel oppose the relief requested by the Applicant and both have requested an oral hearing, neither has identified issues that are within the scope of this application that require an oral hearing to determine.

Rather, both have demonstrated that they do not accept the Board’s decision granting leave to construct, and believe that they should ultimately determine whether the pipeline should be constructed. In this way, Mississauga and Peel are demonstrating why this authority is granted to the Energy Board and not local municipalities. As the Divisional Court stated in *Union Gas v. Township of Dawn*, (1977), 15 O.R. (2d) 722, there is “the potential not only for chaos but the total frustration of any plan” to serve the gas needs of the province if “each municipality were able to enact by-laws controlling gas transmission lines to suit what might be conceived to be local wishes.” As the Court noted, “These are all matters that have to be considered in the light

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of the general public interest and not local or parochial interests.” The responses of Mississauga and Peel demonstrate why the Board should grant the order requested in this case.

The Applicant therefore requests that the OEB hold a written hearing on the basis of the submissions provided.

In the alternative, if the Board does believe that either an oral hearing or further written materials are required, PIFFC respectfully requests that it be held as soon as possible and that the Board issue directions confirming the issues and evidence to those that are necessary to decide this hearing.

Mississauga’s Response

Mississauga’s response makes four points, none of which are relevant to this proceeding.

First, it claims that there is “no information provided by the Applicant that additional time to complete the licence agreement with the City will result in disruption to Airport operations or otherwise result in material prejudice to the Applicant or its customers.” (paragraph 3).

However, the Board already found in the Leave to Construct Application “that the proposed pipeline is needed to allow the transmission of additional jet fuel to accommodate future growth at Pearson Airport.” (at p.6.) That finding cannot be reconsidered in this application. As a result, the facilities are needed. Once leave to construct is granted, a party should not have to then go on to demonstrate that there will be “material disruption” if the approved project does not go forward.

In any event, the Applicant has provided evidence that “If the pipeline is not operational by December, 2008 the ability to meet the jet fuel storage and supply requirements at Pearson Airport cannot be assured.”

Second, Mississauga states that the “Applicant has not furnished to date written confirmation of all other applicable approvals for its project.” (paragraph 4) In response, it should be noted that the parties who would provide most of these approvals are Mississauga and Peel. If their approval is required as a condition to leave to construct, then Peel and the City will effectively be able to exercise a veto over the construction of projects which have already been granted leave to construct by the Ontario Energy Board.

Third, Mississauga states that the Applicant “only received approval from the Ontario Energy Board in August of 2007” and suggests that it is premature to seek an order. However, the evidence indicates that the Applicant has been attempting to negotiate an arrangement with Mississauga since April, 2006 (Application, Tab 1, paragraph 8). It was only after filing this application in April, 2008 that the Applicant has receive a draft licence agreement (see letter from City to OEB dated May, 26, 2008). That draft proposal contains one-sided and commercially unreasonable terms which are material to the installation, construction and operation of the pipeline, with the result that PIFFC would not be in a position to sign this draft

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proposal in its current form. In its current form, that draft demonstrates an unwillingness to allow the pipeline to be constructed.

Peel's Response

Peel's response also fails to demonstrate that there is an issue to be tried that requires an oral hearing.

First, Peel, like Mississauga, claims that, because it has not issued approvals, permits, licences, etc., the Applicant is not entitled to construct the pipeline. As indicated, this approach effectively grants Peel and Mississauga a veto over the construction of projects which have already been granted leave to construct by the Ontario Energy Board.

Second, Peel claims that notice was faulty because it went to Mr. Ken Chartrand, in the Engineering and Construction Department of the Region instead of the Municipal Clerk. However, Mr. Chartrand always held himself out as the responsible person for this project and continued to make representations on behalf of Peel before, during and after the application. Peel now seems to claim that Mr. Chartrand failed to include senior management in Peel on this matter. If so, that is a management issue for Peel, and is not relevant to the issue before the Board. Also, at no time did Peel seek to review or appeal the Board's decision, so it is not clear what remedy Peel is seeking with respect to this issue.

Third, Peel claims that since August, 2007 it has been "involved in active negotiations with the Applicant with the intent of concluding a mutually agreeable agreement for the crossing of Derry Road." It states that there is "still a substantial amount of information lacking which would allow Peel to properly assess the risks involved with having a pipeline containing jet fuel located within an area where substantial infrastructure is located and public interests are concerned."

However, the Application demonstrates that the Applicant has provided all of the information requested by Peel (often more than once) and Peel's letter does not indicate what information is outstanding (See Application, Tab 2, paragraphs 6, 7, and 10-14).

Further, Peel's "assessment of the risks" is essentially covering the same ground that the OEB's assessment carried out in the leave to construct application. This is made clear in the November 15, 2007 letter from Peel indicating that it will not permit the construction of the pipeline: "The applicant shall provide evidence to the Region of Peel, that all possible options to facilitate the proposed Storage Tank Facility within the Operating Area bounded by Dixie road to the west, Derry Road to the north and Airport Road to the east, have been investigated completely." (see Application, Exhibit 2-Z). Again on April 7, 2008, Peel indicated that it proposed to acquire (at the Applicant's expense) "an outside consultant to undertake a peer review of the proposed pipeline design and to administer the project in its entirety." (Application, Exhibit 2-EE).

In other words, Peel is effectively indicating that it does not accept the Ontario Energy Board's determination that the pipeline is needed, that "construction of the proposed pipeline is the preferred alternative based on environmental and cost factors", and that the "Board is satisfied that the proposed routing of the pipeline is appropriate and that any environmental issues have

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been adequately addressed” (at p. 6). Peel also apparently does not accept the Board’s finding that technical and safety issues have been adequately addressed (at p.6). Instead, Peel is requiring to demonstrate its case for leave to construct to be adjudicated upon by Peel and its “outside consultant”.

All of these issues have already been determined by the Board and will not be relitigated in this application. As a result, Peel has not raised grounds for an oral hearing on this matter.

Finally, Peel notes that, subsequent to filing the application, on May 20, 2008, it provided the Applicant with a draft licence agreement. That draft proposal contains one-sided and commercially unreasonable terms which are material to the installation, construction and operation of the pipeline, with the result that PIFFC would not be in a position to sign this draft proposal in its current form. In its current form, that draft demonstrates an unwillingness to allow the pipeline to be constructed.

Conclusion

As a result of the foregoing, neither Mississauga nor Peel have demonstrated that there is a reasonable issue that requires an oral hearing. Rather, their responses to the application demonstrate that, notwithstanding the Board’s decision granting leave to construct the pipeline, neither Mississauga nor Peel have any intention to allow the pipeline to be constructed. It is therefore submitted that the Board should determine, on the basis of submissions already provided, that an order under s. 101 of the OEB Act granting PIFFC authority to construct a pipeline should be granted.

In the alternative, if the Board does believe that an oral hearing is required, PIFFC respectfully requests that it be held as soon as possible and that the Board issue directions confirming the issues and evidence to those that are necessary to decide this hearing.

Sincerely,



George Vegh

c: Eric R. Finn – Counsel for Region of Peel
Alan Herring, P.Eng - Greater Toronto Airport Authority
Michal Minkowski – City of Mississauga