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**VIA Email, RESS and Courier**

January 31, 2018

Ms Kirsten Walli  
Board Secretary  
Ontario Energy Board  
2300 Yonge Street, Suite 2700  
Toronto, Ontario, M4P 1E4

Dear Ms Walli:

**Re: Enbridge Gas Distribution Inc. ("Enbridge")  
Ontario Energy Board ("Board") File No.: EB-2017-0147  
Fenelon Falls Pipeline Project – Leave to Construct Application  
Reply Submission**

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Pursuant to the Board's Procedural Order No. 2 dated January 8, 2018, attached please find Enbridge's Reply Submission for the above noted proceeding.

To view the application and redacted evidence, including the environmental report, please visit the Enbridge website at [www.enbridgegas.com/fenelonfalls](http://www.enbridgegas.com/fenelonfalls).

If you have any questions, please contact the undersigned.

Yours truly,

[original signed]

Bonnie Jean Adams  
Regulatory Coordinator

## **ONTARIO ENERGY BOARD**

**IN THE MATTER OF** the *Ontario Energy Board Act*, 1998, S.O. 1998, c. 15 (Schedule B), as amended (the “OEB Act”) and the *Municipal Franchises Act*, R.S.O. 1990; c. M.55, as amended (the “MF Act”);

**AND IN THE MATTER OF** an application under section 36 of the OEB Act for an order or orders approving a rate to be applied as a System Expansion Surcharge in respect of each Community Expansion Project by Enbridge Gas Distribution Inc.;

**AND IN THE MATTER OF** an application by Enbridge Gas Distribution Inc. under section 90 of the OEB Act for an order or orders granting leave to construct natural gas distribution pipelines and ancillary facilities in the Region of Durham and Fenelon Falls in City of Kawartha Lakes;

**AND IN THE MATTER OF** an application under section 8 of the MF Act for an order or orders granting a Certificate of Public Convenience and Necessity to Enbridge Gas Distribution Inc. for the construction of works in the City of Kawartha Lakes.

### **REPLY SUBMISSION BY ENBRIDGE GAS DISTRIBUTION INC.**

#### **Introduction**

1. In this proceeding, Enbridge Gas Distribution Inc. (“Enbridge”) applied for orders under the *Ontario Energy Board Act*, 1998 (the “OEB Act”) and the *Municipal Franchises Act*, (the “MF Act”). The relief requested by Enbridge under these statutes is as follows:
  - (i) an order under section 36 of the OEB Act approving the proposed System Expansion Surcharge (“SES”) for all customers that take natural gas distribution service from a Community Expansion Project by Enbridge, and associated changes to the Glossary of Terms in Enbridge’s Rate Handbook;

- (ii) an order under section 36 of the OEB Act approving an SES with an Initial Term of 40 years for all customers that take gas distribution service from a Community Expansion Project (the “Project”) to serve the community of Fenelon Falls in the City of Kawartha Lakes (the “City);
  - (iii) an order under section 90 of the OEB Act granting leave to construct facilities (the “Facilities”) required for the purpose of providing gas distribution service to Fenelon Falls;
  - (iv) an order under section 97 of the OEB Act approving Enbridge’s proposed form of easement agreements; and
  - (v) an order under section 8 of the MF Act granting a Certificate of Public and Necessity to Enbridge in respect of the City.
- 2. The Board issued Procedural Order No. 1 on November 22, 2017 providing for a written interrogatory process in respect of this application. On January 8, 2018, the Board issued Procedural Order No. 2 providing for a written submission process. Procedural Order No. 2 states that intervenors and Board staff shall file written submissions, if any, by January 22, 2018 and that Enbridge may file a written reply submission by January 31, 2018.
- 3. Enbridge has received the following written submissions that have been filed with the Board pursuant to Procedural Order No. 2:
  - (i) submission by Board staff (“Staff Submission”);
  - (ii) Consumers Council of Canada (“CCC”) final submissions (“CCC Submission”);
  - (iii) School Energy Coalition (“SEC”) submissions (“SEC Submission”); and
  - (iv) Vulnerable Energy Consumers Coalition (“VECC”) Final Submission (“VECC Submission”).
- 4. This is Enbridge’s Reply Submission filed in accordance with Procedural Order No. 2. Enbridge will respond to the submissions set out in paragraph 3, above, under the headings that follow.

## **The Project**

5. The submissions filed in this proceeding have raised no objections with respect to the need for, or the timing or routing of, the Project. Indeed the submissions filed by intervenors and Board staff generally support the Project.
6. Board staff support the application, as the application is in line with the Ontario government's commitment to bring natural gas service to more communities in Ontario, it follows the guiding principles in the Board's generic decision on community expansion (the "Generic Decision")<sup>1</sup> and it is consistent with approval of community expansion proposals by Union Gas Limited ("Union").<sup>2</sup> More particularly, Board staff accept the need for the Project and have no outstanding concerns with respect to the choice of alternative, economics of the Project (including the SES for the Project), environmental matters, land-related matters and Indigenous consultations.<sup>3</sup>
7. VECC also supports Enbridge's proposal and supports the objective of having natural gas service available by the winter of 2018/2019 to customers served by the Project.<sup>4</sup> SEC takes no position on a number of aspects of the application,<sup>5</sup> but says that, if Enbridge is awarded the full amount of its request from the Natural Gas Grant Program, and insofar as the Board takes the same approach as in the EB-2015-0179 decision regarding community expansion by Union,<sup>6</sup> then the Board should approve Enbridge's proposal.<sup>7</sup>
8. Enbridge therefore submits that a clear and uncontested case has been made out for the granting of leave to construct for the Facilities under section 90 of the OEB Act and that, accordingly, the Board should grant such leave to construct. Board staff submit that the order granting leave to construct should be subject to conditions of approval and propose draft conditions of approval<sup>8</sup> that are attached at Appendix A to the Staff Submission.<sup>9</sup> Draft conditions of approval were provided with the Board staff interrogatories and Enbridge agreed to those draft conditions in its response to Board staff Interrogatory #15.<sup>10</sup>

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<sup>1</sup> EB-2016-0004 Ontario Energy Board Generic Proceeding on Community Expansion, Decision with Reasons, November 17, 2016.

<sup>2</sup> Staff Submission, page 2.

<sup>3</sup> Staff Submission, page 10.

<sup>4</sup> VECC Submission, page 2, paragraphs 1 and 5.

<sup>5</sup> SEC Submission, page 1, footnote 3.

<sup>6</sup> EB-2015-0179 Decision and Order, August 10, 2017 (discussed later in these submissions).

<sup>7</sup> SEC Submission, page 1.

<sup>8</sup> Staff Submission, page 11.

<sup>9</sup> Staff Submission, Appendix A, pages 2 to 3.

<sup>10</sup> Exhibit I.EGDI.STAFF.15.

9. The Staff Submission states an expectation that Enbridge will, in its reply submission, clarify if a provincial government grant has been awarded for the Project.<sup>11</sup> The government has not yet made information publicly available about the awarding of grants, but as soon as the government has released information publicly about the outcome of the grant application for the Project, Enbridge will send a letter to inform the Board and parties to this proceeding of the outcome of the application to the government.
10. In its evidence, Enbridge explained that it currently holds a Municipal Franchise Agreement for the City and that it holds Certificates of Public Convenience and Necessity for five townships and one village that became part of the City as a result of the provincial legislation by which the City was established.<sup>12</sup> Enbridge has requested that the Board cancel the Certificates that it currently holds for areas within the City and issue a Certificate to Enbridge in respect of the City.<sup>13</sup>
11. There is no objection in any of the submissions filed in this proceeding to Enbridge's request that it be granted a Certificate of Public Convenience and Necessity in respect of the City. Board staff submits that the Certificate for the City should be granted to Enbridge, that the granting of the Certificate does not establish exclusive rights to provide service to unserved areas and that this view is consistent with the Board's past practice.<sup>14</sup> Enbridge therefore submits that a Certificate of Public Convenience and Necessity should be granted.

### **The SES**

12. The submissions made by Board staff and intervenors reveal a variety of different positions with regard to the SES. Board staff agree with the proposed SES for the purposes of the Project,<sup>15</sup> stating that: "...the proposed \$0.23 per m<sup>3</sup> is reasonable and acceptable to be charged to customers in Fenelon Falls, and ... the analysis used to arrive at this quantum is acceptable."<sup>16</sup> A considerable portion of the Staff Submission, however, addresses the request that the SES be approved for application to future Community Expansion Projects.<sup>17</sup>
13. SEC, on the other hand, makes certain specific points about the proposed SES, but, in principle, does not oppose the request for approval of an SES for application to future Community Expansion Projects as it allows for regulatory efficiency for

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<sup>11</sup> Staff Submission, page 6.

<sup>12</sup> Exhibit A, Tab 3, Schedule 1, pages 1 to 2, paragraph 3.

<sup>13</sup> Exhibit A, Tab 3, Schedule 1, page 2, paragraph 4.

<sup>14</sup> Staff Submission, page 11.

<sup>15</sup> Staff Submission, page 10.

<sup>16</sup> Staff Submission, page 7.

<sup>17</sup> Staff Submission, pages 11 to 15.

proposed projects that do not require any other approvals and that may be very small in size.<sup>18</sup>

14. Enbridge submits that, in considering the arguments that have been made about the SES, it is important to bear in mind that the SES is, in effect, a Contribution in Aid of Construction (“CIAC”) recovered by way of relatively small payments made over time. The Board has found that a CIAC is a “rate”<sup>19</sup> and the guidelines provided by the Board in its E.B.O. 188 decision<sup>20</sup> allow gas distributors to recover this “rate” without seeking approval of it on a project-by-project basis.<sup>21</sup>
15. Similarly, the SES is a “rate” – indeed, a fixed, volumetric rate for which Enbridge has requested a general approval by the Board – and it should not be necessary for this rate to be approved again and again in respect of each project to which it applies. Board staff submit that a rate order is needed to identify specifically the communities where the SES is being charged.<sup>22</sup> But, just as the Board does not make orders with regard to the application of a CIAC on a case-by-case basis, it is not necessary for the Board to issue rate orders identifying specifically the communities where the SES is being charged.
16. Approval of a fixed volumetric SES for application to future Community Expansion Projects allows all stakeholders to assess community expansion situations on the basis of a consistent, predictable surcharge to be paid by new customers. Thus, an SES rate rider brings consistency to the determination of project economics for different expansion situations. It puts potential expansion customers on an equal footing with respect to their options to support an expansion project and it reduces the risk of concerns arising about unfair or inequitable treatment of community expansion customers.
17. Further, as referred to by SEC, approval of the SES on a project-by-project basis, regardless of the size of a project or the need for any other approvals from the Board, certainly does not advance regulatory efficiency. Indeed, the inefficiency of re-doing the application and supporting evidence for approval of the SES in case after case will increase costs and thereby, everything else being equal, diminish the economic feasibility of community expansion projects.

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<sup>18</sup> SEC Submission, page 2.

<sup>19</sup> See, for example, EB-2012-0396 Decision with Reasons, February 7, 2013, at pages 14 to 16 and EB-2013-0365 Decision and Order, August 21, 2014, page 13.

<sup>20</sup> *E.B.O. 188 Report of the Board (Natural Gas System Expansion)*, January 30, 1998 (the “E.B.O. 188 Report”) and Appendix B thereto, *Ontario Energy Board Guidelines for Assessing and Reporting on Natural Gas System Expansion in Ontario* (the “E.B.O. 188 Guidelines”).

<sup>21</sup> E.B.O. 188 Report, pages 18 to 19 and EBO 188 Guidelines, pages 7 to 8, section 4.

<sup>22</sup> Staff Submission, page 12.

18. The Staff Submission says that the Board should receive advance notification of all of Enbridge's planned Community Expansion Projects and appears to connect this point with the argument about approval of the SES on a project-by-project basis.<sup>23</sup> Board staff says that, in advance of any filing, it is appropriate for the Board to allow for competition by seeing if there are any other parties interested in providing service and that this process should be initiated for all Community Expansion Projects.<sup>24</sup>
19. In its evidence, immediately following the proposed definition of Community Expansion Projects,<sup>25</sup> Enbridge stated as follows:
- When developing an expansion project Enbridge will determine if these criteria are satisfied. If these criteria are satisfied Enbridge will indicate how these criteria are satisfied within an application for a Community Expansion Project. In the event that leave of the Board is not required to construct a project Enbridge will notify the Board of its intent to construct a Community Expansion Project in its annual rate application. Details of the project will be provided including the requirement for an SES and any other financing mechanisms that will be used to support project economics.<sup>26</sup>
20. Intervenors and Board staff have not raised any specific concern about Enbridge's proposal that it will notify the Board of its intent to construct a Community Expansion Project in its annual rate application. Indeed, Board staff says that notification in the annual rate application is "potentially acceptable" and that notification outside of a rate application could also be acceptable (either for individual projects or a group of projects) if the timing of an annual rate application does not work well for Enbridge.<sup>27</sup> In line with Board staff's comment about notification outside of a rate application, SEC submits that Enbridge should be required to file a letter with the Board informing it of a new community expansion project, even if no application needs to be filed with the Board.<sup>28</sup>
21. In short, no specific concern has been raised with respect to Enbridge's proposal that it will notify the Board of Community Expansion Projects in its annual rate application, and, more generally, Board staff and SEC both accept that notification of projects can be given to the Board in situations where no application to the Board needs to be filed. Accordingly, the point about notification to the Board does not in any way support an argument with respect to approval of the SES on a project-by-

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<sup>23</sup> Staff Submission, page 15.

<sup>24</sup> Staff Submission, page 13

<sup>25</sup> Exhibit B, Tab 1, Schedule 1, page 4, paragraph 9.

<sup>26</sup> Exhibit B, Tab 1, Schedule 1, page 4, paragraph 10.

<sup>27</sup> Staff Submission, page 13.

<sup>28</sup> SEC Submission, page 3.

project basis. In other words, since it is accepted that notification to the Board can be given in situations where no application to the Board will be made, there is no connection between the point about notification and Board staff's argument about project-by-project approval of the SES.

- 22.. In the context of submissions about approval of the SES for future Community Expansion Projects, Board staff question the tracking of Small Main Extension Projects not requiring approval under section 90 of the OEB Act in Enbridge's Rolling Project Portfolio and Investment Portfolio, both of which are maintained pursuant to the E.B.O. 188 Guidelines.<sup>29</sup> However, Enbridge would not be in compliance with the E.B.O. 188 Guidelines if it were to follow the approach put forward by Board staff. As one example only, Enbridge notes that omitting projects from the Investment Portfolio is contrary to the provision of the E.B.O. 188 Guidelines which says that this Portfolio is to include the costs and revenues associated with all new distribution customers who are forecast to attach in a particular test year.<sup>30</sup>
23. Moreover, the suggestion that Enbridge should make exceptions from its compliance with the E.B.O. 188 Guidelines for the purposes of Community Expansion Projects is contrary to the Generic Decision. It is clear from many parts of the Generic Decision that the E.B.O. 188 Guidelines continue to apply under the Board's framework for Community Expansion Projects. Among the statements made by the Board in this regard is the following: "There is no need to modify the parameters or depart from the principles embodied in E.B.O. 188 to facilitate expansion projects."<sup>31</sup>
24. SEC submits that potential customers should not be told that the SES will remain unchanged at \$0.23 per m<sup>3</sup> for more than the 10 year Rate Stabilization Period or that the SES will only be in place for 40 years.<sup>32</sup> SEC says that potential customers should only be told that this is the forecast. A core element of Enbridge's proposal, however, is that the SES will not change: it is key to the fair treatment of customers taking service from a Community Expansion Project that the SES be a predictable amount and that it remain constant until it no longer applies. As set out in Enbridge's evidence, if a Community Expansion Project reaches a Profitability Index ("PI") of 1.0 prior to the Final Year of the Initial Term of the SES, the SES will no longer be charged as of the year after the year in which the PI of 1.0 was reached.<sup>33</sup>

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<sup>29</sup> Staff Submission, page 13.

<sup>30</sup> E.B.O. 188 Guidelines, page 3, section 1.1

<sup>31</sup> Generic Decision, page 18.

<sup>32</sup> SEC Submission, page 2 and page 3.

<sup>33</sup> Exhibit B, Tab 1, Schedule 1, page 7, paragraph 19.



25. Board staff also submit that “Enbridge’s contract customers (i.e. stand-alone industrial customer) should not be eligible for an SES”.<sup>34</sup> The Project itself is an ideal illustration of the problem with this submission. It is expected that there will be one large volume customer served by the Project and the economics of the Project are based on payment of the SES by this customer. Should the customer not be “eligible” for the SES, there would be a shortfall in the Project economics that, unless made up in some other way, would put the Project at risk.
26. In view of Enbridge’s proposal that the SES apply to future Community Expansion Projects, both the Staff Submission and the VECC Submission address the definition of Community Expansion Project. The Board determined in the Generic Decision that new rates can be proposed by gas distributors to cover the costs of serving expansion areas.<sup>35</sup> Given this determination, prospective customers who do not currently have gas service should have an equivalent opportunity to pay a rate surcharge, rather than a CIAC, to contribute to the economic feasibility of a system expansion, unless there is a principled basis for doing otherwise. The definition of Community Expansion Project proposed by Enbridge was intended to provide such an equivalent opportunity to prospective customers of system expansion projects.
27. As stated by VECC, the SES “provides a practical and attractive way for potential customers to finance projects which have long-run benefits”.<sup>36</sup> Indeed, VECC goes on to express concern about “discriminating against like situated customers” in making the SES available as an alternative to a CIAC.<sup>37</sup> As a matter of fairness to all prospective customers, Enbridge’s definition of Community Expansion Project is intended to avoid narrowing the availability of the SES in a manner that cannot be justified on a principled basis and indeed may be perceived as arbitrary or even discriminatory.
28. Board staff refer to the Generic Decision and argue that “contiguous growth” should not be considered a Community Expansion Project.<sup>38</sup> However, if a group of prospective customers in a location that is “contiguous” to the existing system must pay a contribution to make an expansion to serve them economically feasible, Enbridge is not aware of any principled basis why the option of the SES, rather than a CIAC, should be unavailable to these prospective customers, even though the SES would be available to a similar group of customers in a slightly more distant, “non-contiguous” location.

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<sup>34</sup> Staff Submission, page 14. Board staff did say, though, that it has “no concerns with the economics of the Fenelon Falls Project ... [or] components of its funding that brings the PI to 1 ...” (Staff Submission, page 7).

<sup>35</sup> See, for example, Generic Decision, at page 19.

<sup>36</sup> VECC Submission, page 15, paragraph 52.

<sup>37</sup> *Ibid.*

<sup>38</sup> Staff Submission, page 14.

29. Board staff argue that “contiguous growth” projects can be covered under the existing E.B.O. Guidelines.<sup>39</sup> The E.B.O. Guidelines, though, do not provide for a rate surcharge as an alternative to a CIAC. VECC’s assertion is that the CIAC “was virtually useless” in adding revenue in any project with multiple customers.<sup>40</sup> But Board staff do not explain how “contiguous growth” projects with multiple customers can be “covered” with the CIAC under the existing E.B.O. Guidelines.
30. Accordingly, Enbridge does not agree with Board Staff’s argument that a Community Expansion Project should be defined to exclude contiguous growth. No principled basis has been put forward to support a conclusion that the availability of the SES to otherwise similarly-placed prospective customers should depend on contiguity to the existing system:
31. VECC goes further with its point about the availability of the SES as an alternative to a CIAC. VECC compares Community Expansion Projects funded by the SES with projects funded by a CIAC and says that the former are expected to achieve a PI of 1.0, while the latter may be included in the Investment Portfolio with a PI of 0.80. Enbridge submits that allowing Community Expansion Projects to proceed with a PI of at least 0.80, but less than 1.0, would put at risk Enbridge’s ability to comply with the provision of the E.B.O. 188 guidelines stating that the Investment Portfolio will be designed to achieve a PI greater than 1.0.<sup>41</sup>
32. The E.B.O. 188 Report makes clear that a PI of 0.80 is a “minimum threshold” for inclusion of a project in the Rolling Project Portfolio.<sup>42</sup> On an overall portfolio basis, the E.B.O. 188 Report says that a Net Present Value (“NPV”) of zero (or greater) is appropriate for the Rolling Project Portfolio<sup>43</sup> and that the Investment Portfolio should be designed to achieve a positive NPV including a safety margin.<sup>44</sup> Accordingly, in its efforts to meet the expectations for the Investment Portfolio and the Rolling Project Portfolio set out in the E.B.O. 188 Report, Enbridge has determined that Community Expansion Projects funded by the SES should achieve a PI of 1.0.

### **Other Issues**

33. In its EB-2015-0179 Decision and Order, the Board found that, in the event Union seeks recovery for any revenue requirement shortfall after the end of the 10 year Rate Stabilization Period, Union will be required to provide a revised Discounted

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<sup>39</sup> Staff Submission, page 14.

<sup>40</sup> VECC Submission, page 15, paragraph 52.

<sup>41</sup> E.B.O. 188 Guidelines, page 3, section 1.1.

<sup>42</sup> E.B.O. Report, pages 18 to 19, section 4.3.2.

<sup>43</sup> *Supra*, page 12, section 2.3.14.

<sup>44</sup> *Supra*, page 11, paragraph. 2.3.10.

Cash Flow calculation based on actuals.<sup>45</sup> As well, the Board addressed Union's proposal that it would bring forward any variance between actual and forecast capital costs in a future rate application. The Board made the following determination with regard to Union's proposal:

Union's proposed treatment of capital costs is the same as other distribution system expansion projects that form part of the common rate base. The community expansion projects are no different and the OEB agrees that consideration of Union's proposal on this basis is warranted. The OEB will determine the appropriate treatment of any capital cost overrun at the time of rebasing.<sup>46</sup>

34. CCC<sup>47</sup> and SEC<sup>48</sup> argue that these determinations by the Board should apply equally to Community Expansion Projects by Enbridge. Enbridge agrees with the application of the same determinations to its Community Expansion Projects.<sup>49</sup>
35. CCC expresses concern that, because the SES is a volumetric charge, declining average use of natural gas could lead to lower recovery of revenue from community expansion customers than forecast revenue. CCC acknowledges that this specific issue was not raised in the EB-2015-0179 proceeding, where the Board ultimately approved a volumetric surcharge.<sup>50</sup>
36. While of course the feasibility test for system expansion projects is, by its very nature, based on forecast revenues and costs, the E.B.O. 188 Decision provides safeguards for existing ratepayers, in particular, through the requirements of the Investment Portfolio and the Rolling Project Portfolio. Enbridge submits that there is no basis for concluding that the E.B.O. 188 safeguards should be any different for Community Expansion Projects than for all other expansion projects.
37. In addition, Enbridge submits that any revenue shortfall after the end of the 10 year Rate Stabilization Period attributable to declining average use will be addressed in accordance with the process for consideration of a revenue requirement shortfall determined by the Board in EB-2015-0179 (set out in paragraph 33, above). Enbridge acknowledges that this type of treatment will apply in respect of its Community Expansion Projects.

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<sup>45</sup> EB-2015-0179 Decision and Order, *supra*, page 14.

<sup>46</sup> *Supra*, at page 15.

<sup>47</sup> CCC Submission, pages 1 to 2.

<sup>48</sup> SEC Submission, page 2.

<sup>49</sup> Response to CCC Interrogatory #3, Exhibit I.B.EGDI.CCC.3.

<sup>50</sup> CCC Submission, page 4.

**Conclusion**

38. Enbridge therefore respectfully requests that the Board make an order for the following relief:

- (i) approving the proposed SES for all customers that take natural gas distribution service from a Community Expansion Project by Enbridge, as set out in draft Rider I at Exhibit B-1-1, Attachment 5;
- (ii) approving associated changes to the Glossary of Terms in Enbridge's Rate Handbook, as set out at Exhibit B-1-1, Attachment 5;
- (iii) approving an SES with an Initial Term of 40 years for all customers that take gas distribution service from the Project;
- (iv) granting leave to construct the Facilities;
- (v) approving Enbridge's proposed form of easement agreements, as set out at Exhibit G-1-3, Attachments 1, 2 and 3; and
- (vi) granting a Certificate of Public Convenience and Necessity to Enbridge in respect of the City.

All of which is respectfully submitted.

January 31, 2018

(Original Signed)

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Fred D. Cass  
Counsel for the Applicants