

Ms. Christine Long
Board Registrar
Ontario Energy Board
P.O. Box 2319, 27th Floor
2300 Yonge Street
Toronto, ON M4P 1E4

January 7, 2021

**Re: EB-2020-0198 – Enbridge Waterfront Relocation Project Leave to Construct
Pollution Probe Submission Related to Jurisdictional Issues**

Dear Ms. Long:

In accordance with Procedural Order No. 3 for the above-noted proceeding, please find below Pollution Probe's submission related to the jurisdictional questions. Pollution Probe is filing this early in the hope that it is helpful to all parties as they finalize their submissions.

Pollution Probe highlighted in its letter dated November 27, 2020 that it believes that the OEB does not have jurisdiction to order costs on Waterfront Toronto. The proposed project and costs allocation for the Leave to Construct application are premised on the fact that Waterfront Toronto would pay the full costs of the project. Enbridge states that the proposed pipeline is required because of the need to relocate a section of existing pipeline that is located on the Keating Railway Bridge, which is in conflict with the construction of Waterfront Toronto's Port Lands Flood Protection and Enabling Infrastructure Project (PLFPEI). The City of Toronto filed material supplemental to the application evidence indicating that the pipeline removal would be required regardless of the request by Waterfront Toronto. The proposed project appears significantly larger than what would be required to meet the needs of Waterfront Toronto and the City of Toronto. It is likely that a more cost-effective solution (as outlined in the Waterfront Toronto letter dated December 17, 2020) could be leveraged. It is unclear at this time, but a more cost-effective project could possibly be funded (in part or whole) by Waterfront Toronto and it is recommended that the OEB request that Enbridge consider those more cost-efficient options in comparison to the proposed solution. If the OEB determines that it does not have jurisdiction to order costs on Waterfront Toronto, it does not preclude the ability for Waterfront Toronto to voluntarily sign a contribution agreement for the project. Should Enbridge require the more expensive solution, it should be justified on a system basis considering a full analysis of integrated resource planning options.

Question 1: Does the OEB have the jurisdiction to determine cost responsibility for the Proposed Pipeline, including any allocation of costs to Waterfront Toronto? If the answer to this question is "yes", what steps, if any, should the OEB take to address this situation?

This application is a Leave to Construct application and Enbridge has stated that Waterfront Toronto is responsible for the project costs, estimated to be \$70 million. There was no agreement filed to confirm that Waterfront Toronto has agreed to pay the project costs. Based on the correspondence laid out in the intervention request from Waterfront Toronto, it appears that there have been ongoing discussions related to project scope and related costs. Had Enbridge accepted one of the less costly options, it appears that Waterfront Toronto may be receptive to a cost sharing arrangement. There is no request in

the application that the OEB order Waterfront Toronto to pay the proposed project costs. However, as outlined in Pollution Probe's letter dated November 27, 2020, it is critical to understand cost responsibility prior to consideration of the Leave to Construct approval. There is also uncertainty and debate over who is accountable for requiring the project. Given that the project driver is the need to abandon the pipeline attached to the Keating Railway Bridge and that the bridge is owned by the City of Toronto, it is unclear what cost responsibility Waterfront Toronto would have regardless of the answer to the question on jurisdiction.

Enbridge's submission does a good job of summarizing the OEB's powers in relation to pipeline projects and Pollution Probe has avoided repeating those points. However, it does not address the issue of OEB authority specifically over Waterfront Toronto. Pollution Probe believes that the OEB does not have the jurisdiction to order costs on Waterfront Toronto. Waterfront Toronto is an entity created by three levels of government, namely Canada, Ontario and the City of Toronto. Although the OEB does have jurisdiction over the City of Toronto, it does not have the authority to upload costs on the Federal Government of Canada. Any costs incurred by Waterfront Toronto are the joint responsibility of all three levels of government jointly, unless there is an agreement to allocate costs on a different basis. Waterfront Toronto is not a commercial entity and appears to have no ability to fund costs other than through government funding.

Question 2: If the answer is "no", what steps can the OEB take to ensure that the costs of the Proposed Pipeline are not unfairly shifted to ratepayers and that the OEB is able to meet its statutory objectives which include protecting the interests of consumers with respect to prices and the adequacy, reliability and quality of gas service (OEB Act, s.2)?

The application submitted was clearly based on the assumption that costs would be fully recovered from Waterfront Toronto and not Ratepayers. If there was certainly that Waterfront Toronto would bear the full project costs, it would reduce the rigor of assessing suitable and less costly options. The need for the project based on customer load or other suitable system factors was not included in the application. If Ratepayers are to carry the costs of a project resulting from removal of the existing pipeline from the Keating Railway Bridge, the need and a more thorough assessment of options based on future demand is required. The Enbridge submission dated December 17, 2020 indicated that "Absent the PLFPEI there would be no need to relocate the existing NPS 20 pipeline off of the Keating Railway Bridge". This is not factually correct since the City of Toronto has provided Enbridge with Notice of Termination of Enbridge Licence to utilize Keating Rail Bridge, therefore requiring pipeline removal prior to May 2022. Under these conditions, the Franchise Agreement would set the cost responsibility for all costs related to pipeline abandonment or relocation, unless another agreement for funding is reached. If Enbridge simply abandons that section of pipe, no OEB approvals are required. If Enbridge believes that there is need for a new (replacement) pipeline, it will require Leave to Construct approval from the OEB.

In the absence of OEB approval for rate recovery of capital costs, any expenditures not reimbursed by a third party would be the responsibility of Enbridge (i.e. Enbridge shareholders). That is the default regardless of whether those costs were prudently incurred or not. Should Enbridge request rate recovery for capital costs incurred, one of the aspects reviewed is prudence. In this application Enbridge has neither requested approval of project costs or provided sufficient evidence to assess costs related to other options available. Cost recovery approval is typically through the annual rate case process and Enbridge's 2021 ICM application has requested full use of 2021 ICM potential funding for three other

projects, leaving no room available in 2021. This means that if the Leave to Construct application proceeds based on the timing outlined in Enbridge's application, the earliest opportunity for Enbridge to request consideration of rate recovery is 2022.

The answer to the jurisdiction questions alone do not provide the full details required to proceed with the application. Even if the OEB determines that it does not have jurisdiction to order costs on Waterfront Toronto, there is still the potential that Waterfront Toronto could be willing to enter a contribution agreement for a down-sized version of the project. Pollution Probe suggests that the timeline outlined in Procedural Orders 1, 2 and 3 should be modified if the OEB does not have jurisdiction to order costs on Waterfront Toronto. It is recommended that the interrogatory phase be placed on hold until Enbridge has an opportunity to update its evidence based on a more cost-effective solution and any cost sharing agreements it is able to secure. Due to the deadline for Enbridge to remove its pipeline from the bridge, a full assessment of the need for a new pipeline and options to reduce costs in line with the recommendations made by Waterfront Toronto is urgently required. It is recommended that the OEB request that Enbridge undertake the full assessment of (integrated resource planning) options and present the full analysis, options and related costs by April 1, 2021. That would enable sufficient time for OEB review, approvals and construction prior to the May 2022 deadline for removing the existing pipeline.

Respectfully submitted on behalf of Pollution Probe.



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