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January 8, 2021

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

Dear Ms. Long,

**RE: EB-2020-0198 Enbridge Gas NPS 20 Waterfront Relocation LTC Application  
Energy Probe Submission on OEB Jurisdiction**

Attached is the submission of Energy Probe Research Foundation (Energy Probe) in response to the questions regarding OEB jurisdiction in Procedural Order No.1 in the EB-2020-0198 proceeding, the application by Enbridge Gas Inc. for the approval of its NPS 20 Waterfront Relocation Project Leave to Construct Application.

Respectfully submitted on behalf of Energy Probe.

Tom Ladanyi  
TL Energy Regulatory Consultants Inc.

cc. Patricia Adams (Energy Probe Research Foundation)  
Joel Denomy (Enbridge Gas Inc.)  
Ritchie Murray (OEB Staff)  
Enbridge Gas Inc. (Regulatory Proceedings)

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**ONTARIO ENERGY BOARD**

**IN THE MATTER OF** the *Ontario Energy Board Act, 1998*,  
S.O. 1998, c. 15 (Sched. B), as amended (the “OEB Act”);

**AND IN THE MATTER OF** an application by Enbridge Gas  
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 City of Toronto.

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**Enbridge Gas Waterfront Relocation Project**

**Energy Probe Submission on OEB Jurisdiction**

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**January 8, 2021**

## Background

Enbridge Gas Inc. applied to the OEB on October 13, 2020 for an order granting leave to construct approximately 1.9 kilometres of 20-inch diameter and approximately eight metres of 24-inch diameter natural gas pipeline and ancillary facilities because Waterfront Toronto requested that the existing pipeline be relocated. The application stated that Enbridge Gas advised Waterfront Toronto that Waterfront Toronto is responsible for 100% of the costs of the proposed pipeline.

In its notice of intervention Waterfront Toronto stated that Enbridge Gas assumes that the OEB has the jurisdiction to allocate the cost of the pipeline to Waterfront Toronto. However, Waterfront Toronto believes that the OEB does not have the necessary jurisdiction. Waterfront Toronto also stated that the City of Toronto sent a letter to Enbridge on October 30, 2020 terminating Enbridge's access rights to the bridge where the existing pipeline is located. Waterfront Toronto claims that the City is now the party that is requesting that Enbridge relocate its pipeline, and not Waterfront Toronto.

In Procedural Order No. 1 issued on December 10, 2020, the OEB invited parties to the proceeding to file submissions on two questions identified as (a) and (b).

- a) 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?*
- b) 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 due date for the submissions was December 17, 2020 and was subsequently changed by Procedural Order No.2 to January 4, 2021 and then to January 8, 2021 by Procedural Order No.3.

The following is the submission of Energy Probe Research Foundation (Energy Probe) on the two questions.

## **The Submission of Energy Probe on Question (a)**

### *Question (a)*

*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?*

Energy Probe submits that the OEB has the jurisdiction to determine cost responsibility for the Proposed Pipeline. Specifically, the OEB has the jurisdiction to determine what portion of the costs of the pipeline should be allowed for addition to rate base of Enbridge Gas for rate setting purposes and recovery from ratepayers in rates. This jurisdiction is stated in the Board objectives under the OEB Act. Specifically, one of OEB’s objectives is to protect the interest of consumers as stated in Section 2 of the OEB Act.

### **Board objectives, gas**

**2** The Board, in carrying out its responsibilities under this or any other Act in relation to gas, shall be guided by the following objectives:

2. To inform consumers and protect their interests with respect to prices and the reliability and quality of gas service.

While the OEB has the jurisdiction determine cost responsibility, Energy Probe submits that the OEB Act does not give it the power to compel a party to pay costs unless that party is providing OEB regulated distribution, storage, or transmission of gas or is requesting any of these services. Neither Waterfront Toronto nor the City of Toronto are providers of gas services regulated by the OEB nor are they requesting such services. Therefore, the OEB does not have the power to compel them to pay for the relocation.

## **The Submission of Energy Probe on Question (b)**

### *Question (b)*

*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)?*

If the OEB decides to approve the relocation project and issues a Leave to Construct Order, it can in its Conditions of Approval require that Enbridge Gas prior to the start of construction file a contract with either Waterfront Toronto or the City of Toronto or both where Waterfront Toronto and/ or the City of Toronto agree to pay for the cost of relocation. Section 23 of the OEB Act gives the OEB wide powers to impose conditions of orders.

### **Conditions of orders**

**23** (1) The Board in making an order may impose such conditions as it considers proper, and an order may be general or particular in its application. 1998, c. 15, Sched. B, s. 23.

Therefore, the OEB can protect the interests of consumers by including a condition in its Leave to Construct Conditions of Approval that no relocation construction work take place until a signed contract committing Waterfront Toronto and/or the City of Toronto to pay for 100% of the relocation costs is filed with the OEB.

Respectfully submitted on behalf of Energy Probe,

Tom Ladanyi

TL Energy Regulatory Consultants Inc.