

# Elson Advocacy

January 8, 2021

## BY EMAIL AND RESS

**Ms. Christine Long**

Board Secretary

Ontario Energy Board

2300 Yonge Street, Suite 2700, P.O. Box 2319

Toronto, Ontario M4P 1E4

Dear Ms. Long:

**Re: EB-2020-0198 – Toronto Waterfront Relocation Project**

I am writing on behalf of Environmental Defence to provide submissions on the two jurisdictional questions posed by the Board in *Procedural Order #1*.

### Summary

Enbridge Gas is seeking an order that would require Waterfront Toronto to pay \$70 million to replace and relocate the fossil fuel pipeline that crosses the Keating Railway Bridge. However, the Board has no jurisdiction to do so. The OEB may set rates, but Waterfront Toronto is not a gas customer and does not pay gas rates. Furthermore, it would be unfair to shift these costs to Waterfront Toronto and thus to taxpayers. Enbridge plans to replace this pipeline in any event and has a variety of options to do so, including those proposed by Waterfront Toronto. Forcing Waterfront Toronto to pay \$70 million for this pipeline replacement represents a very large fossil fuel subsidy that is not in the public interest.

### 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?*

The OEB does not have the jurisdiction to make an order requiring that Waterfront Toronto pay \$70 million to replace and relocate the relevant pipeline. The OEB is a creature of statute and obtains its jurisdiction from the *Ontario Energy Board Act* (the “Act”). The Act simply does not provide the OEB with the jurisdiction to grant the relief that Enbridge seeks. There is no ambiguity.

Enbridge quotes and selectively cites from s. 19(6) of the Act. However, when read in its entirety, that section is of no assistance. Section 19(6) states that: “The Board has exclusive jurisdiction in all cases and in respect of all matters in which jurisdiction is conferred on it by

this or any other Act.” This section does not grant the OEB jurisdiction over any subjects. Instead, it speaks to the jurisdiction granted to the OEB elsewhere and stipulates that this pre-existing jurisdiction is exclusive.

Enbridge also cites s. 36, under which the OEB may “make orders approving or fixing just and reasonable rates for the sale of gas by gas transmitters, gas distributors and storage companies, and for the transmission, distribution and storage of gas.” The OEB could set a rate for Waterfront Toronto, but that would be absurd and meaningless because Waterfront Toronto does not require gas and would never pay it. Waterfront Toronto is not a customer and is not subject to the OEB’s rate-making jurisdiction.

Consider this question: If the OEB ordered Waterfront Toronto to pay \$70 million to Enbridge, how would it enforce that order? There is no such mechanism. The typical means of implementing OEB orders is that a customer can only obtain gas service if it pays the rates set by the OEB. That mechanism does not exist here.

## 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) ?*

It is not at all unfair to refrain from ordering Waterfront Toronto to pay \$70 million for this fossil fuel pipeline. Enbridge had prior plans to replace this pipeline.<sup>1</sup> Furthermore, Enbridge no longer has a legal right to keep the pipeline on the Keating Railway Bridge.<sup>2</sup> The pipeline must be replaced and relocated. It would be unfair to shift the cost of this fossil fuel infrastructure to taxpayers, especially to an entity that has received public funds to further important environmental and public interest objectives.

This pipeline will serve gas customers. Not everyone is a gas customer. Shifting the cost to Waterfront Toronto would be an unreasonable and unfair fossil fuel subsidy. Public funds earmarked for important environmental and public interest purposes should not be diverted in this way. Natural gas consumption causes over 30% of Ontario’s greenhouse gas emissions.<sup>3</sup> This should not be subsidized pursuant to an OEB order.

Yours truly,



Kent Elson

cc: Parties in the above proceeding

<sup>1</sup> EB-2020-0198 Exhibit B, Tab 1, Schedule 1, Page 5 [[link](#), PDF p. 15].

<sup>2</sup> Letter from the City of Toronto, October 30, 2020 [[link](#), PDF p. 8].

<sup>3</sup> EB-2019-0294, Exhibit I.ED.1, Attachment 1 [[link](#), PDF p. 161].