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January 19, 2021

Delivered by Email

Ms. Christine Long, Registrar  
Ontario Energy Board  
2300 Yonge Street  
Toronto, ON M4P 1E4  
Registrar@oeb.ca

Dear Ms. Long:

**Re: Application by Enbridge Gas Inc. for an Order Granting Leave to  
Construct a Natural Gas Pipeline in the City of Toronto. EB-2020-0198**

Please find attached Waterfront Toronto's Submission regarding the Utility Corridor proposed by Waterfront Toronto. Appendix 1 which contains all of the documents being produced is, because of its size, being submitted as a separate document.

Yours truly,



Gordon Kaiser

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## **ONTARIO ENERGY BOARD**

**IN THE MATTER OF** The Ontario Energy Board Act, 1998, S.O. 1998, c.15, Schedule 8, and in particular, S.90.(1) and S.97 thereof;

**AND IN THE MATTER OF** an Application by Enbridge Gas Inc. for an Order granting leave to construct natural gas pipelines in the City of Toronto.

## **SUBMISSIONS ON THE UTILITY CORRIDOR**

## **TORONTO WATERFRONT REVITALIZATION CORPORATION**

### **Introduction**

1. On January 14, 2021 the Board issued PO No.4 directing Waterfront Toronto to file submissions on the Utility Corridor option that is in addition to its submission on the Board's two jurisdictional questions.
2. The evidence to be provided by Waterfront Toronto should include a description of the location and design of the Utility Corridor as well as a summary of any discussions it has had with Enbridge Gas regarding this option on jurisdiction.
3. As noted herein, and in Appendix 1, Waterfront Toronto has had significant and detailed discussions with Enbridge concerning the proposed Utility Corridor .

### **Background**

4. To put matters in perspective it is important to understand the background to the dispute that is now before the Board. Waterfront Toronto was formed by three levels of government, the government of Canada, the Province of Ontario and the City of Toronto to revitalize the Toronto waterfront. One of the priority projects of Waterfront Revitalization is to flood protect the mouth of the Don River, which is susceptible to flooding during a regulatory storm. To remedy this, Waterfront Toronto was tasked with the flood protection project, which is one of the largest infrastructure projects ever undertaken in the City of Toronto.

5. In 1955 the Consumers Gas Company (now Enbridge) requested and received permission from the City of Toronto to locate a 20 inch diameter gas pipe on the Keating Railway bridge. That pipe is still there. The flood protection project requires the Don river to be widened and, therefore, the bridge to be lengthened. To lengthen the bridge requires the pipe to be modified.
6. In 2017, Enbridge announced that they were planning to move the subject pipeline in a manner substantially similar to that which is now proposed. In May, 2018, the Port Lands Flood Protection project was announced and in August, 2018, Enbridge informed Waterfront Toronto that its planned pipeline replacement would not proceed.
7. Waterfront Toronto proposed to Enbridge, as it did to the three other companies using the Keating bridge to carry different utility assets across the river, to relocate the utility assets onto an expanded Utility Corridor on the Keating Rail Bridge once construction has been completed. Enbridge refused. The three other companies agreed. Instead, Enbridge insisted on a new pipeline that would cost \$70 million. It would be many times longer than the pipe being modified.

### **The Enbridge Leave to Construct Application**

8. On October 13, 2020, Enbridge Gas Inc filed an Application with the Board under section 90 of the Ontario Energy Board Act for orders granting leave to construct approximately 2 km of pipeline in the City of Toronto at a cost \$70 million.
9. Enbridge Gas included in that application general information on a number of alternative routing options including the “*Cantilever Beam Option*”. This option, which is addressed in Exhibit B, Tab 1, Schedule 1, pages 35 to 39, paragraphs 37 and 38 is the Utility Corridor option that is referred to by Waterfront Toronto, that is described in progressively more detail in most of the attachments to this submission, and that has been accepted by Toronto Hydro.

### **Waterfront Toronto/Enbridge Correspondence**

10. Substantial communication and correspondence including meetings, meeting minutes, e-mails, drawings and sketches were exchanged between Waterfront Toronto and Enbridge Gas Inc beginning with the first meeting between the parties on April 3, 2018 (Attachment #1) during which the parties discussed Enbridge’s plans to re locate the pipeline in accordance with the preferred alignment of their original leave to construct NPS20 pipeline replacement project.

11. On August 3, 2018 Waterfront Toronto was notified that the then existing plan of Enbridge was placed on hold. (Attachment #2).
12. On August 24, 2018 Waterfront Toronto sent an e-mail to Enbridge Gas Inc. (Attachment #3) transmitting two potential staging options for the Lake Shore Bridge and Keating Rail Bridge and Utility Corridor; Staging Option A (Attachment #4) and Staging Option B (Attachment #5).
13. On October 9, 2018 Enbridge and Waterfront Toronto held a meeting and on October 15, 2018, Enbridge Gas Inc. sent an e-mail to Waterfront Toronto (Attachment #6), transmitting the Minutes of the Meeting held on October 9, 2018 between Waterfront Toronto and Enbridge Gas Inc with the subject Conflict with Existing NPS 20 Gas Main (Attachment # 7)
14. On March 13, 2019 Enbridge and Waterfront held a meeting and on March 28, 2019 Waterfront Toronto sent an e-mail to Enbridge Gas Inc. (Attachment #8) transmitting the Minutes of Meeting held on March 13, 2019 between Enbridge Gas Inc. and Waterfront Toronto with the subject Enbridge NPS-20 Re-Routing Follow-Up (Attachment #9).
15. Waterfront Toronto and Enbridge held a meeting on April 23, 2019 and on May 3, 2019 Waterfront Toronto sent an e-mail to Enbridge Gas Inc. (Attachment #10) transmitting the Minutes of the Meeting held on April 23, 2019 between Enbridge Gas Inc. and Waterfront Toronto with the subject Enbridge NPS-20 Re-Routing Follow-Up (Attachment #11) including two documents illustrating the alignment options discussed at the meeting; 1) Alignment Option Sketches prepared by Enbridge (Attachment #12) and; 2) Relocation Study Table (Attachment #13).
16. Waterfront Toronto and Enbridge held a meeting on July 29, 2019 and on August 2, 2019, Waterfront Toronto Sent an e-mail to Enbridge Gas Inc. (Attachment #14) transmitting the Minutes of the Meeting held on July 29, 2019 with the subject PLFP Enbridge Re-Routing Options Workshop Follow Up (Attachment #15) including five documents illustrating and describing the proposed Don River Utility Corridor crossing; 1) PLFP Enbridge Re-Routing Options Workshop Follow Up Presentation (Attachment #16); Utility Section Detail Drawing (Attachment #17); NPS 20 Relocation Staging Plans (Attachment #18); Utility Corridor Construction and Staging Details (Attachment #19); Lakeshore Boulevard Bridge and Keating Rail Bridge Schematic Design Drawings dated July 24, 2019 (Attachment #20).
17. The extensive meetings, correspondence and meeting records described above (in addition to numerous telephone calls and discussions that do not include written correspondence) illustrate the effort expended by Waterfront Toronto to satisfy Enbridge Gas Inc. with respect to the utility Corridor Option that Waterfront Toronto will construct to accommodate the utilities that cross the Don River at this location, including Enbridge Gas Inc. (NPS 20 gas main), Toronto Hydro (Pan Am Village electrical duct banks), Toronto Water (100 mm water main) and the City of Toronto (RESCU fibre optic cable).

18. Waterfront Toronto has not requested that any utility share in the cost of constructing the utility corridor. It will be constructed by Waterfront Toronto at its sole cost and expense. Toronto Hydro will however relocate the “Pan Am Village” duct banks that are currently located on, and cross, the Keating Rail Bridge at their expense, with no contribution by Waterfront Toronto or the City of Toronto.
19. Whether or not Enbridge Gas Inc. relocates the NPS 20 gas main on the Utility Corridor, Waterfront Toronto is still obliged to, and will construct, the Utility Corridor to accommodate the utilities that have agreed to locate on that structure. This will occur regardless of whether the City of Toronto elects to retain or abandon the Keating Rail Bridge.
20. Attachments #21, #22 and #23 reflect the detailed drawings for the Utilities and Utility Corridor. Attachment 21 is the Existing Utilities Plan; Attachment 22 is the Issued for Tender Utility Corridor Construction Drawings, and; Attachment 23 is the plan showing the utilities after they have been relocated on the Utility Corridor.
21. The attachments and correspondence contained herein are provided in response to the Board’s Procedural Order #4. Waterfront Toronto is prepared to review and discuss the materials further, as the Board may direct. The attachments are set out in Appendix 2.

### **Lower Cost Alternative**

22. It is the position and evidence of Waterfront Toronto in this proceeding that to determine cost responsibility the Board should apply the public interest test as follows:

Section 96(1) of the Act provides that the OEB shall make an order granting leave to construct if the OEB finds that the “construction, expansion or reinforcement of the proposed work is in the public interest”. When determining whether a project is in the public interest, the OEB typically examines the need for the project, project alternatives, project cost and economics, environmental impacts, land matters (including forms of easement agreements), and Indigenous consultation. EB-2019-0183, April 9, 2020 at page 3.

23. The fundamental test established by the OEB Act that the Board must apply in any leave to construct application is that the construction must be in the public interest. Enbridge never mentions this test or how the Board defines the public interest test. Enbridge appears to argue that the public interest test does not apply when the application is to replace an existing pipeline. The Board has never taken that position. The decision in this proceeding must canvass all elements of the public interest test. The Board should allow interrogatories on all elements of the test before rendering its Decision.

24. One element of the public interest test is an examination of the lowest cost alternatives. In this case there is no question that a lower cost alternative is the use of the Utility Corridor. The cost is approximately \$3 million as compared \$70 million for the Enbridge proposal.

25. Waterfront Toronto believes that any consideration of the public interest must include consideration of the lower cost alternatives. We do not believe that Enbridge has offered an acceptable reason for not using the lowest cost alternative.

26. Furthermore, if Enbridge is of the view that retaining a pipeline on or near the Keating Railway Bridge would create a risk from flooding that could damage the pipe, that risk has always existed. Consumers Gas, and subsequently Enbridge, created that risk in 1955. It is not the cost responsibility of Waterfront Toronto to remove that risk. That is an Enbridge risk. If Enbridge wants to move the pipe off the river it should do so and pay for it.

27. Waterfront Toronto disputes the idea that it is up to Waterfront Toronto to bring forward an application that includes a lower cost alternative. The public interest test applies to any section 19 application and as part of that application an examination of the lowest cost alternative is required.

### **Cost Responsibility**

28. Waterfront Toronto has agreed to pay all of the construction costs related to the Utility Corridor. Waterfront Toronto however is not prepared to pay any of the costs of the new pipeline proposed by Enbridge. Waterfront Toronto does not believe it should pay for a pipeline it does not want or need. Nor does Waterfront Toronto believe that the Ontario Energy Board has the jurisdiction to order Waterfront Toronto to pay such costs.

ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 19<sup>th</sup> DAY OF JANUARY, 2021




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