



**By EMAIL and RESS**

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Our File: EB20200198

Ontario Energy Board  
2300 Yonge Street  
27th Floor  
Toronto, Ontario  
M4P 1E4

**Attn: Christine Long, Registrar**

Dear Ms. Long:

**Re: EB-2020-0198 – Enbridge Waterfront Relocation**

We are counsel to the School Energy Coalition ("SEC"). Pursuant to Procedural Order #5, this constitutes SEC's submissions on the proposed withdrawal of the Application, and conditions or other related orders or process, as outlined by the Board in the PO.

**Background**

From the customers' point of view, we will be forgiven for feeling like we are caught between two opposing interests whose tactics threaten to result in the customers holding the bag for tens of millions of dollars of capital costs.

In one corner we have Enbridge Gas (EGI), who in 2017 had a plan to replace two pipes across the Don River, one the NPS 30 that was approved in EB-2018-0108, and one the NPS 20 that is on the Keating Bridge. They proceeded with one, but decided in 2018, around the time that they learned about the Waterfront Toronto plan, that the NPS 20 did not need to be replaced.

When Waterfront Toronto made clear in 2018 that the NPS 20 pipe conflicted with their flood control plan, EGI took the position that relocation of the pipe would be at the expense of Waterfront Toronto. They were unable to get agreement, and more than two years later they filed this Application seeking approval for the most expensive of their available options, saying that it was the only one that could be completed on time, and in any case Waterfront Toronto was going to have to pay for it.

When the Board didn't agree with their argument that the Board could order Waterfront Toronto to pay, EGI purported to withdraw their Application to look at "less expensive options".

One possible interpretation is that this is brinkmanship, with EGI basically telling Waterfront Toronto that if they won't fund Enbridge's expensive relocation plan, they are going to face an indeterminate but clearly costly delay in their own schedule.

In the other corner, we have Waterfront Toronto (which in this context includes one of their members, and their key ally, the City of Toronto). It appears that they were willing early on to contribute to the cost of this relocation, but balked at EGI's high cost solution to the problem.

When it became clear that EGI was not moving quickly, and was trying to force them to pay a lot of money via their Application to the OEB, Waterfront Toronto, through the City of Toronto, launched an application to court for an order forcing Enbridge off the Keating Bridge.

SEC is not convinced that the City has a completely unrestricted right to kick EGI off the bridge after 65 years. The true legal position is likely more complicated than that, tied up in the history of the Toronto Harbour Commissioners and the evolution of ownership of the bridge, along with the long and complex relationship between the City, EGI, and EGI's predecessors. In addition, the ability to kick EGI off the bridge is subject to the Board's jurisdiction, since removing that pipe would require a replacement, and in our view there is zero chance that the City will allow gas to be cut off to downtown Toronto.

Nonetheless, the lawsuit does up the ante for EGI. This, too, could be interpreted as brinkmanship.

Caught in the middle are the existing customers, who run the risk of being asked to pay for a project that EGI said in 2018 was not necessary, but now must proceed with some apparent urgency. Alternatively, customers run the risk that a solution will be proposed and implemented that, due to considerations of timing rather than good design, is sub-optimal from the point of view of the customers. Indeed, part of the Board's role is to protect the customers from exactly that eventuality.

EGI has suggested in its submissions that the only people who will have to pay for the relocation of the pipe on the Keating Bridge are a) Waterfront Toronto; b) the City of Toronto, or c) the EGI ratepayers. This misses an important fourth source of funds: EGI shareholders.

Waterfront Toronto claims in their June 26<sup>th</sup> submissions that delay in removing the pipe from the Keating Bridge will result in losses to Waterfront Toronto of millions of dollars a month. If delay arises because EGI is only now looking seriously at alternatives that it could (and perhaps should) have looked at in more detail in 2018, one would expect that the City of Toronto and Waterfront Toronto might have a claim for damages against EGI. That is not certain, of course, but it is clearly a risk that EGI must consider.

Who would pay those damages? Interestingly, it appears to SEC that it is unlikely the Board would pass those damages on to the ratepayers. If a court says EGI was negligent or acted contrary to their legal duties, the possibility that the Board would allocate cost responsibility for those actions to the ratepayers seems remote.

Therefore, delay runs the risk that EGI's shareholders will bear a substantial cost. EGI does not have a history of putting its shareholders at risk in this kind of way.

Finally, it should be noted that the \$70 million project proposed by EGI in this Application is no longer likely to proceed. In withdrawing the Application, EGI has essentially admitted that there are cheaper options available. It also appears to have recognized that, if it wants the ratepayers to cover all or most of the cost, then given the history of this project it is likely that they will have

to propose one of those cheaper options. Further, one of those options is microtunnelling, and EGI has just completed a similar project under the Don River, 260 metres north of the Keating Bridge, and with NPS 30 pipe, for \$34.2 million all in (as set out in EB-2018-0305, Ex. B1).

We also note, on this point, that this proceeding never did reach the stage of detailed discovery of the available options. To use just one example, the parties would certainly have explored the relationship between the Don River Replacement Project approved in EB-2018-0108 and the Keating Bridge issue. They were, after all, originally one project.

Attached to these submissions is an excerpt from the prefiled evidence in that proceeding, showing the schematic of the flow that project was intended to address. It demonstrates that the flow was across the Don River to Station B, and then back across the Don River on the Keating Bridge to serve the Toronto downtown core. When a full set of options to deal with the Keating Bridge pipe is proposed to the Board, it is clear that why the flow to the downtown core can't simply stay on the west side of the Don will be the subject of customers' questions.

It is in the context of this perception of what has gone on so far that SEC responds to the topics posed by the Board.

### **Topics Highlighted by the Board**

***Adverse Impacts on Waterfront Toronto.*** The factual questions related to the Waterfront Toronto flood control project can only be answered by them. While their submissions on those facts will not be evidence (because there is no opportunity for parties or the Board to test assertions made by Waterfront Toronto), they will still be context, especially if they show that there is actually more time to look at options than the Board and parties had been led to believe.

Related to this, though, is the question of whether it is any part of the Board's role to ensure that the Waterfront Toronto flood control project can proceed as planned. Waterfront Toronto, which claims the Board has no jurisdiction to order them to do anything because they are not a customer, cannot expect this Board to at the same time protect their project schedule, particularly if it would be at the expense of the ratepayers. That would be an internally inconsistent position.

SEC certainly accepts that the broader public interest would include things like flood risk in Toronto, but if the schedule issue is primarily one of cost, that is an issue that is between Waterfront Toronto and EGI. While the Board can express its opinion on it, the Board has already determined the Board's role does not include ordering Waterfront Toronto to bear any part of that cost. It is in our view also no part of the Board's role to protect Waterfront Toronto from financial loss, nor is that a responsibility that the ratepayers should be asked to bear.

***Public Interest and Reliability of Natural Gas Supply.*** SEC does not see any set of circumstances in which EGI will be required to remove their pipe from the Keating Bridge before an approved alternative serving the downtown core is in place. It is politically unlikely that the City of Toronto would pursue such a result, and it is almost unimaginable that a court would order such a result. A court would be aware that any alternative requires OEB approval, and will in our view respect that process and that jurisdiction.

That having been said, SEC believes that the pipe will be off the Keating Bridge by the time Waterfront Toronto needs it to be off in order to proceed with their plans (which may or may not be May 2, 2022). The Board doesn't really need to do anything right now to ensure that result. EGI will not, in our view, put its shareholders at risk to bear millions of dollars of damages payable to the City and/or Waterfront Toronto, so EGI will have to move quickly. If in fact any part of their current strategy has been brinkmanship, they will have to jettison that fast.

SEC also believes that Waterfront Toronto will ultimately contribute some amount to the eventual relocation project. This may be the effect of the new proposal they have said they are working on (presumably a variation on the utility corridor), or it may be the result of negotiations with EGI. Just as EGI does not want to risk shareholder value, Waterfront Toronto doesn't want to delay its flood protection project. Now that both parties understand that the Board is not going to be the final arbiter of the dispute between them (except to the extent that they propose to assign cost responsibility to the ratepayers), they will both have something significant to lose by not reaching a deal.

The Board still retains a key role, of course, as SEC described in our jurisdiction submissions. If EGI and Waterfront Toronto "make a deal", as we expect they will, the Board still have to approve that deal on behalf of the ratepayers and in the public interest. While SEC believes that the Board should allow the dynamics between EGI and Waterfront Toronto to play out, that in no way suggests that the Board should give up any of its responsibility to protect the customers.

***Withdrawal with Conditions.*** SEC believes that the Board is not in a position to mediate between EGI and Waterfront Toronto, and putting any other conditions on withdrawal will not be useful.

However, as noted the Board is still the defender of the customers and the public interest, as stipulated in its governing stature.

The Board can, we think, set expectations for any future application dealing with the relocation of this pipe. Those expectations should in our submission include at least the following:

- Any LTC application to deal with this problem will have to include proper analysis of alternatives to whatever preferred option is proposed. A situation like the current one, in which the Applicant withdraws to review options that it really should have already reviewed fully, cannot be repeated. The Board must have sufficient information to allow it to protect the interests of customers.
- Any application should be filed with sufficient time so that the Board can engage in a proper review. The Board should make clear that it will not be put in a position where it has to short circuit its own deliberations because EGI, or Waterfront Toronto, or anyone else, is in a hurry.
- Issues with respect to EGI's legal right to be on the Keating Bridge, or not, and with respect to contribution by Waterfront Toronto to the cost of relocation, should be resolved before the application is filed.

- The ratepayers should not be asked to pay any amount for this capital project that exceeds the benefits being delivered for the customers (as opposed to benefits to Waterfront Toronto, EGI shareholders, or anyone else).

### **Conclusion**

SEC therefore submits that the existing dynamics between the parties push them strongly towards resolving their disagreements and finding an acceptable solution that meets all of their reasonable objectives. As a result, SEC believes there will be a new LTC application for a relocation project, and that the best the Board can do at this point is to establish clear expectations for what should be in that application.

All of which is respectfully submitted.

Yours very truly,

**Shepherd Rubenstein Professional Corporation**

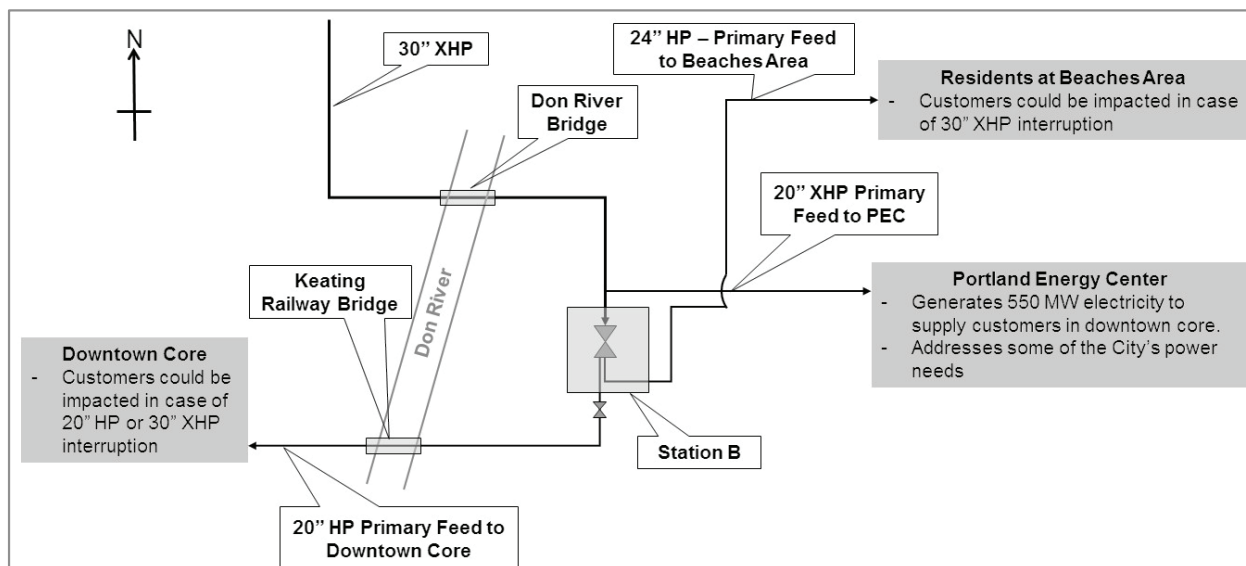


Jay Shepherd

cc: Wayne McNally, SEC (by email)  
Interested Parties (by email)

the sole commercial provider of district heating to customers in downtown Toronto. Enwave supplies steam to more than 140 buildings representing over 40 million square feet. Some of Enwave's customers are hospitals, government buildings and office towers. Figure 5 shows how the NPS 30 XHP Don Valley Pipeline supplies the downtown Toronto area through Station B.

**Figure 5: Area Supplied by the NPS 30 XHP Don Valley Pipeline**



20. Should the NPS 30 XHP river crossing experience a pipeline defect or sustain damage, Enbridge would have to either temporarily reduce operating pressures or shut down the line. Any pipe defects or failures that could release gas would require a significant emergency response and could have severe consequences and impacts. If this happened during the winter months, significant customer outages would immediately occur. Maximum customer loss is approximately 92,500 at -23<sup>0</sup>C (which translates to 41 Degree Days, the Peak Design Temperature of GTA). At a minimum, supply would have to be terminated to PEC, which is the equivalent to the demand of 100,000 residential customers. In the