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February 5, 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 Conditional Withdrawal proposed by Waterfront Toronto.

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 CONDITIONAL WITHDRAWAL**TORONTO WATERFRONT REVITALIZATION CORPORATION**

Pursuant to Rules 20.03 and 20.05 of the Rules of Practice and Procedure of the Ontario Energy Board, Waterfront Toronto respectfully requests that the Board impose a condition on any withdrawal the Board grants Enbridge Gas Inc. with respect to the Notice of Withdrawal filed by Enbridge Gas on January 25, 2021.

Background

On October 13, 2020, Enbridge Gas Inc. filed an application with the Board under section 90 of the Ontario Energy Board Act for an order granting leave to construct approximately 2 km of pipeline in the City of Toronto at a cost of approximately \$70 million. Enbridge Gas stated that it had advised Waterfront Toronto that Waterfront Toronto would be responsible for 100% of the costs of the project because Waterfront Toronto had requested the relocation of the existing pipeline.

In its intervention request of November 30, 2020 Waterfront Toronto stated that it believed that the OEB did not have jurisdiction to allocate the cost for the proposed pipeline to Waterfront Toronto. After hearing submissions from all parties, the OEB ruled on January 22, 2021 that while it had full jurisdiction to determine cost responsibility for the project it did not have jurisdiction to order Waterfront Toronto to pay all or part of the project costs.

On January 25, 2021 Enbridge filed a letter with the Board advising that it was withdrawing its application. On January 26, 2021 Waterfront Toronto filed a letter objecting to the withdrawal. On January 28, 2021 Waterfront Toronto filed a further letter indicating that it wished to consider and submit a proposal regarding a new river crossing to meet the concerns of all parties.

Procedural Order No. 5

On January 29, 2021 the Board issued Procedural Order No.5 indicating that in order to determine whether withdrawal of the application would adversely affect the interests of any party or would be contrary to public interest, the OEB would receive submissions from all parties as to whether the OEB should allow the application to be withdrawn and if so what conditions, if any, should be attached to that decision. Procedural Order No.5 asks the parties to address the following three questions:

1. Adverse Impacts on Waterfront Toronto: What impact could the withdrawal of the application have on the Flood Protection Project schedule, if any? Can Waterfront Toronto adjust its schedule such that Enbridge Gas has more time to assess alternatives to the Project proposed in this Application?

2. Public Interest and Reliability of Natural Gas supply: If the Application is withdrawn, how can Enbridge Gas ensure the security of gas supply to its customers in the City of Toronto while addressing the removal of the Existing Pipeline from the Bridge?

3. Withdrawal with Conditions: If the OEB allows the Application to be withdrawn what, if any, conditions should it include in its decision? For example, should Enbridge Gas be required to provide a schedule for filing a new Leave to Construct application?

Waterfront Toronto Response

The Waterfront Toronto answers to the three questions are set out below.

Question 1

In 2018 Waterfront Toronto began the Port Lands Flood Protection Project. The project, which is funded by the three levels of government (City of Toronto, Province of Ontario and the Government of Canada), is designed to protect over 240 hectares of the Port Lands and South of Eastern Avenue areas from flooding as well as to construct the infrastructure necessary to promote revitalization of the waterfront. Currently the Port Lands and surrounding area face potential flooding from the Don River caused by extreme weather events. This project will widen the mouth of the Don River to accommodate larger volumes of floodwater and will extend the Don River to the inner harbour to handle larger volumes of floodwater than the Keating Channel can accommodate on its own. The plan, which reconnects the Don River to Lake Ontario by creating a naturalized river mouth, is one of the largest infrastructure projects in Toronto's history.

The Port Lands Flood Protection Project is actually a series of 23 separate projects, with a significant degree of interdependence between many of them. Overall scheduling currently requires the completion of the project by March of 2024.

As part of the flood protection project, the Don River is to be widened and, as a result, the Keating Railway Bridge, has to be lengthened if the City determines that continued rail service to the Port Lands is necessary.

The widening of the Don River is a critical component of the project. Until the Keating Rail Bridge and Lake Shore Boulevard Bridge have been extended, excavation on the west side of the river cannot take place and the planned soil and debris management area cannot be established. In short, if the river cannot be widened as scheduled, flood protection for lands to the east of the river (comprising 80%, or 192 hectares, of the flood plain) will not be achieved as planned. That area is currently planned for development, including commercial and retail uses, as well as the East Harbour transit station hub for GO Expansion and the \$11 billion Ontario Line planned to run between Ontario Place and the Ontario Science Center.

In addition, if the Port Lands Flood Protection Project is delayed, it is anticipated that significant additional costs may be incurred as contractors will need to be mobilized over an extended period or be demobilized and then remobilized at a later date.

Waterfront Toronto is currently studying whether necessary components in the project can be rescheduled or re-sequenced to accommodate potential delays. This is not a simple exercise and will depend on whether the Enbridge infrastructure can be relocated on a temporary basis.

Question 2

As noted in the earlier submissions of January 28, 2021, Waterfront Toronto is working with engineers, consultants and its design team, to determine if it is possible to create a new river crossing, upriver from the planned construction site, that can accommodate the Enbridge pipe on a temporary basis. Waterfront Toronto hopes to complete its review within 3 weeks. If the new crossing is feasible, Enbridge could relocate their pipe to that crossing and thereby ensure continuity of supply, while allowing the necessary work on the Port Lands Flood Protection Project to continue. This option was referenced by Enbridge in their original Leave to Construct Application [Exhibit B, Tab 1, Schedule 1, pages 30 through 35, paragraphs 35 and 36].

Question 3

Waterfront Toronto submits that any decision by the Board to accept the request by Enbridge to withdraw its application in EB-2020-0198 should be subject to the following conditions:

- (a) The withdrawal of the Enbridge application in EB-2020-0198 will take place only after the Board has first heard and ruled on a submission by Waterfront Toronto regarding a new river crossing facility that Waterfront Toronto would make available to Enbridge to transport utility assets across the Don River; and
- (b) Enbridge agrees to use the new river crossing facility on a temporary basis during the construction of the Port Lands Flood Protection Project work in that area, until no later than March 31, 2024, if the Board finds that to be in the public interest.

The situation in this case is not unlike the recent decision by the Alberta Utilities Commission in *Fortis Alberta* (Fortis Alberta Distribution Tariff Application, Proceeding 25201, May 2020), where the Commission found that a jurisdictional ruling by the Commission fundamentally changed the nature of the application and allowed Fortis to withdraw its application with conditions relating to the timing for a refiled application.

It is noted that the Ontario rules allow an applicant to withdraw prior to a hearing without Board approval. Nonetheless the Board can attach conditions on any withdrawal where it believes the withdrawal may adversely affect the interest of any party or may be contrary to the public interest.

The submission that Waterfront Toronto wishes to make relates to an important dispute that has been before the Board throughout this proceeding. Waterfront Toronto in its submissions on jurisdiction on January 8, 2021 describe the Port Lands Flood Protection Project at paragraph 8, the Keating Railway Bridge dispute at paragraphs 9 to 12 and the Utility Corridor proposal at paragraph 13.

In short, this is not a new issue. Waterfront Toronto is asking the Board to receive a further submission on a long-standing dispute with serious public policy implications. As the Board is well aware, Enbridge has raised safety concerns. However, the proposal that Waterfront Toronto wishes to present to the Board is intended to address this.

In the ordinary course Waterfront Toronto would have the ability to call expert evidence in the hearing to address this issue. The Enbridge application to withdraw means that the Board will not hear that evidence. Accordingly, the discontinuance adversely affects the interest of Toronto Waterfront contrary to Rule 20.05. The Board can and should retain jurisdiction over this issue and hear Waterfront Toronto's submission and make a ruling before allowing the application to be withdrawn.

The bridge issue must be resolved in order to permit the Port Lands Flood Protection Project to proceed as planned. The Board's determination of this issue will still allow Enbridge to further consider options it may have with respect to a new pipeline.

Enbridge in its most recent letter to the Board suggests that the Board should not hear a further Waterfront Toronto proposal because there is no application before the Board with respect to a utility corridor. With respect, an application is not necessary.

The wording of Rule 20.03 and 20.05 clearly contemplates situations such as this where the Board can continue an existing proceeding in order to make a determination the Board believes is in the public interest and requires immediate attention.

This Board has sufficient resources and expertise to determine whether the new Waterfront Toronto proposal is in the public interest and meets the concerns that Enbridge has raised to date.

ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 5th DAY OF FEBRUARY 2021



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