

Sent by RESS

February 5, 2021

Ontario Energy OEB  
2300 Yonge Street  
Toronto, ON M4P 1E4

Attention: Ms. Christine Long, Registrar

Dear Ms. Long:

**Re: EB-2020-0198 - Enbridge Gas Inc. NPS 20 Waterfront Relocation Application  
TRCA Submission**

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We are counsel to Toronto and Region Conservation Authority ("TRCA") in this matter. TRCA encloses its submission regarding Enbridge Gas Inc. ("Enbridge") withdrawing its Application.

Yours truly,



Julie Abouchar

Partner

*Certified as a Specialist in Environmental Law and in Indigenous Legal Issues  
by the Law Society of Ontario*

Encl.

cc: All parties

## **ONTARIO ENERGY OEB**

**IN THE MATTER OF** The Ontario Energy OEB 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 AND REGION CONSERVATION AUTHORITY**

Pursuant to Rules 20.03 and 20.05 of the *OEB Rules of Practice and Procedure*,<sup>1</sup> TRCA respectfully requests that the OEB impose conditions on any withdrawal the OEB grants Enbridge with respect to Enbridge's Notice of Withdrawal filed on January 25, 2021.

### **BACKGROUND**

On October 13, 2020, Enbridge filed an Application with the OEB, pursuant to sections 90 and 97 of the *Ontario Energy OEB Act*, for an order granting leave to construct approximately 2 kilometres of a natural gas pipeline and ancillary facilities in Toronto ("pipeline project"). Enbridge's position was that the pipeline project was necessary due to the need to relocate the existing NPS 20 pipeline off the Keating Railway Bridge, at a cost of approximately \$70 million. Enbridge stated that Waterfront Toronto was responsible to pay the \$70 million to relocate the pipeline because Waterfront Toronto requested the relocation.

On November 30, 2020 Waterfront Toronto, TRCA, and others submitted intervention request letters with the OEB. In its intervention request letter, Waterfront Toronto stated that the OEB has no jurisdiction to allocate the cost for the pipeline project to Waterfront Toronto. The OEB heard submissions from all parties to the proceeding about the jurisdiction issue.

On January 22, 2021, the OEB determined that it has full jurisdiction to determine cost responsibility for the pipeline project. However, the OEB does not have jurisdiction to order Waterfront Toronto to pay all or part of the costs for the pipeline project.

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<sup>1</sup> OEB Rules of Practice and Procedure, last revised October 28, 2016.

On January 25, 2021, Enbridge filed a notice of immediate withdrawal of Application EB-2020-0198. On January 26, 2021 Waterfront Toronto objected to the notice, and on January 28, 2021, Waterfront Toronto asked the OEB to retain jurisdiction under Rule 20 to address the issue of the pipeline project.

### **QUESTIONS FROM THE OEB IN PROCEDURAL ORDER NO. 5**

In order to determine whether withdrawal of the Application may adversely affect the interests of any party or be contrary to the public interest, the OEB requested submissions from parties on whether the OEB should allow the Application to be withdrawn or what conditions should be applied if the withdrawal is allowed. On January 29, 2021 the OEB issued Procedural Order No.5, which 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?

### **TRCA SUBMISSIONS ON THE THREE QUESTIONS**

#### **QUESTION 1: ADVERSE IMPACTS ON WATERFRONT TORONTO**

Waterfront Toronto has stated that the Portlands Flood Protection Project (“Flood Protection Project”) would be in jeopardy if the Don River cannot be widened as scheduled.

To widen the Don River, Enbridge’s existing pipeline across the Keating Bridge must be relocated by May 2022.

We submit that Waterfront Toronto is best placed to identify impacts on Waterfront Toronto.

In any event and apart from the Flood Protection Project, TRCA supports removal of the Enbridge pipeline from the present Keating Bridge as soon as possible for flood safety reasons.

TRCA has a regulatory function in relation to flood protection in areas within its jurisdiction. Any solution that involves the relocation of the Enbridge pipeline over or under the Don River will require permits from the TRCA under the *Conservation Authorities Act*<sup>2</sup> and co-ordination with TRCA during planning is advised. TRCA's jurisdiction in permitting would include comments on safety of property and persons from natural hazards related to placement of structures in, and working in and around floodplains, including slope stability and risk of flooding.

## **QUESTION 2: PUBLIC INTEREST AND RELIABILITY OF NATURAL GAS SUPPLY**

The OEB Rules of Practice and Procedure provide that:

2.01 These Rules shall be liberally construed in the public interest to secure the most just, expeditious and efficient determination on the merits of every proceeding before the Board.

20.05 If the Board has reason to believe that a withdrawal or discontinuance may adversely affect the interests of any party or may be contrary to the public interest, the Board may hold or continue the hearing, or may issue a decision or order based on the proceedings to date.

Enbridge needs to relocate its pipeline from the Keating Bridge. Enbridge wishes to withdraw its Application and its preferred solution regarding the relocation of its pipeline. Enbridge wishes to take an undetermined amount of time to put a new Application before the Board.

Waterfront Toronto has asked the OEB to retain their jurisdiction for long enough to dispense with the crucial issue of a temporary location to allow the Flood Protection Project to proceed. A temporary location was introduced by the Application, and discussed among the Parties at the Settlement Conference. Waterfront Toronto's proposed condition enables a quick arrival at a solution that will address the concerns of Enbridge, minimise cost to the consumers and ensure reliability and security of gas supply to consumers.

The OEB needs to retain jurisdiction in order to make any decision or order regarding a proposed solution. Further, as long as this proceeding is before the OEB and the OEB's oversight continues, co-operation between Enbridge and Waterfront Toronto is more likely. Such cooperation is needed to arrive at a solution for the temporary and permanent relocation.

To allow the withdrawal with the conditions below represents the most just, expeditious and efficient determination of Enbridge's withdrawal request.

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<sup>2</sup> RSO 1990, c C 27 [*Conservation Authorities Act*].

### **QUESTION 3: WITHDRAWAL WITH CONDITIONS**

#### ***Discussion***

TRCA supports and adopts Waterfront Toronto's two conditions.

In the interests of regulatory efficiency, TRCA proposes a third condition. The scheduling for the proposed interim and final placement of the pipeline must take into account the time for TRCA's permitting process which includes a review of studies related to flooding and erosion impacts and mitigation. The TRCA permitting and review process is estimated to be 30-60 business days per submission once a complete application is received. Multiple submissions may be required to complete the application.

Co-ordination with TRCA is important during the planning phase to ensure a complete application. We understand that both Waterfront Toronto and Enbridge have co-ordinated with TRCA in the past. We ask that coordination with TRCA be made a condition because any solution will involve tight timelines and coordination between two parties.

#### ***Proposed Conditions***

Based on the proceedings to date, TRCA requests the OEB to issue a decision that includes three conditions:

- 1 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.
- 2 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.
- 3 Enbridge and Waterfront Toronto will co-ordinate with TRCA while they are planning the pipeline re-location project to ensure the project takes into account TRCA's requirements under the *Conservation Authorities Act*. Such engagement would include (a) prior to finalizing the Detailed Design plans for permit issuance, TRCA will be provided an opportunity to review the proposed alternative(s), identify specific permit submissions and review requirements, and (b) the project proponent will include in the permit application, their response to comments from TRCA during the planning stage.

***TRCA's view of OEB Board Staff Submissions on Conditions***

TRCA has reviewed OEB staff's submissions on conditions. Gathering information from Enbridge is useful, and the conditions complement Waterfront Toronto and TRCA conditions.

However, TRCA is concerned with the suggestion of waiting for 6 months for Enbridge to (maybe) file a leave to construct to determine the temporary solution. A subsequent hearing process will take at least a year to resolve.

The OEB decision would come after the date when the pipe needs to be removed from the Keating Bridge in order for Waterfront Toronto to conduct the flood protection work to widen the mouth of the Don River. Most importantly from a regulatory perspective, the time frame proposed by the OEB Board Staff does not allow any time for TRCA's regulatory review and permitting.

In the event of a withdrawal TRCA reserves its right to make submissions as to costs of this proceeding.