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May 20, 2022

Delivered by Email & RESS

Ms. Nancy Marconi, Registrar
Ontario Energy Board
PO Box 2319, 27th Floor
2300 Yonge Street
Toronto, ON M4P 1E4

Dear Ms. Marconi:

Re: Sun-Canadian Pipe Line Limited's Sections 90 and 97 Application for Leave to Construct Interrogatories Ontario Energy Board File No.: EB-2022-0012

Pursuant to the Ontario Energy Board's ("OEB") Procedural Order No. 4 dated April 29, 2022, please find the enclosed interrogatories for the above-noted proceedings.

Confidentiality Request

Interrogatories 3-SCPL-1 (b) (c) (d) (e) and (f) and the Haudenosaunee Development Institute's ("HDI") form of Engagement Agreement attached at Appendix "A" contain confidential information that would meet the OEB's test for confidential treatment under the OEB's *Practice Direction on Confidential Filings* ("Practice Direction")¹, due to the potential harm that could result from the disclosure of such information. For example, disclosure of HDI's form of Engagement Agreement and questions relating to the agreement may interfere with HDI's past, present and future negotiations and have therefore been redacted pursuant to Rule 10.01 of the OEB's Rules of Practice and Procedure² ("Rules").

In keeping with the requirements of the Practice Direction, a combined confidential unredacted version of interrogatories 3-SCPL-1 (b) (c) (d) (e) and (f) and HDI's form of Engagement Agreement is filed with the Registrar only. The confidential version of interrogatories 3-SCPL-1 (b) (c) (d) (e) and (f) and HDI's form of Engagement Agreement is marked "Confidential" with highlighting to identify the confidential information. In accordance with Section 5.1.4 of the

¹ Ontario Energy Board – Practice Direction on Confidential Filings, Revised December 17, 2021.

² Ontario Energy Board – Rules of Practice and Procedure, Revised December 17, 2021.

Practice Direction, SCPL is providing Table 1 below which sets out each piece of redacted information: (i) the specific page(s) that contain the confidential information; and (ii) the basis for the confidential information claim.

Table 1 – Redacted Confidential Information

	(i) Page number	(ii) Basis for confidential information claim
1.	4	Interrogatories (b) (c) (d) (e) and (f) contain information related to HDI's form of Engagement Agreement
2.	Appendix "A"	HDI's form of Engagement Agreement

SCPL requests that the redacted information be kept confidential. SCPL confirms that the interrogatories attached do not include any personal information as defined *Freedom of Information and Protection of Privacy Act, 1990*.

If you have any questions or concerns, please do not hesitate to contact me.

Yours very truly,

BORDEN LADNER GERVAIS LLP



Colm Boyle

cc: Peter Martens, Sun-Canadian Pipe Line Limited

ONTARIO ENERGY BOARD

IN THE MATTER OF the *Ontario Energy Board Act, 1998*, S.O. 1998, c. 15 (Sched. B), as amended (the “OEB Act”);

AND IN THE MATTER OF an application by Sun-Canadian Pipe Line Limited (“SCPL”) under section 90(1) of the OEB Act for an order granting leave to replace an approximately 480 metre portion of existing privately owned NPS12 pipeline that has been exposed at East Sixteen Mile Creek in the Town of Milton;

AND IN THE MATTER OF an application by SCPL under section 97 of the OEB Act for approval of the proposed form of easement agreements included herein.

**INTERROGATORIES
ON BEHALF OF SUN-CANADIAN PIPE LINE LIMITED**

1-SCPL-1

References:

- (1) Evidence of the Haudenosaunee Development Institute (“**HDI**”) filed in respect of OEB File No. EB-2022-0012 affirmed May 13, 2022 (the “**HDI Evidence**”) at para. 9.

"The HCCC is empowered by the Haudenosaunee to advance the collective treaty rights and interests of the Haudenosaunee.

As described below, the HCCC established HDI to administer and facilitate engagement with the HCCC in respect of Haudenosaunee lands."

- (2) HDI Evidence at para. 29.

"As described above, HDI is a delegate of HCCC for the purposes of engagement on development issues in Haudenosaunee treaty territory."

Questions:

- (a) Please describe how Haudenosaunee Confederacy Chiefs Council (“**HCCC**”) delegated its authority to engage on development issues in Haudenosaunee treaty territory to HDI.
- (b) For (a), what instrument did HCCC use to delegate authority to HDI and kindly provide a copy.
- (c) For (a) and (b), please list any limitations or restrictions on this delegated authority.
- (d) Does the authority delegated from HCCC to HDI expire? If so, please provide the date.
- (e) How does HDI update or review the authority delegated from HCCC to HDI? When was this last completed?
- (f) Please provide copies of all records evidencing (c), (d) and (e).
- (g) What governance obligations, responsibilities, liabilities, if any, flow with this delegated authority?
- (h) What are the mechanisms for obtaining approval(s) and authorization from the HCCC when HDI is negotiating engagement agreements on its behalf?

2-SCPL-1

References:

(1) HDI Evidence at para. 29.

"Despite being delegated the procedural aspects of the Crown's duty to engage, SCPL has refused to fully engage with HDI's process regarding EB-2022-0012."

(2) Appendix STAFF-9-1 Indigenous Consultation Timeline (Redacted)_20220426.

Questions:

- (a) Please list all correspondence prepared by HDI and addressed to SCPL regarding communications on the "HDI application for consideration and engagement for development".
- (b) Please list all correspondence prepared by HDI and addressed to SCPL informing SCPL that it was not carrying out engagement with HDI or the HCCC.
- (c) At what points in time did the HDI inform SCPL that it was not fully engaging with HDI?

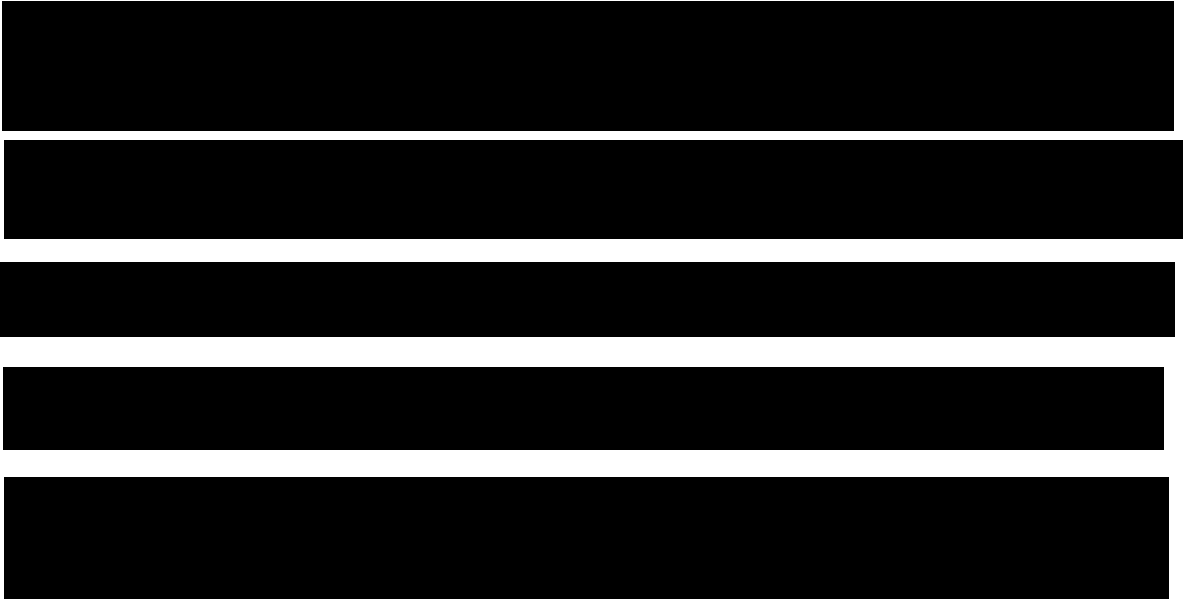
3-SCPL-1

References:

- (1) HDI Evidence at para. 34 and 39.
- (2) Form of Engagement Agreement - attached as Appendix "A" to these IRS (Confidential).
- (3) Appendix STAFF-9-1 Indigenous Consultation Timeline (Redacted)_20220426 Appendix A-116.

Questions:

- (a) Please confirm that attached at Reference (2) is a copy of the form of Engagement Agreement submitted by HDI to SCPL on April 6, 2022.



4-SCPL-1

References:

- (1) HDI Evidence at para. 43.

"SCPL's refusal to discuss an Engagement Agreement effectively precludes HDI from submitting substantive evidence on the impact of EB-2022-0012 on Haudenosaunee rights and interests."

Questions:

- (a) Please confirm that HDI's request for eligibility for cost awards was not contested by SCPL and was accepted by the Ontario Energy Board in Procedural Order No. 1.
- (b) Please confirm that HDI intends to seek a cost award to financially support its participation in this Application, and that HDI is eligible for recovery of costs associated with both legal counsel and third party consultants in accordance with the OEB's tariff.
- (c) Please explain why HDI has chosen not to file evidence on the impacts of EB-2022-0012 on Haudenosaunee rights and interests, in light of the funding set out in Procedural Order #1 (which was not contested by SCPL).

5-SCPL-1

References:

- (1) HDI Evidence at paras. 16-18 and 43.

“The process for proponents of development, including developers and governments, to engage with the HCCC is an open and well-known one. [...] HDI’s process ensures that there are resources available for meaningful review, including environmental and other engineers, archaeological staff, land use planners, architects, legal counsel, and other various experts including Haudenosaunee elders knowledgeable about Haudenosaunee history, medicines, plants, animals, and general harvesting.”

Questions:

- (a) Given HDI’s stated experience in project development and receiving dozens of applications a month, please explain why HDI has not identified, at least at a high level, its specific concerns about the impact of replacing 480 metres of an existing pipeline, in discussions with the applicant.

6-SCPL-1

References:

(1) HDI Evidence at para. 30.

“On January 27, HDI entered into an Environmental Monitoring Agreement with SCPL and further executed an Archaeological Monitoring Agreement with SCPL on March 7, 2022 (collectively, the “Agreements”).”

Questions:

(a) Please confirm that SCPL has retained HDI, or members of the Haudenosaunee, in environmental monitoring and archaeological monitoring activities, whether through Environmental Monitoring Agreements, Archaeological Monitoring Agreements or otherwise, on an annual basis since 2017.

7-SCPL-1

References:

(1) HDI Evidence at para. 40.

“Ironically, SCPL concludes its April 13 letter to the OEB with “SCPL remains committed to working with HDI to address their concerns.” This assertion is made despite SCPL’s silence during the meeting with HDI on March 29 regarding the alleged “urgen[cy]” of the repairs required to address SCPL’s pipeline near East Sixteen Mile Creek or the “urgent circumstances” referenced in the April 13 letter.”

Questions:

- (a) Does HDI agree that the project is urgent? Yes or no?
- (b) If the answer to (a) is no, please discuss the reasons why and include a discussion about managing environmental risks.

8-SCPL-1

References:

- (1) Affidavit of Aidan Hollis, affirmed May 13, 2022

“I have expertise generally in the area of economics, industrial organization, and damages quantification [...] Industrial organization is the study of strategic interactions between firms and governments and it involves considering issues related to competition and how those issues impact these strategic interactions [...] Much of my research focusses on the operation and effects of intangible rights, typically in the patent space and concerning the patent system and its effect on innovation [...] I have been engaged as an expert witness in legal cases involving damages issues. I have previously been qualified before the Federal Court as an expert in economics, including microeconomics and industrial organization, with particular expertise in the structure and economics of competitive markets. I have also been qualified as an expert before the Alberta Energy and Utilities Board and have given testimony before the Ontario Superior Court of Justice.”

Questions:

- (a) Is Mr. Hollis, or his client or counsel, asking the OEB to qualify Mr. Hollis as an expert witness in this proceeding? If so, in which specific areas or topics does Mr. Hollis claim to be an expert?
- (b) Please provide Mr. Hollis’ specific qualifications, education and experience that directly pertain to all those areas or subject matters to which he claims to be an expert.
- (c) Please provide examples whether Mr. Hollis has been qualified as an expert witness on the matters and subject areas in (b) by a court of law and/or an administrative tribunal. Please include the date and year of the proceeding and the name of the adjudicating body.
- (d) Please provide specific examples of where Mr. Hollis has previously dealt with similar matter(s) discussed in his affidavit.

Appendix “A”

ENGAGEMENT AGREEMENT

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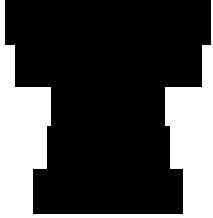
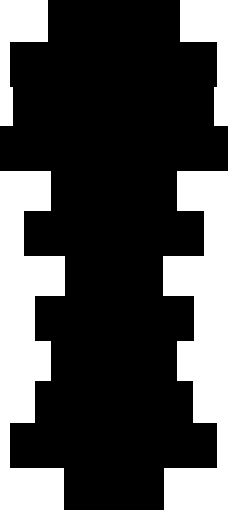
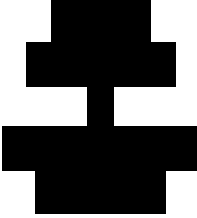
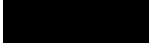

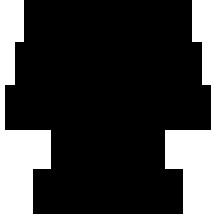
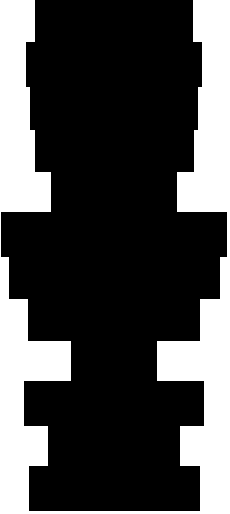

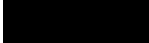


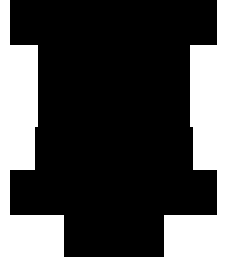




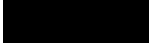
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