

# Elson Advocacy

June 9, 2022

## BY EMAIL AND RESS

### Nancy Marconi

Board Secretary

Ontario Energy Board

2300 Yonge Street, Suite 2700, P.O. Box 2319

Toronto, Ontario M4P 1E4

Dear Ms. Marconi:

### Re: EB-2022-0003 – Toronto Waterfront Relocation Project

I am writing to provide submissions on behalf of Environmental Defence regarding Enbridge's proposed Toronto Waterfront Relocation Project.

Enbridge is seeking approval for a \$23.5 million project to relocate its gas pipeline off the Keating Railway Bridge. This project is driven by a decision of The Honourable Justice Meyers of the Superior Court dated May 17, 2021, which found that: "commencing on September 1, 2022 Enbridge will have no right to use the bridge for its pipeline."<sup>1</sup> Waterfront Toronto is contributing over 20% of the costs, including a \$5 million contribution plus the cost of removing and disposing of the abandoned gas main on the existing Keating Railway Bridge.<sup>2</sup>

These submissions focus solely on whether the ratepayer cost implications of the agreement with Waterfront Toronto are appropriate. Some intervenors may argue that Waterfront Toronto should bear a greater proportion of the costs. Environmental Defence strongly disagrees. On the contrary, Waterfront Toronto should not be covering any costs. We understand that the OEB does not have jurisdiction to annul the agreement with Waterfront Toronto. However, Environmental Defence's perspective may help inform the OEB's review of other intervenors' submissions arguing for a smaller ratepayer contribution.

Waterfront Toronto should not be liable to pay for any portion of this pipeline project. By September 1, 2022, Enbridge will have no right to access the bridge.<sup>3</sup> As noted by Justice Meyers, "the City is properly invoking its rights in aid of its affiliate's implementation of an

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<sup>1</sup> *Toronto v. Enbridge*, May 17, 2021, Exhibit B, Tab 1, Schedule 1, Attachment 2, Page 2.

<sup>2</sup> Exhibit I.STAFF.3.

<sup>3</sup> *Toronto v. Enbridge*, May 17, 2021, Exhibit B, Tab 1, Schedule 1, Attachment 2, Page 2.

important, massive, complex project for the City itself.”<sup>4</sup> There is no legal reason for any party but Enbridge to pay for this pipeline project. It was using the City of Toronto’s bridge free of charge. It was given notice that it can no longer do so. It now needs to move its pipeline.

Justice Meyers did not specifically rule on Enbridge’s contention that it was entitled to be indemnified by the City for the costs incurred when moving the bridge. However, that is only because Enbridge “did not choose to bring a cross-application to advance any such right” in the proceeding before the Court.<sup>5</sup> In addition, Justice Meyers did not make reference to any legal basis on which Enbridge could claim such an indemnity.

In the end, Waterfront Toronto agreed to pay \$5 million plus the cost to remove and dispose of the pipeline that is currently on the bridge. However, that agreement is not an indication that Waterfront Toronto had any obligation to pay. Instead, this appears only to have been done due to Enbridge’s pressure tactics. Indeed, Justice Meyers accepted the City’s submissions regarding Enbridge’s “tactics,” explicitly finding as follows:

I accept that the withdrawal of Enbridge’s prior request for approval at the OEB (just days after the Board held that it could not order Waterfront Toronto to pay Enbridge’s costs) and its current refusal to take a position on timing can be seen as playing games so as to increase pressure on the City to agree to pay its costs as the time for the commencement of construction of the redevelopment project nears.

By refusing to move its pipeline, even though it lacked the authority to remain on the bridge, Enbridge forced Waterfront Toronto to contribute to the project to achieve the certainty it needs for its important and massive waterfront redevelopment project to proceed.

The result is an over \$5 million subsidy from taxpayers toward fossil fuel infrastructure. As the OEB can imagine, Environmental Defence strongly opposes this fossil fuel subsidy. However, we recognize that the OEB does not have the jurisdiction to overturn the agreement with Waterfront Toronto. We nevertheless hope that this perspective is helpful as the OEB considers the submissions of any other intervenors who may argue that Waterfront Toronto should pay more.

Thank you for the opportunity to make these submissions.

Yours truly,



Kent Elson

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<sup>4</sup> *Ibid.* p. 8.

<sup>5</sup> *Ibid.* p. 6, para. 21