

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 Enbridge Gas
Inc. under section 90 of the OEB Act for an order or orders
granting leave to construct natural gas distribution pipelines
and ancillary facilities in the City of Toronto.

SUBMISSIONS OF THE CITY OF TORONTO

A. Summary

1. The City of Toronto ("Toronto") respectfully requests that leave to construct be granted to Enbridge Gas Inc. ("Enbridge") in this Application.
2. With regard to the OEB's standard issues in leave to construct applications and those identified in its Procedural Order No. 1:
 - a. **need for the project:** Enbridge's NPS 20 Waterfront Relocation Project (the “Project”) is needed and is in the public interest. It will permit Enbridge to relocate its pipeline away from pending heavy construction activity by Waterfront Toronto, and in compliance with a Court ruling. This contributes to the safety and reliability of the pipeline and gas supply, to the benefit of ratepayers and Enbridge;
 - b. **nature of the proposed facilities and any alternatives:** Toronto accepts Enbridge's evidence that the Project is the most feasible technical solution.
 - c. **project cost and economics:** Toronto notes Enbridge's evidence that the Project is the most affordable feasible means of relocation;
 - d. **environmental matters, indigenous consultation, and land matters:** Toronto takes no position, and;

- e. **conditions of approval:** Toronto supports a Condition of Approval that "Enbridge shall obtain all necessary approvals, permits, licences, certificates, agreements and rights required to construct, operate and maintain the Project". This is a standard Leave to Construct condition of approval.¹

B. Need for the Project

3. The Project is needed and is in the public interest. Enbridge's current pipeline must be moved from its present location on the Keating Bridge. The City obtained an order of the Ontario Superior Court of Justice terminating any entitlement Enbridge had to occupy the Keating Bridge as of September 2020. If the pipeline is not removed shortly, Enbridge will be liable to the City for trespass.² Enbridge is legally obligated to remove the existing pipeline, and must do so imminently.³

4. Further, the current pipeline location will be subject to what Enbridge describes as "high risk construction" and an unacceptable "risk of severe pipeline damage and resulting safety risk and operational risk (interruption of service to Downtown Toronto)".⁴

5. This construction work is a key element of the Port Lands Flood Protection Project ("PLFPP").⁵ The PLFPP is one of the biggest infrastructure projects in Toronto's history. It will provide flood protection and facilitate development by creating a naturalized river mouth.⁶ Delay in relocating the current pipeline could delay the PLFPP and cause considerable expense and litigation.

¹ Ontario Energy Board Natural Gas Facilities Handbook, March 31, 2022, Page 80 [Natural Gas Handbook].

² Enbridge Application and Evidence, February 24, 2022, Exhibit B, Tab 1, Schedule 1, Attachment 2, Page 2 of 10 [Application and Evidence].

³ Enbridge Interrogatory Responses, May 26, 2022, Exhibit I.SEC.3, Page 1 of 2.

⁴ Application and Evidence, *supra* note 2 at Exhibit C, Tab 1, Schedule 1, Page 9 of 12.

⁵ *Ibid* at Exhibit B, Tab 1, Schedule 1, Page 4 of 11.

⁶ *Ibid* at Exhibit B, Tab 1, Schedule 1, Page 5 of 11.

6. Granting Leave to Construct will contribute to the safety and reliability of gas supply. It will permit Enbridge to maintain gas supply to downtown Toronto, and mitigate the construction hazards Enbridge has identified.

C. Nature of the Proposed Facilities and any Alternatives

7. The OEB's expectation is that Enbridge "assess all feasible alternatives with a focus on protecting the interests of ratepayers with respect to prices and the reliability and quality of gas service".⁷ Toronto accepts Enbridge's evidence that the Project is the most affordable feasible solution.⁸ Enbridge has assessed multiple alternatives; those that are technically feasible are approximately \$21 million to \$24 million more expensive.⁹ Opting for a safer and more affordable alternative – i.e. the Project – promotes the interests of ratepayers with respect to prices and the reliability and quality of gas service.

D. Project Costs and Economics

8. The OEB's expectation is that "[r]atepayers would not be asked to pay any amount that exceeds the benefits being delivered to them".¹⁰ Ratepayers are obtaining substantial benefits from the Project, i.e. maintaining gas supply to downtown Toronto and mitigating construction hazards to the existing pipeline. Toronto again notes Enbridge's evidence that the Project is the most affordable feasible solution and that it is necessary for Enbridge to move the infrastructure.

⁷ EB-2020-0198, Decision and Order on Application Withdrawal Request, February 19, 2021, Page 13 [Withdrawal Decision]; Decision and Procedural Order No. 1, April 29, 2022, Page 2 [Procedural Order].

⁸ Application and Evidence, *supra* note 2 Exhibit C, Tab 1, Schedule 1, Page 8-9 of 12.

⁹ *Ibid.*

¹⁰ Withdrawal Decision, *supra* note 7, Page 13; Procedural Order, *supra* note 4, Page 2.

9. To the extent that there are remaining questions as to project costs or their allocation, these can be addressed in a rate application.¹¹

E. Environmental Matters, Indigenous Consultation, and Land Matters

10. At this time, Toronto takes no position on environmental matters, indigenous consultation, and land matters.

11. Toronto and Enbridge are currently negotiating a license agreement for the relocated pipeline. Toronto routinely arranges license agreements with other land users including utilities, and is engaged in collaborative discussions with Enbridge.

E. Conditions of Approval

12. Toronto supports and requests the standard Condition of Approval that "Enbridge shall obtain all necessary approvals, permits, licences, certificates, agreements and rights required to construct, operate and maintain the Project". *Per* the OEB's recent Natural Gas Facilities Handbook, this is a standard Leave to Construct condition of approval.¹²

ALL OF WHICH IS RESPECTFULLY SUBMITTED.

June 9, 2022



Nicholas Rolfe
City of Toronto Legal Services

¹¹ EB-2020-0198, Decision on Jurisdiction, January 22, 2021, Pages 13-14.

¹² Ontario Energy Board Natural Gas Facilities Handbook, *supra* note 1, Page 80.