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**Enbridge Gas Inc.**  
500 Consumers Road,  
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Canada

February 12, 2025

**VIA EMAIL and RESS**

Nancy Marconi  
Registrar  
Ontario Energy Board  
2300 Yonge Street, Suite 2700  
Toronto, Ontario, M4P 1E4

Dear Nancy Marconi:

**Re: Enbridge Gas Inc. (“Enbridge Gas” or the “Company”)  
Ontario Energy Board (“OEB”) File Nos.:  
EB-2022-0003 – NPS 20 Waterfront Relocation Project (“Project”)  
EB-2022-0200 – Rebasing Phase 1**

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On July 7, 2022, the OEB issued its Decision and Order in EB-2022-0003, granting Enbridge Gas leave to construct the Project in the City of Toronto. As part of its findings on project economics, the OEB ordered Enbridge Gas to file a copy of a licence agreement to be reached with the City of Toronto once executed, for the use of a new utility corridor on the Keating Railway Bridge on the record of the proceeding.

Notably, Enbridge Gas made express submissions in EB-2022-0003 that the execution of the licence agreement would likely occur after having received leave to construct (as is typical of arrangements with landowners, which are often concluded after LTC approval);<sup>1</sup> and the OEB in granting LTC acknowledged that the agreement would not be executed until after the close of record.<sup>2</sup>

Further, the OEB noted that the cost associated with the pending licence agreement did not need to be addressed in the proceeding. Instead, the OEB ordered Enbridge Gas to bring this cost forward in its rebasing application and to file the executed licence agreement on the record of the LTC proceeding.<sup>3</sup>

In that LTC proceeding, Enbridge Gas also provided details on the probable terms of the agreement – that the agreement was expected to have a term similar to the expected useful life of the pipeline and that the attendant costs would not be material and would not have a significant impact on Enbridge Gas’ cost of service.<sup>4</sup>

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<sup>1</sup> EB-2022-0003 Decision and Order, pp. 16 -17 (see reference to Enbridge Gas’ reply to OEB staff submission).

<sup>2</sup> Ibid, p. 18.

<sup>3</sup> Ibid.

<sup>4</sup> Ibid, pp. 16-17.



For ease of reference and additional context on the OEB's deliberation regarding Project cost and the license agreement, parts of the EB-2022-0003 Decision and Order related to Project Cost and Economics are excerpted below:

"The OEB finds that the proposed Project, at an estimated cost of \$23.5 million (\$18.5 million from Enbridge Gas and \$5 million from Waterfront Toronto) is reasonable. The OEB notes that the Original Pipeline Relocation Project in the 2020 Application had an estimated cost of \$70.5 million. This significant cost reduction came about as a result of an agreement reached between Enbridge Gas and Waterfront Toronto to use the Temporary Bypass while the Permanent Pipeline is constructed within the New Utility Corridor to be located on the revamped (elongated) Keating Railway Bridge."<sup>5</sup>

"The OEB finds that the cost of the executed licence agreement between Enbridge Gas and the City of Toronto for Enbridge Gas's use of the New Utility Corridor does not need to be addressed in this proceeding for the following reasons:

- a) The licence agreement is not expected to be finalized until the end of August 2022 after the record of this proceeding is closed.
- b) The costs contemplated in the licence agreement are not expected to be material"<sup>6</sup>

The license agreement was executed between Enbridge Gas and the City of Toronto on January 30, 2025. Pursuant to the above-noted OEB order, attached is a copy of the license agreement.

Giving this timing, the cost associated with the licence agreement was not available at the time Enbridge Gas originally filed its rebasing application (EB-2022-0200).<sup>7</sup>

Under the license agreement (see section 4), Enbridge Gas is required to pay the City a one-time licence fee of \$105,000 plus \$32,464 as a share of maintenance cost, for a total of \$137,464 plus applicable taxes. As expected at the time of the LTC proceeding, the actual amount is not material and has no significant impact on the Company's cost of service.

Please contact me if you have any questions.

Yours truly,

*Olatunbosun Ishola*

Olatunbosun Ishola  
Advisor, Regulatory Applications – Leave to Construct

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<sup>5</sup> Ibid, p. 18.

<sup>6</sup> Ibid.

<sup>7</sup> See EB-2022-0200, Exhibit 1, Tab 12, Schedule 1, p. 5, where Enbridge Gas indicated that the licence agreement was still under negotiation and therefore the associated cost could not be provided at the time.

EXECUTION COPY

**THIS BRIDGE LICENCE AGREEMENT** made as of this 2025-Jan-30 | 9:49 AM EST 2025.

**BETWEEN:**

**CITY OF TORONTO**  
(the "**City**" or the "**Licensor**")

OF THE FIRST PART

- and -

**ENBRIDGE GAS INC.**  
(the "**Licensee**")

OF THE SECOND PART

**WHEREAS:**

- A. The City is the registered owner of certain lands, legally described in Schedule "**B**" hereto, which comprise Lake Shore Boulevard East and a portion of the Don River north of the Keating Channel (the "**City Lands**");
- B. As part of the Port Lands Flood Protection and Enabling Infrastructure Project (the "**Project**"), Toronto Waterfront Revitalization Corporation ("**Waterfront Toronto**") is removing a former railway bridge which crosses the City-owned portion of the Don River (the "**Keating Railway Bridge**") from its current location and reconstructing the utility corridor, which will require the removal of an Enbridge gas main (the "**Original Gas Main**") from the Keating Railway Bridge and construction of a new gas main all as further described in the permit application to be submitted by Licensee to the City pursuant to the MCRs (as such term is defined below);
- C. In connection with a dispute between the parties as to the timing of and responsibility for cost of relocating the Original Gas Main, on May 18, 2021, a decision was rendered by the Ontario Superior Court of Justice, a copy of which is attached hereto as Schedule "E" (the "**2021 Decision**") declaring that, as of September 1, 2022 (subsequently extended by the City), the Licensee would have no right to use the Keating Railway Bridge for the Original Gas Main. At Paragraph 14 of the decision, Myers J. stated that Section 2 of the *Public Service Works on Highways Act* ("**PSWHA**") does not apply as the prior Keating Railway Bridge was not a highway because the public had no access to use it;
- D. The Licensee and Waterfront Toronto have entered into a project work agreement (the "**Project Work Agreement**"), dated February 25, 2022, pursuant to which the Licensee has agreed to decommission the Original Gas Main and construct approximately 100 metres of NPS 20 HP ST pipeline (together with all related components, including the saddle/platform and truss system supporting it, the "**New Gas Main**") within a newly designed utility corridor over the Don River (the "**Elevated Utility Corridor**") that will be supported on the same piers and associated foundations, abutments, retaining walls and soil or rock under reinforced concrete box culverts or below springing lines of soil steel structures (collectively, the "**Bridge Substructure**") as the Lake Shore

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Boulevard East vehicular bridge after it has been elongated and reconstructed as part of the Project, and pursuant to which Waterfront Toronto will contribute to the cost of such work, subject to the Licensee and the City entering into an agreement to grant the Licensee a licence to locate the New Gas Main on the utility corridor to be constructed by Waterfront Toronto;

- E. The former location of the Keating Railway Bridge and the intended location of the New Gas Main are both within the boundaries of the municipal road allowance;
- F. The City's position is that, given the 2021 Decision, the Licensee requires a licence from the City, in its capacity as landowner, to install and maintain the New Gas Main;
- G. The Licensee's position is that the requirement to obtain a licence from the City, in its capacity as landowner, to use the Bridge Substructure is in conflict with the Licensee's rights pursuant to its incorporating legislation titled, "An Act to Incorporate the Consumers' Gas Company of Toronto, 23rd March, 1848" (the "**1848 Legislation**") as the portion of the Bridge Substructure on which the New Gas Main is to be located is within a municipal road allowance. Notwithstanding such position the Licensee is prepared to enter into a license from the City for the Licensee's Bridge Substructure on the basis of the terms set out herein;
- H. The Ontario Energy Board has issued leave to construct the New Gas Main to the Licensee, subject to the condition that a licence be obtained from the City for the New Gas Main, among other conditions;
- I. The City and the Licensee (collectively, the "**Parties**") wish to enter into this agreement for the grant of a licence for the New Gas Main on a portion of the Bridge Substructure on the terms and conditions set out herein;

**NOW THEREFORE** the Parties agree that in consideration of the mutual covenants and agreements herein contained and the sum of Two Dollars (\$2.00) now paid by the Licensee to the City (the receipt and sufficiency of which is hereby acknowledged), the Parties hereto agree as follows:

## **1. LICENCE**

The City grants to the Licensee, for the Term and subject to the terms and conditions in this Agreement, the non-exclusive right to use, occupy, and access a portion of the City Lands shown as Parts 1 and 2 on Schedule "**A**" hereto (the "**Licensed Area**"), for the purpose of the Permitted Use (the "**Licence**"), subject to the provisions of this Agreement.

The Parties agree that the circumstances relating to the New Gas Main are unique, and notwithstanding Section 19(12) hereunder, that nothing in this Agreement shall:

- (a) be considered a precedent for future agreements between the Parties;
- (b) have any precedential or interpretive value with respect to the interpretation of the 2021 Decision in connection with any of the Licensee's other works; or
- (c) have any precedential or interpretive value with respect to the interpretation of the 1848 Legislation in connection with any of the Licensee's other works.

The parties acknowledge the plan attached as Schedule "A", defining the Licensed Area, is a draft and a final post construction form will be provided to the Licensee. Following approval by both parties an amending agreement will be completed to update Schedule "A".

## 2. CITY APPROVAL REQUIREMENTS

(1) The Licensee represents and warrants to the City that the New Gas Main will connect to segments of realigned gas main in the public highway to the east and west of the Elevated Utility Corridor. The Licensee acknowledges that any exercise of this Licence to access the Licensed Area will necessarily involve activities in the public highway. Prior to accessing the Licensed Area the Licensee shall obtain a municipal cut permit as described in § 743-6. ("Municipal Consent") of the Toronto Municipal Code, as it may be amended or replaced (the "Municipal Code"), and in accordance with the "Municipal Consent Requirements — Requirements for the Installation of Services within the City of Toronto Streets" and the appendices attached thereto, as the same may be amended from time to time (the "MCRs"). A current copy of the MCRs as at the date of this Agreement is attached at Schedule "F". For convenience, the Parties agree to adopt the conditions and requirements set out in the Municipal Code, the MCRs and the applicable Municipal Consent, *mutatis mutandis*, to the extent that same pertain to the shared use of the City Lands for utility purposes by the City and the Licensee, as if they directly applied to this Licence and the Licensed Area. Notwithstanding the foregoing, the Licensee acknowledges that it is this Agreement, and not a Municipal Consent granted by the City, as regulatory highway authority, in respect of the public highway that directly authorizes work on the Licensed Area. For clarity, the Parties acknowledge and agree that the terms set out in this Agreement are intended to supplement the conditions and requirements adopted herein by reference to the Municipal Code and the MCRs, and the applicable Municipal Consent. To the extent the provisions of this Agreement are inconsistent with and cannot be interpreted as supplemental to the conditions and requirements of the Municipal Code, the MCRs or the applicable Municipal Consent, this Agreement shall prevail.

(2) Prior to accessing the Licensed Area in each instance, the Licensee shall obtain the written approval of the City's Director, Real Estate Services, Corporate Real Estate Management (the "**CREM Director**"), for the Licensee's proposed work on the Licensed Area. Such request shall be delivered to the CREM Director at Lease.Admin@toronto.ca or such other address as directed by the CREM Director. The Licensee shall seek and submit such approval in conjunction with its application for a Municipal Consent, by taking the following steps:

- (a) Licensee's Geographical Information System (GIS) or equivalent will identify the need for additional approval of the CREM Director, as part of the MCR consent process for the New Gas Main in the Licensed Area;
- (b) Licensee's project manager or equivalent will identify the need for an approval from the CREM Director, as part of the MCRs consent process on the Licensee's internal permit circulation form (being the then current document which identifies which approvals and permits are required for a given project);
- (c) Licensee's permitting coordinator (or equivalent) will:
  - (i) identify the need for circulation to the CREM Director on the CUT PERMIT APPLICATION FOR INSTALLATION OF SERVICES WITHIN THE CITY OF TORONTO STREETS and in the body of the communication sent to either [fsutcuts@toronto.ca](mailto:fsutcuts@toronto.ca) (full) or [utcuts@toronto.ca](mailto:utcuts@toronto.ca) (short/emergency) based on the nature

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of the work contemplated or such other address at which permit applications are received by the City, as public highway authority, from time to time, and provide a copy of this Licence;

- (ii) send the communication identified in subsection 2(c)(i) above, together with all attachments, and along with evidence that such materials have been circulated to the Other Users, as hereinafter defined, and that none of the Other Users have any objection to the proposed work, to the CREM Director, requesting approval under this Licence; and
  - (iii) submit the written approval of the CREM Director, either stating that the CREM Director has no objections and is granting unconditional approval or outlining the conditions of approval, and any conditions identified by the Other Users, to [fsutcuts@toronto.ca](mailto:fsutcuts@toronto.ca) (or such other address at which permit applications are received by the City, as public highway authority, from time to time),.
- (3) Notwithstanding the granting of any approval pursuant to this Section 2, all proposed work shall be completed by the Licensee at its sole risk and the City shall not in any way have liability for the design, plans, drawings, or specifications related to the New Gas Main or performance of any work in connection with the New Gas Main.

### 3. TERM

The term of the Licence (the "**Term**") shall be seventy-five (75) years, commencing on the date that the Licensee notifies the City that it intends to commence the Licensee's Work, as hereinafter defined (the "**Commencement Date**").

### 4. LICENCE FEE AND MAINTENANCE SHARE

- (1) The Licensee shall pay to the City as a one-time fee (the "**Licence Fee**") on the Commencement Date, without abatement, deduction or set-off, the amount of **One Hundred and Five Thousand Dollars (\$105,000)** plus any applicable HST and other taxes as provided for in Section 8(e).
- (2) The Licensee shall pay to the City on the Commencement Date, without abatement, deduction or set-off, the amount of Thirty-Two Thousand, Four Hundred and Sixty-Four Dollars (\$32,464) (the "**Prepaid Maintenance Share**") representing twenty-five percent (25%) of the City's estimated 75 year life cycle costs to maintain and repair the concrete and piers of the portion of the Bridge Substructure that supports the Elevated Utility Corridor, calculated as One Hundred and Twenty Nine Thousand, Eight Hundred and Fifty Seven Dollars (\$129,857).
- (3) The obligations of the Licensee under this section shall survive the expiry or earlier termination of this Agreement in respect of all amounts required to be paid during or in respect of the Term or any renewal.

### 5. PERMITTED USE

Subject to the terms of this License, the Licensee shall use the Licensed Area on a non-exclusive basis to survey, lay, construct and install the New Gas Main on the Bridge Substructure (collectively, the "**Licensee's Work**") and to operate, use, inspect, maintain, repair and replace the New Gas Main, all in accordance with applicable laws, including those imposed by the Ontario Energy Board (collectively, the "**Permitted Use**"). The Licensee shall not cause, suffer, or permit the Licensed Area to be used for any purpose other than the Permitted Use.

For clarity, the Licensee acknowledges that a Municipal Consent is a condition of access to the Licensed Area. If the Licensee proposes to access the Licensed Area and/or conduct work on it that does not require a Municipal Consent pursuant to the Municipal Code, the Licensee will need to seek separate permission from the City for such purpose.

## **6. OTHER BRIDGE USERS**

The Licensee acknowledges that a portion of the Bridge Substructure will be used to support the Elevated Utility Corridor, currently anticipated to include a City watermain, a Toronto Hydro feeder and a Road Emergency Services Communication Unit fibre optic cable, and that other utilities may be added at City's discretion (all such utilities referred to herein as the "**Other Utilities**"). The Licensee's rights shall be subject to the rights of the City, the owners and operators of the Other Utilities and other third-party users as may be permitted by the City (collectively, the "**Other Users**") to use the Bridge and no crossing agreements shall be required by the Licensee to permit such uses, provided that they not materially affect or unreasonably interfere with the New Gas Main.

## **7. PRE-CONDITIONS TO COMMENCEMENT OF LICENSEE'S WORK**

- (1) The Licensee agrees that it shall not commence any work pursuant to this Agreement unless and until:
- (a) all consents, permits, licenses and inspections required for the Licensee's Work have been obtained from all governmental and regulatory authorities having jurisdiction, including without limitation, the Toronto Port Authority, Toronto and Region Conservation Authority, Minister of Natural Resources and Forestry of Ontario, and Minister of Fisheries and Oceans Canada (collectively, the "**Authorities**"), if applicable, and at the request of the City, the Licensee shall submit proof of such compliance; and
  - (b) the insurance required under this Agreement has been obtained.

## **8. LICENSEE'S COVENANTS**

In performing the Licensee's Work and throughout the Term, the Licensee covenants and agrees:

- (a) for initial installation, to construct the Gas Main in accordance with the drawings that will be submitted by Licensee for approval and which are subsequently approved by Waterfront Toronto and the City and any subsequent amendments or deviations therefrom that may be subsequently approved by Waterfront Toronto, the City and the Licensee (collectively the "**Approved Drawings**"), and for subsequent work in accordance with any other plans that may be approved by the City in accordance with this Agreement, in both cases in strict adherence to any conditions identified by the City or Other Users pursuant to Section 2;
- (b) to comply in all respects with the Project Work Agreement;
- (c) to comply with the environmental provisions set out in Schedule "C";

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- (d) to fulfill the requirements of the MCRs in relation to any work conducted by the Licensee pursuant to this Licence, as if the MCRs applied directly to work on the Licensed Area;
- (e) to pay to the City promptly when due, any sales tax, multi-stage sales tax, value added tax, goods and services tax, harmonized sales tax or other similar tax levied by the Federal and/or Provincial Governments of Canada and Ontario respectively on any payments to be made by any Licensee to the City pursuant to this Agreement;
- (f) to comply with all federal, provincial and municipal laws, by-laws, regulations, building codes and rules affecting the Licensed Area and its use, including the obtaining of all necessary consents, permits, licenses and inspections from the applicable Authorities, at its own expense;
- (g) to perform or cause to be performed the Licensee's Work at its sole cost, expense and risk and, in accordance with the time periods established by the permit issued (subject to events of force majeure), and to permit representatives of the City to review and inspect such work at any time and from time to time;
- (h) to perform and discharge, or cause to be performed and discharged, all of the duties of the "constructor" under the Occupational Health and Safety Act (Ontario) in respect of all of the Licensee's Work; and
- (i) to repair and remedy, at its own expense and to the satisfaction of the City, all damage and injury incurred by the City, its officers, councillors, employees, agents, representatives, employees, anyone for whom the City is at law responsible, or any of them (collectively, the "**City's Representatives**") and any property owned by or under the care of any of the City's Representatives, caused by any exercise by the Licensee, or any of its representatives, agents, assigns, employees, officers, invitees and contractors and anyone for whom the Licensee is at law responsible, or any of them (the "**Licensee's Representatives**"), of the Licensee's rights under this Agreement, or the use by any of the Licensee's Representatives of any part of the Licensed Area.

## 9. BRIDGE MAINTENANCE

- (1) The City shall be responsible for maintaining the Bridge Substructure in a safe condition and good state of repair. The Licensee shall cooperate with all City maintenance and repair requirements, which may include interruption of the Licensee's service, and the Licensee shall not have any resulting claims against the City.
- (2) The Licensee shall be responsible for maintaining the New Gas Main in a safe condition and good state of repair.
- (3) The City shall provide updates on the status of the Bridge Substructure and copies of all studies and reports that might give rise to a requirement for a temporary and/or permanent relocation upon request by the Licensee. The Licensee shall be engaged as part of any study or assessment of the New Gas Main.
- (4) The City will provide the Licensee with reasonable prior notice of any maintenance work that may have an impact on the New Gas Main. The City shall provide the Licensee with an opportunity to provide input on the proposed work to the extent required by the MCRs.

## 10. TEMPORARY RELOCATION

(1) The City shall have the right to require that the Licensee temporarily relocate the New Gas Main from the Licensed Area to allow the City to:

- (a) rehabilitate the Bridge, in the event that such rehabilitation is expected to cause vibrations in excess of the tolerance levels of the New Gas Main or otherwise endanger or compromise the New Gas Main as determined by the Licensee, acting reasonably, following receipt of and, in reliance upon, information provided by the City;
- (b) demolish, reconstruct, or replace the Bridge, if deemed necessary by the City's General Manager of Transportation Services acting reasonably; or
- (c) further widen the Bridge,

by giving written notice (the "**Relocation Notice**") to the Licensee. "**Bridge**" in this Agreement shall include the Bridge Substructure, Elevated Utility Corridor and the parallel Lake Shore Boulevard East vehicular bridge, and all related components, or any of them.

(2) The Relocation Notice shall specify the date by which the Licensee is required to vacate the Bridge (the "**Relocation Date**"), which shall be at least five (5) years after the Relocation Notice is given, or such shorter period as may be necessary, in the sole discretion of the City, to ensure that the City can maintain the structural integrity and safety of the Bridge. The Relocation Notice shall also specify the expected period during which vacant possession of the Licensed Area will be required by the City. The ability of the City to impose a Relocation Date shorter than five (5) years shall only be applicable to situations required to maintain structural integrity and/or safety of the Bridge as documented in an expert third party report the Licensee has had the opportunity to review. The Relocation Date shall take into consideration, among other things: the complexity of the removal work; the time to plan and design the new utility work; the time required to test and energize the new utility work; the time to acquire third-party land interests and, if applicable, obtain all regulatory approvals for the New Gas Main to be removed and relocated; and, the urgency of the City's requirement for removal so that it can commence its own work.

(3) If the projected Costs of Relocation/Removal, as defined below, associated with relocating the New Gas Main to a temporary location and then back to the Licensed Area exceed the costs of relocating the New Gas Main permanently, the Licensee shall notify the City within ninety days of receipt of a Relocation Notice by giving written notice to the City (the "**Enbridge Termination Notice**"), in which case this Agreement shall be terminated, the provisions of section 11 shall apply and the Relocation Date shall be the Termination Date.

(4) If the Relocation Notice is given and the Licensee does not terminate the Agreement in accordance with section 10(2) above, then the following shall apply:

- (a) the Agreement shall be temporarily suspended as of the Relocation Date, the Licensee shall restore the Licensed Area in accordance with section [14] hereof, and the Licensee shall deliver vacant possession of the Licensed Area to the City in accordance with all applicable provisions in this Agreement, and except as set out in Section 13 without payment or compensation of any kind from the City;

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- (b) the Licensee shall be responsible for the payment of all fees and charges to and including the Relocation Date, including without limitation all fees and charges in respect of any period prior to the Relocation Date which are subsequently billed or adjusted after the Relocation Date; and
- (c) the City shall notify the Licensee in writing, as soon as reasonably practicable, of the date that the New Gas Main can be reinstalled on the Bridge Substructure.

## 11. EARLY TERMINATION

(1) The City shall have the right to terminate this Agreement:

- (a) during the first 40 years of the Term, in the event that the Bridge Substructure is damaged to the extent that it can no longer be safely used; and
- (b) during the remainder of the Term and any subsequent renewal and/or extension of the Term, in addition to Section 11(1)(a) above, in the event that:
  - (i) the Bridge Substructure must be completely rehabilitated or replaced, in the opinion of the City's General Manager of Transportation Services, acting reasonably; or
  - (ii) new infrastructure or the rehabilitation or improvements to existing infrastructure which is not currently contemplated is planned that is incompatible with the Bridge Substructure or the New Gas Main,

by giving written notice (the "**City Termination Notice**") of such termination to the Licensee.

(2) The City Termination Notice shall specify the required termination date, which shall be at least five (5) years after the Termination Notice is given, or such shorter period as may be necessary, in the sole discretion of the City, to ensure that the City can maintain the structural integrity and safety of the Bridge (the "**Termination Date**"). The ability of the City to impose a required Termination Date shorter than five (5) years shall only be applicable to situations required to maintain structural integrity and/or safety of the Bridge as documented in an expert third party report the Licensee has had the opportunity to review. The required Termination Date shall take into consideration, among other things: the complexity of the removal work; the time to plan and design the new utility work; the time required to test and energize the new utility work; the time to acquire third-party land interests and, if applicable, obtain all regulatory approvals for the New Gas Main to be removed and relocated; and, the urgency of the City's requirement for removal.

(3) If an Enbridge Termination Notice or City Termination Notice (in either case, a "**Termination Notice**") is given, then the following shall apply:

- (a) the Agreement shall terminate on the Termination Date, the Licensee shall restore the Licensed Area in accordance with section 13 hereof, and the Licensee shall deliver vacant possession of the Licensed Area to the City in accordance with all applicable provisions in this Agreement, and except as set out in section 12 hereof without payment or compensation of any kind from the City;
- (b) if required by the City, the Licensee shall execute a surrender of the Agreement in the City's standard form;
- (c) the Licensee shall be responsible for the payment of all fees and charges to and including the Termination Date, including without limitation all fees and other charges in respect of

any period prior to the Termination Date which are subsequently billed or adjusted after the Termination Date;

- (d) the City will repay to the Licensee within 10 Business Days after the Termination Date:
  - (i) a prorated share of the Licence Fee, calculated based on the number of days remaining in the unexpired portion of the Term; and
  - (ii) a prorated share of the Prepaid Maintenance Share, calculated based on the number of days remaining in the unexpired portion of the Term.
- (e) aside from the payments set out in subsection 11(3)(d) above and payment of the Costs of Relocation / Removal, neither party shall have any further liability or obligation to the other after the Termination Date, except for the Licensee's obligations under Subsections [12(3)(a)-(c)] above; except for any default under the Agreement by either party occurring on or before the Termination Date and in respect of which notice is given to the defaulting party on or before the 60<sup>th</sup> day after the Termination Date; and except as otherwise expressly provided for in this Agreement.

## 12. COST OF RELOCATION / REMOVAL

If the City exercises its rights to require the Licensee to temporarily or permanently remove the New Gas Main from the Bridge Substructure pursuant to Section 10 or 11, the City shall pay to the Licensee any amounts that would be payable by the City under the *PSWHA*, as it may be amended or replaced, with respect to taking up, removing or changing the location of the New Gas Main if the Licensed Area was part of a public highway (the "**Costs of Relocation / Removal**"), and all other costs shall be borne by the Licensee. The Licensee shall submit its proposals and cost breakdowns to the City in accordance with any then-current City requirements for costs to be shared under the *PSWHA*.

## 13. DECOMMISSIONING AND RESTORATION

- (1) Following the initial installation of the New Gas Main on the Bridge Substructure, the Licensee shall remove from the Licensed Area all other equipment and excess materials and restore at its cost and to the satisfaction of the City, acting reasonably, the Licensed Area to a condition as close as reasonably possible to its condition at the commencement of the Term.
- (2) After each successive entry into the Licensed Area by the Licensee following installation of the New Gas Main, the Licensee shall remove from the Licensed Area all equipment and excess materials and restore at its cost and to the satisfaction of the City, acting reasonably, the Licensed Area to a condition as close as reasonably possible to their condition immediately preceding its entry into the Licensed Area.
- (3) At the end of the Term the Licensee shall decommission the New Gas Main and remove it and all equipment and excess materials and restore the Licensed Area at its cost and to the satisfaction of the City, acting reasonably, to a condition as close as reasonably possible to their condition immediately preceding the entry by the Licensee into the Licensed Area.
- (4) In the event the City terminates this License prior to the end of the Term the Licensee shall decommission the New Gas Main and remove it and all equipment and excess materials and restore the Licensed Area at its cost and to the satisfaction of the City, acting reasonably, to a condition as close as

reasonably possible to their condition immediately preceding the entry by the Licensee into the Licensed Area.

(5) In the event that the Licensee fails to fulfill any of its obligations under this section 13, the City may do or cause such work to be done and the Licensee shall, on demand, pay the City's reasonably incurred costs plus an administrative fee.

#### **14. OWNERSHIP OF IMPROVEMENTS**

It is expressly understood and agreed that all components of the New Gas Main installed on, in, under or above the Licensed Area shall be and remain the property of the Licensee.

#### **15. INSURANCE:**

The Licensee shall obtain and maintain, throughout the term of the Licence, the insurance set out in Schedule "D".

#### **16. RELEASE AND INDEMNITY:**

(1) Licensee shall at all times indemnify and save harmless the City and its elected officials, directors, officers, employees, agents, representatives, successors and those for whom at law each of them is responsible (the "**Indemnified Parties**") from and against any and all claims, complaints, demands, damages, losses, expenses and costs (including the costs of their respective solicitors of defending any such claims), charges, proceedings and actions (including those under or in connection with the Workplace Safety and Insurance Act or any successor legislation) (collectively, "**Claims**") which may be suffered, sustained or incurred arising from or as a result of the exercise of the rights herein granted to the Licensee or any breach by the Licensee of its obligations under this Agreement , except to the extent that such Claims are arise from or as a result of:

- (i) negligent acts or omissions of the City and/or those for whom the City is legally responsible;
- (ii) breaches of this License by the City and/or those for whom the City is legally responsible;
- (iii) the Bridge Substructure and Bridge (as defined in Section 10) not being constructed in accordance with the Approved Drawings;

None of the indemnity provisions in this License limit any claims that the City may have, at common law or in equity or otherwise, against the Licensee or against any third party.

(2) With respect to any work carried out by or on the Licensee's behalf, the Licensee shall at its own expense cause all registrations on the City Lands or any portion thereof of any claims for lien or Certificate of Action related thereto to be discharged or vacated within ten (10) days of notice from the City requiring it to do so, failing which the City, at the expense of Licensee, in addition to any other rights or remedies it may have, may, but shall not be obliged to, cause such claims or certificates to be discharged or vacated by payment into court and the cost thereof and the City's legal costs on a solicitor and client basis shall be paid forthwith by Licensee to the City on demand. The Licensee shall indemnify and save the City harmless from any liability, claim, damages or

expenses (including legal expenses) due to or arising from any claim for lien made against the Licensed Area or the City Lands.

## 17. DEFAULT

If any Licensee fails to perform or observe any of its covenants, conditions or obligations contained in this Agreement on or within any period specified by the City in a notice of default (the determination of the cure period specified by the City in a notice of default shall be made on a case-by-case basis, acting reasonably, having regard to the nature and impact of the default, the scope of remedial work required to remedy the default, whether or not the default raises a safety concern or impedes the conduct of the City's business or materially affects the City's or Other Users' use of the Bridge), in the event the Licensee fails to diligently and continuously proceed to cure any such default, then the City may either:

- (a) terminate this Agreement and the License by giving to the Licensee a notice of termination;  
or
- (b) remedy the default and the costs of remedying such default shall be payable by the Licensee on demand.

In the event the Licensee disputes the cure period specified by the City in a notice of default and applies to a judge of the Superior Court of Justice for an order altering the date specified in the notice of default to a later date, the Licensee shall make such application and take all related steps forthwith.

## 18. GENERAL:

(1) Except where otherwise provided, the City's Director, Real Estate Services shall administer and manage this Licence including the provision of any consents, approvals, waivers, notices and notices of termination provided that he or she may, at any time, refer consideration of such matters (including their content) to City Council for its determination and direction.

(2) If any amount herein due and payable to the City remains unpaid thirty (30) days after it is due, interest on the amount outstanding shall be paid to the City at the rate of 1.25% per month (15% per annum) (the "**Default Rate of Interest**"). Payments received by the City will be applied first to outstanding interest charges and the balance (if any) will be applied to the outstanding principal amount. Subject to City Council approval (which may include delegated approval), the Default Rate of Interest may be increased by the City from time to time, by notice to the Licensee. The right of the City to charge and receive interest in accordance with this section is without prejudice to any of the other remedies available to the City, at law or otherwise.

(3) The Licensee will pay to the City, immediately on demand, a charge of forty dollars (\$40.00) for every cheque tendered by any Licensee to the City that is not honored by the institution on which it is drawn (the "**NSF Fee**"). The NSF Fee may be increased by the City from time to time by notice to the Licensee, so that it is at all times equal to the charge payable in respect of cheques tendered in payment of municipal tax and water charges that are not honored by the banks on which they are drawn, and the Licensee agree to pay the NSF Fee as it may be so increased from time to time.

(4) All notices, consents, approvals or other communications (collectively "**Notices**") permitted or required to be given under this Agreement shall be in writing and shall be: personally delivered; sent by prepaid registered mail (except during a postal disruption or threatened postal disruption); or sent by email where an email address is set out below, in each case to the applicable address set out below:

(a) in the case of the Licensee, to:

Enbridge Gas Inc.  
Operations Capital Programs  
500 Consumers Road  
Toronto, Ontario M2J 1P8  
Attention: Manager, Capital Development & Delivery  
Email: bhujwalh@enbridge.com

with a copy to:

Enbridge Gas Inc.  
Legal Department  
500 Consumers Road  
Toronto, Ontario M2J 1P8  
Email: EGI LawContracts@enbridge.com

(b) in the case of the City, to:

City of Toronto  
Corporate Real Estate Management Division  
Metro Hall, 2<sup>nd</sup> floor  
Toronto, Ontario M5V 3C6  
Attention: Director, Real Estate Services

with a copy to:

City of Toronto, Legal Services  
Metro Hall  
55 John Street, 26<sup>th</sup> floor  
Toronto, Ontario  
M5V 3C6  
Attention: City Solicitor

(c) and where expressly required under this Agreement, to:

City of Toronto  
Transportation Services  
Toronto City Hall  
22<sup>nd</sup> fl. E., 100 Queen St. W.  
Toronto ON M5H 2N2  
Attention: General Manager

City of Toronto  
Engineering and Construction Services  
Toronto City Hall  
24<sup>th</sup> fl. E., 100 Queen St. W  
Toronto ON M5H 2N2

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Attention: Executive Director

(5) Any Notice shall be deemed to have been validly and effectively given and received: if personally delivered, on the date of delivery; if sent by prepaid registered mail, on the third (3<sup>rd</sup>) Business Day next following the date of mailing, provided, however, that during any postal disruption or threatened postal disruption, delivery shall be in person; and if sent by facsimile, on the Business Day next following the day on which the Notice was sent.

**"Business Day"** means Monday to Friday, both inclusive, except any such day that is a statutory holiday under the laws of either Canada or the Province of Ontario and except any other day that the City of Toronto is not open for business.

(6) Notwithstanding any consent or approval given by the City with respect to any plans, specifications or other construction-related matter, the City will not be in any way liable for the design or construction of the New Gas Main, and the party that has obtained the consent or approval of the City shall be wholly liable for such design and construction.

(7) Either party under this Agreement may from time to time by Notice to the other party change its address for service under this Agreement.

(8) The Parties hereto agree to execute such additional and further documentation as may be necessary or advisable to more effectually implement this Agreement.

(9) If this Agreement creates an interest in land which would require a consent to severance under the provisions of Section 50 of the *Planning Act 1990* then any such right or interest shall be limited to a period of twenty-one years less a day unless prior to such date any necessary consent to severance is obtained and the Parties agree to co-operate in obtaining any necessary consents. The party bringing the application shall have the responsibility for securing such consent and shall bear all costs relating thereto.

(10) The Licence is personal to the Licensee and may not be assigned or sublicensed without the prior written consent of the City, which consent may be arbitrarily and unreasonably withheld.

(11) Time shall in all respects be of the essence hereof.

(12) The Parties acknowledge that the City is entering into this Agreement in its capacity as owner of the Bridge Substructure and City Lands, and nothing in this Agreement derogates from, interferes with, or fetters the exercise by the City of all of its legislative and regulatory powers, including its planning rights and responsibilities, or imposes any obligations on the City with respect to such powers. Nothing in this Agreement derogates from, interferes with, or fetters the exercise by the City's officers, employees, agents, representatives or elected and appointed officials of all of their rights, or imposes any obligations on the City's officers, employees, agents, representatives or elected and appointed officials, other than as expressly set out in this Agreement. For greater certainty, nothing in this Agreement restricts, alters, or otherwise affects the application to any works of the Licensee outside of the Licensed Area of the Municipal Code, the MCRs, and any other requirements applicable to public highways in the City of Toronto.

(13) No communication or dealing between any Licensee and any department, committee, body, officer, employee, agent, representative or elected or appointed official of the City that is not clearly in respect of and in accordance with this Agreement will be deemed to be a communication or dealing under this Agreement between the Licensee and the City as parties to this Agreement, or affect the City with notice of any such communication or dealing. It is intended and agreed that any communication or dealing between any Licensee and the City as parties to this Agreement will only be effective if delivered in accordance with the notice provisions in this Agreement. No communication or dealing between the City as a party to this Agreement and any Licensee as a party to this Agreement will relieve the Licensee from the responsibility of discharging its lawful obligations to the City imposed by statute, regulation, by-law or by any other lawful manner separate and apart from the obligations imposed under this Agreement.

(14) If any portion or provision of this Agreement (including, without limitation, any portion or provision of any section of this Agreement) shall to any extent be declared illegal or unenforceable by a court of competent jurisdiction, then the remainder of this Agreement, or the application of such portion or provision in circumstances other than those as to which it is so declared illegal or unenforceable, shall not be affected thereby, and each portion and provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

(15) All agreements, covenants, obligations and indemnifications in this Agreement made by either party hereto shall survive the expiration or earlier termination of this Agreement, anything to the contrary in this Agreement notwithstanding.

(16) This Agreement will bind and benefit the Parties and their respective successors and permitted assigns.

(17) The Parties will endeavour to resolve any question, difference or dispute that arises between the Parties in respect of any matter arising under this License or in relation to the construction of this License (each, a **"Dispute"**), using their reasonable commercial efforts to settle such Dispute as soon as reasonably practicable, and may by mutual agreement enter into a mediation process to attempt to resolve any Dispute.

(18) With the exception of any financial obligations under this License, whenever a period of time is herein prescribed for action to be taken by either Party hereto, such Party shall not be liable or responsible for, and there shall be excluded from the computation of any such period of time, any delays due to strikes, riots, acts of God, shortages of labor or materials, war, terrorist acts or activities, governmental laws, regulations, or restrictions, a health emergency, or any other causes of any kind whatsoever which are beyond the control of such Party.

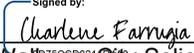
(19) This Agreement may be executed in counterparts, each of which shall be deemed an original and which, taken together, shall constitute one and the same instrument. Each counterpart of this Agreement, and any other document to be delivered by one or more parties under this Agreement, may be executed by electronic signature through a City-Approved Electronic Signature Platform (as defined below), or by handwritten signature delivered to the other party or parties by electronic transmission in PDF format. Any such electronic signature or handwritten signature delivered by electronic transmission shall be valid, binding and enforceable upon the party or parties so executing and/or delivering same electronically to the same extent and shall have the same legal effect as an original signature. If and when one or more parties hereto executes this Agreement by or through a City-Approved Electronic Signature Platform, then such

party or parties shall, upon the request of another party hereto, be obliged to forthwith provide the requesting party with a certificate of completion or similar certificate produced or issued by such City-Approved Electronic Signature Platform, which confirms, verifies and/or validates the electronic signature of the party or parties so executing same electronically. For the purposes of this section, "City-Approved Electronic Signature Platform" means DocuSign Inc.'s electronic signing platform or any other similar secure electronic application or platform acceptable to the City in its sole and absolute discretion and "electronic signature" and "electronic" shall have the meanings respectively ascribed to such terms in the Electronic Commerce Act, 2000, S.O. 2000, c. 17, as amended.

***The remainder of this page intentionally left blank.***

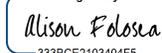
**IN WITNESS WHEREOF** the Parties have hereunto executed this Agreement.

**APPROVED AS TO FORM**

Signed by:  
  
 \_\_\_\_\_  
 For Wendy Walberg, City Solicitor  
 File No.2800-302-0857.22  
 Print Name: Charlene Farrugia

Authorized by Article 2 of City of Toronto  
 Municipal Code Chapter 213, Real  
 Property  
 DAF Tracking No. 2025-014

**CITY OF TORONTO**

DocuSigned by:  
  
 Per: \_\_\_\_\_  
 Name: Alison Folosea  
 Title: Director, Transaction Services, Corporate Real Estate Management c/s

Per: \_\_\_\_\_  
 Name:  
 Title:

I/We have authority to bind the Corporation.

**ENBRIDGE GAS INC.**

Signed by:  
  
 Per: \_\_\_\_\_  
 Name: Hussein Bhujwala  
 Title: Manager of Capital Development & Delivery c/s

Per: \_\_\_\_\_  
 Name:  
 Title:

I/We have authority to bind the Corporation.

**SCHEDULE "A"**

**LICENSED AREA PLAN**

**[Draft Reference Plan No. X-3750, File No. 18-21995K, dated June 11, 2024 and prepared by Callon Deitz Incorporated follows]**

SCHEDULE				
PART	BLOCK/RIVER/ROAD	REGISTERED PLAN	P.I.N.	AREA (sq.m.)
1	PART OF 150 FOOT ROAD	159-E	PART OF 21077-0165(LT)	53.0
2	PART OF 150 FOOT ROAD		PART OF 21077-0166(LT)	34.8

NOTES

BEARINGS ARE UTM GRID DERIVED FROM SPECIFIED CONTROL POINTS 02219740890 AND 02219740900, MTM ZONE 10 NAD-1927 ORIGINAL. ALL DIMENSIONS SHOWN ARE MEASURED, UNLESS OTHERWISE NOTED.

FOR COMPARISON, A ROTATION OF 0'05"10" COUNTER CLOCKWISE WAS APPLIED TO THE BEARINGS ON P9.

DISTANCES ARE GROUND AND CAN BE CONVERTED TO GRID BY MULTIPLYING BY THE COMBINED SCALE FACTOR OF 0.99989.

PARTS 1 AND 2 ARE LIMITED VERTICALLY

LEGEND

- DENOTES SURVEY MONUMENT SET
- DENOTES SURVEY MONUMENT FOUND
- CC DENOTES CUT CROSS
- CP DENOTES CONCRETE PIN
- IB DENOTES IRON BAR
- IP DENOTES IRON PIPE
- OU DENOTES ORIGIN UNKNOWN
- RIB DENOTES 30mm DIAMETER ROUND IRON BAR
- SCP DENOTES SPECIFIED CONTROL POINT
- SIB DENOTES STANDARD IRON BAR
- SSIB DENOTES SHORT STANDARD IRON BAR
- WIT DENOTES WITNESS
- 1017 DENOTES CALLON DIETZ, OLS
- CTS DENOTES CITY OF TORONTO
- MIR DENOTES METROPOLITAN TORONTO DEPARTMENT OF ROADS
- P.I.N. DENOTES PROPERTY IDENTIFIER NUMBER
- R.P. DENOTES REGISTERED PLAN
- M DENOTES MEASURED
- S DENOTES SET
- P1 DENOTES PLAN 63R-49571
- P9 DENOTES REGISTERED PLAN 520-E
- P12 DENOTES PLAN 63R-724
- P14 DENOTES PLAN 68R-31773
- P18 DENOTES PLAN 68R-24340
- P17 DENOTES PLAN 63R-405

INTEGRATION DATA

SPECIFIED CONTROL POINTS (SCP's): MTM-10 NAD27 ORIGINAL COORDINATES TO URBAN ACCURACY PER SEC. 14 (2) OF O.REG. 216/10		
POINT ID	NORTHING	EASTING
SCP 02219740890	4833991.195	316782.553
SCP 02219740900	4833822.849	316881.185

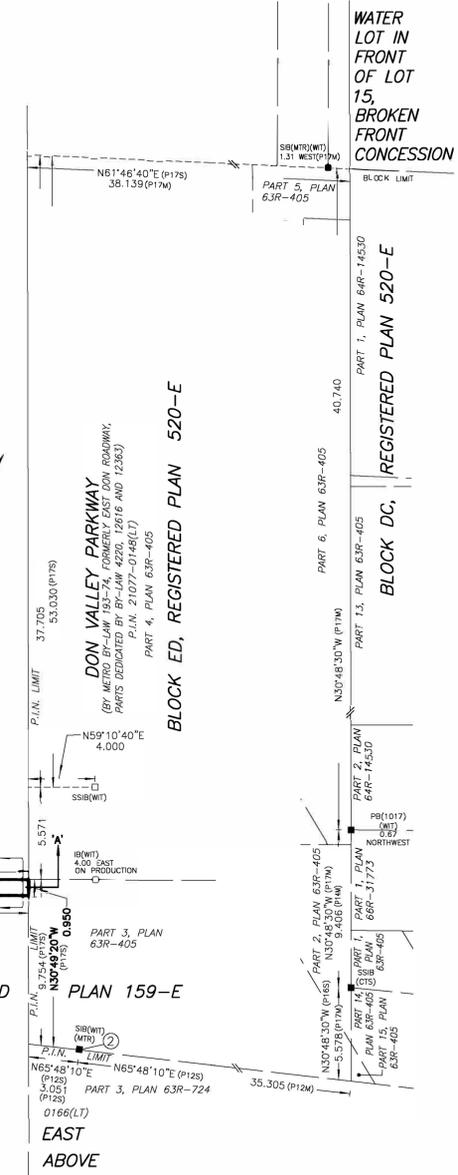
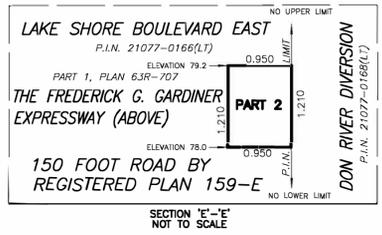
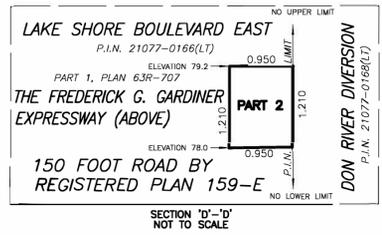
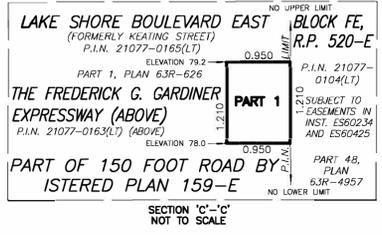
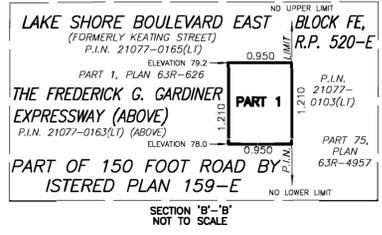
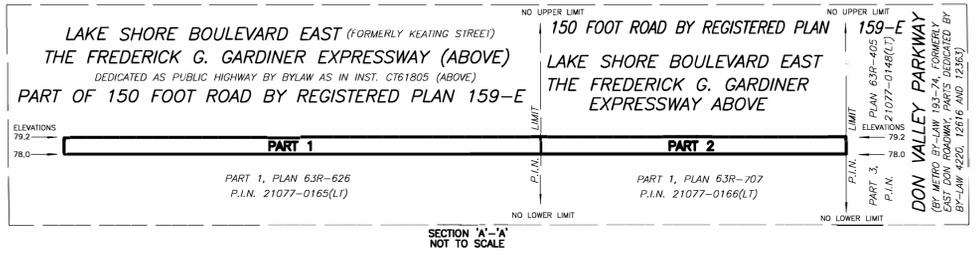
  

PLAN COORDINATES, MTM ZONE 10, NAD27 ORIGINAL		
	NORTHING	EASTING
1	4834320.03	316997.28
2	4834370.17	317101.37

COORDINATES CANNOT, IN THEMSELVES, BE USED TO RE-ESTABLISH CORNERS OR BOUNDARIES SHOWN ON THIS PLAN

STRATIFIED PART SCHEDULE	
PART	VERTICAL SECTION
1 (LIMITED VERTICALLY)	'A'-'A' 'B'-'B' 'C'-'C'
2 (LIMITED VERTICALLY)	'A'-'A' 'D'-'D' 'E'-'E'



STRATA PLAN OF SURVEY  
OF PART OF  
PART OF 150 FOOT ROAD BY REGISTERED PLAN 159-E

IN THE  
CITY OF TORONTO  
SCALE 1:200 (METRIC)

(SCALE IN METRES)

THE INTENDED PLOT SIZE OF THIS PLAN IS 913mm IN WIDTH BY 609mm IN HEIGHT WHEN PLOTTED AT A SCALE OF 1:200

J. ANDREW SMITH  
ONTARIO LAND SURVEYOR

BENCHMARK:

DESCRIPTION: 12219740901  
CITY OF TORONTO SOUTHEAST CORNER OF LAKE SHORE BLVD E AND DON ROADWAY. BENCHMARK ON MOST SOUTHERLY SUPPORTING PIER FOR EXPRESSWAY 0.23m NORTH FROM SOUTHEAST CORNER 0.36m ABOVE GRADE.

DATUM: CGVD28:PRE78  
ELEVATION: 78.404m

METRIC

DISTANCES AND COORDINATES SHOWN ON THIS PLAN ARE IN METRES AND CAN BE CONVERTED TO FEET BY DIVIDING BY 0.3048

SURVEYOR'S CERTIFICATE

I CERTIFY THAT:

(1) THIS SURVEY AND PLAN ARE CORRECT AND IN ACCORDANCE WITH THE SURVEYS ACT, THE SURVEYORS ACT AND THE LAND TITLES ACT AND THE REGULATIONS MADE UNDER THEM.

(2) THE SURVEY WAS COMPLETED ON THE 3rd DAY OF OCTOBER, 2023.

DATE: \_\_\_\_\_ J. ANDREW SMITH  
ONTARIO LAND SURVEYOR

THIS PLAN OF SURVEY RELATES TO AOLS PLAN SUBMISSION FORM NUMBER 2215679.

**Callon + Dietz** INCORPORATED  
ONTARIO LAND SURVEYORS  
CARLETON PLACE LONDON NORTH BAY  
info@callondietz.com callondietz.com

SURVEY BY: AM/GA DRAWN BY: KC FILE NO: 18-21995 K PLAN NO: X-3750

**SCHEDULE "B"**

**CITY LANDS**

Firstly:

PIN 21077-0165 (LT)

PT MARSH LANDS GRANTED TO CITY OF TORONTO BY ONTARIO GOVT ON MAY 18, 1880 & DOMINION GOVT ON OCT 10, 1903 TWP OF YORK; PT LT E PL 159E TORONTO PT 3 63R625; PT 150 FT WIDE RD PL 159E TORONTO (FORMERLY KEATING AV) PT 4 63R625, PT 1 63R626 BEING LAKE SHORE BLVD E BTN CHERRY ST & DON RIVER; CITY OF TORONTO

Secondly:

PIN 21077-0166 (LT)

PT BLK D PL 520E TORONTO AS IN ES56515 (THIRDLY); PT 150 FT WIDE RD PL 159E TORONTO EXCEPT PT 2, 3 63R405, PT 2 64R14530; PT KEATING ST PL 554E TORONTO (AKA LAKE SHORE BLVD E) BEING FREDERICK G. GARDINER EXPRESSWAY (AKA LAKE SHORE BLVD E) BTN DON RIVER & BOOTH AV; S/T CT475850; CITY OF TORONTO

## SCHEDULE "C"

### ENVIRONMENTAL PROVISIONS

1. Definitions in this Schedule:

**"Contaminant"** has, for the purposes of this Agreement, the same meaning as that contained in the *Environmental Protection Act*, R.S.O. 1990, c. E.19, as amended, and shall include the requirements of any and all guidelines and/or policies issued by the Ministry of Environment, Conservation and Parks and/or the Ministry of Labour.

**"Environmental Laws"** includes, but is not limited to all applicable federal and provincial statutes, municipal and local laws, common law, and all statutes, by-laws, regulations, codes, licenses, permits, orders, directives, guidelines that have the force of law, decisions rendered by any Governmental Authority relating to the protection of the environment, natural resources, occupational health and safety or the manufacture, processing, distribution, use, treatment, storage, disposal, packaging, transport, handling, containment, clean-up or other remediation or corrective action of any Hazardous Material.

**"Governmental Authority"** means any federal, provincial or municipal government, parliament, legislature, or any regulatory authority, agency, ministry, department, commission or board or other representative thereof, or any political subdivision thereof, or any court or (without limitation to the foregoing) any other law, regulation or rule-making entity, having jurisdiction over the relevant circumstances, or any person acting under the authority of any of the foregoing (including, without limitation, any arbitrator).

**"Hazardous Material"** means any contaminant, pollutant, dangerous substance, potentially dangerous substance, noxious substance, toxic substance, hazardous waste, biological materials and organisms (including, without limitation, viral agents, mold, fungus and bacteria), flammable material, explosive material, radioactive material, ureaformaldehyde foam insulation, asbestos and poly-chlorinated biphenyls, radiation, natural or man made, dangerous to public health, crops, water supplies or soil quality, and including, without restricting the generality of the foregoing, any Contaminant, any substances declared to be hazardous or toxic (including without limitation, substances which if found in certain minimum quantities are declared to be hazardous or toxic) and any other substance, materials, effect, or thing declared or defined to be hazardous, toxic, a contaminant, or a pollutant in or pursuant to any Environmental Law.

2. The Licensee covenants and agrees that it shall, at its sole cost, expense and risk, observe and otherwise comply with all Environmental Laws during the term of this Agreement. Without limiting the generality of the foregoing, the Licensee covenants and agrees that it shall not store or use any Hazardous Material and shall not to do or permit anything to be done in, at, on or in the vicinity of the Licensed Area which may cause contamination to the City Lands and/or to the lands adjoining or in the vicinity of the City Lands, or which may cause pollution to the Don River, or which is or may be a nuisance or which causes disturbance, damage to or interference with the Other Utilities, Other Users, or any users or occupants of any lands adjoining or in the vicinity of the City Lands.

3. The Licensee shall immediately provide the City with written notice of any order, direction, notice of default or notice of legal action received by the Licensee pursuant to any Environmental Laws and relating to the City Lands, or the use and occupation of the Licensed Area.

4. The Licensee shall immediately provide written Notice to the City of any Hazardous Material on the City Lands of which it becomes aware, any spill or release of any Hazardous Material onto or from the Licensed Area and of any order, direction, Notice of default or Notice of legal action received by the Licensee, pursuant to any Environmental Laws and relating to the City Lands, or the use and occupation

of the Licensed Area. Provided that the Licensee's activities are limited to the Licensed Area in accordance with this Agreement, the Licensee shall not be liable for any pre-existing Hazardous Material that was present on the City Lands below prior to the execution of this Agreement.

5. The City shall have the right (but not the obligation), from time to time, to inspect (including the right to conduct an environmental audit or assessment) the Licensed Area for the purpose of determining whether the Licensee is in compliance with its obligations in this Schedule. The City shall provide the Licensee written notice of intention to inspect the Licensed Area for such purpose, and any associated requests for relevant documentation. The Licensee shall pay any reasonable costs incurred by the City in making such inspections of the Licensed Area only if, by virtue of said inspection, the Licensee is determined to be in default under this Agreement. Such costs shall be paid forthwith on demand. The City shall also have the right to examine all of the Licensee's relevant files, books, records, statements, plans and other written information in the Licensee's possession relating to the compliance with Environmental Laws at the City Lands. The Licensee authorizes the City to make inquiries from time to time with any Governmental Authority having jurisdiction in respect of matters relating to the Licensee's compliance with Environmental Laws at the City Lands, and the Licensee agrees to provide any further authorizations as may be required to facilitate the obtaining of such information.

6. In the event that the City determines that the Licensee is in breach of its obligations in this Schedule, the City may, without limiting any other rights or remedies, provide the Licensee with Notice in writing of the breach, and the Licensee shall commence to rectify such breach at the Licensee's sole cost and expense, and shall complete such rectification as soon as reasonably possible. In the event that the Licensee does not commence to rectify such breach within thirty (30) days, the City may, at its option and in its sole discretion, terminate this Agreement without any further Notice, or may rectify such breach at the cost of the Licensee, and the Licensee shall forthwith, on demand, reimburse the City for the cost of rectification together with an administration fee of fifteen percent (15%) of the cost of rectification.

7. If any Governmental Authority shall require the clean-up of any Hazardous Material held, released, spilled, abandoned or placed on the City Lands or released into the environment in contravention of the Licensee's covenants in this Schedule, the Licensee shall, at its own expense:

- (a) prepare all necessary studies, plans and proposals required as a result thereof;
- (b) obtain all necessary approvals of such authorities required to complete the remediation and other work required;
- (c) provide all bonds and other security required by such authorities;
- (d) carry out and complete the remediation and other work required; and
- (e) provide the City with copies of the plans and proposals and keep the City advised from time to time as to the status of its remediation and other work.

8. If the Licensee, its agents, contractors or invitees, creates or brings to the City Lands any Hazardous Material, then, notwithstanding any provision in this Agreement or rule of laws to the contrary, such Hazardous Material shall be and remain the sole and exclusive property of the Licensee, and shall not become the property of the City notwithstanding the degree of affixation to the City Lands of the Hazardous Material or the goods containing the Hazardous Material, and notwithstanding the expiration or earlier termination of this Agreement.

9. The Licensee agrees to indemnify and save harmless the City and the City's Representatives against any and all liabilities, claims, damages, interest, penalties, fines, monetary sanctions, losses, costs and expenses whatsoever (including, without limitation, reasonable costs of professional advisors, consultants and experts in respect of any investigation, and all costs all remediation and other clean-up costs and expenses) arising from:

- 3 -

- (a) any breach by the Licensee of any provisions of this Schedule, or any noncompliance by the Licensee, its agents, contractors or invitees, with any Environmental Laws;
- (c) any generating, manufacture, refinement, treatment, transportation, storage, handling, disposal, transfer, production or processing of any Hazardous Material by the Licensee, its agents, contractors or invitees; and
- (a) any illness, injury or death of persons, or any loss or damage to property, on or about the City Lands as a result of any breach by the Licensee of any provisions of this Schedule.

## SCHEDULE "D"

### INSURANCE REQUIREMENTS

- 1.1 Insurance Policies.** At all times during the term of the Agreement, the Licensee shall maintain at its own expense, the insurance coverage outlined below, in each case with insurers having financial security ratings of at least "A-" by AM Best or "A" by Standard & Poor's and which are authorized to do business in all jurisdictions where any work is being performed.
- a) **Commercial General Liability** coverage with a limit of twenty million dollars (\$20,000,000) per occurrence for bodily injury and property damage arising out of or relating to the Licensee's activities under this Agreement. The policy shall add the Licensor as an additional insured and provide a waiver of subrogation in favor of Licensor, include coverage for personal and advertising injury, contractual liability addressing indemnification under this Agreement, cross liability, severability of interests, non-owned automobile liability, products and completed operations, limited time element pollution, contingent employer's liability and as applicable, shall provide coverage for explosion, collapse, and underground hazards ("XCU").
- b) **Commercial Auto Liability** covering all vehicles used by or on behalf of the Licensee in connection with this Agreement with a combined single limit of five million dollars (\$5,000,000) for injury or death of one or more persons or damage to or destruction of property as a result of each accident.
- 1.2 Insurance Limits.** Subject to the total required amount of insurance for each individual insurance coverage requirement herein, the amounts of insurance specified in the foregoing sections may be satisfied through a combination of self-insurance, primary and excess insurance limits at the discretion of the Licensee.
- 1.3 All-Risk Property Coverage.** The Licensee shall be responsible for any loss or damage whatsoever to any of the Works or its other property and shall maintain appropriate all-risk coverage as would any prudent owner. The Licensee shall require its property insurers to waive any right of subrogation against the Licensor.
- 1.4 Notice of Cancellation.** Insurance maintained by the Licensee shall not be canceled without thirty (30) days prior written notice being furnished to the Licensee and the Licensor in accordance with subsection 1.12 below.
- 1.5 Evidence of Insurance.** Upon request of the Licensor, the Licensee shall provide Certificate(s) of Insurance on standard forms regularly accepted in the industry certifying the Licensee's compliance with this Schedule. The Licensor's acceptance of certificates or correspondence associated thereto does not constitute a waiver, release or modification of the requirements under this Schedule.
- 1.6 Failure to Maintain.** In the event the Licensee fails to comply with insurance requirements under this Schedule, such failure shall constitute cause a breach of this Agreement.
- 1.7 Contractors and Sub Contractors.** The Licensee shall make commercially reasonable efforts to require all its contractors to provide insurance coverage in accordance with this Schedule. The failure of any contractor to obtain and maintain the required insurance shall not in any way impact the obligations of the Licensee under this Schedule.
- 1.8 Insurance Costs.** The Licensee shall be solely responsible for any premiums, surcharges,

supplemental calls, penalty payments, deductibles, self-insured retentions, self-insurance or any other costs for the insurance provided by or on behalf of the Licensee in accordance with this Schedule.

- 1.9 Compliance with Applicable Laws.** If it is judicially determined that the monetary limits of the insurance required herein do not conform with applicable law, it is agreed that the Licensee shall take whatever steps are necessary, at its own expense, to ensure said insurance shall conform to the greater of the minimum monetary limits and other provisions in such law, or the limits specified herein.
- 1.10 Effect on Indemnity Obligations.** Except as required by applicable law, the Licensee's compliance with the obligations under this Schedule shall in no way limit or replace the indemnity and other obligations of Licensee contained elsewhere in this Agreement.
- 1.11 Worker's Compensation Insurance:** The Licensee shall carry, and shall require its contractors carry, workers' compensation insurance covering all employees engaged in the performance of any work and/or activities carried out in connection with this Agreement to the extent and to the limits required by the Workplace Safety and Insurance Act (Ontario).
- 1.12 Notice:** Any notice to the Licensor pursuant to any provision of this Schedule shall be given in accordance with the Agreement.
- 1.13 Self-Insurance:** Licensee may, at its discretion, either (1) maintain third party insurance; or (2) self-insure in the absence of insurance (either in whole or part), coverage consistent with the insurance coverages required in this Schedule D. When the requirements of this Schedule D are self-insured by Licensee in the absence of insurance, without limiting Licensee's liability or indemnity obligations elsewhere in this Agreement, for the purposes of its self-insurance obligations only, Licensee shall, as applicable and to the extent of its obligations herein, provide defense and indemnity support to Licensor in the same manner and to the same extent, using industry standard claims adjustment practices, as if it were fully insured by a financially sound third-party insurer on insurance forms customarily available for similar operations undertaken by similar organizations at the time such obligations are realized.

**SCHEDULE "E"**

**2021 DECISION**

**[Decision follows]**

<b>CITATION:</b>	
<b>ONTARIO SUPERIOR COURT OF JUSTICE (TORONTO REGION)</b> <b>CIVIL ENDORSEMENT FORM</b> <i>(Rule 59.02(2)(c)(i))</i>	
<b>BEFORE</b>	<b>Judge/Case Management Master Myers J</b>
<b>Court File Number: CV-21-00654243-0000</b>	
<b>Title of Proceeding:</b>	
_____ <b>CITY OF TORONTO</b> _____ Plaintiff(s) -v- _____ <b>ENBRIDGE GAS INC.</b> _____ Defendants(s)	

<b>Case Management:</b>	<input type="checkbox"/>	If so, by whom:	<b>X No</b>
-------------------------	--------------------------	-----------------	-------------

**Participants and Non-Participants:** *(Rule 59.02(2)(vii))*

Party	Counsel	E-mail Address	Phone #	Participant (Y/N)
1) Plaintiff	Michele A. Wright, Michele Brady, and Jennifer Boyczuk	<a href="mailto:michele.a.wright@toronto.ca">michele.a.wright@toronto.ca</a> ; <a href="mailto:michele.brady@toronto.ca">michele.brady@toronto.ca</a> jennifer.boyczuk@toronto.ca;		Y
2) Defendant	Scott Stoll and David S. Reiter	<a href="mailto:sstoll@airdberlis.com">sstoll@airdberlis.com</a> ; <a href="mailto:dreiter@airdberlis.com">dreiter@airdberlis.com</a>		Y
3)				

<b>Date Heard:</b> <i>(Rule 59.02(2)(c)(iii))</i>	<b>May 17, 2021</b>
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<b>Nature of Hearing (mark with an "X"):</b> <i>(Rule 59.02(2)(c)(iv))</i>									
<input type="checkbox"/>	Motion	<input type="checkbox"/>	Appeal	<input type="checkbox"/>	Case Conference	<input type="checkbox"/>	Pre-Trial Conference	<b>X</b>	Application

<b>Format of Hearing (mark with an "X"):</b> <i>(Rule 59.02(2)(c)(iv))</i>							
<input type="checkbox"/>	In Writing	<input type="checkbox"/>	Telephone	<b>X</b>	Videoconference	<input type="checkbox"/>	In Person

If in person, indicate courthouse address:

**Relief Requested:** *(Rule. 59.02(2)(c)(v))*

- a. an Order declaring that Enbridge's right to support its 20 inch high pressure pipeline on the centre pier of the Keating Railway Bridge pursuant to a letter agreement between Toronto Harbour Commissioners and Consumers Gas Inc. dated February 22, 1955 is terminated as of August 31 2022;**
- b. an Order declaring that under the letter agreement, all costs of the removal of the pipeline from the bridge and elsewhere as a result, shall be paid by Enbridge; and**
- c. an Order requiring Enbridge take all reasonable measures to ensure the removal of the Pipeline from the bridge by August 31, 2022; and**
- d. costs.**

**Disposition made at hearing or conference (operative terms ordered):** *(Rule 59.02(2)(c)(vi))*

**The court declares that the letter agreement dated February 22, 1955 does not govern the current rights of the City and Enbridge.**

**The court declares that commencing on September 1, 2022 Enbridge will have no right to use the bridge for its pipeline and it will accordingly be liable to the City for trespass if its pipeline remains on the bridge thereafter.**

**Enbridge may deliver cost submissions no later than May 25, 2021. Toronto may deliver cost submissions no later than June 1, 2021. In addition, the parties may deliver copies of any offers to settle on which they rely. Submissions shall be no longer than three pages. Both parties shall deliver Costs Outlines if they deliver submissions.**

**All costs material is to be filed through the Civil Submissions Online portal and uploaded to Caselines although counsel will not have received confirmation of the acceptance of their filings from the registrar.**

**No case law or statutory material is to be submitted. References to case law and statutory material, if any, shall be embedded in the parties' submissions as hyperlinks to CanLII.**

<b>Costs:</b> On a <b>As above</b>	indemnity basis, fixed at \$	are payable
by	to	[when]

**Brief Reasons, if any:** *(Rule 59.02(2)(b))*

1. Enbridge is the corporate successor to Consumers Gas. By letter agreement dated February 22, 1955, Toronto Harbour Commissioners granted permission to Consumers to run a pipeline across the Don River along the north side of a railway bridge that crossed the river just north of Lakeshore Blvd.
  
2. Specifically, the license granted Consumers the right to support its pipeline on the centre pier of the bridge.
  
3. Toronto now owns the bridge.
  
4. The letter agreement does not refer to successors and assigns. Enbridge is not able to point to any specific right that it has to utilize the bridge to support its pipeline. It has been granted authority by the City to maintain and move the existing pipeline to its current position on the bridge. If the letter agreement does not govern the ultimate right for Enbridge to use the bridge, there is at minimum a tacit license for Enbridge to use the bridge at least up to August 31, 2022. Neither side claims, and there is no evidence to suggest, that Enbridge’s use of the bridge has been adverse to the City.
  
5. Both parties rely on *Fraser River Pile & Dredge v. Can-Dive Services Ltd.*, [1999] 3 SCR 108. I am not sure that the issue of successorship is necessarily the same as whether the agreement binds or can be relied upon by third parties. However, both parties rely on this case as the governing authority. It requires an assessment of the likely intention of the parties to the agreement and then the court is to consider whether the agreement is being invoked in a way contemplated by its terms. The overall assessment is whether the extension of the contract to third parties will frustrate the parties’ expectations.

*The Implied Intention of the Parties*

6. The agreement is a short letter without any number of standard clauses that one would expect to see in any commercial agreement even from 1955. It just provides that

Consumers can use the bridge if it obeys all applicable laws and bears all financial consequences of doing so to itself and to the Harbour Commissioners. I suspect that as two bodies fulfilling public roles in downtown Toronto, the Harbour Commissioners and Consumers knew each other well. Neither sought to profit from the other.

7. Had Consumers been asked in 1955 whether the agreement would bind the next owner of the bridge, I have no doubt it would have agreed. The piece of pipeline in issue is a 42 meter section of its main pipeline running from Bathurst Street to Cherry Street servicing large parts of downtown Toronto. Consumers needs the bridge and the agreement imposes minimal obligations on it.
8. Not only has Enbridge continued to use the bridge since the City took ownership, it has also moved the pipeline at its own cost both for its own maintenance purposes and also to accommodate Toronto's desire to widen the bridge. By asking Enbridge to move the pipe to its current location on the bridge, Toronto must similarly be taken to have approved the current location.

*The Use of the Agreement in a Manner Contemplated by the Parties*

9. Toronto wants to terminate Enbridge's right to use the bridge. Enbridge accepts that Toronto has the right to terminate its license at common law on reasonable notice. Toronto purported to give notice of termination by letter dated October 30, 2020. The notice period provided was 18 months expiring May 2, 2022. Toronto has now agreed to extend the notice period to 22 months expiring August 31, 2022.
10. If these were the only facts, the matter would be simple. But real life rarely is. The issues here actually relate to the question of whether the 1955 letter agreement requires Enbridge to bear the full costs of relocating its pipeline to accommodate the City's plan to redevelop 700 acres of flood plain land nearby.
11. Toronto, through Waterfront Toronto, has embarked on a massive capital improvement project to redevelop the local area. It will be taking down the ramps to and from the Gardiner Expressway that parallel Lakeshore Blvd. over the Don River. It will be expanding the Don River itself to provide flood control to protect the newly redeveloped neighbourhoods. This will necessitate lengthening the bridge.
12. The reason Toronto is telling Enbridge to move its pipeline is because the pipeline is in the way of Waterfront Toronto's proposed work. Moreover, aspects of the proposed project pose safety hazards to the pipeline. The demolition of the Gardiner ramps overhead and proposed work on Lakeshore Blvd. require the pipeline to be moved.

13. Enbridge says that it is entitled to be paid in full if it moves its infrastructure to accommodate the Waterfront Toronto. It points to *Consumers' Gas Company of Toronto v. The Corporation of the City of Toronto*, 1940 CanLII 108 (CA) as an example. But that case turned on an injurious affection claim under a specific section of the *Municipal Act* then in force and a specific inclusion of pipelines within the definition of “land” in the statute at that time. See: *City of Toronto v Consumers Gas*, [1916] AC 611 (PC).
14. Subsection 2 of the *Public Service Works on Highways Act*, R.S.O. 1990, c. P-49 does not apply. It applies to changes to a highway that necessitate moving utility infrastructure placed over or under the highway. The railway bridge is not a highway because the public has no access to use it. See the same 1940 *Consumers' Gas Company* case. I do not see anything changing that outcome in s. 13 of the *Act as to Gas Companies Breaking up Streets of the City of Toronto, and as to the Purchase of Gas Companies' Works by the City of Toronto*, 40 Vict, Cap 39, amended by 40 Vict, Cap 88. These statutes deal with digging up a street to lay pipe under it or beside it. No law extends them to moving remote pipe laid beside a railway bridge that might be affected by construction overhead nearby on a different highway on which no pipes have been laid.
15. Neither party pointed to any other current basis to understand the rights between them. I do not know who would be required to pay if Enbridge was required to move its pipes due to the City's construction project without any reference to the 1955 agreement.
16. Enbridge cannot just take its 42 meter section of pipeline off the bridge and deal with its need to cross the river on its own account. Due to the widening of the river, Enbridge will be required to move underground pipe that is currently the western terminus of the section of pipe that runs over the bridge. Moreover, Enbridge is not free to just find a different way to traverse the river to connect to its existing pipeline. The options provided by the City to Enbridge require considerable changes to the land-based portions of the pipeline to accommodate the proposed redevelopment project.
17. In addition, as one would expect with a project of the magnitude proposed by the City, the coordination issues are considerable. Dredging is required. Hydro and water mains need to be moved. The bridge will need two new piers to be sunk on its western extension. This just scratches the surface of the complexity of the interrelated issues that make up the City's project and the work that Enbridge must do to meet its needs among the needs of the City.

18. The Harbour Commission's permission to use the railway bridge and the protections of the costs of doing so granted by Consumers Gas had nothing to do with a massive project undertaken 65 years later by the City necessitating the movement of the pipe on the bridge and portions of it on land to accommodate changes to the Gardiner Expressway, the expansion of the Don River, redevelopment of the flood plain, changes to Lakeshore Blvd. etc.
19. It is fortuitous that the City now owns the railway bridge and can claim to be entitled to rely on the costs indemnity provided by Consumers Gas to the Harbour Commissioners. In my view, it is a gross overreach for the City to argue that the terms of the Harbour Commissioner's simple grant of permission to Enbridge to use its bridge pier requires that Enbridge be stuck with the full costs of participating in a huge project driven by the needs of Waterfront Toronto and its redevelopment project. The facts at play have nothing to do with the needs or wants of the City *qua* railway bridge owner independent of Waterfront Toronto's redevelopment project.
20. I find that the use being made of the agreement exceeds any reasonable contemplation of the parties and would be well beyond the reasonable expectations of the parties to the 1955 letter agreement.
21. Without the agreement, the City and Enbridge are left to their regular rights at law. The City can tell Enbridge to move its pipes on reasonable notice. As noted above, I do not know how payment obligations are determined between them. Enbridge says it is entitled to indemnity for all costs incurred by it when moving at the City's request. But it did not choose to bring a cross-application to advance any such right in this proceeding.

*Reasonable Notice*

22. The parties would appreciate some certainty as to the requirements of reasonable notice under the law of trespass or in case the 1955 letter agreement is later found to apply.
23. Enbridge is claiming that it can only be required to leave the bridge once it knows specifically where and when it will have to move the pipeline; obtained or have ample time to obtain the approval of the Ontario Energy Board to the new site; and built out that new site. It says it has no idea today when all of that is likely to happen as there is too much uncertainty on the City's side to allow Enbridge to formulate a definitive plan as yet.

24. On consent of the parties, the OEB intervened as *amicus* and provided a very helpful factum. It made no submissions concerning the timing of its approval as raised by Enbridge. The OEB has made it clear already that it expects the parties to deal with their private law issues before Enbridge comes to it to seek approval for the project to move the pipeline. Moreover, the OEB has held that it does not have jurisdiction to order Waterfront Toronto to pay the costs associated with the movement of the pipeline. The OEB deals only with costs as between Enbridge and its ratepayers.
25. The court very much appreciates the OEB's involvement. Someone has to go first and the Board has asked the court to do so in effect. The OEB has not taken up the arguments advanced by Enbridge asserting minimum time requirements for Board proceedings. It is entitled to expect that the court will take into account its statutory process just as the court understands that the Board will do what it can to accommodate the court's process. But I should note that the parties argued that the OEB will take the court's rulings into account as factors in its decisions. I assume that the parties realize that all are bound by rulings of the court and the Board within their respective spheres.
26. The City is frustrated by the tactics adopted by Enbridge to decline to specify a date to be off the bridge that meets the needs of the greater project. 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. I accept as well that there is no way to give the type of certainty that Enbridge currently demands. In real life, even if fixed plans were set in stone, in a project of this magnitude, any number of reasons could arise later to change them.
27. On the other hand, the Harbour Commissioners must be taken to have known that the pipeline running through its land on either side of the bridge would be affected if it withdrew its permission for Consumers to use its bridge pier. The City too (whether under the letter agreement or a common law license) knows that a gas utility cannot just cut out a section of an active pipeline. An alternative needs to be built before the old pipeline can be decommissioned. These are bodies with public functions. They understand the public service needs of each other.

28. The City argues that what Enbridge does with its pipeline is Enbridge's business. But that is not really the case. The City has approved the current location of the pipeline when Enbridge moved it at the City's request at least. Now, Waterfront Toronto is threatening to rain down construction debris on the pipeline (among other things) and its construction schedule is affecting the locations and timing of alternatives to which Enbridge can move its pipeline. The City is not just saying "get off my bridge and be quick about it". Rather, the City is properly invoking its rights in aid of its affiliate's implementation of an important, massive, complex project for the City itself. Through Waterfront Toronto, the City has controlled to a significant degree the timing and location of alternatives.

29. Enbridge has been studying movement of the pipeline since 2018. Its withdrawal of its OEB application does not provide it much room to complain about timing however. In providing alternatives to Enbridge the City may be seen as trying to be cooperative. But it knows that Enbridge needs OEB approval as well. Enbridge has to study and satisfy itself of which alternative is best substantively and economically. Economics will matter at the OEB.

30. In its factum, the City provides the following factors to guide the issue of reasonable time which I accept:

53. Although there is no rule as to what constitutes reasonable notice and circumstances will be different in all cases, Courts have considered the following factors to determine whether the notice given to terminate a licence was reasonable:

- a. the nature of the right at issue;
- b. the time needed for the licensee to physically remove its chattels from the land,
- c. the availability of opportunities and time needed for the licensee to, without extraordinary effort, replace or find a substitute for the right that the license previously gave the license,
- d. the length and nature of the relationship between the licensor and licensee, and
- e. the importance of the licence to the licensee's business.

54. In addition to considering the interests of the licensee, the Court will also consider the circumstances of the licensor in determining what constitutes a reasonable notice period.

[Notes omitted]

31. In light of the discussion above, recognizing that this is a public project on all sides, discussions could go on forever. However, I also recognize that although this is a public sector issue, both sides are motivated to avoid incurring costs to protect their ratepayer bases. Costs are the driver of this application. I am reluctant therefore to leave the parties uncertain or to link dates to future events – such as a definitive agreement on the alternative route for the pipeline. Doing that risks creating incentives to delay that would destabilize the negotiation that will have to take place now that the parties cannot rely on the 1955 letter agreement or the *Public Service Works on Highways Act*.

32. The City and Enbridge have been discussing options since 2018 at least. Enbridge had taken one option to the OEB until it withdrew that application effective February 19, 2021. The City has since then provided further alternatives to Enbridge. Counsel for Enbridge advised that Enbridge was about to respond with another option of its own.

33. In my view, the parties need to get to it. The City set a deadline of August 31, 2022 so it can start its own work shortly thereafter. The OEB service standard is apparently seven months. Construction has been estimated as being likely to take between four months and 13 months depending on the option chosen. There are still more than 15 months available time to meet the August 31, 2022 deadline. I find that 22 months is reasonable notice in the circumstances under either the letter agreement or at common law.

34. Enbridge will be a trespasser if it has not removed its pipeline from the bridge by August 31, 2022. As such, it will be liable in tort for any damages that it causes to anyone with sufficient proximity and foreseeability to amount to a cause of action. (No, I am not going to decide if that includes Waterfront Toronto in this application.)

35. I am specifically not granting an injunction requiring Enbridge to be off the bridge by a fixed date. This case is about money. If Enbridge has no right to remain on the bridge and the City is delayed and incurs costs as a result, Enbridge should be liable as a trespasser. I am not usurping the role of the OEB nor telling anyone which plan to adopt. I am not ordering anyone to physically do anything at the pipeline site.

36. I am also not assessing liability for the costs to be incurred by Enbridge moving its pipeline as required by the City and Waterfront Toronto. That was not a question submitted to me.

37. Enbridge has chosen its approach up to now for its own purposes. It has time to settle on a plan, bring its application and build. It may have to do some work in parallel – like preparing for a hearing while it is finalizing its options or preparing for construction while the OEB proceeding is ongoing. There are many other waiting. There is no reason to take the slowest route doing one thing at a time waiting for absolute certainty that will never arrive.

38. Success is divided, but Enbridge avoided being held liable under the letter agreement and now can advance another outcome (except for the *Public Service Works on Highways Act*). Accordingly, I call on Enbridge to deliver its costs submissions first.

Yes  No

2021.05.18

May 18, 20 21

Date of Endorsement (Rule 59.02(2)(c)(ii))



Signature

16:16:41

Agent Master (Rule 59.02(2)(c)(i))

-04'00'

**SCHEDULE "F"**

**MCRs**

Available at: <https://www.toronto.ca/services-payments/building-construction/infrastructure-city-construction/construction-standards-permits/standards-for-designing-and-constructing-city-infrastructure/>

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Ontario | Commission  
Energy | de l'énergie  
Board | de l'Ontario

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# **DECISION AND ORDER**

**EB-2022-0003**

## **ENBRIDGE GAS INC.**

**Application for leave to construct two natural gas pipelines and associated facilities in the City of Toronto**

**BEFORE: Emad Elsayed**  
Presiding Commissioner

**Robert Dodds**  
Commissioner

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**July 7, 2022**



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## 1 OVERVIEW

On February 24, 2022, Enbridge Gas Inc. (Enbridge Gas) filed an application under section 90 of the *Ontario Energy Board Act, 1998*, S.O. 1998, c. 15, (Schedule B) (OEB Act) for leave to construct two new gas pipelines in the City of Toronto: a temporary 190 metre 20-inch diameter bypass pipeline and a permanent 160 metre 20-inch diameter pipeline (the Project).

The Project will facilitate the abandonment of approximately 155 metres of existing 20-inch diameter pipeline that is located on and near the existing Keating Railway Bridge (Existing Pipeline) and that conflicts with the construction of Waterfront Toronto's Port Lands Flood Protection and Enabling Infrastructure Project (Flood Protection Project).

The temporary bypass pipeline would be located on the existing Lake Shore Bridge and would maintain current service levels to the downtown Toronto area (Temporary Bypass) while the permanent 160 metre 20-inch diameter pipeline is constructed (Permanent Pipeline). The Permanent Pipeline would be constructed within a newly designed utility corridor (New Utility Corridor) that will be located on the Keating Railway Bridge after the bridge has been upgraded and elongated as part of the Flood Protection Project.

Enbridge Gas has also applied under section 97 of the OEB Act for approval of the form of land-use agreements it has offered or will offer to landowners affected by the routing and construction of the Project.

The current application is an update to an application originally filed by Enbridge Gas in October 2020 (2020 Application) that was withdrawn so that Enbridge Gas could reassess alternatives to the project proposed in that application.<sup>1</sup>

For the reasons provided in this Decision and Order, the OEB grants Enbridge Gas's application for leave to construct the Project.

The OEB finds that the Project is in the public interest based on an examination of the Project need, alternatives, cost and economics, environmental impacts, land use requirements, and Indigenous consultations.

The leave to construct is subject to the OEB's conditions of approval, attached as Schedule B to this Decision and Order.

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<sup>1</sup> Enbridge Gas Inc.'s original Waterfront Relocation application, [EB-2020-0198](#)

## 2 CONTEXT AND PROCESS

### 2.1 The 2020 Application

In its original 2020 Application, Enbridge Gas applied to the Ontario Energy Board (OEB) for leave to construct approximately two kilometres of 20-inch diameter pipeline and ancillary facilities (including a new feeder station) in the City of Toronto in order to abandon approximately 155 metres of existing NPS 20 pipeline (Original Pipeline Relocation Project).<sup>2</sup> Enbridge Gas stated that the Original Pipeline Relocation Project was needed to relocate the Existing Pipeline located on and near the Keating Railway Bridge that conflicts with the construction of the Flood Protection Project.

The Existing Pipeline forms part of Enbridge Gas's Kipling Oshawa Loop and supplies many residential, commercial, institutional and industrial customers in the downtown Toronto area. A 42-metre portion of the Existing Pipeline that is located on the Keating Railway Bridge was replaced in 2000.<sup>3</sup>

The Flood Protection Project is a \$1.25 billion project aimed at revitalizing 800 acres of flood prone land in the Toronto Port Lands and surrounding areas. The Flood Protection Project will widen the mouth of the Don River to better handle flood waters from extreme weather events.

The estimated cost of the Original Pipeline Relocation Project was \$70.5 million and Enbridge Gas advised Waterfront Toronto that it was responsible for 100% of the cost because Waterfront Toronto had requested the pipeline relocation. Waterfront Toronto disagreed and, on October 30, 2020, the City of Toronto terminated the license that allowed Enbridge Gas's pipeline to occupy the Keating Railway Bridge after May 2, 2022.

The City of Toronto also commenced a court application for an order requiring Enbridge Gas to remove the Existing Pipeline from the Keating Railway Bridge. The Court granted the order and held that Enbridge Gas would be a trespasser if it did not remove the pipeline by August 31, 2022. The Court specifically did not order an injunction requiring Enbridge Gas to remove the Existing Pipeline by a fixed date.<sup>4</sup>

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<sup>2</sup> Ibid.

<sup>3</sup> Enbridge Gas's Reply Submission, June 23, 2020 (Reply Submission), page 3

<sup>4</sup> *City of Toronto v. Enbridge Gas Inc.*, Ontario Superior Court of Justice, May 17, 2021, Court File No. CV-21-00654243-0000 at paras 33-35. A copy of the decision is included in Application at Exhibit B, Tab 1, Schedule 1, Attachment 2

On January 22, 2021 the OEB issued a decision that found that the OEB has full jurisdiction to determine cost responsibility for the Original Pipeline Relocation Project to the extent that it is pertinent to the OEB's rate-setting mandate and its consideration of the public interest in a leave to construct proceeding as articulated in the OEB Act. However, the OEB stated that it does not have jurisdiction to order Waterfront Toronto to pay all or part of the project cost. The decision also noted that, although Enbridge Gas had provided an assessment of several project alternatives, the list may not have included some potentially more cost-effective solutions.<sup>5</sup>

The OEB had scheduled a settlement conference starting on January 25, 2021. However, after the first day of the conference, Enbridge Gas filed notice that it was withdrawing the 2020 Application in order to reconsider the project alternatives. The OEB accepted Enbridge Gas's withdrawal request on February 19, 2021.

In its decision that approved Enbridge Gas's request to withdraw the 2020 Application, the OEB set out several expectations for the current application which are further discussed in part 3 of this Decision and Order (Decision Outline).

## 2.2 The Current Application

The Project that is the subject of the current application consists of the Temporary Bypass and the Permanent Pipeline (Application).

The Temporary Bypass would be located on the existing Lake Shore Bridge. The Temporary Bypass would maintain current service levels to the downtown Toronto area while the Permanent Pipeline is constructed and put into service. The Permanent Pipeline would be constructed within the New Utility Corridor to be located on the elongated Keating Railway Bridge.

The Project is estimated to cost \$23.5 million, which is approximately \$47 million or 67% lower than the Original Pipeline Relocation Project. As a result of negotiations with Enbridge Gas, Waterfront Toronto agreed to contribute \$5 million to the Project making the net cost to Enbridge Gas \$18.5 million.

Enbridge Gas and the City of Toronto will be entering into an updated license agreement for the New Utility Corridor for the Permanent Pipeline. In the meantime, the City of

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<sup>5</sup> EB-2020-0198, Decision and Order on Application Withdrawal Request, February 19, 2021

Toronto has granted permission for the Existing Pipeline to remain on the Keating Railway Bridge until April 30, 2023, which is when the Temporary Bypass must be operational.

## **2.3 Process**

Enbridge Gas filed the current application with the OEB on February 24, 2022. The OEB issued the Notice of Hearing on March 16, 2022, and Procedural Order No. 1 on April 29, 2022. The City of Toronto, Energy Probe (EP), Environmental Defence (ED), Pollution Probe, School Energy Coalition (SEC), and Waterfront Toronto were approved as intervenors. EP, ED, Pollution Probe and SEC are eligible to apply for an award of costs.

### 3 DECISION OUTLINE

The OEB's legislative authority with respect to applications seeking approval for the construction of hydrocarbon pipelines is set out in Sections 90, 91 and 96(1) of the OEB Act. When determining whether a project is in the public interest, the OEB typically examines the following factors that comprise the OEB's [Section 90 and 91 Leave to Construct Issues List](#):

1. The need for the project
2. Project alternatives
3. Project cost and economics
4. Environmental impacts
5. Land matters
6. Indigenous consultation
7. Conditions of approval

As noted above, the current application is related to an earlier application that was withdrawn by Enbridge Gas. In its decision approving withdrawal of the earlier application, the OEB stated that, if Enbridge Gas files a new application, the OEB would have the following expectations:

- 1) Enbridge Gas would 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
- 2) Ratepayers would not be asked to pay any amount that exceeds the benefits being delivered to them
- 3) Issues between Enbridge Gas and Waterfront Toronto and/or the City of Toronto regarding schedule, legal rights and cost responsibility would be resolved before the new application is filed
- 4) Enbridge Gas would allow sufficient time for the OEB to conduct a proper review of the new application

In Procedural Order No. 1, the OEB stated that Items #3 and #4 are addressed in the current application as filed and do not need to be added to the standard issues list in

this proceeding. Item #1 can be addressed under “project alternatives” and item #2 can be addressed under “project cost and economics”. Therefore, the OEB determined that there was no need to make changes to the standard issues list for this proceeding.

This Decision and Order is structured to follow the OEB’s standard issues list for leave to construct applications.

## 4 POSITIONS OF PARTIES AND OEB FINDINGS

The City of Toronto and EP submitted that the Application should be approved as filed. OEB staff and SEC submitted that the Application should be approved, but with certain conditions (as explained below). ED and Pollution Probe were silent on whether the Application should be approved but provided their views on certain aspects of the Project which are discussed further in this Decision and Order. While Waterfront Toronto did not file a formal submission, it expressed its support for the Application in its intervention request.<sup>6</sup> Enbridge Gas also noted that since the withdrawal of the 2020 Application, it has held several discussions with Waterfront Toronto and the City of Toronto and they have come to an agreement on the Project schedule, cost, and associated legal rights.<sup>7</sup>

### 4.1 Need for the Project

The Project is driven by the City of Toronto's requirement to remove the Existing Pipeline from the Keating Railway Bridge and the direct conflict with the Flood Protection Project. No party disputed the need for the Existing Pipeline to be relocated.

Enbridge Gas stated that the Project consists of like-for-like replacement of existing capacity and does not include any incremental or growth capacity.

#### Fit within Relevant Growth Plans and Dependencies

OEB staff submitted that the Project is not part of a multi-phase project and noted that the Project was identified in Enbridge Gas's Asset Management Plan Addendum, which was filed in its 2022 Rates Proceeding.<sup>8</sup> The Project does not contain any planned future phases and is not dependent upon any previously filed leave to construct application by Enbridge Gas. Furthermore, the Project does not have a growth component associated with it.

#### Future Demand in the City of Toronto

Pollution Probe noted that the City of Toronto is forecasting a significant decline in natural gas use over the life of the proposed pipeline.<sup>9</sup> Pollution Probe submitted that

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<sup>6</sup> Waterfront Toronto's intervention request letter, April 5, 2022

<sup>7</sup> Exhibit A-2-1, page 3

<sup>8</sup> EB-2021-0148, Exhibit B-2-3, EGI Asset Management Plan Addendum – 2022, pages 9-12

<sup>9</sup> Enbridge Gas response to Interrogatory I.PP.6

using a “like for like” assumption does not match project capacity to future demand and increases the potential for the proposed pipeline to become stranded (in part or whole) in the future. The proposed amortization period for the proposed Permanent Relocation is 40 years which would mean that ratepayers will still be paying for costs related to this pipeline in 2062. Even by 2050 the City of Toronto is forecasting natural gas use within the City of Toronto to be approximately 30% of historical demand. Pollution Probe proposed that the OEB create a blanket requirement that broad system demand forecasts be updated and filed for all future projects which seek leave to construct approval as this would ensure that the projects align with future demand and reduces the likelihood of stranded assets that are not fully depreciated.<sup>10</sup>

In its reply submission, Enbridge Gas argued that Pollution Probe’s commentary about amortization methodologies are rate-related issues that are more appropriately considered in a rate-related hearing and are out of scope in this proceeding.<sup>11</sup>

In response to Pollution Probe’s proposal that the OEB create a blanket requirement that broad system demand forecasts be updated and filed for all future projects which seek leave to construct approval, Enbridge Gas noted that not every project requires a demand forecast for the entire system which is impacted by a project. The Project proposed in the Application is a relocation project which is required to maintain system reliability in the immediate term and so a long-term demand forecast is neither important nor required to establish Project need.<sup>12</sup>

SEC noted that various levels of government have implemented policies and programs aimed at reducing natural gas consumption and greenhouse gas emissions. SEC submitted that Enbridge Gas has not provided sufficient information to support the need for a 20-inch diameter pipeline (versus a smaller diameter) and the OEB has insufficient supporting evidence to assess whether a 20-inch diameter pipeline is the prudent option for the Project.

In its reply submission, Enbridge Gas reiterated that a 20-inch diameter pipeline is needed to meet today’s demand<sup>13</sup> and that a 16-inch diameter pipeline is not sufficient to provide the same reliability and puts the security of supply at risk for customers. Additionally, reducing the size of the Permanent Pipeline would preclude Enbridge Gas from being able to complete in-line inspections on the Lisgar to Station B portion of the

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<sup>10</sup> Pollution Probe Submission, page 4

<sup>11</sup> Reply Submission, page 11, para 49

<sup>12</sup> Reply Submission, page 11, para 50

<sup>13</sup> Also see Enbridge Gas response to Interrogatories I.PP.6(d) and I.STAFF.2

Kipling Oshawa Loop. Finally, reducing the pipeline size would have only a marginal potential cost savings related to the proposed Project.<sup>14</sup>

Enbridge Gas noted the suggestion by several intervenors that there will be future reduced demand for natural gas in the downtown Toronto core but argued that the demand and reliability required today by approximately 15,000 customers in the downtown Toronto region must be satisfied and reduction to NPS 16 while meeting this current demand is not possible.<sup>15</sup>

Enbridge Gas also noted that the reference by intervenors to the City of Toronto's future demand was excerpted from a report that was introduced as a preamble to an interrogatory which was not properly put into evidence, subject to cross-examination or full evaluation. Furthermore, the City of Toronto, which was the author of the report, did not rely on the report and also supports the Application. As such, Enbridge Gas submitted that no weight can be given to such information from the intervenors.<sup>16</sup>

## Findings

The OEB finds that Enbridge Gas has demonstrated the need for the Project.

The OEB agrees with Enbridge Gas that a section of the Existing Pipeline located on and near the Keating Railway Bridge must be relocated for the following reasons:

- It conflicts with Waterfront Toronto's Flood Protection Project which involves the widening of the mouth of the Don River where the Keating Railway Bridge is located
- The Existing Pipeline is a critical source of safe and reliable natural gas supply to the downtown Toronto area serving approximately 15,000 customers
- While it is possible that the future demand for natural gas may reduce in this area in several decades, there will be no such immediate reduction and the current demand must be met

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<sup>14</sup> Reply Submission, pages 7-8, paragraphs 30-31

<sup>15</sup> Reply Submission, page 8, para 32

<sup>16</sup> Reply Submission, page 8, paragraph 33

Based on the above, the OEB finds that Enbridge Gas has no choice but to explore alternatives for relocating the Existing Pipeline.

The OEB also notes that the City of Toronto obtained an order of the Ontario Superior Court of Justice terminating any entitlement Enbridge Gas had to occupy the Keating Bridge after August and if the Existing Pipeline is not removed, Enbridge Gas will be liable for trespass.<sup>17</sup>

## 4.2 Project Alternatives

Enbridge Gas evaluated several pipeline alternatives based on their ability to meet the project need, capital cost, constructability, safety risks, land constraints, legal requirements and whether they could meet Waterfront Toronto's timelines.

In the 2020 Application, Enbridge Gas proposed to replace the Existing Pipeline with approximately a 2 kilometre, 20-inch diameter pipeline and abandon the Existing Pipeline at an estimated cost of \$70.5 million. Enbridge Gas subsequently withdrew the 2020 Application in order to explore other alternatives. In its decision approving Enbridge Gas's withdrawal request, the OEB found that Enbridge Gas should "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."<sup>18</sup> (emphasis added)

The City of Toronto, EP, and OEB staff submitted that Enbridge Gas has adequately considered all viable pipeline alternatives to the Project and has demonstrated that the need to relocate the Existing Pipeline is best addressed by the Project.

## Integrated Resource Planning

The aim of Integrated Resource Planning (IRP) is to ensure that applicants have evaluated and compared both supply-side and demand-side options, including an

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<sup>17</sup> *Toronto v. Enbridge Gas*, supra notes 34 and 35 and Enbridge Gas response to Interrogatory I.SEC.3, page 1. While the court found that Enbridge Gas would be trespassing if it did not remove the pipeline by August 31, 2022, the City later agreed to extend the deadline provided that Enbridge Gas will pursue this Project and remove the existing pipeline by April 30, 2023.

<sup>18</sup> OEB's Decision and Order in EB-2020-0198, page 13

interplay of options, and identified the best solution to meet a system need. In 2021, the OEB approved an IRP Framework for Enbridge Gas.<sup>19</sup>

Enbridge Gas stated that it did not conduct an IRP alternative assessment related to the Project because it believes, in accordance with the IRP Framework, the Project is exempt from such consideration due to it being needed in less than three years.<sup>20</sup>

Pollution Probe argued that an exemption from IRP considerations is not automatic and that a proposed leave to construct project can only be considered for a potential exemption if the OEB determined that the project is exempt and that reasonable attempts were taken to assess IRP alternative (such as a decreased pipeline size) during project development prior to application filing.<sup>21</sup> Pollution Probe submitted that this Project has been in consideration for more than three years and although recent circumstances outlined in the Application have increased the sense of urgency, an IRP assessment should have been conducted.

In its reply submission, Enbridge Gas stated that, in the IRP Framework, the OEB confirmed that binary screening criteria is part of the process to determine whether an IRP assessment is required and that where a system need had to be met within a 3-year time frame, an IRP assessment would not be required.<sup>22</sup>

In its submission, OEB staff agreed with Enbridge Gas's assessment that the Project does not warrant IRP assessment.

## Findings

The OEB finds the alternative proposed in this application to be reasonable.

The OEB is satisfied that the current application demonstrates that examination of project alternatives was an appropriate step to arrive at a solution that avoids the conflict with the Flood Protection Project while protecting the interests of the ratepayers.

The OEB finds that an IRP assessment is not required in this case given that the proposed Project is a like-for-like with no growth component and has a tight timeline.

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<sup>19</sup> OEB's Decision and Order in EB-2020-0091, Enbridge Gas's Integrated Resource Planning Proposal (July 22, 2021) including Appendix A to the Decision and Order (IRP Framework)

<sup>20</sup> Exhibit C-1-1, pages 5-6

<sup>21</sup> Pollution Probe Submission, page 5

<sup>22</sup> Reply Submission, paragraph 29 and OEB Decision and Order in Enbridge Gas's Integrated Resource Planning Proposal, EB-2020-0091, issued July 22, 2021, page 48

However, the OEB encourages Enbridge Gas to provide more comprehensive studies with respect to future load on proposed pipelines in future leave to construct applications.

In respect of its expectations for the Application arising from its decision to withdraw the 2020 Application, the OEB finds that:

- a) Enbridge Gas has met the OEB's expectation that it would 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
- b) Enbridge Gas's anticipated decision date of September 2022 provides the OEB with sufficient time to conduct a proper review of this application and render a decision

### 4.3 Project Cost and Economics

#### Estimate of the Project Cost

##### *Contribution from Waterfront Toronto*

The Project is estimated to cost \$23.5 million, which is approximately \$47 million or 67% lower than the Original Pipeline Relocation Project (estimated to cost \$70.5 million). As a result of negotiations with Enbridge Gas, Waterfront Toronto agreed to contribute \$5 million to the Project making the net cost to Enbridge Gas \$18.5 million. The Application and interrogatory responses refer to a "Project Work Agreement" which was not filed on the record of this proceeding.<sup>23</sup> However, the evidence filed with the Application

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<sup>23</sup> At Exhibit A, Tab 2, Schedule 1, page 3, para 6, Enbridge Gas stated:

*"Since the withdrawal of Enbridge Gas's EB-2020-0198 application, the Company has held several discussions with Waterfront Toronto and the City of Toronto and have come to an agreement on the Project schedule, cost, and associated legal rights."*

At Exhibit D, Tab 1, Schedule 1, page 3 para 6, Enbridge Gas stated:

*"... An agreement has been reached and is in the process of being executed between Enbridge Gas and Waterfront Toronto regarding the sharing of Project costs. As a result, Waterfront Toronto will contribute \$5 million to the Project. A letter dated July 13, 2021, which confirms the details of the forthcoming legal agreement and Waterfront Toronto's contribution to the Project, is included as Attachment 1 to this Exhibit."*

includes a letter dated July 13, 2021, which confirms the details of the forthcoming legal agreement and Waterfront Toronto's contribution to the Project.<sup>24</sup>

In its submission, OEB staff noted that a contribution in aid of construction is not required in this case and that the OEB has no authority to impose any portion of the Project costs on Waterfront Toronto. Waterfront Toronto's contribution of \$5 million benefits Enbridge Gas's ratepayers. Waterfront Toronto will also be responsible for the costs it incurs related to consulting and construction services to design and construct the New Utility Corridor on the Keating Railway Bridge, the estimated value of which is approximately \$3 million. Waterfront Toronto is also contributing the cost for the removal and disposal of the Existing Pipeline.

In its reply submission, Enbridge Gas noted that Waterfront Toronto has absorbed certain costs related to the revised Flood Protection Project schedule and there is no liability for Enbridge Gas's pipeline remaining on the Keating Railway Bridge beyond August 2022.<sup>25</sup>

ED submitted that Waterfront Toronto should not be covering any of the cost. ED acknowledged that the OEB does not have jurisdiction to annul the agreement with Waterfront Toronto but asserted that there is no legal reason for any party but Enbridge Gas to pay for the Project. By refusing to move its pipeline, even though it lacked the authority to remain on the Keating Railway Bridge, Enbridge Gas forced Waterfront Toronto to contribute to the Project to achieve the certainty it needs for its Flood Protection Project. The result is an over \$5 million subsidy from taxpayers toward fossil fuel infrastructure which ED strongly opposes.<sup>26</sup>

### *Project and Unit Costs*

SEC submitted that the proposed budget for the Project is overstated and that the OEB should approve a smaller budget. SEC noted that the Project has much higher unit costs than other projects.<sup>27</sup>

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In Interrogatory Response I.EP.2 Enbridge Gas stated that it met with Waterfront Toronto on June 14, 2021 and June 23, 2021 to negotiate Waterfront Toronto's contribution to the Project costs. Following these meetings, a Project Work Agreement was drafted, reviewed, and executed.

<sup>24</sup> Exhibit D, Tab 1, Schedule 1, Attachment 1

<sup>25</sup> Reply Submission, page 10, paragraph 46

<sup>26</sup> ED Submission, page 2

<sup>27</sup> Interrogatory I.STAFF.3 preamble

OEB staff accepted Enbridge Gas's explanation that the differences in project unit costs relate to such things as pipeline diameter, length, and the relative complexity of the work.

While OEB staff submitted that the Project cost is reasonable and that Enbridge Gas appropriately assessed the project economics, OEB staff also noted that the terms and conditions of the pending licence agreement between Enbridge Gas and the City of Toronto for the New Utility Corridor have not been filed on the record of this proceeding and that agreement will have costs that impact Enbridge Gas's ratepayers.<sup>28</sup>

In its reply submission, Enbridge Gas stated that, while the per-metre costs may appear high, such costs are in-line with the cost of the NPS 30 Don River Replacement Project and consider the specific facts of the Project including:

- a) It is a relatively short pipeline segment
- b) It involves NPS 20 ST pipeline and the specialized equipment necessary to complete the Project,
- c) It has both above grade and below grade construction in both the Temporary Bypass and the Permanent Relocation
- d) It requires two mobilizations and two abandonments
- e) It requires four tie-ins (two for the Temporary Bypass and two for the Permanent Pipeline) instead of the typical two

### **Project Risks and Contingency**

The cost estimate includes a 30% contingency applied to all direct capital and abandonment costs to reflect the preliminary design stage of the Project. Enbridge Gas noted that this contingency amount has been calculated based on the risk profile of the Project and is consistent with contingency amounts calculated for similar projects – specifically Cherry to Bathurst NPS 20 Replacement, the St. Laurent Ottawa North Replacement Project,<sup>29</sup> and the NPS 30 Don River Replacement Project.<sup>30</sup> Enbridge Gas confirmed that it used the American Association of Cost Engineers International

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<sup>28</sup> OEB Staff Submission, page 7

<sup>29</sup> EB-2020-0293, Decision and Order, May 3, 2022

<sup>30</sup> Enbridge Gas response to Interrogatory I.STAFF.3(d)

Cost Estimate Classification System to establish the estimated cost of the Project, including the contingency.<sup>31</sup> The Project cost estimate is a Class 4 estimate.

OEB staff submitted that Enbridge Gas had adequately identified and described risks associated with the Project and that the proposed contingency budget is appropriate and consistent with the identified risks.

SEC submitted that the Project may in fact be less risky than other projects and that Enbridge Gas had not provided circumstances unique to this Project that justify the 30% contingency. SEC noted that, for example, the cost for constructing the Utility Corridor and the deck for Temporary Bypass will be borne by Waterfront Toronto, and Enbridge Gas will not be affected by the uncertainties associated with that construction.

Furthermore, as far as complexity of the Project is concerned, SEC stated that the only aspect of the Project that stands out from other pipeline cut-out and replace projects is the Temporary Bypass, which Enbridge Gas described as a commonly utilized design during tie-ins to avoid supply disruption.<sup>32</sup>

In its reply submission, Enbridge Gas noted that contingency is an amount included in a cost estimate to account for events, circumstances or conditions that may or may not occur, for which the impact is uncertain, but which experience indicates an aggregate amount to account for such is appropriate. Enbridge Gas submitted that contingency amounts do not go into rate base, unless used in the completion of the Project in a prudent manner.<sup>33</sup>

## Project Economics

Typically, in a leave to construct application, the applicant must demonstrate that the project's economics meet the OEB's economic tests using the methodology outlined in [EBO 188](#) or [EBO 134](#). In the present case, Enbridge Gas did not complete a Discounted Cash Flow assessment using the OEB methodology EBO 188 or EBO 134 because the Project is underpinned by compliance requirements and will not create any incremental capacity or new revenues from customers.

OEB staff agreed that a Discounted Cash Flow assessment is not required in this case.

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<sup>31</sup> Enbridge Gas response to Interrogatory I.STAFF.3(e)

<sup>32</sup> SEC Submission page 4

<sup>33</sup> Reply Submission, para 39

## Ratepayers Not to Pay Amount that Exceeds Benefits

Enbridge Gas stated that since the withdrawal of the 2020 Application, it has prudently managed the potential ratepayer impacts of the Project by:

- a) Determining a new, lower cost preferred alternative
- b) Negotiating a fair contribution to the Project from Waterfront Toronto

Enbridge Gas submitted that there are no lower cost alternatives to meet the Project need while ensuring reliability of gas service to customers in the Toronto region.

Enbridge Gas submitted that its ratepayers are benefiting from the Project by continuing to receive safe and reliable natural gas amidst Enbridge Gas being required to relocate the critical Existing Pipeline.

OEB staff submitted that Enbridge Gas seems to be taking appropriate steps to ensure that ratepayers will not be asked to pay any amount that exceeds the benefits being delivered to them. However, OEB staff noted that the terms and conditions of the pending licence agreement between Enbridge Gas and the City of Toronto for the New Utility Corridor have not been filed on the record of this proceeding. The agreement will have costs that impact Enbridge Gas's ratepayers – some of which may not be included in the \$23.5 million cost estimate for the Project (e.g., the “proportionate contribution” toward the capital maintenance and repair of the New Utility Corridor).<sup>34</sup> Enbridge Gas stated that it expects to finalize the licence agreement by the end of August 2022.<sup>35</sup> In its submission, OEB staff invited Enbridge Gas to provide an estimate as to the potential quantum of these costs in its reply submission. OEB staff submitted that the OEB should require Enbridge Gas to file a copy of the executed licence agreement and evidence supporting the reasonableness of the executed licence agreement as part of Enbridge Gas's upcoming rebasing application. OEB staff submitted that the OEB can review the reasonableness of the executed licence agreement in terms of its impact on ratepayers as part of the rebasing proceeding. Finally, for the purpose of completing the record of this proceeding, OEB staff submitted that the executed licence agreement should also be filed on the record of the current proceeding.

In its reply submission, Enbridge Gas stated that it expects the licence agreement to have a term similar to the expected useful life of the pipeline. Additionally, the costs will

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<sup>34</sup> OEB Staff Submission, page 10

<sup>35</sup> Enbridge Gas response to Interrogatory I.STAFF.1(a)

not be material and will not have a significant impact on Enbridge Gas's cost of service. Enbridge Gas submitted that not having concluded the licence agreement is no different than not having concluded arrangements with landowners which are completed after having received leave to construct approval by the OEB.

SEC noted that the pipeline segment on the Kipling Railway Bridge was replaced in 2000 and, assuming an amortization period of 40 years, the Existing Pipeline would have 18 years left, which represents 45% of its lifetime. SEC submitted that the OEB should allocate 55% of the net Project costs to ratepayers for the purpose of Enbridge Gas's rate recovery for the Project. SEC submitted that this approach would ensure that ratepayers would not be asked to pay any amount that exceeds the benefits being delivered to them.<sup>36</sup>

In its reply submission, Enbridge Gas disagreed with SEC's suggestion of disallowing part of the cost of the Project based upon the premise that the existing natural gas pipeline crossing the Keating Railway Bridge is being abandoned before it has been fully depreciated. The suggestion is inconsistent with the accounting approach of pooling assets for depreciation. Further, there has been no suggestion that Enbridge Gas was imprudent in the pipeline replacement 22 years ago nor in the need to relocate the Existing Pipeline to accommodate the Flood Protection Project.<sup>37</sup>

Pollution Probe submitted that the Temporary Bypass should only be allowed in rate base for the period it is in operation (i.e., while "used and useful") but noted that Enbridge Gas does not have a specific internal policy/guidance document, nor is it aware of any OEB direction that sets the basis for evaluation and financial treatment of a proposed Temporary Bypass.<sup>38</sup> Pollution Probe's concern appears to be that if the OEB approves the Project as filed, there would be no other OEB review of project costs and the full project costs (Permanent Pipeline plus Temporary Bypass) would be added to Enbridge Gas's rates at rebasing in 2024 to be amortized over a 40 year period.

In its reply submission, Enbridge Gas submitted that Pollution Probe's commentary about amortization methodologies are rate-related issues which are more appropriately considered in a rate-related hearing and do not pertain to the issues in this leave to construct application.<sup>39</sup>

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<sup>36</sup> SEC Submission, page 5

<sup>37</sup> Reply Submission, para 48

<sup>38</sup> Pollution Probe Submission, page 6 and Enbridge Gas response to Interrogatory I.PP.7

<sup>39</sup> Reply Submission, paragraph 49

## Findings

The OEB finds that the proposed Project, at an estimated cost of \$23.5 million (\$18.5 million from Enbridge Gas and \$5 million from Waterfront Toronto) is reasonable. The OEB notes that the Original Pipeline Relocation Project in the 2020 Application had an estimated cost of \$70.5 million. This significant cost reduction came about as a result of an agreement reached between Enbridge Gas and Waterfront Toronto to use the Temporary Bypass while the Permanent Pipeline is constructed within the New Utility Corridor to be located on the revamped (elongated) Keating Railway Bridge.

Although the OEB has no authority to impose any portion of the Project costs on Waterfront Toronto, the OEB finds that Waterfront Toronto's negotiated contribution of \$5 million plus the cost of the removal and disposal of the existing pipeline as well as the design and construction of the New Utility Corridor to be an optimal solution to minimizing the impact on Enbridge Gas's ratepayers.

The OEB agrees with Enbridge Gas that inclusion of a differing amortization schedule for the Temporary Bypass and early replacement of the Existing Pipeline are ratemaking matters that are beyond the scope of this leave to construct application. These issues should be addressed in Enbridge Gas's next rebasing application.

The OEB finds that the cost of the executed licence agreement between Enbridge Gas and the City of Toronto for Enbridge Gas's use of the New Utility Corridor does not need to be addressed in this proceeding for the following reasons:

- a) The licence agreement is not expected to be finalized until the end of August 2022 after the record of this proceeding is closed
- b) The costs contemplated in the licence agreement are not expected to be material

The OEB orders Enbridge Gas to bring the cost associated with the licence agreement forward in its upcoming rebasing application to demonstrate its prudence. The OEB also orders Enbridge Gas to file the executed licence agreement on the record of this proceeding.

The OEB finds that Enbridge Gas's explanation of the estimated cost per metre for this Project compared to other projects, as well the 30% contingency used in the Project cost estimate, to be reasonable based on the unique characteristics of the Project and the risks associated with it.

In respect of its expectations for the Application arising from its decision to withdraw the 2020 Application, the OEB finds that:

- a) Enbridge Gas's ratepayers are not being asked to pay any amount that exceeds the benefits being delivered to them. The OEB finds that the negotiated cost sharing between Enbridge Gas and Waterfront Toronto, which provides for continued safe and reliable natural gas supply to downtown Toronto, meets this expectation.
- b) Issues between Enbridge Gas and Waterfront Toronto and/or the City of Toronto regarding schedule, legal rights and cost responsibility have been resolved as evidenced by the letter filed with the Application.<sup>40</sup>

#### 4.4 Environmental Impacts

Enbridge Gas stated that with the implementation of the mitigation and protective measures outlined in the updated Environmental Report (ER) and pending Environmental Protection Plan, the environmental impacts resulting from construction of the Project are not anticipated to be significant. Enbridge Gas also noted that, in the preparation of the preferred route and alternative, significant agency consultation had occurred and no agency has expressed any concern about the Project proceeding.<sup>41</sup>

No party raised any concern regarding environmental impacts. OEB staff submitted that Enbridge Gas's Environmental Report (ER) meets the requirements of the [OEB's Environmental Guidelines](#)<sup>42</sup> and that the ER appropriately identifies the environmental impacts associated with construction of the Project and adequately describes how it intends to mitigate and manage these impacts.

#### Findings

The OEB finds that Enbridge Gas's updated ER meets the requirement of OEB's Environmental Guidelines. The updated ER concludes that, with the implementation of specific mitigating measures, the environmental impacts resulting from construction of the Project are not anticipated to be significant. These mitigating / contingency

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<sup>40</sup> Exhibit D, Tab 1, Schedule 1, Attachment 1

<sup>41</sup> Reply Submission, paragraph 53

<sup>42</sup> Ontario Energy Board Environmental Guidelines for the Location, Construction and Operation of Hydrocarbon Pipelines and Facilities in Ontario, 7<sup>th</sup> Edition, 2016

measures include potential unknown soil or groundwater contamination that may be encountered during construction.

#### 4.5 Route Map and Form of Landowner Agreements

All phases of the Project will be constructed within road allowances in the City of Toronto apart from the Keating Railway Bridge, which is owned by the City of Toronto (and operated by CreateTO), for which a new licence agreement is required. Schedule A to the Decision and Order includes a map of the project.

Enbridge Gas noted that the Permanent Pipeline phase of the Project will be located within the road allowance and easements will not be required.<sup>43</sup>

For the Temporary Bypass, Enbridge Gas stated that it is currently working with Waterfront Toronto on the proposed alignment. Once the alignment has been finalized, Enbridge Gas will then determine if easements are required. Enbridge Gas has discussed the requirements of the Project with Waterfront Toronto and does not anticipate any issues acquiring easement or bylaw land rights, if necessary, for the Temporary Bypass.<sup>44</sup>

Enbridge Gas noted that temporary working areas may be required to facilitate construction.

Enbridge Gas filed its forms of easement agreement and working area agreement for OEB approval. Enbridge Gas confirmed that the forms of agreement filed in this proceeding had been previously approved by the OEB,<sup>45</sup> and that no changes have been made to the forms of agreement since they were last approved.<sup>46</sup>

No party raised any concern with the route map or forms of landowner agreement.

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<sup>43</sup> Enbridge Gas response to Interrogatory I.STAFF.6(a)

<sup>44</sup> Ibid.

<sup>45</sup> Enbridge Gas noted that the form of Working Area Agreement has been previously approved by the OEB as part of the OEB's Decision and Order regarding Enbridge Gas's Innes Road Project (EB-2012-0438, OEB Decision and Order, April 11, 2013, pp. 5-6) and the form of Easement Agreement has been previously approved by the OEB as part of the OEB's Decision and Order regarding Enbridge Gas's London Lines Replacement Project (EB-2020-0192, OEB Decision and Order, January 28, 2021, p. 29).

<sup>46</sup> Enbridge Gas response to Interrogatory I.STAFF.6(b)

## Findings

The OEB approves the forms of working area agreement and easement agreement filed by Enbridge Gas for the use of temporary work areas to facilitate construction.

### 4.6 Indigenous Consultation

The Ministry of Energy has determined that the Project does not trigger the Duty to Consult. The Ministry encouraged Enbridge Gas to engage and provide Project updates to the Mississaugas of the Credit First Nation (MCFN), which Enbridge Gas did.<sup>47</sup>

No Indigenous communities filed a letter of comment or sought intervenor status in this proceeding.

No party raised any concern with respect to Indigenous consultation.

## Findings

The Ministry of Energy has determined that the Project does not trigger the Duty to Consult. However, the OEB encourages Enbridge Gas to continue engaging and providing Project updates to MCFN.

### 4.7 Conditions of Approval

OEB staff submitted that the OEB's use of its standard conditions of approval are sufficient in this case, and that no modifications or additions are required.

OEB staff noted that standard condition No. 3 would require Enbridge Gas to obtain all necessary approvals, permits, licences, certificates, agreements and rights required to construct, operate and maintain the Project.

## Findings

The OEB finds that the standard conditions of approval are sufficient in this case and that no modifications or additions are required.

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<sup>47</sup> Exhibit F-1-1, Attachment 2

## 5 ORDER

### THE ONTARIO ENERGY BOARD ORDERS THAT:

1. Enbridge Gas Inc. is granted leave, pursuant to section 90(1) of the OEB Act, to construct the Project in the City of Toronto as described in its application.
2. Pursuant to section 97 of the OEB Act, the OEB approves the form of Easement Agreement and Form of Temporary Land Use Agreement that Enbridge Gas Inc. has offered or will offer to each owner of land affected by the Project.
3. Leave to construct is subject to Enbridge Gas Inc. complying with the Conditions of Approval set out in Schedule B.
4. Eligible intervenors shall file with the OEB and forward to Enbridge Gas Inc. their respective cost claims in accordance with the OEB's *Practice Direction on Cost Awards* on or before **July 14, 2022**.
5. Enbridge Gas Inc. shall file with the OEB and forward to intervenors any objections to the claimed costs of the intervenors on or before **July 21, 2022**.
6. If Enbridge Gas Inc. objects to any intervenor costs, those intervenors shall file with the OEB and forward to Enbridge Gas Inc. their responses, if any, to the objections to cost claims on or before **July 28, 2022**.
7. Enbridge Gas Inc. shall pay the OEB's costs incidental to this proceeding upon receipt of the OEB's invoice.

Parties are responsible for ensuring that any documents they file with the OEB, such as applicant and intervenor evidence, interrogatories and responses to interrogatories or any other type of document, **do not include personal information** (as that phrase is defined in the *Freedom of Information and Protection of Privacy Act*), unless filed in accordance with rule 9A of the OEB's [Rules of Practice and Procedure](#).

Please quote file number **EB-2022-0003** for all materials filed and submit them in searchable/unrestricted PDF format with a digital signature through the [OEB's online filing portal](#).

- Filings should clearly state the sender's name, postal address, telephone number and e-mail address.
- Please use the document naming conventions and document submission standards outlined in the [Regulatory Electronic Submission System \(RESS\) Document Guidelines](#) found at the [File documents online page](#) on the OEB's website.
- Parties are encouraged to use RESS. Those who have not yet [set up an account](#), or require assistance using the online filing portal can contact [registrar@oeb.ca](mailto:registrar@oeb.ca) for assistance.
- Cost claims are filed through the OEB's online filing portal. Please visit the [File documents online page](#) of the OEB's website for more information. All participants shall download a copy of their submitted cost claim and serve it on all required parties as per the [Practice Direction on Cost Awards](#).

All communications should be directed to the attention of the Registrar and be received by end of business, 4:45 p.m., on the required date.

With respect to distribution lists for all electronic correspondence and materials related to this proceeding, parties must include the Case Manager, Ritchie Murray at [ritchie.murray@oeb.ca](mailto:ritchie.murray@oeb.ca) and OEB Counsel, Ljuba Djurdjevic at [ljuba.djurdjevic@oeb.ca](mailto:ljuba.djurdjevic@oeb.ca).

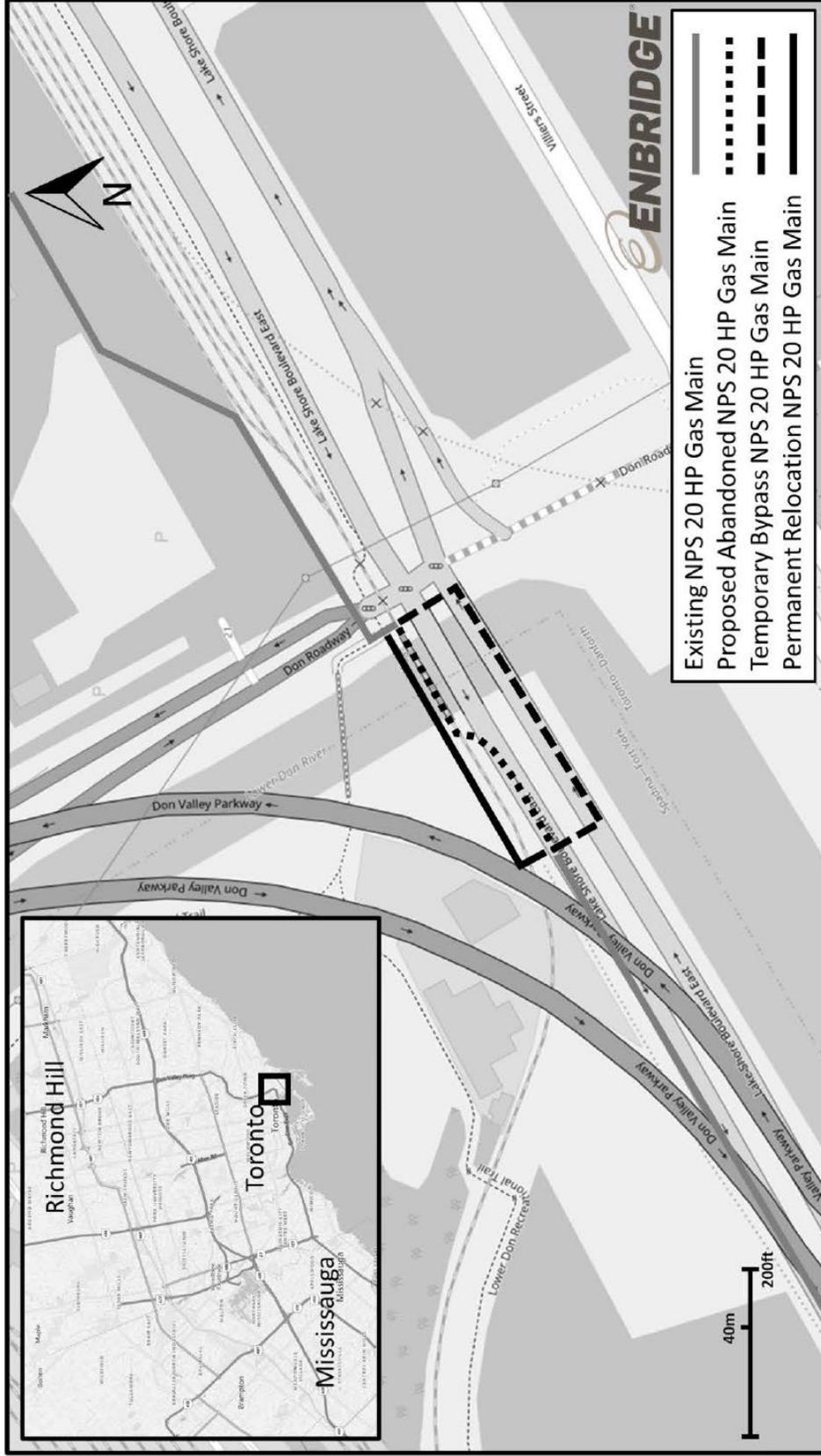
**DATED** at Toronto July 7, 2022

**ONTARIO ENERGY BOARD**

Nancy Marconi  
Registrar

**SCHEDULE A**  
**DECISION AND ORDER**  
**ENBRIDGE GAS INC.**  
**EB-2022-0003**  
**JULY 7, 2022**

# NPS20 Waterfront Relocation Project



**SCHEDULE B**  
**DECISION AND ORDER**  
**ENBRIDGE GAS INC.**  
**EB-2022-0003**  
**JULY 7, 2022**

**Leave to Construct Application under  
Section 90 of the OEB Act  
Enbridge Gas Inc.  
EB-2022-0003  
Conditions of Approval**

1. Enbridge Gas Inc. shall construct the facilities and restore the land in accordance with the OEB's Decision and Order in EB-2022-0003 and these Conditions of Approval.
2. (a) Authorization for leave to construct shall terminate 12 months after the decision is issued, unless construction has commenced prior to that date.  
  
(b) Enbridge Gas Inc. shall give the OEB notice in writing:
  - i. of the commencement of construction, at least 10 days prior to the date construction commences
  - ii. of the planned in-service date, at least 10 days prior to the date the facilities go into service
  - iii. of the date on which construction was completed, no later than 10 days following the completion of construction
  - iv. of the in-service date, no later than 10 days after the facilities go into service
3. Enbridge Gas Inc. shall obtain all necessary approvals, permits, licences, certificates, agreements and rights required to construct, operate and maintain the Project.
4. Enbridge Gas Inc. shall implement all the recommendations of the Environmental Report filed in the proceeding, and all the recommendations and directives identified by the Ontario Pipeline Coordinating Committee review.
5. Enbridge Gas Inc. shall advise the OEB of any proposed change to OEB-approved construction or restoration procedures. Except in an emergency, Enbridge Gas Inc. shall not make any such change without prior notice to and written approval of the OEB. In the event of an emergency, the OEB shall be informed immediately after the fact.
6. Concurrent with the final monitoring report referred to in Condition 7(b), Enbridge Gas Inc. shall file a Post Construction Financial Report, which shall provide a variance analysis of project cost, schedule and scope compared to the estimates filed in this proceeding, including the extent to which the project contingency was utilized. Enbridge Gas Inc. shall also file a copy of the Post Construction Financial Report in the proceeding where the actual

capital costs of the project are proposed to be included in rate base or any proceeding where Enbridge Gas Inc. proposes to start collecting revenues associated with the Project, whichever is earlier.

7. Both during and after construction, Enbridge Gas Inc. shall monitor the impacts of construction, and shall file with the OEB one electronic (searchable PDF) version of each of the following reports:
  - a. A post construction report, within three months of the in-service date, which shall:
    - i. provide a certification, by a senior executive of the company, of Enbridge Gas's adherence to Condition 1
    - ii. describe any impacts and outstanding concerns identified during construction
    - iii. describe the actions taken or planned to be taken to prevent or mitigate any identified impacts of construction
    - iv. include a log of all complaints received by Enbridge Gas Inc., including the date/time the complaint was received, a description of the complaint, any actions taken to address the complaint, the rationale for taking such actions
    - v. provide a certification, by a senior executive of the company, that the company has obtained all other approvals, permits, licenses, and certificates required to construct, operate and maintain the proposed project
  - b. A final monitoring report, no later than fifteen months after the in-service date, or, where the deadline falls between December 1 and May 31, the following June 1, which shall:
    - i. provide a certification, by a senior executive of the company, of Enbridge Gas's adherence to Condition 4
    - ii. describe the condition of any rehabilitated land
    - iii. describe the effectiveness of any actions taken to prevent or mitigate any identified impacts of construction
    - iv. include the results of analyses and monitoring programs and any recommendations arising therefrom
    - v. include a log of all complaints received by Enbridge Gas Inc., including the date/time the complaint was received; a description of the complaint; any actions taken to address the complaint; and the rationale for taking such actions

8. Enbridge Gas Inc. shall designate one of its employees as project manager who will be responsible for the fulfillment of these conditions, and shall provide the employee's name and contact information to the OEB and to all the appropriate landowners, and shall clearly post the project manager's contact information in a prominent place at the construction site.