



**STAFF REPORT
ACTION REQUIRED**

Enbridge Pipelines Inc. Application to the National Energy Board for Line 9B Reversal – City of Toronto Participation

Date:	July 4, 2013
To:	City Council
From:	City Solicitor
Wards:	All
Reference Number:	

SUMMARY

This report is to advise Council on the status of an application by Enbridge Pipelines Inc. to the National Energy Board. The application is to change the operating conditions of pipeline 9B which runs from Hamilton to Montreal and crosses the City of Toronto. This report is also to advise Council of the steps taken on behalf of the City as an intervenor in the National Energy Board proceedings.

RECOMMENDATIONS

The City Solicitor recommends that Council:

1. Receive this report for information.

Financial Impact

This report will have no financial impact beyond what has already been approved in the current year's budget.

DECISION HISTORY

At its meeting of November 27, 2012, City Council adopted Member's Motion 28.22 directing the City Solicitor to report directly to City Council on the application by Enbridge Pipelines Inc. ("Enbridge") to the National Energy Board ("NEB") to change

the operation of Line 9B which flows through Toronto. A copy of the decision document can be found at:

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2012.MM28.22>

At its meeting of February 20 and 21, 2013, City Council adopted my report dated February 11, 2013, on the Enbridge application, the identification of issues of concern to the City, and the steps to review these issues with Enbridge and, if necessary, present them to the NEB. Council further directed that an update report be provided to Council at its July 16 and 17, 2013 meeting. A copy of the decision document can be found at:

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2013.CC30.5>

ISSUE BACKGROUND

The issue background for this matter is set out in detail in my report of February 11, 2013.

In summary, Enbridge seeks to reverse the flow of its Line 9 crude oil pipeline as a result of changing market conditions. This change now favours the transport of North American oil eastward over the transport of imported oil westward from Montreal for use in refineries in Quebec and Ontario. The project includes reversal of flow, the increase in capacity of the line by 25%, using waxy additives (drag reducing agent, or "DRA") and the amendment of the applicable tariff to allow the transport of heavy crude products such as diluted bitumen, or "dilbit" on Line 9B.

The areas of City concern identified in the February 11, 2013 report include: pipeline integrity; spill response capabilities; drinking water protection; and, cost recovery. These issues have been brought forward with Enbridge and the NEB as discussed below.

On June 26, 2013, the U.S. National Research Council of the National Academies released Transportation Research Board Special Report 311 *Effects of Diluted Bitumen on Crude Oil Transportation Pipelines*. The report was requested by the U.S. Congress to determine whether diluted bitumen products increased the risk of release from pipelines. The report concluded that diluted bitumen has physical and chemical properties within the range of other crude oils and that no aspect of its transportation by pipeline would make it more likely than other crude oils to cause accidental release. A link to the report follows:

<http://onlinepubs.trb.org/onlinepubs/sr/sr311.pdf>

COMMENTS

The NEB encourages informal information requests. Two such requests were sent to Enbridge in January and May of 2013. Enbridge responses were received and reviewed. Further information request have been and will be made through the formal NEB process.

My staff applied to the NEB for intervenor status on April 19, 2013. By order of the NEB dated May 22, 2013, intervenor status was granted to the City and others. The NEB received 177 applications for participation in the Line 9B proceedings as an intervenor or a participant. Sixty applicants were granted intervenor status. Most other applications were granted participant status (a more limited form of participation where the participant is entitled to file written submissions but is not permitted to make further information requests or deliver oral or written argument).

As previously requested, my staff established a liaison group attended by representatives from municipalities, conservation authorities and other groups affected by the Line 9B application. This group has met regularly by teleconference to discuss issues of concern and to consolidate these issues for presentation in the NEB process. This group has also discussed the possibility of contributing to the cost of experts retained by the City as discussed below. The liaison group has included staff from Ajax, Burlington, Hamilton, Kingston, Mississauga and Oakville.

City Legal has retained experienced outside legal counsel to provide strategic advice. Mark Rodger, co-chair of the energy law practice group of the law firm Borden Ladner Gervais LLP, has provided assistance at all steps to date. Through Mr. Rodger, an engineering firm has been retained to assist in the preparation of information requests, particularly in relation to pipeline integrity issues. City staff in Legal Services, the Office of Environment and Energy, Toronto Water, Toronto Fire Services, the Toronto Office of Emergency Management, Toronto Police Service, and others, have been involved in reviewing the issues related to spills, water safety and cost recovery.

The NEB issued an updated hearing order on May 22, 2013 altering the timetable for the Line 9B proceedings. As a result, the first formal Request for Information ("RFI") was due and filed on June 11, 2013. The City of Toronto RFI was prepared in consultation with the liaison group, staff, and our outside consultants. A link to the City's RFI No. 1 follows:

<https://www.neb-one.gc.ca/ll-eng/livelink.exe?func=ll&objId=962204&objAction=browse>

Only intervenors may submit a formal RFI. Twenty-seven of the parties that were granted intervenor status made such requests. The RFIs of other parties can be reviewed through the NEB website at:

<https://www.neb-one.gc.ca/ll-eng/livelink.exe?func=ll&objId=956564&objAction=browse&sort=name>

Enbridge provided its response to the first RFI on June 25, 2013 and the response was filed on the NEB website on June 25, 2013. A link to the Enbridge response to the City follows:

<https://www.neb-one.gc.ca/ll-eng/livelihood.exe/fetch/2000/130635/964209/A3I6X8 - Response to Toronto IR No 1.pdf?nodeid=965161&vernum=0>

At writing, my staff is reviewing the responses to the City RFI, as well as the RFIs of other parties, and the Enbridge responses to those RFIs (all of which are available online). These requests and responses are being reviewed with City staff, the liaison group and the City's advisors. While Enbridge did provide answers to most questions, some were not answered on the basis that they were proprietary, not relevant or beyond the scope of the application. My staff are following up with the NEB to request that Enbridge be directed to provide particulars on identified questions.

A second RFI (based on clarification to answers received in the first RFI) may be filed by no later than July 9, 2013.

The NEB has, by Order, made intervenor funding available, and some of the intervenors did apply for and receive such funding. No intervenor funding is available for municipal groups or agencies in accordance with the policies of the NEB.

Final submissions, both written and oral, are not currently scheduled, although the NEB has indicated that these arguments will be held some time after October 1, 2013. Enbridge has requested that arguments be scheduled for an earlier date; however, no changes to schedule have been made to date. My staff will be present at the final argument stage to make submissions on any unresolved issues.

Discussion continues with the liaison group, both as to issues of common concern and the potential for sharing the costs for outside expertise. This liaison group has provided an effective mechanism for consolidating municipal concerns and resources, to the benefit of the participants, Enbridge and the NEB.

A letter was sent to the Minister of the Environment in accordance with Council's instructions. A letter was also sent to the Minister of Energy, noting the City concerns. The Minister of Energy sought and was granted intervenor status by the NEB and has been an active participant in the RFI process.

CONTACT

Graham Rempe, Solicitor, Legal Services, Tel: 416-392-2887 / Fax: 416-397-1765
Email: grempe@toronto.ca

SIGNATURE

Anna Kinastowski
City Solicitor