



STAFF REPORT ACTION REQUIRED

National Energy Board Decision on Enbridge Line 9B Application – Follow Up Actions

Date:	August 12, 2014
To:	City Council
From:	City Manager and City Solicitor
Wards:	All
Reference Number:	

SUMMARY

The City of Toronto has participated as an intervenor in proceedings at the National Energy Board ("NEB") regarding Enbridge's Application to reverse the flow direction of its Line 9B, which runs through the north end of Toronto. Following the NEB's decision approving the project with conditions, Council directed that an information report be submitted directly to Council outlining City input to Enbridge on emergency preparedness measures applicable to Line 9B. This report is in response to that direction.

RECOMMENDATIONS

The City Manager and City Solicitor recommend that:

1. City Council 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 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 the City Solicitor's 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 the City Solicitor to submit an update report 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>

At its meeting of July 16, 2013, City Council adopted the City Solicitor's report dated July 4, 2013, on the status of the Enbridge application and the steps taken on behalf of the City as an intervenor in the National Energy Board proceedings. A copy of the decision document can be found at:

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2013.CC37.1>

By Notice of Motion MM45.18, as amended and adopted at its meeting of December 16, 2013, City Council requested the City Solicitor to report on the decision of the National Energy Board. Specifically, Council requested a report on Enbridge's emergency response capacity. A copy of the decision document respecting the motion can be found at:

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2013.MM45.18>

At its meeting of April 1, 2 and 3, 2014, City Council amended and adopted the report from the City Manager and City Solicitor dated March 25, 2014 on the NEB decision on Line 9B. A copy of the decision document can be found at:

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2014.CC50.9>

City Council requested that the City Manager and City Solicitor report back to Council on emergency preparedness measures associated with Line 9 prior to Enbridge completing its submission to the NEB for Leave to Open ("LTO") Line 9.

ISSUE BACKGROUND

As outlined above, City Legal staff have represented the City at all stages of the proceeding, including final argument. City Legal staff have continued to work with a team of City staff, and representatives from other municipalities, conservation authorities, and others with similar interests. This work has extended to cover the City's input on emergency preparedness measures as part of Enbridge's application for LTO, which is expected in the Autumn of 2014.

As previously reported, the NEB released its decision and conditions on March 6, 2014. A link to the decision document follows:

https://docs.neb-one.gc.ca/ll-eng/llisapi.dll/fetch/2000/90464/90552/92263/790736/890819/2431831/2428616/Reasons_for_Decision_OH-002-2013_-_A3V1E4.pdf?nodeid=2431830&vernum=-2

COMMENTS

City Council, in its decision of April 1, 2 and 3, 2014 (the "April Decision"), directed the City Manager and City Solicitor to contact Enbridge concerning City input on emergency measures applicable to Line 9. Council also directed a further report directly to Council on this input. City staff have been involved in further consultation and review of emergency measures as outlined below.

Updated Emergency Plans

Enbridge staff attended a meeting of the City's Emergency Management Working Group on May 26, 2014. Enbridge made a presentation on their new, draft Emergency Response Action Plan ("ERAP") as well as measures related to risk management, public awareness and exercise and training programs. Copies of the draft ERAP were provided to City staff for review and comment. Responses from City staff were forwarded to Enbridge on June 16, 2014.

Enbridge has committed to providing training on their ERAP when it is complete. Enbridge and City staff have discussed a table-top exercise, based on the ERAP, to take place, likely in 2015. Enbridge has also indicated that it is completing a review of emergency response information to better reflect urban conditions.

Enbridge and its consultants have been included in ongoing discussions with the Office of Emergency Management ("OEM"). For example, a workshop was held on June 24, 2014, regarding procedures applicable in the event of potential natural gas leaks in urbanized areas.

New GTHA Emergency Crew

Enbridge has committed to a new Emergency Response Team to be deployed in Mississauga to provide service to the GTHA. In response to Recommendation 6 from the Council decision of April 1, 2 and 3, 2014, Enbridge advises that it will implement this measure in the third quarter of 2014. Further, Enbridge advises that as of July 4, 2014, it is assessing locations in Mississauga.

Liaison with Fire Service

Toronto Fire Service ("TFS") provided input to the draft ERAP discussed above. TFS will be reviewing Enbridge's tactical response plans and control point mapping plans

applicable to Toronto waterways. These documents identify specific measures to be taken at these locations.

TFS has also provided comments regarding work underway in developing an emergency plan specific to the Finch subway station, as discussed below. This plan is expected to lead to a table-top exercise for this location, at which various organizations including TFS and OEM will participate.

TFS is reviewing the "Enbridge and Vector Pipeline Emergency Responder Education Program" for first responders. Designated TFS staff are completing this training. TFS has also been invited by Enbridge to attend exercises in other municipalities. In addition, TFS has been reaching out to neighbouring municipalities to share and exchange information on issues related to the transportation of dangerous materials.

TFS has also been involved in a working group, arranged by the Federation of Canadian Municipalities, on rail safety as it relates to the transportation of petroleum hydrocarbons. TFS will also be sending staff to Colorado this Fall to receive training on transport of crude oil products by rail.

Water Protection

Toronto Water provided comments on the Enbridge ERAP as discussed above. Enbridge has included Toronto Water contacts in its emergency response protocols in order to ensure that Toronto Water staff is notified in the event of a potential threat to drinking water. This ensures that the City can take appropriate action, including shut down of water intakes if necessary.

Enbridge did not agree to be subject to the draft source water protection policies applicable to pipelines (referred to as LOPIPE in the CTC Source Water Protection Plan), partly because these policies have not been accepted by the Ministry of the Environment and Climate Change ("MOECC"). Nonetheless, Enbridge has committed to further discussions, as required, in relation to the objectives of these policies. Also, many of the conditions imposed through the NEB decision meet the concerns set out in the draft source water policies.

Toronto Water has been in communication with TRCA staff in regard to the Enbridge Water Crossing Management Plan (now filed with the NEB). Also, City staff has conferred with TRCA staff regarding TRCA's consultation and input to Enbridge on new valve installations, permits applicable to integrity digs at various locations, and pipeline replacement/upgrading at the Rouge and Don River crossings.

TTC/GO Preparedness

The Head of Safety and Environment at TTC advises that discussions have been held between Enbridge, the TTC and their respective consultants, and City Staff. The TTC has retained a pipeline safety specialist to assist in reviewing emergency plans applicable

to the Finch subway station. Likewise, Enbridge has retained a spill specialist to work on this plan.

TTC will apply a similar process to the Yonge-University subway extension. Once preliminary design begins on the proposed Finch LRT, a similar process will be applied to that project.

Enbridge advises that as of July 4, 2014, no work is scheduled in the area of the TTC and GO stations over the next five years, but that notice will be provided to the City, the TTC and GO should work be required. Enbridge also notes that pipeline locations drawings and as-built drawings have been provided to the City and TTC.

Financial Assurance

Further to Recommendation No. 1 of the April Decision, on April 9, 2014, the City Solicitor wrote to the Federal Minister of Natural Resources requesting immediate implementation of proposed regulations regarding financial assurance for pipeline operators. Minister Rickford responded on June 24, 2014. A copy of that response is attached as Appendix A. The Minister advised that measures are being proposed to amend the National Energy Board Act "as soon as possible". The Minister notes that those amendments will include:

- No fault liability to \$1 Billion
- Unlimited liability where at fault
- Financial assurance of \$1 Billion, with some portion as cash
- NEB authority to order reimbursement
- NEB authority to take control of cleanup

City staff have participated in consultation with the Great Lakes and St. Lawrence Cities Initiative. This group has been actively lobbying for improved regulation of compensation for pipeline accidents.

Other

A number of integrity digs have been or are proposed to be carried out in the City of Toronto. These digs are intended to confirm data gather by Enbridge's in-line inspection tools, and to make any necessary repairs. All of this is required to be completed before the LTO application. Enbridge has notified the offices of the City Councillor in whose Ward any particular integrity dig takes place. Enbridge has offered the various Councillors briefings, if required, in relation to these digs.

Legal Services has also continued to organize consultation among the municipalities participating in the Liaison Group established to address concerns related to this project.

Enbridge advises that it has entered a Joint Industry Partnership Agreement with Trans Canada Pipeline to share emergency response resources.

In response to Recommendation 3 from the April Decision, the City Solicitor wrote to the Minister of Environment indicating Council's request for a provincial environmental assessment. Correspondence from the Ontario Minister of the Environment is attached as Appendix B.

The correspondence with the Provincial Minister was also forwarded to the Federal Minister of the Environment in accordance with Recommendation 4 of the April Decision. The response received from the Federal Minister is attached as Appendix C.

This report has been prepared in consultation with Toronto Water, Toronto Fire Services, Toronto Office of Emergency Management, Toronto Transit Commission, and the Toronto and Region Conservation Authority.

CONTACT

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SIGNATURE

Joseph P. Pennachetti
City Manager

Anna Kinastowski
City Solicitor

ATTACHMENTS

APPENDIX A (LETTER FROM MINISTER RICKFORD)
APPENDIX B (LETTER FROM MINISTER BRADLEY)
APPENDIX C (LETTER FROM MINISTER AGLUKKAQ)

APPENDIX A

Minister
of Natural Resources

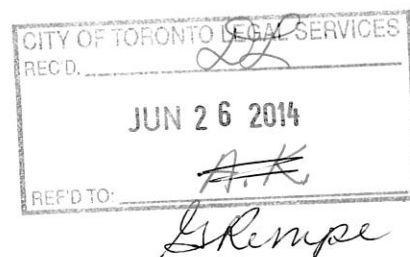


Ministre
des Ressources naturelles

Ottawa, Canada K1A 0E4

JUN 24 2014

Ms. Anna Kinastowski
City Solicitor
Legal Services
Metro Hall, 26th Floor, Station 1260
55 John Street
Toronto, Ontario M5V 3C6



Dear Ms. Kinastowski:

Thank you for your letter of April 9, 2014, regarding the timing of legislation and regulations to implement financial resource requirements for companies operating federally regulated pipelines, such as Enbridge's Line 9.

On May 14, 2014, I announced that the Government of Canada is moving forward with the implementation of measures to enhance our world-class pipeline safety system. Our commitment to safety is built on the three pillars of incident prevention, incident preparedness and response, and incident liability and compensation. Key measures include:

- making companies operating pipelines absolutely liable on a no-fault basis for up to \$1 billion—they will continue to have unlimited liability when at fault or negligent;
- requiring that all pipeline companies have adequate financial resources to pay for incident response and remediation—this requirement will be a minimum of \$1 billion for companies operating major oil pipelines;
- requiring that companies carry a portion of their financial resources in readily accessible cash on hand to enable rapid response;
- providing the National Energy Board (NEB) authority to order companies to reimburse any clean-up costs incurred by governments or individuals;
- providing the NEB the ability to provide guidance on the best available technologies used in federally regulated pipeline projects—this includes materials, construction methods, and emergency response techniques; and
- providing the NEB authority and resources to assume control of incident response if a company is unable or unwilling to do so (i.e., in exceptional circumstances).

Canada

This set of measures builds on what the Government previously announced, such as enshrining the “polluter pays” principle in law, holding companies responsible for their pipelines during the entire life cycle, aligning provincial and federal pipeline safety zones, and ensuring that companies have a minimum of financial resources.

Implementation of these measures will involve amending the *National Energy Board Act*. We intend to introduce a bill with these measures as soon as possible.

You may wish to share details of my recent announcement with the City Council. You will find the news release and related backgrounders at www.news.gc.ca/web/article-en.do?nid=848059.

I appreciate the interest of the City of Toronto on this important matter.

Again, thank you for writing.

Kind regards,

A handwritten signature in black ink, appearing to read "Greg Rickford". The signature is stylized with a large initial "G" and a long, sweeping underline.

The Honourable Greg Rickford, P.C., M.P.
Minister of Natural Resources and Minister for the
Federal Economic Development Initiative for
Northern Ontario

APPENDIX B

Ministry of the Environment

Office of the Minister

77 Wellesley Street West
11th Floor, Ferguson Block
Toronto ON M7A 2T5
Tel.: 416-314-6790
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Ministère de l'Environnement

Bureau du ministre

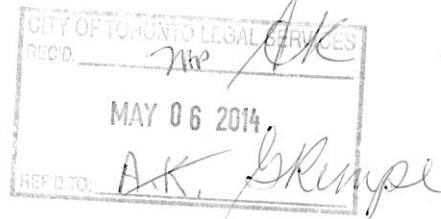
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MAY 01 2014

ENV1283MC-2014-1032

Ms. Anna Kinastowski, BA, LLB
City Solicitor
City of Toronto – Legal Services
Metro Hall, 26th floor Station 1260
55 John Street
Toronto ON M5V 3C6



Dear Ms. Kinastowski:

Thank you for your letter of April 9, 2014 about the Enbridge Line 9B Reversal and Line 9 Capacity Expansion Project (Line 9B/the Project).

On March 6, 2014, the National Energy Board (NEB) approved the Line 9B/the Project application. Attached to the Project's approval, the NEB imposed 30 conditions designed to enhance pipeline integrity, safety, environmental protection and emergency response measures to which Line 9 is subject.

The Ontario Government actively participated in the NEB hearing process to ensure that Ontarians' concerns, including potential environmental impacts arising from the Project, were fully considered by the NEB in its decision on the Enbridge Line 9B Project.

On October 17, 2013, Ontario provided its oral final argument to the NEB. Ontario's final argument submission was based on the following principles:

- Pipelines must meet the highest available technical standards for public safety and environmental protection;
- Pipelines must have world leading contingency planning and emergency response programs;
- Proponents and governments must fulfil their duty to consult obligations with Aboriginal communities;
- Local communities must be consulted;
- Projects should provide demonstrable economic benefits and opportunities to the people of Ontario, over both the short and long term; and
- Economic and environmental risks and responsibilities, including remediation, should be borne exclusively by the pipeline companies, who must also provide financial assurance demonstrating their capability to respond to leaks and spills.

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Ms. Anna Kinastowski, BA, LLB
Page 2.

Ontario recognizes the federal government's sole jurisdiction in approving the Enbridge Line 9B Reversal and Capacity Expansion Project and its responsibility for ensuring the safe operation of Line 9.

Moving forward, the federal government, through the NEB's mandate, is expected to work with Enbridge to ensure the company anticipates, prevents, manages and mitigates any potential dangerous conditions associated with their facilities. The Government of Ontario will continue to work with the federal government, municipalities and first responders to ensure the environment in this province is protected.

Once again, thank you for bringing Council's concerns to my attention.

Yours sincerely,

A handwritten signature in black ink, appearing to read "Jim Bradley". The signature is stylized with a large, sweeping initial "J" and a long, horizontal stroke extending to the right.

Jim Bradley
Minister

APPENDIX C

Minister of the Environment



Ministre de l'Environnement

Ottawa, Canada K1A 0H3

JUN 03 2014

Ms. Anna Kinastowski
City Solicitor, Legal Services
Metro Hall, 26th floor, Station 1260
55 John Street
Toronto ON M5V 3C6

Dear Ms. Kinastowski:

Thank you for your correspondence of April 9, 2014, concerning the Line 9B Project proposed by Enbridge Pipelines Incorporated.

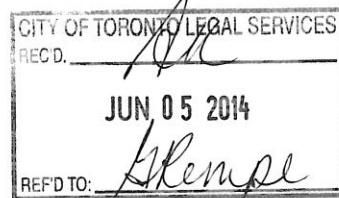
The National Energy Board regulates pipelines that are under federal jurisdiction to ensure Canada's rigorous environmental and safety standards are met under the *National Energy Board Act*. On March 6, 2014, the National Energy Board approved the Project with numerous conditions pertaining to environmental, socio-economic impacts and technical feasibility of the Project.

I am satisfied that any effects associated with the Project will be addressed by the National Energy Board's conditions and that the Project does not warrant an environmental assessment under the *Canadian Environmental Assessment Act, 2012*. For further information on the National Energy Board's regulatory process, please consult www.neb-one.gc.ca.

Matters concerning the National Energy Board fall within the purview of my colleague, the Honourable Greg Rickford, P.C., M.P., Minister of Natural Resources. I am therefore sending a copy of our correspondence to Minister Rickford for his information.

Sincerely,

The Honourable Leona Aglukkaq, P.C., M.P.
Minister of the Environment



c.c.: The Honourable Greg Rickford, P.C., M.P.

Canada