



REPORT FOR ACTION WITH CONFIDENTIAL ATTACHMENT

Termination of Enbridge Licence to Utilize Keating Rail Bridge to Support Natural Gas Pipeline

Date: December 8, 2020

To: City Council

From: City Solicitor

Wards: All

REASON FOR CONFIDENTIAL INFORMATION

The attachment to this report contains advice or communications that are subject to solicitor-client privilege and advice about potential litigation that affects the City of Toronto.

SUMMARY

The City is the owner of the Keating Railway Bridge (the "Bridge"), which crosses the Don River at a location immediately north of Lake Shore Blvd East.

Enbridge is the current owner of a 20 inch natural gas pipeline (the "Pipeline") attached to the Bridge.

The City gave Enbridge notice that the permission given in 1955 authorizing the Pipeline to be attached to the Bridge is revoked, requiring steps be taken to remove the Pipeline by May, 2022, and directing that the costs of this work must be borne by Enbridge.

Enbridge has applied to the Ontario Energy Board ("OEB") for leave to construct a pipeline along a new route through the West Don Lands, and proposes to discontinue use of the Pipeline when the new route is operational.

Enbridge disputes that it must bear any of the costs associated with the Pipeline's removal from the Bridge, which it estimated to be \$70 million. Enbridge's position is that these costs must be paid by Waterfront Toronto as part of the Port Lands Flood Protection project.

RECOMMENDATIONS

The City Solicitor recommends that:

1. City Council approve the City Solicitor's September 8, 2020 and November 30, 2020 applications to participate as an intervenor in the OEB proceedings considering Enbridge's applications for leave to construct a new pipeline to replace the existing pipeline between Cherry Street and Bathurst Street and a 1.9 km 20 inch pipeline along a route through the City of Toronto;
2. City Council direct the City Solicitor, in consultation with the Deputy City Manager, Infrastructure and Development, to deliver evidence and submissions to the OEB and participate in any hearing, including in any procedural or settlement discussions, as permitted by the OEB;
3. City Council adopt the confidential instructions to staff in the Confidential Attachment;
4. City Council authorize the public release of the confidential instructions to staff contained in Confidential Attachment 1, at the discretion of the City Solicitor; and
5. City Council direct that the balance of the confidential information contained in Confidential Attachment 1 remain confidential in its entirety, as it contains advice which is subject to solicitor-client privilege.

FINANCIAL IMPACT

The financial implications are discussed in Confidential Attachment 1.

The Deputy City Manager and Chief Financial Officer has reviewed this report and agrees with the financial impact information.

DECISION HISTORY

There are no previous reports to Council on this matter.

COMMENTS

Pipeline Located on the Bridge Since Permission Granted in 1955

In 1955, the Bridge was owned by the Toronto Harbour Commissioners ("THC").

Enbridge's predecessor, the Consumers' Gas Company of Toronto, approached the THC for permission to support its Pipeline on the Bridge. Permission was granted on

the basis that Consumers' Gas would bear all costs associated with the Pipeline's existence on the Bridge.

The Pipeline has been affixed to the Bridge supports since approximately 1962.

Current Use of the Bridge Is Limited

At present, the Bridge is only used for the limited purpose of periodically delivering supplies by rail to the Ashbridge's Bay Sewage Treatment Plant and Ports Toronto's 8 Unwin Avenue port facility. For the last two years these rail deliveries have been suspended because of an interruption in the rail line at Leslie Street. All other rail uses of the Bridge have ceased. Therefore, City staff are considering whether, given existing and anticipated future development in the Port Lands, as well as current trends in the movement of goods by rail and ship, removal of the Bridge is appropriate. City staff are undertaking a review of transportation issues in the area as part of a cost-benefit analysis with regard to removing the Bridge. A final recommendation has not yet been made to Council.

Widening of the Don River & Work on Lake Shore Blvd Will Impact the Bridge

Work to widen the Don River will commence in 2021. That work will take place in the vicinity of the Bridge and will impact all infrastructure on or adjacent to the Bridge beginning in 2022.

This work is one element of the Port Lands Flood Protection and Enabling Infrastructure Project (the "Project"). The Project is being carried out by the City in partnership with the Government of Canada and the Province of Ontario, with Waterfront Toronto as the Project delivery agent. The project is of enormous public significance.

In addition to the widening of the Don River, the City is also undertaking work in relation to Lake Shore Boulevard East. This work will also necessitate construction activity in the vicinity of the Bridge.

Enbridge Asserts Waterfront Toronto Must Pay Approximately \$70 million to Relocate Pipeline

In 2017, Enbridge undertook a review of the 20 inch Pipeline's status, including the risks posed by the fact that it is attached to a Bridge located in a floodplain.

After Waterfront Toronto and the City advised Enbridge of the proposed construction work to be undertaken on and in the vicinity of the Bridge, Enbridge announced that the Pipeline did not require relocation given Enbridge's assessment of its state of repair and its conclusions as to potential environmental risks.

Enbridge did, however, subsequently advise that the Pipeline would require relocation due to the anticipated Project construction. Since Enbridge says this is the reason why the Pipeline must be relocated, Enbridge asserts Waterfront Toronto is liable to pay the relocation costs.

In October, 2020, Enbridge filed an application with the Ontario Energy Board for leave to construct a new pipeline that will replace the Pipeline. The approximately 155 metre Pipeline on and adjacent to the Bridge structure is to be replaced by a 1,900 metre pipeline that will link an existing 30 inch gas pipeline that is further north along the Don River, and travel south-west through Corktown and the West Don Lands to the central waterfront. Enbridge has estimated the cost of the new Pipeline's construction at approximately \$70 million. The approximate route of the proposed pipeline through Corktown and the West Don Lands is shown in Attachment 2.

In its OEB application, Enbridge asserts that the reason the Pipeline must be relocated is because widening the Don River will necessitate work on the Bridge. It asserts that there is no more safe, cost-effective response and rejected proposals for the temporary relocation of the Pipeline or drilling to place the Pipeline under the Don River (as with other Enbridge pipelines to the north).

Notice to Enbridge of Termination of Licence

The City determined that it was appropriate to terminate Enbridge's permission to use the Bridge and require removal of the Pipeline since the City is evaluating the potentially permanent removal of the Bridge, Enbridge has occupied the Bridge for over 60 years for free, and the original 1955 permission is clear that all expenses associated with the Pipeline's existence on the Bridge are to be borne by Consumer's Gas (now Enbridge).

The City provided notice of this decision to Enbridge on October 30, 2020.

In its response to this letter, Enbridge confirmed its intention to seek permission from the OEB to relocate the Pipeline and its position that the costs of relocating must be paid by Waterfront Toronto.

The City and Waterfront Toronto Sought Leave to Intervene in OEB Hearings

The City filed an application to intervene in the OEB hearing on November 30, 2020, the OEB deadline to do so. The City advised the OEB that it terminated Enbridge's 1955 permission to use the Bridge and provided a copy of the 1955 permission letter.

Waterfront Toronto also filed an application to intervene in the OEB hearing. It asserts, among other things, that it does not have funds available to pay \$70 million and the OEB has no jurisdiction to order that it pay these costs in any event.

In a separate application to the OEB, Enbridge is also seeking leave to construct a new approximately 4.3 km segment of pipeline to replace the existing pipeline from Cherry Street to Bathurst Street. Enbridge is seeking permission to replace this pipeline because its asset health review indicated that the pipeline is demonstrating declining health due to its age and construction. On September 8, 2020, the City has also sought intervenor status in this OEB application given the proposed pipeline's route through the downtown.

Internal Consultations

The Deputy City Manager, Infrastructure and Development, has been consulted and concurs with the recommendations in this report.

CONTACT

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SIGNATURE

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ATTACHMENTS

Attachment 1 - Map Showing Location of Keating Rail Bridge and Proximate Location of Existing Pipeline

Attachment 2 - OEB Notice of Enbridge Gas Inc. application for approval to construct a 20" pipeline in the City of Toronto

Confidential Attachment 1 - Termination of Enbridge Licence to Use Bridge for Pipeline