



EB-2007-0692

IN THE MATTER OF the *Ontario Energy Board Act*
1998, S.O.1998, c.15, (Schedule B);

AND IN THE MATTER OF section 99(1) of the Act

AND IN THE MATTER OF an application by
Enbridge Gas Distribution Inc. for authority to
expropriate land for the purposes of natural gas
pipeline to supply gas to Portland Energy Centre
generating station in the City of Toronto .

BEFORE: Paul Sommerville
Presiding Member

DECISION AND ORDER

The Application

Enbridge Gas Distribution Inc. (the “Applicant” or “Enbridge”) has filed an application dated July 20, 2007, with the Ontario Energy Board (the “Board”) under section 99 of the *Ontario Energy Board Act, 1998, S.O. 1998, c. 15* (Schedule B) (the “Act”) for approval to expropriate lands for the construction of a natural gas pipeline to supply gas to the Portlands Energy Centre generating station (“PEC”) in the City of Toronto (the “Application”). The Board has assigned File No. EB-2007-0692 to the Application.

On June 1, 2007 the Board issued an order (EB-2006-0305), pursuant to subsection 96 (1) of the Act, granting Enbridge leave to construct approximately 6.5 kilometres of 36 inch diameter pipeline (the “North Section”) and approximately 2.9 kilometres of 20 inch diameter pipeline that would interconnect

the Don Valley Line at Enbridge's Station B regulator station and would terminate at the PEC (the "South Section") in the City of Toronto. The construction of the pipeline commenced in the summer of 2007 and is scheduled to be in-service in February of 2008.

Enbridge has been unable to secure the easement rights necessary to construct the South Section of the pipeline on four parcels of property owned by City of Toronto Economic Development Corporation ("TEDCO") and seeks the approval of the Board to expropriate the land needed for three permanent easements and one temporary working easement, all of which are necessary to build the pipeline needed to supply the PEC.

The approved pipeline route crosses the Shipping Channel at locations owned by TEDCO on both sides of the Shipping Channel. The affected TEDCO lands on either side of the Shipping Channel are already encumbered with 999 year easements to Ontario Power Generation Inc. and Hydro One Networks Inc. In order to meet PEC's planned in-service date Enbridge will need permanent and temporary working easements on TEDCO's property at the Shipping Channel. Descriptions of the three permanent easements and one temporary easement that Enbridge is seeking the authority to expropriate from TEDCO are as follows:

Permanent Easements on:

1. Land area of 84.6 m² size described as part of Block G of Registered Plan 675 E in the City of Toronto being part 13 on Reference Plan 66R-23139;
2. Land area of 84.5 m² size described as part of Block 2 of Registered Plan 540 E in the City of Toronto being part 2 on Reference Plan 66R-23230;
and
3. Land area of 782.6 m² size described as part of Blocks X and J of Registered Plan 675 E and part of Lot 63 and Reserve for Park Development of Registered Plan 520 E in the City of Toronto being parts 1,2,3,4,5 and 6 on Reference Plan 66R-23128.

Temporary Working Easement on:

1. Land area of 1,192 m² size described as part of Blocks X and J of Registered Plan 675 E and part of Lot 63 and Reserve for Park Development of Registered Plan 520 E in the City of Toronto designated as Part 7 on Reference Plan 66R-23128. (collectively the “TEDCO lands”)

Hard copies of the Registered and Deposited Surveyor’s Plans depicting the locations where easements are sought are attached to this Decision and Order as Appendix “A”.

The Proceeding

The Board’s Notice of Application was issued on August 16, 2007 (the “Notice”). Enbridge served the Notice and the Application along with the pre-filed evidence on all affected parties, including TEDCO. While TEDCO did not formally seek Intervenor status in this expropriation application, the Board has considered it such because of its status as owner of lands affected by the Application, and its engagement in the Leave to Construct application referenced above as EB-2006-0305, and refers to it as an Intervenor throughout this Decision and Order. Union Gas Limited and Portlands Energy Centre requested and were granted Intervenor status. No Intervenor has requested that it be eligible for costs in this expropriation proceeding. The Applicant and the Intervenors are referred to in this decision as the “parties”.

On August 17, 2007, the Board issued Procedural Order #1, which made provision for the filing of evidence by Intervenors no later than August 31, 2007. Procedural Order #1 also made provision for a Technical Conference to be held in Toronto on September 7, 2007, and scheduled an oral hearing for September 14, 2007 at the Board’s offices. No Intervenor filed any evidence. On September 7, 2007 the Board issued Procedural Order #2 which adjourned the Technical Conference upon the joint request of TEDCO and the Applicant.

On September 14, 2007, the Board convened the oral hearing, but, again, at the joint request of the Applicant and TEDCO, the hearing was adjourned. On that same day, the Board issued Procedural Order # 3, which set a timeline for a written hearing.

On October 2, 2007 Enbridge filed its Argument-in-Chief. On October 5, 2007 TEDCO and PEC filed their respective written Arguments.

Enbridge responded on October 9, 2007. On October 9, 2007 TEDCO filed a letter commenting on certain points in Enbridge's Reply Argument. This completed the record of the proceeding.

Submissions

In its Argument-in-Chief Enbridge stated that as the need for the pipeline had been recognized and confirmed in the EB-2006-0305 proceeding, the public interest in granting the expropriation to permit the pipeline to be built had been clearly established. Enbridge pointed out that TEDCO had not challenged the need for the project in the EB-2006-0305 proceeding, and did not challenge the need for the project in this proceeding. Enbridge noted that it has a gas delivery contract with PEC and a statutory obligation to serve its customer. Finally, Enbridge referred to Board findings made in the EB-2006-0305 proceeding that no intervenor objected to the proposed route and that the Board was satisfied that the proposed route is the best alternative for the location of the southern section of the pipeline.

In its Written Argument TEDCO stated that it has been negotiating with Enbridge regarding the easements to the effected lands since June 1, 2007, and that aspects of those negotiations included the compensation. TEDCO did not oppose Enbridge's application for expropriation except "to submit that any order the Board may issue granting Enbridge the permanent easements ought to provide that the duration of the permanent easement be contemporaneous with

Enbridge's gas delivery agreement obligations to PEC". It noted that the gas delivery agreement term is 40 years commencing on February 1, 2008.

TEDCO also submitted proposed terms to be included in an easement agreement, should the Application be granted.

Enbridge's Reply argued that TEDCO should not put any proposed terms before the Board for approval in this proceeding as this dealt with compensation arrangements between TEDCO and Enbridge, and are matters which are outside the Board's jurisdiction. With regard to TEDCO's argument that the term of the easement should be of the same duration as the gas delivery agreement, Enbridge stated that permanent easement rights are in perpetuity and should not to be restricted to any term.

In a letter dated October 9, 2007 TEDCO commented on Enbridge's Reply Argument. While it withdrew its proposed terms of easement, it did not change its position that the duration of permanent easement should be 40 years.

Board Findings

Section 99(1) of the Act provides that any person who has received an order granting leave to construct is eligible to request an order authorizing the expropriation of lands necessary for the approved construction. As has been noted above, in EB-2006-0305 Enbridge received such leave with respect to the construction of the hydrocarbon pipeline necessary to supply the Portlands generation facility.

The statute stipulates that in considering an application for authority to expropriate, the Board may grant the application if it is of the opinion that it is in the public interest to do so. That is the same test that applies to the granting of the leave to construct which underpins this application.

Compensation for the expropriation is not a matter that falls within the scope of the Board's authority. Section 100 of the Act makes it very clear that compensation for any expropriation authorization granted by the Board is to be determined by the Ontario Municipal Board, applying clauses 26 and 27 of the *Expropriations Act*.

The only outstanding issue in this case is the extent to which the Board should limit the authorization to expropriate by limiting it to a term of years commensurate with the gas delivery agreement governing the underlying project.

In its submissions, TEDCO states that it does not consent to, but does not oppose, Enbridge's claim for expropriation as described in the Application, with one proviso. That proviso is that the expropriation authorization ordered by the Board should reflect the fact that Enbridge's gas supply arrangement with PEC is for a firm 20 year term, followed by an optional additional term of 20 years. In other words, TEDCO suggests that the Board's authorization to expropriate should be limited to a like term.

TEDCO attached as part of its submissions the form of easement it asks the Board to authorize. Among numerous other terms it limits the duration of the easement to 41 years.

For its part, Enbridge strongly opposes any such restriction for a number of reasons. Firstly, permanent easement rights are in perpetuity and should not to be restricted to any term. Secondly, the duration of an easement is intrinsic to the consideration of the appropriate compensation, and so is properly left to the Ontario Municipal Board, pursuant to Section 100 of the Act.

Finally, Enbridge suggests that the limitation as to duration of the easement would create dysfunction should the pipeline come to be used by other customers over the course of time. While the pipeline is directed to servicing the

PEC project, it is contemplated that others may come to depend upon it as the lands around the project are developed. In Enbridge's view, those connections would become problematic if the easement were to be restricted as to duration.

Enbridge also objects to the manner in which this issue has been raised. It notes that TEDCO did not file evidence in the case, but rather chose to introduce this proposed limitation by way of argument.

PEC filed a brief argument urging an expeditious decision in favour of the expropriation request.

After considering the evidence and arguments of the parties, the Board finds that the expropriation of the land is in the public interest and it will grant an order authorizing Enbridge to expropriate the TEDCO lands, on the terms applied for.

No party, including TEDCO, raised any question about the extent to which the PEC project or the related pipeline extension served the public interest. As stated previously, the public interest is the Board's criterion for its consideration of the application to expropriate. The evidence filed by Enbridge, which included references to the underlying Board authorizations respecting the PEC project, has established that it is in the public interest to grant an order authorizing expropriation..

The Board will not limit the easements as requested by TEDCO.

First, the Board notes that the authorization sought by Enbridge is already quite restricted. It seeks easements, not transfers of land. The requests are quite limited as to the amount of property actually affected. The easements sought imitate, as to location and duration, other existing easements enjoyed by other utilities.

Second, in the Board's view, the imposition of a limitation such as that sought by TEDCO would create an unworkable restriction on the use of the pipeline by other parties, who may wish to connect to it over the course of time. In normal circumstances the distributor, in this case Enbridge, has an obligation to connect additional users of pipeline. If TEDCO's limitation were to be adopted, future customers' connections could be subject to the easement time limit sought by TEDCO. It is undesirable to put in place restrictions which could affect future customers.

Finally, it would be inappropriate for the Board to restrict the expropriation at this stage, particularly when it is being asked to do so without any genuine evidentiary basis for the limitation sought. It is the Board's opinion that the Ontario Municipal Board can address TEDCO's concerns when it considers and determines the compensation issues arising out of the authorization to expropriate. TEDCO may make its argument on this point part of its submissions on quantum.

The Board therefore concludes that the expropriation of the TEDCO lands is in the public interest and grants an order authorizing the Applicant to expropriate the TEDCO lands.

THE BOARD ORDERS THAT:

1. Enbridge Gas Distribution Inc. is permitted to expropriate from the TEDCO the lands necessary for the permanent and temporary easements required by the Applicant and described in:
 - a. Plan 66R-23128 which was received and deposited on June 14, 2007 by the Land registrar for the Toronto Registry Office # 66.
 - b. Plan 66R-23130 which was received and deposited on June 15, 2007 by the Land registrar for the Toronto Registry Office # 66.

- c. Plan 66R-23139 which was received and deposited on June 18, 2007 by the Land registrar for the Toronto Registry Office # 66.

The copies of the plans described above are attached in Appendix A to this Decision and Order.

2. Enbridge Gas Distribution Inc. shall pay the Board's costs of and incidental to, this proceeding immediately upon receipt of the Board's invoice.

DATED at Toronto, October 16, 2007.

ONTARIO ENERGY BOARD

Original Signed By

Kirsten Walli
Board Secretary

Appendix A
To Decision and Order
EB-2007-0692

Registered and Deposited Surveyor's Plans

PLAN OF SURVEY OF
**PART OF BLOCKS J AND X
 REGISTERED PLAN 675 E
 AND
 PART OF LOT 63
 PART OF RESERVE FOR
 PARK DEVELOPMENT
 REGISTERED PLAN 520 E
 CITY OF TORONTO**

SCALE 1: 250

SEXTON MCKAY LIMITED
 ONTARIO LAND SURVEYORS
 CANADA LANDS SURVEYOR

PE 7431

I REQUIRE THIS PLAN TO BE DEPOSITED
 UNDER THE LAND TITLES ACT.

PLAN 66R-23128

Received and deposited
 DATE June 14 2007

DATE June 14 2007

 C.A. SEXTON
 Ontario Land Surveyor

"J.A. Klein"
 LAND REGISTRAR FOR THE LAND TITLES
 DIVISION OF THE TORONTO REGISTRY OFFICE
 (No. 68)

SCHEDULE

PART	BLOCK	REGISTERED PLAN	P.I.N.	AREA
1	PART OF BLOCK X & J	675 E	PART OF PIN 21385-0156 (LT)	303.0 m ²
2	PART OF LOT 63 AND RESERVE FOR PARK DEVELOPMENT	520 E	PART OF PIN 21385-0156 (LT)	379.8 m ²
3	PART OF BLOCK J	675 E	PART OF PIN 21385-0156 (LT)	0.9 m ²
4	RESERVE FOR PARK DEVELOPMENT	520 E	PART OF PIN 21385-0156 (LT)	3.6 m ²
5	PART OF BLOCK J	675 E	PART OF PIN 21385-0156 (LT)	65.3 m ²
6	RESERVE FOR PARK DEVELOPMENT	520 E	PART OF PIN 21385-0156 (LT)	30.0 m ²
7	PART OF BLOCK X & J	675 E	PART OF PIN 21385-0156 (LT)	1192 m ²

PARTS 2 AND 3 - SUBJECT TO EASEMENT AS IN INST. No. CT 545148

METRIC

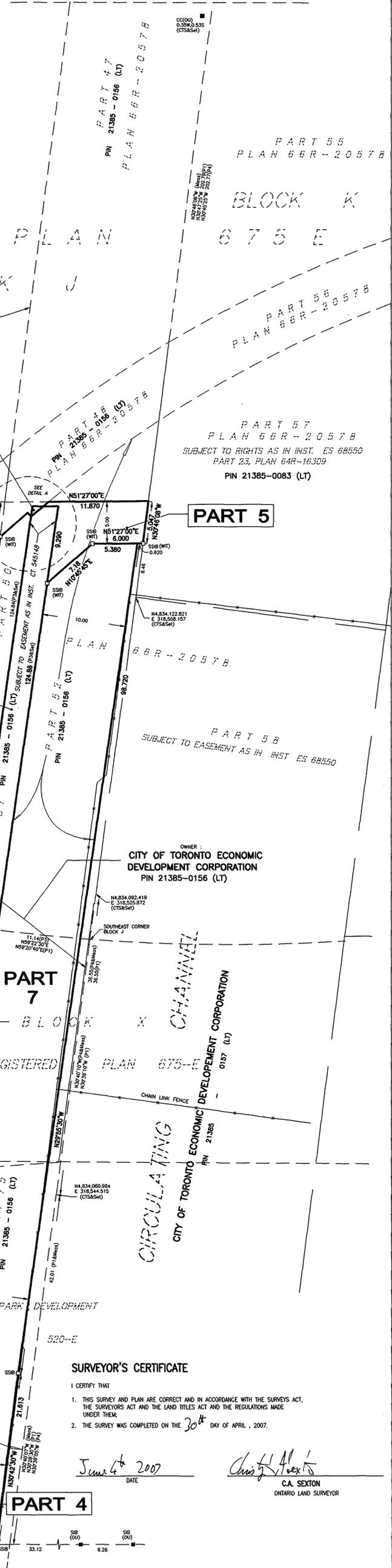
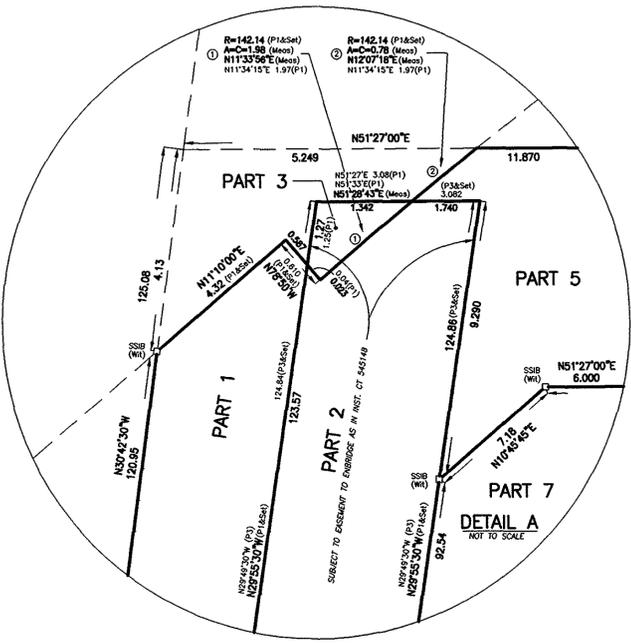
DISTANCES SHOWN ON THIS PLAN ARE IN METRES AND CAN BE CONVERTED TO FEET BY DIVIDING BY 0.3048.

NOTE

BEARINGS SHOWN HEREON ARE GRID BEARINGS AND ARE DERIVED FROM THE ONTARIO CO-ORDINATE SYSTEM, ZONE 10, N.T.M. CENTRAL MERIDIAN 79°30' WEST LONGITUDE, AND 27' (1974 ADJUSTMENT) AND ARE DERIVED FROM HORIZONTAL CONTROL MONUMENTS:
 No. 022742390 N 4,834,262.147 E 318,649.726
 No. 022742413 N 4,834,050.603 E 318,696.806

DISTANCES ARE ADJUSTED GROUND DISTANCES AND CAN BE USED TO COMPUTE GRID DISTANCES BY MULTIPLYING BY THE COMBINED SCALE FACTOR OF 0.999890.

THIS IS AN INTEGRATED SURVEY PLAN



LEGEND

- DENOTES SURVEY MONUMENT FOUND
- DENOTES SURVEY MONUMENT SET
- SB DENOTES STANDARD IRON BAR
- IB DENOTES IRON BAR
- SSB DENOTES SHORT STANDARD IRON BAR
- CC DENOTES CUT CROSS
- DENOTES ROUND
- WIT DENOTES WITNESS
- P1 DENOTES PLAN 66R-20578
- P2 DENOTES PLAN RD-216
- P3 DENOTES PLAN 63R-1907
- P4 DENOTES PLAN 64R-14758
- D2 DENOTES INST. No. 68549 ES
- OU DENOTES ORIGIN UNKNOWN
- CIS DENOTES CITY OF TORONTO SURVEY DEPT.

OWNER:
ONTARIO POWER GENERATION INC.
 PIN 21385-0082 (LT)

UNWIN AVENUE
 (BY REGISTERED PLAN 675-E)
 (CLOSED BY BY-LAW 17614, INST. 29327 ES)

OWNER:
**CITY OF TORONTO ECONOMIC
 DEVELOPMENT CORPORATION**
 PIN 21385-0156 (LT)

OWNER:
**CITY OF TORONTO ECONOMIC
 DEVELOPMENT CORPORATION**
 PIN 21385-0157 (LT)

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 DEVELOPMENT CORPORATION**
 PIN 21385-0157 (LT)

OWNER:
**CITY OF TORONTO ECONOMIC
 DEVELOPMENT CORPORATION**
 PIN 21385-0157 (LT)

SURVEYOR'S CERTIFICATE

- I CERTIFY THAT
- 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.
 - THE SURVEY WAS COMPLETED ON THE 30th DAY OF APRIL, 2007.

DATE June 14 2007

 C.A. SEXTON
 ONTARIO LAND SURVEYOR



DRAWN BY: JD
 CHECKED BY: C.A. SEXTON, OLS
 JOB No. 20401-1
SEXTON MCKAY LIMITED ONTARIO LAND SURVEYORS - CANADA LANDS SURVEYOR
 70 EAST BEAVER CREEK ROAD, UNIT 44 & 45, RICHMOND HILL, ONTARIO L4B 3B2
 Tel: (905)889-9103 Fax: (905)889-8941

