



File OF-Fac-Oil-E101-2012-10 02  
22 May 2013

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Dear Ms. Robert, Ms. Fowke, and Mr. Crowther:

**Hearing Order OH-002-2013 - Enbridge Pipelines Inc. (Enbridge)  
Application for the Line 9B Reversal and Line 9 Capacity Expansion Project (Project)  
pursuant to section 58 and Part IV of the *National Energy Board Act* (NEB Act)  
Procedural Update No. 2 - Ruling on Participation and Updated Timetable of Events**

On **19 February 2013**, the National Energy Board (Board) issued [Hearing Order OH-002-2013](#), which established a public hearing to assess Enbridge's proposed Project. On **4 April 2013**, the Board provided further information on the hearing process in [Procedural Update No. 1](#).

This Procedural Update No. 2 includes the following:

- an updated Timetable of Events (Appendix I);
- the List of Parties (Appendix II); and
- the List of Commenters (Appendix III).

The information provided in this Procedural Update No. 2 expands on the information in the Hearing Order issued 19 February 2013.

Appendix I updates the dates provided in the Hearing order and describes upcoming process steps or events with the deadlines for Participants to file and serve documents. The corresponding paragraph reference where further information can be found in the [Hearing Order](#) is provided for each of these steps or events. The timing and location of the oral final argument portion of the hearing will be provided later.

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On 9 May 2013, the Board received a request from Ecojustice to delay the oral hearing from 26-30 August 2013 until sometime after 1 October 2013. According to the updated Timetable of Events, oral argument cannot occur prior to 1 October 2013, so there is no need for a further decision from the Board on Ecojustice's request.

The Board is also providing a National Energy Board Fact Sheet with this letter. This Fact Sheet describes the Board's mandate and jurisdiction under the NEB Act in general, as well as what the Board considers when it exercises its authority under the NEB Act in the Canadian public interest.

### **Ruling on Participation**

This Procedural Update provides a List of Parties and List of Commenters, as well as the Board's reasons regarding those persons who were not granted the participation they requested.

The *Jobs, Growth and Long-term Prosperity Act* came into force on 29 June 2012 and amended the NEB Act. One of the amendments was the addition of section 55.2 to the NEB Act. Section 55.2 establishes what discretion the Board has with respect to granting participation rights or "standing" for certain Board proceedings. Section 55.2 states:

55.2 On an application for a certificate, the Board shall consider the representations of any person who, in the Board's opinion, is directly affected by the granting or refusing of the application, and it may consider the representations of any person who, in its opinion, has relevant information or expertise. A decision of the Board as to whether it will consider the representations of any person is conclusive.

These changes to the NEB Act promote fairness and efficiency by focusing consultation on individuals directly affected by an application and persons with relevant information or expertise. The addition of section 55.2 also assists the Board with collecting information that the Board considers to be relevant to its mandate and the application before it. If you are directly affected, you will be given an opportunity to present your concerns to the Board, and the Board will make its decision based on the application and all the evidence before it.

To implement section 55.2 of the NEB Act, the Board established a process where interested persons applied to participate in this proceeding as outlined in the 19 February 2013 Hearing Order. In order to evaluate who must and who may be heard by the Board in this proceeding, the Board provided an Application to Participate (ATP) form which asked interested persons to explain how they are directly affected by the proposed Project or in possession of relevant information or expertise. The deadline for submitting the completed ATP form was originally

11 April 2013 and when the ATP form was provided with Procedural Update No. 1 on 4 April 2013 the deadline for submitting the completed ATP form was extended to 19 April 2013.

The Board appreciates the feedback it has received to date on its new process and the ATP form. This is a new process for both the Board and for persons with an interest in Board proceedings. The Board will continue to look for ways to improve its process, and will continue to offer assistance to those who seek the Board's assistance with this new process.

When assessing the ATP forms, the Board applies the criteria provided in section 55.2 of the NEB Act, the List of Issues for this proceeding (to determine the relevance of the issues persons wish to address), and considers the Board's Section 55.2 Guidance – Participation in a Facilities Hearing (Section 55.2 Guidance). The Section 55.2 Guidance was provided as an appendix to both the Hearing Order and Procedural Update No. 1, and the ATP form advises applicants to make reference to the Section 55.2 Guidance when completing their ATP form.

It is up to the applicant to demonstrate to the Board's satisfaction that they are either directly affected by the proposed Project or in possession of relevant information or expertise. The Board makes its decision under section 55.2 of the NEB Act on a case-by-case basis, taking into account the specific facts and circumstances of each project application, and the information provided in the ATP form. When the Board assesses the directly affected status of an applicant, the Board looks at how the person uses the area where the project will be located, how the project will affect the environment, and how the effect on the environment will affect the person's use of the area. The closer these elements are connected (their proximity), the more likely the person is directly affected. An effect that is too remote, speculative, or is not likely to impact the applicant's interests will not lead to finding that an applicant is directly affected. The Board also considers whether the relevant information or expertise being offered will add value to the Board's assessment. The Board is an expert tribunal with decades of experience in assessing applications for projects under its jurisdiction in the Canadian public interest, and the Board employs this expertise when assessing completed ATP forms.

The Board received Applications to Participate from 177 persons. Of the 177 applications, 158 were granted as requested. 11 persons who requested intervenor status were instead granted the opportunity to submit a letter of comment. 8 persons have not been granted standing.

Many persons who submitted ATP forms stated their intention to make submissions concerning issues that the Board has previously determined are not relevant to this proceeding. The Board reminds those who are granted participation rights in this proceeding that all submissions must be relevant to the List of Issues. The Board has the authority to make a decision in this proceeding based on the application before it, and will do so in a manner consistent with the

Board's mandate and jurisdiction. The Board does not regulate matters related to, and cannot make broad policy decisions on, subjects such as climate change or oil sands development. Any submissions made that are not relevant to the List of Issues in this proceeding will not be considered by the Board.

### **List of Parties and Letters of Comment**

The List of Parties provided at Appendix II includes the proponent and all intervenors approved by the Board, as well as government participants.

The persons who have been granted intervenor status have demonstrated to the Board's satisfaction that they are either directly affected by the proposed Project or in possession of relevant information or expertise that will assist the Board in its assessment. The first step for intervenors and government participants is to serve a copy of their ATP form and supporting documentation on all other intervenors. This must be done immediately. Enbridge must also immediately serve a copy of its Project Application and all related documents on each intervenor and government participant who has not already received a copy. Further rights and responsibilities of intervenors, Enbridge, and government participants, as well as the respective deadlines, are set out in the Hearing Order and the updated Timetable of Events attached to Procedural Update No. 2.

Those persons listed in Appendix III may submit a letter of comment in this proceeding. Those who applied to submit a letter of comment and were granted this opportunity demonstrated to the Board's satisfaction that they are either directly affected by the proposed Project or in possession of relevant information or expertise that will assist the Board in its assessment. Some applicants who requested intervenor status are instead being granted the opportunity to submit a letter of comment, as discussed below.

Letters of comment must be submitted by **6 August 2013**. No other actions are required of these participants.

### **No Request Indicated**

Some interested persons did not specify on the ATP form whether they wanted to participate as an intervenor or by submitting a letter of comment. For those persons, if they demonstrated to the Board that they are either directly affected by the proposed Project or in possession of relevant information or expertise that will assist the Board in its assessment, the Board has granted them the opportunity to submit a letter of comment.

### **Late Application to Participate**

The Board received one late ATP form, from Ms. Jean Lee, on 26 April 2013. On 9 May 2013, the Board received a further letter from Ms. Lee, requesting that the Board accept the late filing. The Board is of the view that allowing this late Application to Participate will not result in prejudice to other parties or negatively impact the efficiency of this proceeding since the List of Commenters has not yet been issued. Accordingly, the Board has decided to accept the late filing.

### **Where Intervenor Status Was Not Granted**

Some interested persons who requested to participate as an intervenor are instead being provided the opportunity to submit a letter of comment. In general, these persons either did not demonstrate to the Board's satisfaction that they would be directly affected by the proposed Project, or the Board determined that their relevant information or expertise can be submitted by way of a letter of comment. The Board's reasons for reducing those applicants' requested level of participation from intervenor to letter of comment are provided below.

The Board notes that many applicants submitted that they were directly affected by the proposed Project due to concerns related to the risk of a pipeline spill or rupture and the resulting environmental effects, specifically, contamination of water sources. The Board understands this concern and takes all available actions to protect the public and the environment. As indicated in the Section 55.2 Guidance, the Board may consider factors such as the degree of connection between the project and the identified interest, and the likelihood and severity of the harm the person is exposed to. These factors recognize that not every person who applied to participate in this proceeding is affected by the proposed Project in the same way. Persons who live north (upstream) of the currently operating Line 9 pipeline are exposed to a different likelihood and severity of harm in the event of a pipeline spill or rupture than those who live south (downstream) of the Line 9 pipeline.

For example, since the route crosses the watershed approximately 20 km south (downstream) from the City of Guelph, and the groundwater gradient in the region is from the NW to SE, there is a lower likelihood that the pipeline will have a direct effect on a City of Guelph resident than on someone who lives downstream of the pipeline. The Board also regulates the currently operating Line 9 and understands where the Line 9 pipeline is located in and near the City of Toronto and relative to Lake Ontario where the City of Toronto obtains its drinking water. The Board has taken this understanding into account when assessing the submitted ATP forms in this proceeding.

Applicants who applied on the basis that they represent directly affected persons were asked in the ATP form to describe who they represented, to list the persons being represented, and to

describe how the persons being represented are directly affected. In order for a representative (such as a lawyer or organization) to be granted standing on this basis, they must be able to demonstrate to the Board's satisfaction that the persons they represent are directly affected. For example, if an organization does not demonstrate to the Board's satisfaction how it or any of its identified members will be directly affected, it will not be granted standing on the basis of being directly affected.

A. Individuals

1. *Mr. Andrew Ages*

Mr. Ages applied to participate as an intervenor on the basis of being both directly affected by the proposed Project and having relevant information or expertise. Mr. Ages submitted that he is directly affected by the Project because he is a resident of Toronto, and he expressed a general concern that a rupture of the pipeline could result in property contamination and impact to means of livelihood and necessities, potentially resulting in stress or severe illness or death. Mr. Ages submitted that he is in possession of relevant information or expertise because he had a degree in environmental science and had experience with interpreting environmental and socio-economic impact assessments.

2. *Mr. Zachary Ruiter-Ligeit*

Mr. Ruiter-Ligeit applied to participate as an intervenor on the basis of being both directly affected by the proposed Project and having relevant information or expertise. Mr. Ruiter-Ligeit submitted that he is directly affected by the Project as a citizen invested in ensuring the safety of his community and due to the potential for a failure of the Project to contaminate the drinking water in Toronto where he resides. Mr. Ruiter-Ligeit also stated that he has relevant information or expertise because he is an experienced environmentalist who has successfully opposed and shut down proposed projects.

3. *Mr. Peter Lowry*

Mr. Lowry applied to participate as an intervenor on the basis of having relevant information or expertise. Mr. Lowry submitted that he is specialized in writing and editing material on technical subjects. He indicated that he has an interest in oil pipelines from an ecological viewpoint and also as an economic, business, ethical, and political challenge. He submitted that he would provide information on the possible consequences of a spill in a major urban area like Toronto, as well as on liability questions for a major urban spill, financial liability for evacuation, lost business, and long term concerns for water table and storm sewer runoff into Lake Ontario. He also indicated that he has extensive knowledge of the pipeline route

through Toronto and would provide information on emergency measures and how management of a spill in Toronto would be different than in a rural area.

### ***The Board's Ruling***

The Board notes that the Line 9 pipeline is currently in place and presently transporting crude oil. As an expert tribunal, the Board has expertise assessing both material and environmental

risks and vulnerabilities. Although they are residents of Toronto, these individuals have expressed concerns relating to a general public interest, and did not demonstrate to the Board's satisfaction that there is a direct connection between the proposed Project and their specific individual interests. In the Board's view, the information or expertise offered by these individuals would be of limited value to the Board's assessment. However, the Board is interested in hearing the concerns of citizens with local information relevant to the Project, and therefore these individuals have been granted the opportunity to provide a letter of comment.

### ***B. Companies***

#### ***1. TDT Crews***

TDT Crews (TDT), as represented by Mr. Todd Clyde, applied to participate as an intervenor on the basis of being directly affected. TDT submitted that it provides skilled workers in the oil and gas industry, including pipe-fitters, pipe welders, HD operators, crane operators and electricians. TDT suggested that the Project would have a substantial impact on its interest, that being an impact on job growth for skilled trades, engineering and construction which would be felt across multiple regions.

#### ***2. Aecon Group Inc.***

Aecon Group Inc. (Aecon), as represented by Mr. Paul Pastirik, applied to participate as an intervenor on the basis of being directly affected. Aecon submitted that it works in construction and infrastructure development in the energy sector and provides services to processing facilities and pipelines. Aecon suggested that approval of the Project would lead to economic benefits to Canada's economy as well as Aecon specifically, enabling Aecon to create employment opportunities. Aecon also suggested that denial of the Project could lead to possible direct and indirect negative impacts for Aecon.

### *3. The Ontario Chamber of Commerce*

The Ontario Chamber of Commerce (OCC), as represented by Mr. Allan O’Dette, applied to participate as an intervenor on the basis of being directly affected. The OCC is an association that represents a large number of businesses in Ontario. No further information about the OCC and its members was provided.

### **The Board’s Ruling**

In the Board’s view, these organizations did not demonstrate a specific and detailed interest that would be directly affected by the proposed Project. While the Project may have an indirect effect on their respective businesses, the Board notes that this same impact will be felt by other Canadians or businesses that work in the energy industry in general.

However, the Board is satisfied that these companies can offer some relevant local and professional information about the industry, and therefore these companies have been granted the opportunity to provide a letter of comment.

### *C. Other Associations*

#### *1. East End Against Line 9*

East End Against Line 9 (East End), as represented by Mr. John Riddell, applied to participate as an intervenor on the basis that its members are both directly affected by the proposed Project and have relevant information or expertise. East End submitted that its members are primarily residents of the Toronto-Danforth and Beaches-East York constituencies and include a number of different communities, such as immigrants, faith-based groups, labour, aboriginal, educational and political parties. East End indicated that it has collected information from and consulted with its members through a number of different forums and represents over 200 residents of the area. No further details were provided about its members.

East End submitted that many of their members “believe they will be adversely affected by the proposed Project, in terms of quiet enjoyment of their homes, health, freedom from fear, access to recreational opportunities, and personal security.” East End also submitted that it would provide information and local knowledge relating to benefits for the area, including the impact on local businesses, local emergency response agencies, effects on the local aboriginal community, the consultation done by Enbridge, and the impacts on affected landowners and land use. The Board notes that the areas represented by East End are not in close vicinity to the pipeline route, and East End therefore did not persuasively demonstrate a



specific and detailed interest that would be directly affected by the Project. However, the Board is of the view that East End has general local information that is relevant and would be of value to the Board.

## *2. Environmental Justice Toronto*

Environmental Justice Toronto (EJT), as represented by Mr. Dave Vasey, applied to participate as an intervenor on the basis that its members are both directly affected by the proposed Project and have relevant information or expertise. EJT did not provide information about its membership, but indicated that Mr. Vasey lives within 50 km of the pipeline. EJT indicated that Mr. Vasey holds a Masters in Environmental Studies focusing on the impact of oil sands expansion on communities, a degree in Human Geography, and a diploma in Environmental Technology. The Board notes that it does not have the jurisdiction to consider oil sands expansion and that this matter does not form part of the List of Issues. EJT submitted that it will provide information that the Project is not good for the economy, that it will not create jobs, and will also provide information on prior Enbridge spills and their impact on communities.

## *3. Council of Canadians*

The Council of Canadians (COC), as represented by Ms. Maryam Adrangi, applied to participate as an intervenor on the basis that it has relevant information or expertise. The COC submitted that it has local knowledge and would provide expert evidence on issues relating to pipeline integrity and the environmental effects of the proposed Project. The COC also expressed its intention to make submissions on broad policy issues concerning the future of energy development in Canada. The Board notes that it has significant expertise on the issues identified by the COC. In the Board's view, other than the offer of providing local knowledge, the COC did not demonstrate any specialized knowledge or expertise that would further assist the Board in its assessment of the Project. The Board also notes that some of the matters the COC indicated it wished to speak to have previously been determined to be not relevant in this proceeding or are outside of this Board's jurisdiction to consider, such as the development of oil sands.

## *4. Council of Canadians – Guelph Chapter*

The Council of Canadians – Guelph Chapter (COC-GC), as represented by Ms. Norah Chaloner, applied to participate as an intervenor on the basis that its members are both directly affected by the proposed Project and have relevant information or expertise. The COC-GC submitted that its members would be directly affected by the proposed Project due to the potential for a pipeline failure to contaminate the local watershed. The COC-GC also

stated that it had relevant information and expertise regarding experience with the negative effects of water contamination.

The Board notes that the Line 9 pipeline is currently in place and presently transporting crude oil. As an expert tribunal, the Board has expertise assessing both material and environmental risks and vulnerabilities. The Board has taken into consideration that the Line 9 route crosses the Grand River watershed approximately 20 km south (downstream) from the City of Guelph, and the groundwater gradient in the region is from the NW to SE.

COC-GC also expressed concerns relating to a general public interest only and did not demonstrate to the Board's satisfaction that there is a direct connection between the Project and their specific interests. In the Board's view, other than the offer of providing local knowledge, the COC did not demonstrate any specialized knowledge or expertise that would further assist the Board in its assessment of the proposed Project.

#### *5. Sierra Club Canada*

Sierra Club Canada (SCC), as represented by Mr. John Bennett, applied to participate as an intervenor on the basis that its members are both directly affected by the proposed Project and have relevant information or expertise.

SCC submitted that it has 20,000 members and supporters, who, "like all residents of Ontario," take the risks and potential costs of a possible accident. The Board is of the view that this represents a general public interest, as no further information was provided about SCC members' specific and detailed interest in the proposed Project, or how such an interest would be directly affected by the proposed Project.

SCC indicated that it is a conservation organization with expertise in environmental law, conservation, environmental protection, energy, air pollution, and toxic emissions. SCC also indicated that they have previously participated in environmental assessments, hearings, and court cases. The Board notes that, as an expert tribunal, it has expertise in the areas identified by SCC to the extent they are relevant to the Board's mandate and jurisdiction. In the Board's view, and based on the description provided in SCC's ATP form, the information or expertise offered by SCC would be of limited value to the Board's assessment.

### **The Board's Ruling**

The Board notes that the pipeline is currently in place and presently transporting crude oil. The associations listed above have not demonstrated to the Board's satisfaction that their members have a detailed and specific interest in the Project that would be directly affected, as opposed to a general public interest. These associations have demonstrated that they possess some relevant

information or expertise, though the Board notes that it is an expert tribunal and also has expertise in the areas mentioned by these associations. However, the Board is interested in hearing the concerns of citizens with local information relevant to the Project and other relevant information that would assist it in its assessment. Therefore these associations have been granted the opportunity to provide a letter of comment.

### **Where Standing Was not Granted**

Some persons who submitted ATP forms and requested to participate as either an intervenor or as a commenter have not been granted standing to participate in this proceeding. These persons did not demonstrate to the Board's satisfaction that they are either directly affected by the proposed Project, or in possession of relevant information or expertise that will assist the Board in its assessment.

#### *1. Ms. Barbara Feldman*

Ms. Feldman applied to participate on the basis of being both directly affected by the proposed Project and having relevant information or expertise. Ms. Feldman asserted that she is a landscape artist and that any contamination would impact her ability to do her job, but provided no further detail. Ms. Feldman also stated that she is a landowner in Québec, but provided no detail on the proximity of her property to the pipeline.

In terms of relevant information and expertise, Ms. Feldman stated that she has a PhD, providing no further detail.

#### *2. Ms. Tara Harding*

Ms. Harding applied to participate on the basis of being directly affected by the proposed Project. Ms. Harding asserted that she lives in close proximity to the pipeline and that a spill or leak from the pipeline would directly affect her by negatively impacting her sources of water, air, land and food. The Board notes that many of the concerns expressed by Ms. Harding relate to general policy considerations regarding fossil fuel use and that Ms. Harding resides in St. Catherines, Ontario, which is on the south side of Lake Ontario and not in the vicinity of the proposed Project. The Board is of the view that the degree of connection between the Project and Ms. Harding's interest is very remote and, as a result, the likelihood and severity of any harm is also very low.

#### *3. Mr. Gaston Hervieux*

Mr. Hervieux applied to participate on the basis of being both directly affected by the proposed Project and having relevant information or expertise. Mr. Hervieux lives in L'Isle-

Verte, Québec, situated approximately 230 km northeast of Québec City which is not in the vicinity of the Project, and has demonstrated only a general public interest in this proceeding. Mr. Hervieux indicated that he would provide information relating to air quality in Montréal, the further transport of refined product, public health, species at risk, and general energy policy. Additionally, Mr. Hervieux indicated that his relevant expertise was mostly based on his prior participation in many different regulatory proceedings over the past 30 years. The Board is of the view that the information or expertise that Mr. Hervieux offers is not relevant to this proceeding and, because the Board is an expert tribunal and has expertise in these areas, will not assist the Board in its assessment.

4. *Ms. Irina Ivanova*

Ms. Ivanova submitted a blank ATP form.

5. *Mr. Phillip Kienholtz*

Mr. Kienholtz applied to participate on the basis of being both directly affected by the proposed Project and having relevant information or expertise. Mr. Kienholtz lives in Peterborough, Ontario, which is north (upstream and upgradient) of the Project. He asserted that he is directly affected by the proposed Project due to the risk associated with and resulting environmental effects of an oil spill. In terms of relevant information and expertise, Mr. Kienholtz stated that he was an architect and had expertise in “technological generalism”. In the Board’s view, the degree of connection between the Project and Mr. Kienholtz’s interest is very remote and, as a result, the likelihood and severity of any harm is also very low. The Board also notes that much of the information Mr. Kienholtz wished to provide is not relevant to this proceeding, such as oil-fired transportation, oil sands development, and fossil fuel use in general.

6. *Mr. Jay Rawding*

Mr. Rawding submitted a blank ATP form.

7. *Ms. Donna Sinclair*

Ms. Sinclair applied to participate on the basis of being both directly affected by the proposed Project and having relevant information or expertise. Ms. Sinclair supported these assertions on the basis of her religious beliefs and her Canadian citizenship in general. The Board is of the view that this is only a general public interest in the proposed Project. Further, Ms. Sinclair lives in North Bay, Ontario, which is not in the vicinity of the Project.

8. *Mr. Brian Skerrett*

Mr. Skerrett applied to participate on the basis of being directly affected by the proposed Project. He states that a spill would contaminate rivers that provide drinking water to his community of Eden Mills. Eden Mills is not in the vicinity of the Project and is upstream from the Project. In the Board's view, the degree of connection between the Project and Mr. Skerret's interest is very remote and, as a result, the likelihood and severity of any harm is also very low.

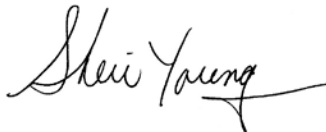
**The Board's Ruling**

In the Board's view, these individuals did not demonstrate how they would be directly affected by the Project, nor did they demonstrate that they had relevant information or expertise that would assist the Board in its assessment. Accordingly, the Board has denied standing to these individuals in this proceeding.

Enbridge is directed to serve a copy of the attached Procedural Update No.2, and its Appendices, immediately on those parties identified in Appendix II of the Procedural Update No.2.

If you have any questions about this letter or about participating in the NEB's hearing process, please contact Michael Benson, Process Advisor, through the Board's toll-free number at 1-800-899-1265. [Hearing Order OH-002-2013](#), and the [Procedural Update No.1](#) may also be accessed through the Board's Internet site at [www.neb-one.gc.ca](http://www.neb-one.gc.ca) (Under "Major Applications and Projects" click on "[Enbridge Line 9B Reversal and Line 9 Capacity Expansion](#)").

Yours truly,



Sheri Young  
Secretary of the Board

Attachments