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E-FILE

Mackenzie Valley Land & Water Board
7th Floor, 4922 48th St, PO Box 2130
Yellowknife, NT X1A 2P6 Canada

Attention: Angela Love

Dear Ms. Love:

**Re: Enbridge Pipelines NW Inc. (“Enbridge”)
Line 21 Segment Replacement Project
Application for Type A Land Use Permit MV2017P0013
Application for Type B Water License MV2017L1-0002
Written Final Argument**

Please find attached, Enbridge’s written final argument.

Should the Board require any further information, please contact the undersigned.

Sincerely,

Sarah McKenzie
Manager, Regulatory Affairs

Enclosure:



MACKENZIE VALLEY LAND AND WATER BOARD

WATER LICENSE MV2017L1-0002

LAND USE PERMIT MV2017P0013

LINE 21 SEGMENT REPLACEMENT PROJECT
ENBRIDGE PIPELINES (NW) INC.
RESPONSE TO FINAL WRITTEN ARGUMENTS OF INTERVENORS

January 17, 2018



Background

1. The Line 21 Segment Replacement Project is an essential maintenance project. Through the ongoing monitoring program for the pipeline, Enbridge identified increased rates of movement around the south slope of the Mackenzie River crossing, approximately 10 kilometres southeast of Fort Simpson. As a result, in November 2016, as a precautionary measure, Enbridge took action to shut down this section of the pipeline, purging and isolating the section of pipe under the Mackenzie River and the south slope. In order to protect the pipeline and the surrounding environment in the event of further slope movement, Enbridge plans to decommission the segment of pipeline in the active slope and install a new section of pipe below the slip plane and deep under the river, via horizontal directional drill, or HDD.
2. In order to complete this Project, Enbridge requires a Type A Land Use Permit and Type B Water License. In particular, Enbridge will need to use approximately 27.5 acres of land outside of the existing right of way for temporary workspace and will need to withdraw a total of approximately 10,000 m³ of water, limited to 299 m³ per day.
3. Timing is critical for successful execution of this Project. In order to resume safe operation of Line 21 in 2018, a number of project activities would need to take place well in advance of starting construction, for example, procurement of materials, finalization of contracts, site preparation, and mobilization of equipment. Timely approval of both the water license and land use permit is required so that the Project can proceed to the mutual benefit of all parties.

Agreements with Parties

4. As the Board is aware, Enbridge and Łíídljį Kúé First Nation ("LKFN") have agreed to a Participation Agreement that establishes mechanisms to address mitigation of potential Project impacts on LKFN members and to provide benefits to the local community.
5. Since the close of the oral portion of the hearing on January 9, 2018, Enbridge has also successfully entered into an Environmental Management Agreement ("EMA") with LKFN, Sambaa K'e First Nation ("SKFN"), Pehdzeh Ki First Nation, Tthets'éhk'edéí First Nation and Dehcho First Nations ("DFN"). The EMA establishes a structure and process for addressing Dene concerns about the Line 21 Segment Replacement Project and the ongoing operation of Line 21 for an initial term ending on December 31, 2020. This structure includes an Environmental Management Committee with representatives from each First Nation. The first priorities for the Environmental Management Committee are as follows:
 - Collaborating to finalize the Project engagement plan, communication protocols, and Indigenous monitoring plan;
 - Recommending measures to address socio-economic concerns related to work camps; and
 - Collaborating to review the Environmental Protection Plan to integrate Dene knowledge and review mitigation measures.



Response to Draft Conditions and Recommendations

6. Enbridge provided brief comments to the Mackenzie Valley Land and Water Board (“MVLWB”) on the draft conditions on May 18, 2017. Other than these brief comments, Enbridge has no objections to these conditions and asks the Board to impose those conditions as proposed.
7. In its final submissions dated January 12, 2018, the Government of the Northwest Territories (“GNWT”) provided a number of recommendations, including a formal requirement for a Turbidity Monitoring Plan (“TMP”) to be included as a condition of the water license. Enbridge has voluntarily prepared a draft TMP and is working to finalize that plan, including engaging in ongoing discussions with GNWT and parties to the EMA. Should the National Energy Board (“NEB”) approve the Project, Enbridge will already be required to implement the TMP; therefore, the inclusion of a condition requiring a TMP would be unnecessary and redundant (as would the surveillance network program).¹
8. Enbridge acknowledges GNWT’s arguments regarding jurisdiction over the deposit of waste in waters within a federal area in the Mackenzie Valley. However, to be clear, Enbridge submits that the NEB has full jurisdiction over potential impacts of all drilling activity relating to the Project, regardless of whether any drilling waste migrates off the right-of-way. The issues of potential inadvertent returns, drilling contingency and mitigation measures, including, but not limited to, the TMP, were thoroughly considered by the NEB at the oral hearing in October 2017. GNWT participated fully in the NEB proceeding, including submitting Information Requests to Enbridge regarding the turbidity monitoring protocol. As a result, there is no regulatory gap regarding these issues.
9. In its rationale for why the MVLWB should require a TMP as a condition of the water license, the GNWT stated that the MVLWB process would allow for public review of and comment on the draft TMP prior to its finalization. Respectfully, there have already been extensive opportunities for stakeholders to provide comments on the TMP – through both the MVLWB and the NEB processes. Further, the EMA provides a mechanism to collaborate with local Indigenous groups on the details of the TMP. Finally, as acknowledged by the GNWT at the oral hearing on January 8, 2018, Enbridge has begun, and is continuing, discussions with the GNWT regarding updates to the TMP.

¹ A standard condition of NEB Orders is that the applicant “shall cause the approved Project to be designed, located, constructed, installed, and operated in accordance with the specifications, standards, commitments made and other information referred to in its application.” Another standard condition is that the applicant “shall implement or cause to be implemented all of the policies, practices, programs, mitigation measures, recommendations, procedures and its commitments for the protection of the environment included in or referred to in its application or in its related submissions.”



10. Should the NEB or MVLWB determine that a condition regarding the TMP is necessary, in order to prevent the potential for conflicting requirements or interpretation of the requirements by regulators, Enbridge recommends that a single condition imposed by either the MVLWB or the NEB – not both. Please also refer to Enbridge’s responses to GNWT’s recommendations regarding aquatic effects monitoring, TMP, and surveillance network program (topics 3, 4 and 5), filed October 13, 2017.

11. The GNWT also addressed sump monitoring in its written argument. On this issue, Enbridge notes that at the oral hearing on January 8, 2018, the GNWT confirmed as follows (Transcript Day 3, p. 42, 2-11):

It's GNWT's position that provided bentonite is the only drilling additive used, there would be no need for groundwater wells. Bentonite may only result in increased in TSS, which are already elevated in groundwater and difficult to test for in groundwater. So we do still think that the Sump Construction Monitoring Plan would include a monitoring aspect, but it would be more of a visual monitoring and inspections as opposed to groundwater wells.

Engagement and Consultation

12. In its decision, we ask the Board to find that consultation with potentially affected Indigenous groups was adequate. Enbridge submits that it has met the Board’s engagement requirements. In accordance with Board’s Engagement and Consultation Policy, Enbridge initiated dialogue with Indigenous groups in January 2017 prior to filing its applications with the MVLWB in March 2017 and filed its Engagement Plan as part of its applications. Enbridge has explained the Project, has heard from the intervenors about their concerns and potential impacts to the environment and Indigenous and treaty rights, and has addressed those concerns. Enbridge has also committed to updating the Project Engagement Plan, in collaboration with the Dehcho First Nation communities, as a first priority of the EMA.

13. Enbridge also asks the Board to assess and rule on the adequacy of Crown consultation. This finding will be particularly important given that the GNWT indicated in its letter of October 19, 2017 that it is relying on the Board’s process to assist in fulfilling its duty to consult. The Board’s Engagement and Consultation Policy states that in most cases, it can rely on the robustness of its existing procedures to satisfy itself that consultation with potentially impacted Indigenous groups has been adequate. The latest decisions from the Supreme Court of Canada on the adequacy of Crown consultation support that position.² Enbridge notes that in this case, the Board’s process has been robust, providing many opportunities for intervenors and members of the public to participate and voice their concerns, including: submitting comments on draft conditions, filing interventions, making oral presentations to the Board, asking questions of

² *Chippewas of the Thames First Nation v Enbridge Pipelines Inc.*, 2017 SCC 41; *Clyde River (Hamlet) v Petroleum Geo-Services Inc.*, 2017 SCC 40.



Enbridge's witnesses, and making both oral and written closing statements. The Board's process was flexible and accommodating, including additional hearing time to accommodate more extensive questioning of Enbridge and additional time for intervenor presentations.

14. LKFN, SKFN and DFN each confirmed in their written arguments that any concerns with Enbridge's use of water and temporary lands as proposed in Enbridge's applications to the MVLWB have been, or will be addressed through the agreements. Enbridge therefore asks the Board to conclude that consultation has been adequate and that the Crown's duty to consult has been met.

Conclusion

15. Enbridge submits that it has and will continue to take appropriate measures to protect the environment and has met the application requirements for a Type A Land Use Permit and Type B Water License. Enbridge requests that the Board approve Enbridge's applications for a Type A Land Use Permit and a Type B Water License in order to complete its Line 21 Segment Replacement Project.
16. Enbridge would like to conclude by expressing its appreciation to the Mackenzie Valley Land and Water Board, all its staff, the intervenors and public who made presentations to the Board, and other individuals who contributed to the successful hearing. Enbridge appreciates the robust, transparent and respectful process that the Board established and implemented.