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OH-002-2013
FINAL ARGUMENT
OF
ENBRIDGE PIPELINES INC.

OCTOBER 8, 2013

I. INTRODUCTION

It is our pleasure to appear before you, here in Montréal, to present the argument-in-chief of Enbridge Pipelines Inc. in respect of the Line 9B Reversal and Line 9 Capacity Expansion Project – a project that would redeploy an existing pipeline in a safe, efficient and economical way to the benefit of refiners in Québec, oil producers in western Canada, and the broader Canadian public interest.

II. ARGUMENT

This argument briefly summarizes the Application and the matters that are before the Board for approval. It also treats each of the issues set out in the List of Issues that was attached as Appendix I to Procedural Update No. 1. **[Ex. A5-1]**

Submissions are provided in reply to the written arguments that were filed before the October 3, 2013 deadline. By permission from the Board, Mr. McCormick's written argument was not filed until yesterday. If we have any specific

submissions to make in respect of that argument, we will make them in reply in Toronto next week.

The purpose of final argument is not to repeat evidence and we will generally refrain from doing so. However, we will refer to specific parts of the evidentiary record on occasion and also quote a few brief, but significant, excerpts to you.

We will introduce each issue as we proceed through our submissions, although we may not always restate an issue in its entirety.

But first, we offer very brief summaries of: the history of Enbridge Line 9; the approvals requested in the Application; and, what the Project entails.

History of Line 9

Line 9 is a Nominal Pipe Size 30 pipeline that was originally constructed in 1975 and commissioned in mid-1976 to transport crude oil, including diluted bitumen, eastward from Sarnia Terminal to Montreal Terminal. **[Ex. B19-20, Adobe 19]**

The flow of the pipeline was reversed, to a westward direction, in 1999 pursuant to the decision of the National Energy Board in the OH-2-97 proceeding and the relevant Board order. **[Ex. B1-2, Adobe 18]**

On July 27, 2012, the Board approved a standalone application for the re-reversal of the 194-kilometre segment of Line 9 from Sarnia Terminal to North Westover

Pump Station near Hamilton Ontario (Line 9A). **[Letter Decision OH-005-2011 and Order XO-E101-010-2012]**

Enbridge now seeks to change the flow of the pipeline – from westward to its original eastward direction – of the balance of Line 9 (between North Westover Station and Montreal Terminal) (Line 9B) and to concurrently expand the overall capacity of Line 9. **[Ex. B1-2, Adobe 18]**

The Application and Relief Requested

As the Board will know, the Application that is the subject of this proceeding was filed on November 29, 2012 pursuant to section 58 of the *National Energy Board Act*. The Board determined that the Application was properly filed and was complete to proceed to public hearing. **[Ex. A3-1, Adobe 1]**

The Application requests exemptions from the provisions of paragraph 30(1)(b) and sections 31, 33 and 47 of the *National Energy Board Act.*

We will address later the additional requests from Enbridge that it be exempted from the requirement to keep the system of accounts for the Project prescribed by paragraph 5(1)(c) of the *Oil Pipeline Uniform Accounting Regulations* and from the filing requirements specified in *Guide BB* of the *Filing Manual*. **[Ex. B42-1, Adobe 3]**

Finally, Enbridge requests approval, under Part IV of the *NEB Act*, for the revised Line 9 Rules and Regulations Tariff.

The Project

The Project principally entails pump additions and modifications as well as piping modifications at existing terminals and stations. Such work would be completed at Sarnia Terminal, North Westover Station, Hilton Station, Cardinal Station, Terrebonne Station, and Montreal Terminal. **[Ex. B42-3, Adobe 1-3]**

No new line pipe would be installed.

New electrical cables must be installed between the Enbridge North Westover Station fence line and the Enbridge electrical power substation fence line. The land on which the cables would be installed is Enbridge property but is outside of Enbridge fence lines. **[Ex. B12-1, Adobe 2]**

Temporary work space on Enbridge property outside facility fence lines would be utilized at North Westover, Hilton and Cardinal Stations and Montreal Terminal, for vehicle parking, laydown areas for construction materials, and construction trailer storage. Additional temporary work space would be required within the industrial area surrounding the Montreal Terminal for the purpose of siting

construction trailers and for crane set-up during construction. **[Ex. B12-1, Adobe 2]**

It is worth emphasizing, and fundamentally important, that in *all* other respects, the Project work would take place entirely on previously disturbed lands within the confines of existing, and operating, terminals and stations that are privately owned or controlled by Enbridge. **[Ex. B19-25, Adobe 3; Ex. B42-3, Adobe 3]** As stated by the Board in its Hearing Order, the Project would involve *no* planned ground disturbances along the pipeline right of way. **[Ex. A3-1, Adobe 6; Ex. A3-2, Adobe 6]** In this regard, although Enbridge had initially proposed a new densitometer at a site to be located at kilometre post 2989, further engineering has shown that that will not be necessary. **[Ex. B42-1, Adobe 2]**

Included among the more material elements of the Project work are:

- New pumps would be installed at Sarnia Terminal and existing pumps would be modified. **[Ex. B42-3, Adobe 1]**

- Drag Reducing Agent skids would be added at each of Sarnia Terminal, North Westover Station, Hilton Station, and Cardinal Station. **[Ex. B42-3, Adobe 1 and 2]**

- Finally, new leak detection instrumentation would be installed at each of Sarnia Terminal, North Westover Station, Hilton Station, Cardinal Station, Terrebonne Station, and Montreal Terminal. **[Ex. B42-3, Adobe 1-3]**

We turn now to the issues that have been identified for consideration in this proceeding.

We will commence by speaking to Issues 1 and 2 – the need for, and potential commercial impacts of, the Project under a single heading.

ISSUES 1 AND 2: NEED FOR AND POTENTIAL COMMERCIAL IMPACTS OF THE PROPOSED PROJECT

Project Need

The evidence before the Board shows that the Project would meet the business demands of shippers.

Its express purpose is to accommodate requests from eastern Canadian refiners to secure access to the growing, and less expensive, supplies of crude oil production from western Canada and the U.S. Bakken region. **[Ex. B1-2, Adobe 24]**

Open Season

Enbridge conducted a formal, binding, open season in May and June, 2012 for shippers interested in committing to long-term ship-or-pay Transportation Service

Agreements in support of the Project. Shippers were afforded the opportunity to subscribe for capacity on a 10-year term with one five-year renewal option. **[Ex. B1-2, Adobe 24]**

Project Supported by Long-term Contracts with Shippers

Enbridge received signed Transportation Service Agreements from three shippers – for a total commitment that exceeded the firm capacity initially offered. A *pro forma* copy of the Transportation Service Agreement was filed as an attachment to NEB information request 1.1. **[Ex. B8-3]**

Valero Energy Inc., which owns and operates the Jean Gaulin refinery at Lévis, Québec, was one of those three shippers. **[English: Ex. C34-2-2, Adobe 3; French: Ex. C34-2-3, Adobe 3]**

Suncor Energy Marketing Inc. was another. **[English: Ex. C32-2-2, Adobe 2; French: Ex. C32-2-3, Adobe 2]**

You will be hearing from Suncor and Valero later in this oral argument phase.

Subject to approval of the Application, Enbridge would be able to accommodate 275,000 barrels per day of the capacity initially requested by the three contracted shippers while maintaining a minimum of 25,000 barrels per day of space for

transportation of uncommitted volumes. The annual capacity of Line 9 would be 300,000 barrels per day. **[Ex. B1-2, Adobe 24]**

Benefits to Shippers and Producers

Enbridge submits that the evidence amply demonstrates that the Project would yield positive commercial impacts for both Québec oil refiners and western Canadian oil producers.

For Québec refiners: the Project would enable them to reduce their reliance on crude oil from areas of declining, or potentially unreliable, supply. Upon Project completion, a portion of the Atlantic basin oil supply for those refiners would be replaced with western Canadian and U.S. Bakken crude.

As Valero makes clear, its current international sources of crude oil (from the Mediterranean, the Black Sea, the North Sea, West Africa and South America) are more expensive than western Canadian sources. Being able to take advantage of this differential in feedstock prices, and to have greater flexibility in sourcing its supply, would have a direct positive impact on Valero's ability to remain competitive. **[English: Ex. C34-2-2, Adobe 2 and 3; French: Ex. C34-2-3, Adobe 2 and 3]**

Suncor – which operates an important refinery in Montréal – sees the Project as providing it with the ability to economically replace largely foreign supplies of crude oil with oil sourced from the Western Canada Sedimentary Basin and the U.S. Bakken. **[English: Ex. C32-2-2, Adobe 2; French: Ex. C32-2-3, Adobe 2]**

Suncor considers obtaining access to new sources of feedstock to be critical to the continued viability of the Suncor Montréal refinery. This was the primary rationale underpinning that company's decision to incur the costs associated with a long-term commitment to ship on the re-reversed Line 9. **[English: Ex. C32-2-2, Adobe 5; French: Ex. C32-2-3, Adobe 6]**

Cost Savings

Over the next 30 years, refinery cost savings of approximately $23 billion are expected as a result of the Project. **[Ex. B1-2, Adobe 25]**

There is, admittedly, some uncertainty around that estimate – as there would be for *any* that reflects price forecasts and depending on the prevailing prices when the forecast is made. **[Ex. B43-3, Adobe 4]** But, the sensitivity cases demonstrate substantial refiner feedstock cost savings under a range of assumptions – and there is no evidence that the analysis completed by Demke Management Ltd. on behalf of Enbridge employed price differentials from the high side of the range of uncertainty. **[Ex. B43-3, Adobe 4]**

In any event, it is not the forecasts of Enbridge, IHS Global Canada **[Ex. C34-3-1]**, Stratégies Énergétiques **[Ex. C25-9-2, Adobe 23 ff.]**, The Goodman Group, Ltd. **[Ex. C13-7-2]**, or any other prognosticator that would determine the savings that the refiners actually achieve. Any savings would instead result from the workings of the well-functioning market that exists for crude oil in North America. **[Ex. B43-3, Adobe 12]**

Neither should the decisions of the three shippers to enter long-term Transportation Service Agreements be second-guessed – whether by Stratégies Énergétiques, Équiterre Coalition or anyone else. The substantial commercial support for the Project – in the form of lengthy ship-or-pay commitments from sophisticated market participants is, rather, a fact to which the Board should attach considerable weight.

Project Benefits – Western Producers

For western Canadian producers – as well as those in the U.S. Bakken – completion of the Project would afford them with access to the Québec refining market. **[Ex. B1-2, Adobe 24]**

There would be collateral benefits to this as well.

According to Suncor, the unprecedented growth in recent years of tight oil plays, particularly the Bakken region, has made the marketing of sweet Synthetic Crude Oil, as well as conventional light crude production, a greater challenge in the traditional markets for western Canadian oil. This difficulty has been exacerbated by a number of refinery conversion projects in the U.S. Mid-West – switching the refineries from light to heavy crude oil slates. New market access – such as that offered by the re-reversal of Line 9 – is required to remove the extraordinary discounting of western Canadian crude oil. **[English: Ex. C32-2-2, Adobe 6; French: Ex. C32-2-3, Adobe 6 and 7]**

While some other transportation methods – such as rail, barge or marine tanker – for delivering western crude oil to Québec area refineries may be feasible, none of them is practical in terms of economics or efficiency. **[Ex. B11-2, Adobe 7 and 8]** The Project is all of these – feasible, practical and efficient.

Socio-Economic Benefits of the Project

The benefits of the Project would extend beyond crude producers and refiners.

In fact, over the 30-year period from 2013 through 2043, the Project could be expected to result in substantial other socio-economic benefits such as – to name only a few:

- an increase to Canadian Gross Domestic Product of approximately $25 billion, taking into account the Project's total multiplied impact;

- an increase in labour income of nearly $350 million, mostly in Ontario and Québec; and,

- employment increases of approximately 5,500 person years – again mostly in Ontario and Québec. **[Ex. B1-2, Adobe 25; Ex. B18-41, Adobe 9]**

It is worth noting that these benefit numbers were calculated on the basis of the original estimated $121.8 million ($2012) capital cost of the Project.

The increase in Project capital costs – to approximately $170 million – does not have an appreciable effect on the estimated economic impacts due to the predominance of the feedstock cost savings in the overall impacts. The effect on Canadian GDP of the increase in capital costs is relatively minor; the employment impact increases by approximately 6%. **[Ex. B43-3, Adobe 15]**

Some parties dispute the estimates of the benefits of the Project; most particularly The Goodman Group which advocates on behalf of Équiterre Coalition.

Like Demke, The Goodman Group estimates positive economic benefits from the Project – albeit in lesser amounts. **[Ex. C13-7-2, Adobe 7]** Over 10 years, and even at the low end of The Goodman Group's range, the Project would be expected

to yield $5 billion of net economic benefit. Over 30 years, the arithmetic would make it $15 billion. These are quite remarkable sums in their own right.

The Goodman Group nevertheless conclude that benefits of this magnitude are *insignificant* in the context of the overall Québec, Ontario, and Canadian economies.

They argue that they are even less significant when weighed against what they claim could be the costs of a major accident or spill from Line 9. **[Ex. C13-7-2, Adobe 7]**

They also argue that the oil price savings we have just discussed are likely overstated because there is unavoidable forecast error underlying the estimates. **[Ex. C13-7-2, Adobe 22 and 23]**

Finally, The Goodman Group contend that benefits of the Project will accrue to refiners rather than consumers – with the implication that, if true, this would be an unwelcomed result or at least one that should be significantly discounted. **[Ex. C13-7-2, Adobe 30]**

With respect, The Goodman Group analysis suffers from a number of critical deficiencies. The more material of those are addressed in detail in the Reply

Evidence Prepared by Demke Management Ltd. **[Ex. B43-3]** which we commend to the Board's careful review and consideration.

One aspect of The Goodman Group analysis requires mentioning here – that being their assertions regarding the potential costs of a major accident or spill – which they attribute to the Project.

It is important to note that The Goodman Group begin by conceding that there is a high degree of uncertainty in their estimate associated with a broad range of costs that makes a precise determination very challenging if not impossible.

Undeterred by that reality – and notwithstanding the questionable utility of doing so – they proceed to offer what they suggest is a ". . . range of relative magnitudes for potential costs under a variety of accident/spill possibilities." **[Ex. C13-7-2, Adobe 7, 33 and 34]** Unfortunately, that so-called range of potential costs simply does not bear scrutiny. There are several reasons.

First, The Goodman Group's range of potential costs is apparently unsupported by any study – including no specific consideration or modelling of the costs or risks associated with various pipeline malfunction or accident scenarios. **[Ex. C13-7-2, Adobe 34]** Instead, they claim only to:

> . . . provide the NEB with a range of relative magnitudes for the potential costs under a variety of spill possibilities. This range of cost

> magnitudes then allows [The Goodman Group] to undertake *an order of magnitude* comparison with the more readily estimated benefits. **[Ex. C13-7-2, Adobe 34]**

They also say:

> Despite the challenge in making a precise determination of the costs (and risks) of the Project, [The Goodman Group] can offer *practical guidance* to the NEB regarding the relative magnitude of the costs and benefits. **[Ex. C13-7-2, Adobe 18]**

At the same time, The Goodman Group repeatedly describe their work as an economic cost benefit analysis – which for the reasons articulated in the Demke Reply Evidence, it is not. **[See, for example, Ex. C13-7-2, Adobe 7-9 and 59; Ex. B43-3, Adobe 3 and 4]**

Second, The Goodman Group have selected examples of pipeline accidents and other disasters that they claim are both relevant and illustrative of the range of cost magnitudes and potential effects of an accident or malfunction on Line 9. **[Ex. C13-7-2, Adobe 34]** There is, of course, another concession that ". . . some of [the] examples are more directly comparable than others . . . " but it is coupled with the suggestion that the entire range of examples has been offered so as to " . . . highlight to the NEB that a major accident/spill on Line 9 <u>*will*</u> [not may] have very high costs with respect to damage and disruption of infrastructure, particularly in metropolitan regions of Toronto or Montreal." **[Ex. C13-7-2, Adobe 37]**

As noted in the Demke Reply Evidence, it is curious that The Goodman Group's estimates of possible environmental costs come in large part from disasters associated with rail transportation, a hurricane, and a natural gas pipeline explosion. **[Ex. B43-3, Adobe 5]**

With respect, those examples are not at all relevant and serve much more to misinform or alarm than enlighten.

The Demke Reply Evidence also comments on The Goodman Group's reliance upon the conclusions of the author of the Accufacts Report – concerning the risk of failure on the pipeline. **[Ex. B43-3, Adobe 5]**

There is more to be said about the Accufacts Report later. For now, we merely observe that Enbridge is not only fully confident in its ability to operate Line 9 safely but equally confident in the ability of its regulator – the National Energy Board – to ensure that it does so. The Board would most certainly *not* be reckless (to use The Goodman Group's word) if it were to approve the Application. **[Ex. C13-7-2, Adobe 59]**

Finally, The Goodman Group offer only highly approximate spill cost estimates – ranging from $1 billion (attributable to an undefined "bad scenario") to $5 to $10 billion (for a "worst case scenario"). If this "range" of "cost magnitudes" was

intended to provide "practical guidance" to the Board then The Goodman Group failed in its objective.

For instance, there is absolutely nothing useful for the Board to find in the bald assertion that a $1 billion clean-up cost estimate for the Marshall, Michigan spill ". . . is nowhere near the worst-case scenario for the Project." **[Ex. C13-7-2, Adobe 41]**

The entirely unsubstantiated claims by The Goodman Group that the San Bruno, California natural gas pipeline explosion disaster is ". . . getting closer to a worst-case scenario for the Project" but that a Line 9B spill ". . . could create even more extensive damage and disruption to infrastructure and cause greater loss of life" are irresponsible at best. **[Ex. C13-7-2, Adobe 47]**

In summary in respect of Issues 1 and 2, Enbridge submits that the evidence amply demonstrates that the Project is needed and that, if approved, would yield substantial benefits for shippers, western Canadian oil producers and others alike.

The support for the Project coming from not only prospective shippers, but also from parties such as: labour federations **[Ex. C5-2-1]**, labour unions **[Ex. C9-4-1]**, Association Industrielle de l'Est de Montréal **[Ex. C7-2-1]**, Conseil du partronat du Québec **[Ex. C10-2]**, the Canadian Association of Petroleum Producers **[Ex. C8-2-2]**, Fédération des chambres de commerce du Québec **[Ex. C14-2-1]**,

Manufacturiers et Exportateurs du Québec **[Ex. C18-2-1]**, Ontario Petroleum Institute **[Ex. C20-2-1]**, and the Progressive Contractors Association of Canada **[Ex. C23-2-1]** speaks volumes in this respect.

The evidence also shows that the Project would generate substantial benefits for the Canadian economy including through increased Gross Domestic Product, labour income increases – mostly in Ontario and Québec – and increased employment – again mostly in those two provinces. In this regard, and for the reasons already discussed, the evidence of Demke Management Ltd. should be accorded substantial weight and preferred to that of either The Goodman Group or Stratégies Énergétiques.

ISSUE 3: THE APPROPRIATENESS OF THE PROPOSED RULES AND REGULATION TARIFF AND TOLLING METHODOLOGY

Rules and Regulations Tariff

As mentioned earlier, the Application seeks approval of the revised Rules and Regulations Tariff for Line 9. **[Ex. B1-2, Adobe 50; B1-23]** The changes are required to align the Line 9 Tariff with the Rules and Regulations Tariff for the Enbridge Mainline – which will be the source of all of the oil to be transported on Line 9. **[Ex. B19-29, Adobe 15]**

The revised Rules and Regulations Tariff includes specifications for allowable crude types. Those specifications address the safe operation of Line 9 and, it is worth repeating, *are the same as those included in the Rules and Regulations Tariff for the Enbridge Mainline*. **[Ex. B1-2, Adobe 50]**

Tolling Methodology

Enbridge is not currently seeking approval of the revised Line 9 tolls. Enbridge instead intends to file the relevant toll tariff(s) with the Board at a later date – but prior to the Project going into service. **[Ex. B8-2, Adobe 2]**

The tolling methodology that would apply to Line 9 after Project completion resulted from commercial negotiations among Enbridge and the shippers that have entered Transportation Service Agreements.

Included among the agreed terms is the requirement that tolls for uncommitted volumes be set so that the toll from any Canadian receipt point is no more than 22% higher than the International Joint Tariff toll to Montréal. **[Ex. B8-2, Adobe 2]**.

The tolling methodology is otherwise aligned with the principles and the toll making methodology underlying the Enbridge Competitive Toll Settlement. **[Ex. B18-2, Adobe 5-7]**

Uncommitted Capacity Reservation

As mentioned previously, a minimum of 25,000 barrels per day of capacity would be maintained for uncommitted volumes. 25,000 barrels per day represents slightly less than 10% of the annual capacity of Line 9 post-Project completion.

In considering the adequacy of this uncommitted capacity, it must be remembered that a notice of the open season was issued to all shippers on the Enbridge Mainline. Further, the pipeline terminates in Montréal and it is telling that the only two refiners in Québec have both signed Transportation Service Agreements. **[Ex. B1-2, Adobe 51]**

So far as Enbridge is aware, no party to this proceeding – nor anyone filing a letter of comment – has expressed any concerns about the adequacy of the uncommitted capacity reservation.

In summary on this point, Enbridge submits that the proposed 25,000 barrels per day of uncommitted capacity, as well as the priorities afforded to uncommitted volumes under the Rules and Regulation Tariff (as summarized in response to NEB information request 1.4) **[Ex. B8-2, Adobe 6]** would enable Enbridge to meet its obligations under subsection 71(1) of the *National Energy Board Act* in a similar fashion, and to the same extent, as has been regularly approved by the Board. **[Ex. B18-2, Adobe 10 and 11]**

ISSUE 4: THE POTENTIAL ENVIRONMENTAL AND SOCIO-ECONOMIC EFFECTS OF THE PROPOSED PROJECT INCLUDING MALFUNCTIONS OR ACCIDENTS THAT MAY OCCUR, AND ANY CUMULATIVE ENVIRONMENTAL EFFECTS THAT ARE LIKELY TO RESULT FROM THE PROPOSED PROJECT

Issue 4 on the List of Issues concerns the potential environmental and socio-economic effects of the Project including malfunctions or accidents that may occur and any cumulative environmental effects that are likely to result from the Project. We will address these topics in reverse order and will also have a number of submissions to make concerning emergency response and prevention of damage to the environment when we reach Issue 6 on the List of Issues.

But first, a few words about the Project scope.

Project Scope for Assessment

As the Board set out in Hearing Order OH-002-2013, and then reiterated on several subsequent occasions, the Project is of a limited scope and is defined as additions and modifications required to allow the reversal of crude flow within a segment of the existing Line 9 pipeline (which is already in operation), as well as a capacity increase and a change to the Rules and Regulations Tariff to allow for the transportation of heavy crude for the entire Line 9. **[see for example: Ex. A19-1, Adobe 2; Ex. A20-1, Adobe 3; and, Ex. A21-1, Adobe 2]**

The environmental and socio-economic assessments were completed with this Project scope in mind – and appropriately so.

Assessment Results

A copy of the Environmental and Socio-Economic Impact Assessment of the Project – which, to repeat, was completed in a manner and to a level of detail consistent with the Project scope – is Attachment 9 to the Application. **[Ex. B1-19 through B1-22]** An addendum to the ESEIA – reflecting the requirement for additional lands to accommodate electrical cable installation and temporary workspace – was filed April 30, 2013. **[Ex. B12-6]** A further, and final, update to the ESEIA was filed September 10, 2013. **[Ex. B42-5]**

The totality of this evidence shows that the Project would cause no residual effects after application of the proposed mitigation and Enbridge respectfully requests that the Board find accordingly.

Assessment of Accidents, Malfunctions and Unplanned Events

The Environmental and Socio-Economic Impact Assessment also addressed the matter of potential effects of accidents, malfunctions and unplanned events. **[Ex. B1-20, Adobe 29-32]**

Various credible accidents, malfunctions, and unplanned events were selected to complete the assessment. **[Ex. B1-20, Adobe 30]** Scenarios that represent higher consequence events were specifically considered because they would more than adequately address the consequences of less likely, or lower consequence, scenarios. **[Ex. B1-20, Adobe 30]**

The following scenarios were considered: hazardous material spills; failure of erosion and sediment control measures; fire as a result of the construction, maintenance and operations of the Project; vehicle accident; wildlife encounters by workers during construction or operation and maintenance; and, discovery of a previously undiscovered heritage or archeological resource. **[Ex. B1-20, Adobe 30]**

Specific mitigation measures, including the Environmental Protection Plan – which will be developed prior to construction – and Enbridge's Operating and Maintenance Procedures Book 1, were identified and discussed. **[Ex. B1-20, Adobe 30-32]**

The conclusion of the assessment was that the Project is not anticipated to result in a significant residual environmental effect. **[Ex. B1-20, Adobe 33]** The Board is respectfully requested to endorse that conclusion.

ISSUE 5: THE ENGINEERING DESIGN AND INTEGRITY OF THE PROPOSED PROJECT

As the Panel will be well aware, the issue of engineering design and integrity of the Project is the subject of substantial evidence in this proceeding.

Enbridge submits that the evidence before the Board should more than satisfy you that the relevant pipeline and facilities have been properly and prudently designed, that Enbridge has properly and prudently maintained and managed the integrity of those facilities, and that the proposed flow reversal and capacity increase would not adversely impact that integrity.

The relevant evidence is of sufficient scope and volume that we will not attempt to cite all of it to you. We will, however, emphasize some of the more salient points – secure in the knowledge that, as part of its deliberations, the Board will carefully review and have regard for, the entirety of the record.

Pipeline and Facility Engineering Assessments

The Board will no doubt closely consider, as it should, the Pipeline Integrity Engineering Assessment and the Facilities Integrity Engineering Assessment (as amended), Exhibits B1-15 and B1-18 respectively. Both of the Assessments were prepared in accordance with the requirements of section 3.3 of Canadian Standards Association Code Z662-11 **[Ex. B1-15, Adobe 12; Ex. B1-18, Adobe 8]**

The conclusion of the Pipeline Engineering Assessment is that the Project can proceed in a safe and reliable operating condition. **[Ex. B1-15, Adobe 95]** The Facilities Engineering Assessment reaches a similar conclusion vis-à-vis the relevant facilities. **[Ex. B1-18, Adobe 6]**

The Pipeline Engineering Assessment addresses, among other things: corrosion; cracking threat; and, mechanical damage. It also outlines integrity work that, although not part of the Project, Enbridge plans to complete prior to flow reversal. Some of that work, such as the In-Line Inspections and evaluation of ILI data and investigative excavations, are well underway. **[Ex. B1-15, Adobe 10 and 11; Ex. B8-12; Ex. B20, Adobe 42]** All of this, in combination with its cathodic protection surveys, depth of cover surveys, right of way surveys – to mention only some of the measures – demonstrates that Enbridge takes precisely the proactive approach to monitoring and ensuring pipeline integrity advocated by the Toronto and Region Conservation Authority (which we will call "TRCA" for today's purposes) **[see for example, Ex. C39-7, paras. 5, 6, 8, 13 and 16; Ex. B18-47, Adobe 6; Ex. B30-2, Adobe 8; Ex. B35-19, Adobe 6 and 21]**

For its part, the Facilities Engineering Assessment addresses the following integrity threats, among others: piping metal loss; equipment metal loss; cracking;

construction; geotechnical; seal or packing failure; and, gaskets. **[Ex. B1-18, Adobe 19-21]**

The conclusions are that the Project is expected to reduce the probability of releases from the facilities and would not adversely affect the release consequences. **[Ex. B1-18, Adobe 22]** Overall, the Project would reduce the risk of a release at the facilities. **[Ex. B1-18, Adobe 23]**

The record of this proceeding also includes the Revised Pipeline Risk Assessment. **[Ex. B21-2]**.

The Risk Assessment results for the Project demonstrate minor changes in the likelihood of pipeline failure.

Specifically, susceptibility of the pipeline to external and internal corrosion would remain unchanged with the reversal. However, the susceptibility to pipeline cracking potentially increases for those sections of the pipe which, post-reversal, would be located at the discharge side of the pump. Conversely, cracking susceptibility decreases for those sections that would be at the suction side.

There is no change in the susceptibility to natural forces, system operations, appurtenances, third party damage, or ground movement threats with the proposed

reversal. Similarly, the consequences of a failure are independent of flow direction. **[Ex. B21-2, Adobe 5]**

The Project would increase Line 9's capacity and that increase would result in an increase in assessed risk for 2.2% of the pipeline. To be clear, that does not mean a 2.2% higher risk overall. In fact, only 60 of the 2,730 total 305 meter long pipeline sections between Montreal Terminal and North Westover Station display an increase in risk. **[Ex. B19-29, Adobe 26; Ex. B35-19, Adobe 17]** Moreover, the risk control and mitigation strategies currently being executed by Enbridge manage the risks effectively. **[Ex. B21-2, Adobe 5 and 9]**

The response to NEB information request 1.24 **[Ex. B8-2, Adobe 39-41]** is commended to you because it provides a detailed explanation of how Enbridge meets or exceeds the requirements of section 10.10.2 of CSA Z662-11 for pipeline internal and external corrosion management. Similarly, the response to NEB request 3.8 **[Ex. B18-2, Adobe 23 and 24]** provides a substantial discussion of Enbridge's internal pipe corrosion susceptibility analysis for Line 9 recognizing certain characteristics of heavy crude.

The response to City of Toronto information request 1.10.e.c1R **[Ex. B30-2, Adobe 7]** should also be mentioned. Among other things, the response discusses

the recent and current projects and expenditures that Enbridge has implemented, and is planning to implement, in order to mitigate risk.

Careful consideration should also be given to the response to City of Toronto information request 1.8.b in particular, but not only, because it summarizes enhancements to the Integrity Management Program that were made following the Marshall, Michigan incident. **[Ex. B19-29, Adobe 21]**

The response to Toronto information request 2.30.d discusses the depth of cover survey that Enbridge is conducting on all streams and slopes – including the assessment of geohazards – in 2013. **[Ex. B35-3, Adobe 61]** This should satisfy the concerns of the TRCA in that regard. **[Ex. C39-7, paras. 14, 15 and 40]**

Of course, the responses that we have identified comprise only a small portion of a very complete record concerning the safety and integrity of Line 9.

We expect that you may hear from various of the intervenors expressions of concern, or perhaps even warnings, about such things as corrosivity, cracks, spills, leaks and discharges and the related risks imposed by the Project. You have certainly received written argument and letters of comment that make such assertions and we know that Environmental Defence, a member of the Équiterre Coalition **[Ex. C13-6, Adobe 4]**, actively campaigned against the Project including by claiming in correspondence to various municipalities that the product to be

transported on Line 9 would put them at increased risk. **[Ex. B1-2, Adobe 30; Ex. B1-12, Adobe 2]**

With respect, there is a distinct lack of credible evidence on the record to support those concerns, let alone the warnings. To the contrary, there is more than sufficient evidence for you to conclude that those concerns are ill-informed and unsubstantiated.

For example, the evidence presented by Enbridge shows: that the facilities and pipeline have been properly and prudently designed; that Enbridge has properly and prudently maintained and managed the integrity of the pipeline and facilities; and, that the proposed flow reversal and capacity increase would not adversely impact that integrity.

We alluded briefly to the Accufacts Report earlier. It is necessary now to address it at some length since it includes, among others, assertions of serious deficiencies affecting Enbridge's pipeline integrity management and that Enbridge is "not heeding" pipeline investigators and regulators in respect of pipeline integrity management. **[Ex. C13-6-3, Adobe 4]**

There is also the claim in the Accufacts Report that Enbridge has not adequately incorporated the critical safety process management perspectives that serve as the basis of prudent pipeline integrity management regulation. This claim must surely

be meant as much to challenge the competence of the Board as a pipeline regulator as it is to criticize Enbridge. **[Ex. C13-6-3, Adobe 4]**

Indeed, the Accufacts Report goes so far as to include a subheading that blares "Something appears very wrong with Enbridge's Line 9B risk assessment." **[Ex. C13-6-3, Adobe 2 and 30]**

It may be that the use of such overblown rhetoric was intended to incite public sentiment against the Project. Regardless, it is completely unhelpful to this process – and most especially because it has no basis in fact.

The Enbridge Reply Evidence responded to the Accufacts Report and the entirety of that reply need not be repeated. **[Ex. B43-2, Adobe 3 and 4]**

We will, though, highlight the fact that the Board has confirmed its satisfaction with the incremental improvements and initiatives that Enbridge has made to its Integrity Management Program, both prior to and after the Marshall, Michigan incident and further that Enbridge has demonstrated its capability to effectively detect, assess and mitigate cracking on its NEB-regulated pipelines. **[Ex. B43-2, Adobe 4]**

It is also necessary for us to specifically address the assertion in the Accufacts Report that without a proper hydrotest of Line 9 there is a high risk that the

pipeline will rupture in the early years following the Project's implementation. **[Ex. C13-6-3, Adobe 5]**

Although it is the "high risk that the pipeline will rupture in the early years" sound bite that has been repeated most frequently by the Project's opponents (including The Goodman Group **[Ex. C13-7-2, Adobe 7]**) – both within this process and beyond it – it is the "without a proper hydrotest" qualification that we intend to examine more closely for a few moments.

But first, it should be noted that for all of its criticisms of Enbridge, and the often extreme language in which those criticisms are expressed, the Accufacts Report does not include a recommendation against approval of the Project. **[Ex. C13-6-3, Adobe 33 and 34]** Instead, there is only the recommendation for hydrostatic testing and others relating, broadly, to leak detection and emergency response. The substance of these latter recommendations is already captured either in Enbridge standard practice or its plans for executing and operating the Project.

Specifically as to the recommendation for hydrostatic testing: the Accufacts Report recommends that ". . . proper hydrotests should be performed on Line 9A and 9B . . . " before the Project commences operation. **[Ex. C13-6-3, Adobe 33]**

Enbridge is familiar, and fully conversant, with hydrostatic testing. Line 9 itself was hydrostatically tested in 1976 (prior to being put in service) and then again in

1997. The results of the 1997 testing have been filed with the Board. [**Ex. B19-1, Adobe 80; Ex. B28-2, Adobe 1; Ex. B28-3 through Ex. B28-22]**

As explained in the response to Ontario information request 1.14.a, hydrostatic testing is *one* integrity verification technique that Enbridge uses as part of its Integrity Management Program and the Company continues to evaluate both the benefits and potential detrimental effects of the technique.

Hydrostatic testing is not a panacea. In fact, it is not the primary method utilized by pipeline operators that are able to use high resolution In-Line Inspection tools for integrity verification.

One reason is that hydrostatic testing only provides confirmation at a particular time that the remaining defects in the pipeline have dimensions smaller than a critical defect size. The reality is that a successful hydrostatic test does not guarantee that the pipeline in question will not fail in the future. **[Ex. B20, Adobe 22]**

The author of the Accufacts Report apparently agrees with these views since the following statement appears at page 24 of the Report:

> It is true that a properly developed, field demonstrated and utilized ILI tool, usually designed for a specific purpose, can tell one more about a pipeline than a hydrotest . . . **[Ex. C13-6-3, Adobe 27]**

Likewise, there is no disagreement between Enbridge and the author that:

> The obligation to choose, use, and apply the right assessment method(s) falls to the pipeline operator who eventually must demonstrate their use is appropriate. **[Ex. C13-6-3, Adobe 28]**

Another reason why hydrostatic testing is not preferred by pipeline operators that have the option of utilizing high resolution In-Line Inspection tools for integrity verification is that there are potential detrimental effects of hydrostatic testing; including the potential to induce or grow cracks that do not fail during the test but may continue to grow in-service. Hydrostatic testing that resulted in propagating crack growth would obviously be counterproductive to the efforts to eliminate pipeline failures. **[Ex. B20, Adobe 22 and 23]**

It is apparent that these views are supported by the respected pipeline engineering consultants, John Kiefner and Willard Maxey, in their paper "The Benefits and Limitations of Hydrostatic Testing" a copy of which was filed as Exhibit B35-45. For example, Kiefner and Maxey state:

> [Hydrostatic] [t]esting of an existing pipeline is a possible way to demonstrate or revalidate its serviceability. For a variety of reasons, retesting an existing pipeline is not necessarily the best means to achieve confidence of its serviceability, however.

Several potential detrimental effects of hydrostatic testing and reasons why In-Line Inspection is often a better alternative are also discussed.

Enbridge expects that the Panel will have noted that there is not a single mention of the Kiefner and Maxey paper in the Accufacts Report.

In light of all of this, it is both surprising and perplexing to find that the Accufacts Report levels the following very serious charge against Enbridge:

> Accufacts finds Enbridge's statements concerning the possible damage from hydrotesting are without technical merit, and *appear to be attempts to misinform decision makers and the public*. **[Ex. C13-6-3, Adobe 33; Ex. C13-6-3, Adobe 5]**

It also cannot go unmentioned that this statement follows immediately after other claims in the Accufacts Report that ". . . Enbridge has a *culture of denial* when it comes to the strengths of hydrotesting and a *highly distorted over-reliance* on ILI inspection . . . " – which are quite outrageous in their own right. **[Ex. C13-6-3, Adobe 33]**

Moreover, there can be no reasonable inference that Enbridge means to persuade the Board or anyone else that the potential detrimental effects of hydrostatic testing cannot be managed appropriately. In fact, Enbridge has expressly stated the opposite and detailed the methods that it employs to that end. **[Ex. B20, Adobe 22 and 23; Ex. B35-44, Adobe 7]**

In summary, the charges, claims and warnings of high risk of rupture in the Accufacts Report are entirely unfounded and grossly unfair. They are also, quite

frankly, irresponsible – coming as they have in a document tendered as expert evidence in this public proceeding. The Board should accord them no weight.

It is submitted that, given the foregoing and the comprehensive Enbridge Integrity Management Program, the recommendation that Enbridge be required to hydrostatically test the entirety of Line 9 before commencement of operation in eastward flow should be rejected.

Intelligent Valve Placement

There are several references throughout the Enbridge evidence to the Intelligent Valve Placement program. **[see for example, Ex. B11-2, Adobe 13 and 14; Ex. B35-18, Adobe 1; and, Ex. B35-44, Adobe 10 and 11]**

The Intelligent Valve Placement program is an ongoing process, independent of the Project, conducted as part of Enbridge operations and maintenance activities and constructed pursuant to the Board's document entitled: *Operation and Maintenance Activities on Pipelines Regulated Under the National Energy Board Act: Requirements and Guidance Notes*. The program is used to both confirm the appropriateness of current remote-controlled valve locations and determine where additional valves are needed. **[Ex. B11-2, Adobe 13]**

The response to Dr. Nicole Goodman information request 2 explained that Intelligent Valve Placement seeks to identify valve locations to reduce the potential release volume in the event of a pipeline rupture. Optimal valve locations are carefully selected based on their potential volume reduction and other factors such as water crossings, drinking water sources, populated areas, and ecologically or otherwise sensitive areas. **[Ex. B35-18, Adobe 1]**

Enbridge very recently decided that a total of 17 new remote-controlled sectionalizing valves will be installed along Line 9 before Line 9B enters operation in eastward service. The additional valves will be installed separately from the Project as part of the Enbridge's Intelligent Valve Placement program. **[Ex. B45-3, Adobe 4]**

The approximate locations for the 17 valves are listed in the updated Line 9B Reversal and Line 9 Capacity Expansion Project Mainline Transient Analysis Summary Report, a copy of which is Attachment 1 to the updated response to NEB information request 4.7. **[Ex. B45-3]** The final locations may vary slightly depending on factors such as landowner and environmental concerns, access, and power availability. **[Ex. B45-3, Adobe 10]**

ISSUE 6: THE SAFETY, SECURITY, AND CONTINGENCY PLANNING ASSOCIATED WITH CONSTRUCTION AND OPERATION OF THE PROPOSED PROJECT, INCLUDING EMERGENCY RESPONSE AND THIRD-PARTY DAMAGE PREVENTION

Leak Detection

It will come as no surprise to Enbridge if various parties, including for sake of example, the Aamjiwnaang First Nation and the Chippewas of the Thames First Nation (to which we will refer as AFN and COTTFN – as have their own counsel on occasion in this proceeding), DurhamCLEAR, and Équiterre Coalition, were to argue over the next few hearing days that the Board should be concerned about the adequacy and efficacy of the Enbridge leak detection systems. **[Ex.C1-5-1, Adobe 24; Ex. C2-4-1, Adobe 19 and 36-38; Ex. C12-6-1, Adobe 4; Ex. C13-6-3, Adobe 31 and 32]**

This seems a convenient point at which to address these arguments.

The Enbridge Reply Evidence responded to many of them and those responses will not be repeated. Nevertheless, we will briefly address certain of the intervenor assertions.

First, it is entirely incorrect to suggest, as DurhamCLEAR has in its written evidence, that the Enbridge leak detection system is next to useless. **[Ex. C12-6-1, Adobe 4]**

The fact is that Enbridge is committed to employing industry leading leak detection methods across its pipeline system – including Line 9. This commitment is realized through employing industry-leading technologies, developed processes, and skilled personnel. Enbridge is also committed to continuous improvement of its leak detection strategy; which is a comprehensive, multi-layered approach for its pipeline network.

The strategy encompasses five primary detection methods, each with a different focus and featuring differing technology, resources and timing. Used together, these methods provide an overlapping and effective leak detection capability.

Considerable detail concerning the Enbridge approach to leak detection is provided in the response to NEB information request 3.10 and we would respectfully suggest that you review it carefully. **[Ex. B18-2, Adobe 27-30]** We similarly recommend that the Panel carefully consider the response to NEB information request 4.8 which provides a complete explanation of the way in which the Enbridge Material Balance System for leak detection meets or exceeds the recommendations of CSA Z662/Annex E. **[Ex. B41-2, Adobe 18 and 19]**

Both AFN and COTTFN contend that the potential transportation of diluted bitumen on Line 9 would make leak detection more difficult. **[Ex.C1-5-1, Adobe 24; Ex. C2-4-1, Adobe 19]** With respect, AFN and COTTFN are mistaken.

The AFN and COTTFN assertions appear to be based upon flawed and unauthoritative claims related to the effects of column separation on the effectiveness of computational leak detection systems. **[Ex. C2-4-7, Adobe 1-33, at Adobe 13]**

As explained in the Enbridge Reply Evidence, Enbridge is well aware of column separation and has implemented technology, developed structured procedures, and trained its staff to make sure that column separations are appropriately managed within pipeline operations. **[Ex. B43-2, Adobe 4 and 5]**

The Enbridge Reply Evidence describes the several means through which column separation events can be detected and managed. **[Ex. B43-2, Adobe 5]** It also outlines a number of enhancements that Enbridge has implemented to improve the management of column separation events.

Some of those improvements are: enhanced control centre procedures – addressing start up, shut down, and flowing conditions as well as procedures relating to the Material Balance System; operational decision support including on-line tools and pipeline operation metrics that facilitate continuous improvement; and, comprehensive instrumentation improvement throughout the Enbridge system – including Line 9. **[Ex. B43-2, Adobe 5]**

We pause here to note that after completion of the Project and commencement of operation of the re-reversed Line 9, Enbridge would complete additional performance testing to validate the actual sensitivity and reliability performance of the Line 9 Computational Pipeline Monitoring System. **[Ex. B35-31, Adobe 1]**

Drag Reducing Agent

You may also hear arguments about the risks and adverse impacts associated with the Drag Reducing Agent that would be employed by Enbridge in order to expand the oil transportation capacity of Line 9.

Adverse impact on leak detection is likely to be a focus of those arguments – given that the properties of the specific Drag Reducing Agent products are no cause for concern. In that regard, Drag Reducing Agents have been used by Enbridge throughout its system and for more than two decades on transmission pipelines. DRA would not be harmful to human health or the environment in the event of a release from the pipeline. **[Ex. B8-2, Adobe 18; Ex. B18-18, Adobe 13; Ex. B18-32, Adobe 18; Ex. B18-34]**

The evidence also shows that use of Drag Reducing Agent allows for higher volume of fluid to be transported but under the same operating pressure constraints. DRA is injected to reduce frictional pressure without increasing operating pressure. Simply stated, the operating pressure profiles are relatively

similar between the two cases, but the pipeline operates at a higher velocity. **[Ex. B8-2, Adobe 18]**

As for leak detection, specifically: accurate modeling of DRA in the Enbridge Leak Detection system entails real-time measurement of DRA injection rates and correct prediction of drag reduction performance. The drag reduction is factored into the real time pressure drop calculations for the leak detection system.

To make sure that the Enbridge system properly models the impact of DRA accurately and reliably, various actions are taken as summarized in the response to City of Toronto information request 2.21. **[Ex. B35-3, Adobe 32]**

Emergency Response Generally

We turn now to the important topic of emergency response. It is one which is likely to feature prominently in the arguments that you hear from intervenors both here in Montréal and next week in Toronto.

Madam Chair, you and your fellow panel members will appreciate that the record of this proceeding is substantial and that a considerable portion of it is comprised of evidence, from both Enbridge and intervenors, regarding the Company's ability to respond effectively in the unlikely event that there were to be a release from Line 9. It is respectfully submitted that a careful consideration of the *credible* and

persuasive elements of that evidence should lead you to conclude that Enbridge is more than adequately prepared to respond in such eventuality and fully capable of doing so.

The response to NEB information request 4.9 is an important component of that credible and persuasive evidence because it succinctly articulates how Enbridge meets the requirements of sections 33 through 35 of the *Onshore Pipeline Regulations*. **[Ex. B41-2, Adobe 22-30]**

Please also carefully consider the response to NEB information request 4.10, and specifically the discussion there concerning the Emergency Management Program. **[Ex. B41-2, Adobe 37 and 38]**

Improvements since the Marshall Incident

We also direct you to the response to Ontario information request 1.44. **[Ex. B20, Adobe 70-75]**

Numerous parties point to the 2010 incident in Marshall, Michigan as evidence of the insufficiency of the Enbridge emergency response preparedness and the Company's inability to prevent damage to the environment or to third parties.

What all of those arguments fail to acknowledge is that we are no longer in 2010 and that in the intervening years – and under the close and careful supervision of

the National Energy Board – Enbridge has implemented a large number of operational and procedural changes based on its detailed investigations of, and lessons learned from, the Marshall Incident.

Those changes touch virtually all aspects of the Enbridge operation: from pipeline and facility integrity management and maintenance to leak detection, and from control centre operations to emergency response and the reinforcement of a safety culture. **[Ex. B20, Adobe 70-75]**

Specifically in respect of emergency response the evidence shows that:

- Enbridge has continued to add to its inventory of emergency response equipment, including through acquisition of additional boats, boom and response trailers. In this regard, Attachment 1 to MNCFN information request 1.17 provides a listing of the emergency response equipment that Enbridge maintains in its Eastern Region (which is responsible for Line 9). **[Ex. B20, Adobe 73; Ex. B22-18; Ex. B18-11, Adobe 6; Ex. B18-12]**

- Enbridge has also enhanced its Incident Command System competence by training, to ICS 100, 200 and 300 levels, staff that would fill leadership roles in the unlikely event of an emergency. **[Ex. B20, Adobe 73]**

- Regional Incident Management Teams have been established across the Enbridge System. These teams are able to mobilize and provide immediate response to any incident. **[Ex. B20, Adobe 73 and 74]**

- A Regional Incident Management Team is identified for the Enbridge Eastern Region and is organized according to an Incident Command Structure protocol. This team would be deployed if an incident were to occur on Line 9. **[Ex. B35-3, Adobe 37]**

- Numerous new tools have been developed to provide resources to responders to support an effective, coordinated response. These tools include, among others: an Incident Management Handbook; an emergency response Exercise Guide; and, Tactical Response Plans. **[Ex. B20, Adobe 74]**

  Tactical Response Plans provide responders with a pre-developed plan of action in the event of an incident and enhance response preparedness. They are not required by regulation but exemplify Enbridge working proactively to enhance its emergency planning in key areas. They also represent the sort of watershed based environmental management plans that the TRCA considers to be necessary. **[Ex. C39-7, paras. 26 ff.]**

Enbridge has contracted with The Response Group to assist in developing additional Tactical Response Plans and agrees with the TRCA that prioritization of plan development is necessary. **[Ex. C39-7, paras. 32 and 33; Ex. B19-29, Adobe 53]** To date, Enbridge has developed Tactical Response Plans for: the St. Clair River; Rivière des Milles Îles; Rivière des Prairies, the Ottawa River, the Niagara River, and the Don River. **[Ex. B35-3, Adobe 40]** In 2013, Tactical Response Plans will be developed for the Rideau Canal, the Grand River, the Humber River, and the Trent River. **[Ex. B35-3, Adobe 40]**

The locations that were chosen for Tactical Response Plan development were mainly selected based on higher potential consequences to the environment, population or the economy if a release from the pipeline were to occur. **[Ex. B35-3, Adobe 40]** This is the prioritization approach advocated by the TRCA. **[Ex. C39-7, paras. 32, 34 and 46]**

Enbridge already maintains control point mapping for each river crossed by Line 9 but will continue to review and enhance its control points along each river in an effort to improve its ability to respond to a release on any river that Line 9 crosses. **[Ex. B35-3, Adobe 40]**

- Incident Action Plan software has been purchased and prepopulated with Enbridge response plan information, including Enbridge and contractor equipment. **[Ex. B20, Adobe 74]**

- The Enbridge dedicated Emergency Management group has continued to grow. **[Ex. B20, Adobe 74]** A dedicated Emergency Response coordinator has been added for the Enbridge Eastern Region and that coordinator will be responsible for the pipeline systems and facilities from Sarnia to Montréal. **[Ex. B35-44, Adobe 13]**

Finally, it is important to stress that Enbridge contracted The Response Group to conduct a third-party assessment of its emergency capabilities and to provide recommendations.

The Response Group's assessment team made two recommendations in respect of emergency response planning. The first was that Enbridge continue to develop quick response guides as part of Integrated Contingency Plan development – which Enbridge has done. Throughout this year and next, Enbridge plans to align its emergency response plans with the Integrated Contingency Plan concept – an industry recognized format which is familiar to coordinating response agencies.

The second recommendation from The Response Group was that Enbridge continue to develop Tactical Response Plans for High Consequence Areas.

Enbridge accepted that recommendation and, as mentioned a moment ago, continues to develop Tactical Response Plans for water crossings along Line 9. **[Ex. B35-38, Adobe 9 and 10]**

Emergency Response Training and Exercises

Training and exercises are obviously important to establishing and maintaining emergency response capability and, for that reason, Enbridge regularly and routinely conducts emergency response exercises. Among other things, these exercises afford response personnel the opportunity to practice using equipment that they would utilize in the unlikely event of an incident. The findings from an exercise are used by Enbridge for several purposes including identifying any additional requirements for personnel, access and equipment. Possible enhancements to procedures are also considered and implemented when indicated. **[Ex. B43-2, Adobe 7]**

There are numerous references to emergency response exercises throughout the evidentiary record and it is not necessary to recite all of them to you. **[see for example, Ex. B19-27, Adobe 3; Ex. B20, Adobe 80; Ex. B22-23; B35-27, Adobe 25; Ex. B35-44, Adobe 23; B43-2, Adobe 7 and 8]** Suffice to say that the exercises: range from table-top to full-scale in scope; involve municipalities, other levels of government, first responders – such as police and fire departments, and

First Nations representatives; are frequently observed by NEB staff who then report their observations and recommendations; and, take place in all seasons – in both Ontario and Québec.

Response Times

Some parties may argue, whether during the hearing here in Montréal or later in Toronto, that the estimated times required for Enbridge emergency responders to arrive on scene are too long.

The fact is, however, that there is no regulatory requirement for spill response times in Canada. It is also the fact that the Enbridge 1.5 to 4 hour estimates fall well within response times set out in the Pipeline and Hazardous Materials Safety Administration guidelines in the United States (being 6 hours for a Tier 1 worst case discharge within a High Volume Area – as defined in the regulations and 12 hours for a worst case discharge in all other areas). **[Ex. B18-46, Adobe 5; Ex. B 35-38, Adobe 9 and 10]**

Further, Enbridge continues to work to improve its emergency response capabilities and reduce its spill response times.

An example of those efforts is the establishment of a pipeline maintenance work crew in Mississauga commencing in the third quarter of 2014. This crew would

provide emergency response to any pipeline incident in the Greater Toronto Area and its location would improve Enbridge's response time in the unlikely event of such an incident. **[Ex. B41-2, Adobe 29]** The TRCA Argument includes a recommendation that Enbridge take just such an action. **[see for example, Ex. C39-7, para. 35]**

Integration and Information Sharing with Municipalities and First Responders

A number of municipalities and other government bodies are participating in this proceeding. Some of them may argue that the NEB and Enbridge must both appreciate the importance of ensuring that the Company integrates its emergency response planning and execution with that of municipal first responders and other such agencies. The importance of information sharing among Enbridge and these various other constituencies may also be emphasized.

Enbridge understands that it must be prepared to provide municipal emergency responders with the level of information necessary to enable them to properly plan and prepare for the most effective coordinated response in the unlikely event of a release from the pipeline. Indeed, sections 33 through 35 of the *Onshore Pipeline Regulations* impose specific obligations in that regard and we have already spoken this afternoon about how Enbridge satisfies them. Moreover, Enbridge is completely confident that the Board will ensure that it continues to do so.

We have already referred to the evidence on the record regarding the emergency response exercises that are regularly and routinely conducted by Enbridge. But here we emphasize the involvement of various government and response organizations in Ontario, Québec and at the federal level, in the planning and execution of those exercises. **[see for example, Ex. B41-2, Adobe 20-30; and, Ex. B43-2, Adobe 7 and 8]**

It is also worth emphasizing the efforts that Enbridge makes to meet the requirements of emergency response agencies and municipal governments, including their requirements for information – such as maps, emergency response procedures, and emergency contact details. The evidence demonstrates that those efforts are ongoing, significant and increasing. **[see for example, Ex. B41-2, Adobe 20-30]**

The evidence also shows that much more will be done by Enbridge this year and next especially in terms of: meetings and information exchange including with municipal governments such as, to name only a few, Ville de Montréal, Ville de Terrebonne, Ville de Montréal-Est, the Municipalities of St-Justine-de-Newton, Très-Saint-Rédempteur, and Régionale de Comté de Vaudreuil-Soulanges; identification and clarification of information requirements; first responder training; and, the joint review and development – with agencies including, for

example, the Cities of Hamilton and Toronto, the TRCA, and others – of response plans and response strategies for key areas. To emphasize, the municipalities and other agencies that we have mentioned here and elsewhere in this argument do not represent an exhaustive list. Enbridge will be meeting and working with many more municipalities, agencies, government departments, and so on both in the near future and throughout the life of the Project. **[see for example, Ex. B41-2, Adobe 20-30; and, Ex. B43-2, Adobe 7 - 10]**

Financial Assurances

It seems reasonable to anticipate that, at some point before this proceeding closes, you will also hear arguments to the effect that Enbridge should be required to implement extraordinary measures – such as establishing a contingency fund – to ensure that, in the unlikely event of a release from Line 9, the Company would have sufficient financial resources available to satisfy its obligations under section 75 of the *National Energy Board Act* to make full compensation to all persons interested for all damage sustained by them. With respect, there is no precedent for such measures, none are necessary, and no such requirements should be imposed as a condition of approval of the Application, or otherwise.

Enbridge is a well-capitalized corporation with a 60-year plus history of mitigating risk exposures related to the reliable operation of its crude oil pipelines. If a

release from Line 9 were to occur, Enbridge would be able to satisfy its obligations by drawing upon its substantial financial resources – those at the ready or those available to it after a brief mobilization period. There is a considerable volume of evidence that details the Company's financial resources including its insurance coverage. **[see for example, Ex. B18-2, Adobe 21; Ex. B35-26, Adobe 21; and, Ex. B41-2, Adobe 3]** We will not take you through all of that evidence but submit that it is both compelling and determinative of the issue.

ISSUE 7: CONSULTATION WITH ABORIGINAL GROUPS AND THE POTENTIAL IMPACTS OF THE PROPOSED PROJECT ON ABORIGINAL INTERESTS

Applicable Principles and Requirements

It is well-established in law that the Crown alone is legally responsible for consultation and accommodation – if and when required.

According to the decision of the Federal Court of Appeal in *Standing Buffalo Dakota First Nation v. Enbridge Pipelines Inc.*, **[2009 FCA 308 (at paras. 30 and 32-34), leave to appeal to SCC refused, 33480, 33481, and 33482 (December 2, 2010)],** the Board is not required to determine whether there is a duty to consult or whether that duty has been fulfilled. Nor does the Board itself bear any duty to consult.

Importantly, the courts have found that the NEB's process may be sufficient to fulfil the Crown's duty to consult and, further, that the Board's process appears well-suited to address mitigation, avoidance and environmental issues that are site or project specific. **[*Brokenhead Ojibway Nation v. Canada*, 2009 FC 484 at paras. 25 and 26]**

The Board's process is designed to obtain as much relevant evidence as possible regarding Aboriginal concerns about a project, how the project may impact Aboriginal interests, and possible mitigation measures that may address those concerns. **[Letter Decision OH-005-2011, Adobe 10]**

In this particular case, the Board's process included contacting each of the potentially affected Aboriginal groups by letter in which it described the Project, introduced the regulatory process, and described both opportunities and means for participation and participant funding. The Board also offered to meet with Aboriginal groups, in person or by phone, to provide information on the process and about how to participate. $200,000 was made available to Aboriginal groups and the public to support them in participating in the hearing. **[Ex. A2-1 to A2-20]**

While, like the NEB, Enbridge has no independent duty to consult Aboriginal groups or accommodate their interests, it must nevertheless meet the Board's requirements to engage with Aboriginal groups.

Where a project has the potential to impact Aboriginal interests, the Board requires the proponent to consult with all potentially-affected Aboriginal groups and to provide information to the Board about those consultations. The greater the potential for impacts on Aboriginals as a result of the project, the more the Board requires of the proponent's consultation program. But, where there is a remote possibility of impact on Aboriginal interests, or the potential impacts are minor in nature, the proponent's consultations will not be required to be as extensive. **[Letter Decision OH-005-2011, Adobe 10]** In Enbridge's submission those are the circumstances of this case.

It is submitted that Enbridge has met the Board's requirements to engage with Aboriginal groups, and more – a matter to which we will return momentarily.

Claims of Effects on Aboriginal Rights and Interests

Certain Aboriginal groups have, through their written evidence, informed Enbridge that they practice traditional activities in the vicinity of the pipeline right of way. **[Ex. B43-2, Adobe 11 and 12]**

For example, AFN states that it undertakes harvesting and other traditional activities in the immediate vicinity of Sarnia Terminal and at other locations along the right of way. **[Ex. C1-6-1, Adobe 17]**

Enbridge has carefully reviewed the Preliminary Traditional Land Use Study filed by AFN. Figures 3a and 3b of that Study purport to delineate areas in which AFN may harvest a variety of resources. **[Ex. C1-6-1, Adobe 14 and 15]** So far as Enbridge can determine, the only location depicted on those Figures at which Project work would be undertaken is Sarnia Terminal; where no AFN harvesting is indicated as occurring. **[Ex. C1-6-1, Adobe 14 and 15]**

COTTFN cites in its written evidence a preliminary land use study focused on the Line 9 right of way. **[Ex. C2-4-1, Adobe 13]**

That study states that COTTFN's traditional harvest is most often carried out directly on, or near, the lands that comprise the COTTFN reserve but also that there are instances in which traditional harvest is carried out at sites that are directly adjacent to the Line 9 right of way. **[Ex. C2-4-1, Adobe 14]**

It should be mentioned, at least in passing, that until the filing in this proceeding of the preliminary traditional land use study, COTTFN had made only general statements to Enbridge about COTTFN traditional activities with no specific references to geographic locations other than the Fanshawe Conservation Area (which is not proximate to the Line 9 right of way). **[Ex. B43-2, Adobe 11]**

The AFN evidence similarly states that AFN has specifically told Enbridge that AFN members use lands and resources in the vicinity of Line 9. However,

Enbridge records indicate that AFN has not, before now, advised the Company of any specific use of Project lands by AFN. **[Ex. B43-2, Adobe 12]**

The written evidence of the Mississaugas of the New Credit First Nation (to which, for convenience, we will refer as "MNCFN") describes its exercise of Aboriginal harvesting rights across its traditional territory **[Ex. C3-5-1, Adobe 2]** and informs us that its members maintain a deep spiritual connection to the lands and waters within the territory. **[Ex. C3-5-1, Adobe 3]** The evidence did not, however, identify any specific locations along the Line 9 right of way where the traditional practices may occur.

The Mohawks of Kahnawà:ke assert Aboriginal rights and title to their traditional territory although it can be noted that the documents cited – including the *R v. Adams* decision of the Supreme Court of Canada – do not confirm Aboriginal title. **[Ex. C4-4-2, Adobe 2 and 3]**

The Mohawks of Kahnawà:ke take issue with Enbridge's statement that lands already in Enbridge's possession are incompatible with traditional use and argue instead that the rights of Enbridge and of First Nations must be reconciled according to the factors specific to the exercise of each right. **[Ex. C4-4-2, Adobe 18 and 19]**

The Williams Treaties First Nations (which include the Alderville First Nation and the Hiawatha First Nation) voice similar concerns and argue that, although an infringement by means of contamination has not occurred, the potential impact of any accident or malfunction on Line 9 has, in their words, the ". . . potential to annihilate the traditional harvesting practices of the First Nations should the neighboring lands and water be contaminated . . . ." **[Ex. D2-2, Adobe 5]**

Enbridge submits that a careful and considered review of the concerns that have been expressed by AFN, COTTFN, MNCFN, The Mohawks of Kahnawà:ke, and The Williams Treaties First Nations *and* of the relevant evidence can support only one conclusion: that the potential for adverse effect from the Project on Aboriginal rights and interests is minor – at most.

Remember, for instance, that the conclusion of the ESEIA was that potential environmental impacts related to terrestrial, aquatic, physical and socio-economic environment are anticipated to be minimal and are not expected to result in adverse residual effects after mitigation measures have been implemented. **[Ex. B1-19, Adobe 3]** Further, to this point in time, no Project-specific impacts on Aboriginal or treaty rights, or the exercise of such rights, have been identified. **[Ex. B19-25, Adobe 3]**

As we have already noted this afternoon, with very limited exceptions relating to temporary work space, the Project work would take place entirely on previously disturbed lands within the confines of Enbridge's existing and operating terminals and stations which are privately owned or controlled by Enbridge and incompatible with the exercise of traditional activities. **[*R v Peeace*, [1998] 3 CNLR 202 (Sask. Prov.), para. 72, aff'd 2000 SKCA 16]**

Even if the Board were to be persuaded – which you should not be – that the minor change in risk from the Project for 2.2% of the pipeline would constitute a potential adverse effect on Aboriginal rights or title, then the only reasonable conclusion would be that nothing more than minimal consultation was required and that the requirement has been more than sufficiently satisfied.

Claims of Past Infringements

As a separate matter, AFN, COTTFN and MNCFN have asserted that they were not consulted or accommodated when Line 9 was built and that Line 9 is infringing on their Aboriginal and treaty rights. **[Ex. C1-6-1, Adobe 3; Ex. C2-4-1, Adobe 3; Ex. C3-5-1, Adobe 3 and 4]**

More specifically, MNCFN expresses concern that neither Enbridge nor the Crown actively consult them during operation and maintenance of Line 9 **[Ex. C3-5-1,**

Adobe 3] and that the Crown allows Enbridge to transport oil through MNCFN traditional territory without any agreements in place. **[Ex. C3-5-1, Adobe 3]**

AFN claims that the construction of Line 9 in the mid-1970's, as well as its subsequent and ongoing operation, constitute an unauthorized taking of its traditional territory by the federal Crown. **[Ex. C1-6-1, Adobe 17]**

With respect, this hearing is not the proper forum in which to debate these issues. The courts have found that the duty to consult on a proposed project does not include addressing alleged past wrongs.

The Supreme Court of Canada made plain in *Rio Tinto* that:

> . . . An underlying or continuing breach, while remediable in other ways, is not an adverse impact for the purposes of determining whether a particular government decision gives rise to a duty to consult. **[*Carrier Sekani Tribal Council v. British Columbia (Utilities Commission)* (2010), 2010 2 S.C.R. 650 (sub nom. *Rio Tinto Alcan Inc. v. Carrier Sekani Tribal Council*) [*Rio Tinto*], para. 48]**

The question to be considered is whether there is a claim or right that potentially may be adversely impacted by the *current* government conduct or decision. Prior and continuing breaches, including prior failures to consult, will only trigger a duty to consult if the present decision has the potential of causing a novel adverse impact on a present claim or existing right. **[*Rio Tinto*, para. 49]** There is no such impact here.

As Justice Fenlon stated in *Adams Lake Indian Band v. British Columbia*:

> . . . the inclusion of past impacts within the scope of the duty to consult is inconsistent with the purpose for which the duty was designed. **[2013 BCSC 877, para. 51]**

A similar finding was made in *Louis v. British Columbia*. **[2013 BCCA 412]**

Enbridge's Consultation with Aboriginal Groups

Earlier in our submissions, we argued that Enbridge has more than met the Board's requirements to engage with Aboriginal groups. Let us elaborate – briefly.

Initially, Enbridge considered two factors in determining which Aboriginal groups to engage in respect of the Project. The first factor was proximity to the Project area. The second was Enbridge's knowledge of the Aboriginal groups in Ontario and Québec. **[Ex. B1-2, Adobe 34]**

Enbridge engaged with 14 Aboriginal groups and then five additional groups at the Board's request. **[Ex. B8-2, Adobe 33]**

The Aboriginal engagement program enabled Enbridge to: provide information about the Project; provide opportunities for each Aboriginal group to express concerns about the Project – including their views on impacts to Aboriginal rights; and, to address those concerns, as applicable. Engagement activities included sending notices, providing written project information, inviting Aboriginal groups

to open houses, and attending in-person meetings with Aboriginal groups. **[Ex. B1-2, Adobe 35 and 36]** All of this is described in the Aboriginal Engagement Summaries. **[Ex. B1-14, B8-9, B8-10, B18-9, B18-28 and B43-8]**

We submit that the record in this proceeding clearly shows that, through Enbridge's Aboriginal engagement program, all Aboriginal groups potentially affected by, or that have expressed an interest in, the Project, were provided with Project information and offered various opportunities to make their views known to Enbridge and subsequently, to the Board. They did so, in part, through issuing information requests to Enbridge and filing written evidence or letters of comment.

In addition, Enbridge has been working with AFN, for example, to understand potential impacts of the Project and to explore means of addressing the issues that AFN has raised. **[Ex. B43-2, Adobe 12]** Enbridge has been working with COTTFN to build capacity for technical review of the Project and to develop traditional land use information for the purpose of identifying sensitive areas and specific Project-related concerns. **[Ex. B43-2, Adobe 12]**

In our submission, the evidence also shows that, to the extent practicable, Enbridge has addressed the concerns expressed by Aboriginal groups about the Project. To name only a few examples: Enbridge has addressed concerns about the age, design and fitness for service of the pipeline **[Ex. C1-6-1, Adobe 23]** through describing,

maintaining and following the Integrity Management Program and by providing credible evidence to counter the less than credible information that seems to underlie many of the concerns. One such is the repeated assertion that diluted bitumen is more corrosive or "rougher on pipelines" (to use the words of The Williams Treaties First Nations) than other crude oils. With great respect, evidence filed by Enbridge demonstrates that this is simply not the case. **[Ex. C2-4-1, Adobe 18; Ex. D2-2, Adobe 4; and, for example, Ex. B1-12, Adobe 21; Ex. B19-5, Adobe 4; Ex. B25-5]**.

Enbridge has also addressed concerns expressed by Aboriginal groups and others about pipeline integrity through preparing and filing the Pipeline Integrity Engineering Assessment, the Facilities Integrity Engineering Assessment, and the Revised Pipeline Risk Assessment and by explaining its Integrity Management Program. **[Ex. B1-15; Ex. B1-18; Ex. B21-2]** Numerous information requests relating to those topics have also been answered by Enbridge.

Concerns about leaks and spills have been addressed through the design, implementation and continuous improvement of the pipeline leak detection system. The Board and others asked, and Enbridge answered, many information requests about those topics.

Concerns over potential environmental impact of the Project are addressed through the proposed environmental protection procedures and mitigation measures.

Concerns about explosion risk, for example, are addressed through implementation and enforcement of the crude quality specifications in the Revised Tariff and compliance with the Board's regulatory requirements and conditions.

The Company will be providing additional opportunities to First Nations members to tour and observe Project work; as the Company is doing with respect to its day-to-day operations in the region. This should facilitate an improved understanding of Enbridge's practices and emphasis on safety. **[Ex. B43-2, Adobe 12]**

Finally, Enbridge is exploring opportunities for meaningful economic participation by First Nations and will continue to do so. Enbridge also intends to continue its efforts to create opportunities for education and training necessary to build First Nations capacity for economic participation. **[Ex. B43-2, Adobe 12]**

In summary on Issue 7, Enbridge respectfully requests that the Board find that Enbridge has satisfied the requirements for consultation with Aboriginal groups and that any potential impacts of the Project on Aboriginal interests would be minimal and appropriately mitigated.

ISSUE 8: CONSULTATION ACTIVITIES AND POTENTIAL IMPACTS OF THE PROPOSED PROJECT ON AFFECTED LANDOWNERS AND LAND USE

Consultation Activities

Enbridge has engaged in comprehensive and effective public consultation in respect of the Project. Unfortunately, we cannot discount the possibility that you may hear contrary arguments as this proceeding continues. With respect, any such argument should be rejected as being both unsupported by the evidence and unfair to Enbridge.

The evidence relating to Enbridge's public consultation about the Project is extensive. **[see for example, Ex. B1-2, Adobe 27-32; Ex. B8-8; Ex. B18-47, Adobe 21-24 (see also subsequent revision Ex. B35-44, Adobe 26 and 27); Ex. B18-32, Adobe 36 and 37; Ex. B19-22, Adobe 3 and 4; Ex. B20, Adobe 92-94; and, Ex. B43-7]**

Among other things, that evidence demonstrates that Enbridge carried-out – and, indeed, continues to carry-out – a Project-specific public consultation that was designed for early engagement and provision of detailed and timely Project information. The consultation program was also designed so that interested parties were afforded sufficient opportunity to respond with comments, questions, or concerns and, if they so chose, to meet in person with Enbridge representatives to

discuss issues or obtain further information. Enbridge has engaged more than 2,600 stakeholders in consultation on the Project. **[Ex. B20, Adobe 92 and 93]**

Importantly, the consultation process would not end with approval of the Project. Enbridge is committed to ongoing engagement with stakeholders through the life of the Project and will continue to pursue a number of activities to that end including: arranging meetings or presentations as required or requested; sending Project update letters as appropriate; responding to e-mail messages received at the Project e-mail address and responding to calls to the toll-free telephone number; and, updating the Project website. **[Ex. B20, Adobe 94]** For example, recent meetings took place with Ville de Montréal and Ville de Terrebonne. Others are planned with Ville de Montréal-Est and the Ministère du Développement durable, de l'Environnement, de la Faune et des Parcs to discuss the Project and gain a better understanding of the environmental permitting requirements of each. **[Ex. B43-2, Adobe 9 and 10]**

Potential Impacts of the Project on Affected Landowners and Land Use

It must be recognized that, in designing and implementing the public consultation Program for the Project, Enbridge took account of the nature and type of work to be undertaken as part of Project construction. **[Ex. B1-2, Adobe 27 and 28]**

Since the great majority of the Project work would take place entirely on previously disturbed lands within the confines of Enbridge's existing and operating terminals and stations, it is submitted that the Project would have no noticeable impact to landowners or land use.

We respectfully submit that the Board should find accordingly.

ISSUE 9: THE TERMS AND CONDITIONS TO BE INCLUDED IN ANY APPROVAL THE BOARD MAY ISSUE FOR THE PROPOSED PROJECT

Before providing Enbridge's comments respecting the draft potential conditions set out in Appendix II to the Board's letter of 30 September 2013, it is necessary to comment on the conditions proposed by the TRCA, the City of Mississauga, and MNCFN respectively, in their written arguments.

We may have further submissions to make in our reply argument if the MRC of Vaudreuil-Soulanges or the municipalities of Très-Saint-Rédempteur, St. Justine de Newton, Rigaud, or Ville de Ste-Anne-des-Plaines propose any conditions during their oral arguments. The same applies in respect of any other intervenor that may do so.

We should also say that several letters of comment including – to name only some of them – those filed by: Ville de Montréal, Municipalité de Saint-Télesphore, Municipalité de Saint-André-d'Argenteuil, Cataraqui Region Conservation

Authority, The City of Hamilton, The City of Kingston, and the Town of Ajax included recommendations for conditions. Enbridge respectfully submits that, to the extent that the conditions proposed by these, or any other commenters, are reasonable, appropriate, relevant to the Project, and within the Board's jurisdiction, then they are sufficiently addressed through the Board's potential conditions (taking into account the submissions that we will make shortly).

TRCA Conditions

The TRCA confirms in its written argument that it has reviewed the draft potential conditions. It also offers proposed language for additional conditions. **[Ex. C39-7, para. 36]**

Enbridge respectfully submits that none of those additional conditions is necessary because the apparent purpose for each would be met through a combination of: (1) the requirements of the *Onshore Pipeline Regulations*; and, (2) the Board's potential conditions – including Condition 3 which references the policies, practices, programs, mitigation measures, recommendations, procedures and commitments for protection of the environment included in the Application, to which the Application refers, or made in Enbridge's related submissions in this proceeding.

City of Mississauga Conditions

It is unclear from the written argument of the City of Mississauga whether the City also reviewed the draft potential conditions before offering the 15 suggested conditions that it did. **[Ex. C45-9-2, para. 7]** In any event, Enbridge submits that none of the conditions that the City proposes is necessary.

Specifically, for the reasons that have already been discussed, the Board should not impose any condition respecting financial assurances – including any condition related to the amount of insurance coverage or other financial surety to be maintained.

Similarly, the NEB will determine how, and according to what timetable, it will make sure that Enbridge continues to implement improvements discussed in the May, 2013 *Compliance Verification Report*. It is neither necessary nor appropriate to attach any such condition to Project approval.

Enbridge submits that the Board is more than capable of deciding whether or not the Project poses any risks to human health or the environment. No independent study, as contemplated by Mississauga condition (vi) is warranted, and no such condition should be imposed.

As we mentioned earlier this afternoon, Enbridge is establishing a pipeline maintenance work crew in Mississauga commencing in the third quarter of 2014 and so there is no need for the City's condition (vii).

Finally, it is submitted that the apparent purpose for each of the remaining conditions requested by the City of Mississauga would be met through the Board's potential conditions.

To be specific, Enbridge submits that: Mississauga condition (ii) is unnecessary in light of Board Conditions 24 and 25; Board Conditions 9 and 10 make Mississauga condition (iii) unnecessary; there is no need for Mississauga Conditions (iv) or (v) since their apparent purpose would be achieved by NEB Condition 15; and, Mississauga conditions (viii) through (xiii) would serve no purpose that would not be served by Board Condition 23.

MNCFN Conditions

The MNCFN also seeks to have the Board place conditions on any approval given to Enbridge in respect of the Project.

One of the conditions requested by MNCFN is that Enbridge be required to ensure that adequate insurance and/or funds are available for any cleanup, compensation, and restoration in the event of an oil spill on MNCFN traditional territory whether

resulting from the Project, investigative excavations, or what MNCFN calls the "upcoming Line 10 and 11 replacements." **[Ex. C3-11-2, para. 9(e)]**

There is, of course, no need for us to repeat Enbridge's views regarding proposed conditions for financial assurances. Further, it is clear that the Project scope does not include either the investigative excavations or the "upcoming Line 10 and 11 replacements" to which MNCFN refers. This means that the MNCFN proposed conditions would also be inappropriate as being unrelated to the approvals that are requested in the Application.

MNCFN requests a condition requiring archeological assessments at any Project work site (as well as others) prior to work commencing and, further, the active participation of third party contractors in archeological assessment and monitoring work at any work site. Another condition requested by MNCFN would require Enbridge to provide financial resources to MNCFN to fund hiring and administration of the monitors and hiring of consultants to review and approve all Enbridge permits and approvals relating to the Project, investigative excavations, and "the upcoming Line 10 and 11 replacements." **[Ex. C3-11-2, para. 9(d)]** It is submitted that NEB Condition 6 c) should be more than sufficient to satisfy any concerns regarding archeological resources to the extent that they are relevant to the Project and the Application.

Now, to the submissions of Enbridge regarding the Board's potential conditions.

Potential Condition 5

Condition 5 contemplates a requirement that Enbridge file with the Board and post on the Company's website a Commitments Tracking Table.

Enbridge has no concerns with continuing to use, for the Commitment Tracking Table, the approach that has been followed by Enbridge throughout this proceeding regarding the provision of information in both of Canada's official languages.

Specifically, Enbridge will file with the Board and post on the Company's website an English version of the Commitments Tracking Table that would include a hypertext link to the French version – which would be posted on the Company's website as soon as reasonably possible after the English version is filed with the NEB.

Potential Condition 9

Enbridge submits that the Board's proposed timing, as reflected in Condition 9, for filing the Updated Pipeline Engineering Assessment would be challenging to meet based on the Project schedule. Therefore, Enbridge requests that the deadline be revised from 90 days prior to applying for leave to open to 30 days prior to applying for leave to open. This revised timing would make certain that all of the

investigative excavations have been completed and a full data set obtained. It would also facilitate inclusion of information obtained from field observations in the Updated Pipeline Engineering Assessment.

Potential Condition 10

Before commencement of operation of Line 9B in eastward flow, all known features meeting the CSA Z662-11 repair criteria will be mitigated in a manner consistent with the Integrity Management Program and in accordance with CSA Z662-11 to confirm the continued safe operation of the pipeline. However, the Board's proposed timing for Condition 10 would be challenging to meet given that the pipeline maintenance activities would be undertaken independently of Project construction activities. Enbridge therefore submits that the phrase "15 days prior to applying for LTO" should be substituted for "30 days prior to applying for LTO" in the Condition.

Potential Condition 11

Enbridge has no concerns with Condition 11 provided that it relates to the hydrostatic testing of new facilities piping for the Project. As previously stated, Enbridge submits that it should not be required to hydrostatically test the Line 9 mainline.

Potential Condition 12

The second sentence of Condition 12 c) requires that the Enbridge LDS design meet or exceed the expectation of CSA Z662-11 – Annex E. Enbridge submits that the sentence is not required given potential Condition 2 and the Enbridge response to NEB information request 4.8 in which Enbridge committed to meeting or exceeding Annex E, and which provides a complete explanation of the way in which the Enbridge Material Balance System does so. **[Ex. B41-2, Adobe 18 and 19]**

The last paragraph of Condition 12 speaks to Enbridge demonstrating compliance with the relevant conclusions and outcomes of the *Compliance Verification Report*. It is respectfully submitted that the focus should instead be compliance with the Board's Safety Order (SO-E101-003-2013) and that all of the words "the relevant conditions and outcomes of the Compliance Verification Report under the *National Energy Board Act* In the Matter of Enbridge Pipelines Inc. – Edmonton Control Room Inspection and Assessment (May 2013) and related" should be deleted.

All items resulting from the Order (human factor and management system reviews) will be addressed and incorporated into the LDS manual.

Potential Condition 26

Finally, Enbridge submits that the words "construction in relation to" should be inserted after the word "unless" and before the words "the Project" in the second line of Condition 26. The effect of the Condition, as revised, would be to cause the Order to expire unless construction in relation to the Project has commenced by the date specified. This wording would also reflect that of the French version proposed by the Board.

III. OTHER RELIEF REQUESTED

One final matter remains before we offer our concluding remarks – and that is to address the other relief that Enbridge has requested from the Board.

The request is that the Company be exempted from the requirement to keep the system of accounts for the Project prescribed by paragraph 5(1)(c) of the *Oil Pipeline Uniform Accounting Regulations* and from the filing requirements specified in *Guide BB* of the *Filing Manual*. We have brief submissions to make in respect of each of those requests.

Exemption from OPUAR

Subsection 5(1) of the *OPUAR* requires Enbridge, as a Group 1 company, to do the following:

- keep separate books of account in Canada in a manner consistent with generally accepted accounting principles;

- unless otherwise authorized or instructed by the Board, keep accounts in the manner set out in the *OPUAR*; and

- keep the system of accounts prescribed in the *OPUAR*.

Enbridge complies with paragraphs 5(1)(a) and 5(1)(b) vis-à-vis Line 9 and more generally. However, Enbridge does not keep its General Ledger according to the prescribed system of accounts. Enbridge instead maintains its GL according to its own chart of accounts and maps its GL accounts to the prescribed system of accounts. Enbridge would therefore be able to recast its General Ledger according to the prescribed system of accounts if, and whenever, the Board were to require it to do so.

Enbridge proposes to continue to maintain its existing chart of accounts for Line 9 and seeks such exemption from paragraph 5(1)(c) of the *OPUAR* as may be necessary to permit it to do so. **[Ex. B42-1, Adobe 2 and 3]**

Guide BB

The filing requirements specified in *Guide BB* of the NEB *Filing Manual* pertain to the obligation of Group 1 companies, under the *Toll Information Regulations*, to

file quarterly surveillance reports. Enbridge seeks exemption from those requirements pursuant to subsection 129(1.1) of the *National Energy Board Act*.

Instead of the information specified in *Guide BB*, Enbridge proposes to file with the Board, on an annual basis, audited consolidated financial statements. This would be consistent with past practice and the filing of audited annual consolidated statements, combined with the existing NEB audit provisions, would provide the Board with the information required to evaluate and monitor financial information. **[Ex. B42-1, Adobe 3]**

IV. CONCLUSION

In conclusion, Madam Chair and Members, Enbridge Pipelines Inc. submits that, based on the substantial evidence that comprises the record of this proceeding, you can be more than confident that a re-reversed Line 9 – flowing eastward with expanded capacity – would be safe to operate and safe to transport, from Sarnia to Montréal, all oil that would meet the specifications in the Revised Rules and Regulations Tariff.

The Project would benefit shippers including, and perhaps most importantly, the Québec refiners that have committed to it.

It would benefit western Canadian producers by providing them with access to new markets and other advantages.

The Project would yield substantial socio-economic benefits for Québec and Ontario, in particular, but not exclusively.

In short, the Project would advance the overall Canadian public interest.

Enbridge therefore respectfully urges that you approve the Application and grant all of the requested relief as soon as possible.