

COMMENTARY: This principle is excerpted from 3790

"The Supreme Court here refers to the principle of subsidiarity which suggests that local governments, being the closest to the people, should be empowered to exceed not lower national norms."

**--- FINAL ARGUMENT BY/ARGUMENTATION FINALE PAR CITY OF TORONTO:**

3784. **MR. REMPE:** Thank you very much, Madam Chair and Members of the Board.

3785. I do have some materials which I would ask Madam Registrar to distribute. So I have a case and -- that I will be referring to and I have a written version of the oral argument. And so, I've provided cases or copies for the Board and my colleague is leaving copies at the back for the members of the public that may be interested in looking at that.

3786. And I should say as a preliminary, that the written version of the oral argument, I did not but should have written on that, check against delivery because obviously, that's what governs. And I should also say that I have provided a copy of that written version to the court reporter and so I don't propose to refer at all to the exhibits or maybe the odd exception, but I have set them out there for your assistance and the assistance of the court reporter.

3787. And I'd like you to know I'm putting my Blackberry here not to check it, but rather just to keep an eye on the time.

3788. So Madam Chair and Members of the Board, thank you on behalf of the council and staff of the City of Toronto as well as the Toronto Transit Corporation -- or Commission for the opportunity to make submissions before

- you today.
3789. And the Toronto intervention is very much based on a community safety perspective. And to illustrate that perspective a bit, I'd like to draw to your attention, without necessarily having you turn it up, to the *Spraytech v. Hudson* case, which is the one that I've provided to you. This is a case in which the Supreme Court reviewed the role of municipalities in the very important area of protecting the environment.
3790. And I'd like to mention a couple of paragraphs. First, paragraph 3 where the Court refers to the environment as a major challenge that requires action by government at all levels. The Supreme Court here refers to the principle of subsidiarity which suggests that local governments, being the closest to the people, should be empowered to exceed not lower national norms. Now that's a bit of a different case because it was a regulatory issue, but in our submission, the principles still apply.
3791. I'd also like to refer you to paragraph 27, [on p.265] right at the end, on the role of municipalities in relation to matters of local health and environment, in other words, the community safety perspective.
3792. Here we have the Supreme Court quoting the Court of Appeal for Ontario on the role for municipalities as "trustees of the environment". Now, that is not to suggest that the municipality is the only one with that role, there are many with that role, and principally in this case, of course, that's you. I raise it simply to reinforce the city's submission that municipalities do have an important role in aspects of community safety and environmental protection, and that's why we are here today.
3793. Municipalities such as Toronto are key stakeholders in pipeline projects. They own land and infrastructure. Toronto, for example, owns \$28 billion worth of water infrastructure. [C40-7-2, at p.1, FN 1] Municipalities have an obligation to provide clean, safe drinking water. Toronto provides that water for some 3.2 million people both in Toronto and in the regions around Toronto. [Ibid, p.17]
3794. Municipalities are usually the first responders if there is an emergency and these services would be critical in the event of a major discharge from Line 9.
3795. Municipalities are also -- to use the language from the *Hudson*

decision -- the "closest to the people". Folks may not be familiar with the workings of Enbridge or of this Board, but they sure know where City Hall is.

3796. Now, there's a great deal of public concern about what can happen if there is a problem with Line 9. Everybody has some idea of the worst case: the 2010 spill in Marshall. In that case, a pipeline of the same size, of the same vintage, owned by the same company, discharged some 3 million litres of dilbit into a waterway which was surging due to recent rains. Contamination was widespread. The clean-up is still underway years later, with costs approaching \$1 billion, billion with a B.
3797. The Marshall spill was followed by a National Transportation Safety Board or NTSB as I'll refer to it report and review and report which was strongly critical both of Enbridge, and of the U.S. regulatory authority, the P-H-M-S-A or PHMSA as I'll refer to it.
3798. The Marshall spill raises concerns about integrity management, spill response and financial assurance, exactly the issues that have been flagged by city council and by the councils of other municipalities as deserving of the highest level of attention. *[COT Evidence, EX. C40-7-2, paras. 5-14]*
3799. We would like to highlight for the Board that Toronto has organized through this process a liaison group with a number of municipalities and Conservation Authorities to present this Board with issues that are of concern to all.
3800. We have pooled our internal expertise in areas such as water supply, firefighting and emergency response planning, and we have shared the cost of experts, who have provided us with assistance in reviewing those aspects of the application where we lack internal expertise. And we hope that our combined efforts will assist this Board in crafting the right decision that will truly serve the public interest.
3801. I'll divide our presentation into three areas that reflect the three issues identified by city council. *[[Ex. 40-7-3, pp. 21-25]*
3802. These issues are, one, integrity; in other words, let's prevent a Marshall or any other kind of spill. Two, spill preparedness; should the worst happen, let's be certain that we are prepared to deal with it quickly and effectively. Three, financial assurance; should the worst happen, let's make sure

- that funds are available to fully compensate those who have suffered losses.
3803. And so we'll review these issues and we'll provide this Board with our observations on how they mesh with the NEB's proposed conditions [Ex. 47-7] and offer our own proposals for conditions in areas where we believe they are merited.
3804. Our first issue then is pipeline integrity which falls under your Issue List numbers five and six.
3805. First, there's been much speculation about the risk of corrosivity associated with the transportation of dilbit material and presumably synbit and dilsynbit, these other related heavy crude materials.
3806. We have received expert advice on this issue based on the documents filed by all parties. We have carefully reviewed both the NTSB report on Marshall [Ex. C59-10-2] that I referred to, and the Transportation Research Board Report 311 on the Effect of Dilbit on Transmission Pipelines [Ex. B25-5] which is also in evidence.
3807. We are of the view based on this review that, subject to the imposition of conditions as proposed by the NEB [Ex. A47-7] and subject to amendments we will outline, the risks of corrosion associated with the operation of the pipeline can be managed.
3808. We rely on the NEB to impose and oversee stringent integrity management programs and procedures in ensuring that aspect of community safety.
3809. In addition to the proposed NEB conditions, we are in favour of the following conditions being fully met prior to applying for leave-to-open.
3810. Proposed Condition 15 provides that Enbridge must file with the Board an evaluation of its Mainline valve system. We propose an amendment to add after the first sentence in that condition, quote, "That evaluation should include consideration of remote shutdown valve placements adjacent to the east branch of the Don River". End quote.
3811. This valve placement and system modification will lower the maximum volume out at that location to approximately 7,000 barrels or less. The

- current maximum at the east branch of the Don River is almost 12,000 barrels, and that, by my calculation, is nearly 2 million litres, which is roughly the ballpark of Marshall.
3812. We understand that Enbridge is engaged in an intelligent valve placement study and that two valves are being installed in the Don Valley. We support this program of course, however, it is our view that all major watercourses should have valves that prevent the release of any significant amount of material.
3813. The Board's Proposed Condition 16 provides for a geohazard study and Conditions 17 and 22 for a watercourse crossing management plan. Again, we fully support these.
3814. We also request, however, a condition that will ensure that Enbridge completes, at least 30 days prior to LTO, the replacement of cover or other corrective actions required at the three locations I've referred to here are Newtonbrook Creek, the Dawn River and the Honi -- I'm not sure if I'm pronouncing that right but H-O-N-I Lands as referred to by Enbridge [*Ex. B19-29, at p. 34*] in the evidence.
3815. We understand that these activities will be complete in 2013, and so this requirement could, in our submission, be added as a new Condition 17A.
3816. Toronto also submits that the following conditions could apply to post-construction and operation of the Line. Enbridge has provided a timetable to complete a study of leak sensitivity. In other words, the estimated maximum volume of product that can be released before a leak is detected by January the 31<sup>st</sup>, 2014. [*Ex. B35-3, p32*]
3817. Accordingly, we request a Condition 19A, that Enbridge file with the Board the results of that study within 30 days following LTO.
3818. There are some remaining knowledge gaps in the corrosivity of dilbit and heavy crude oil. The Alberta Innovates Corrosivity Comparison Study, filed by Enbridge in these proceedings, recommended more work on sludge formation, deposition and under-deposit corrosion. [*Ex. B1-12, pp. 21, 43*]
3819. Enbridge's Pipeline Engineering Assessment also states that:

*“A prevention program has been planned to displace  
corrodents through routine maintenance via in-line cleaning  
tools.” [Ex. B1-15, p. 50 of 96]*

3820. So sediment and water or S&W monitoring is critical to understanding under-deposit corrosion. Toronto, therefore, requests a Condition 24A, that Enbridge be required to report annually on S&W testing to the NEB and that that report should also include upset conditions causing the S&W level excursions above the limit, as well as pipeline injections that are not tested for S&W prior to injection.

3821. And as a further condition, and really a proposed modification to Condition 24, Enbridge, we’re asking, must modify its integrity management plan to include analysis of collected S&W and measures taken to mitigate its presence. In other words, a mechanism for this Board to keep an eye on what’s going on in that important subject.

3822. We also request a new Condition 25A, that Enbridge file with the NEB a procedure to report to the Board on all material balance system or MBS alarms or imbalance alarms and any unusual event pipeline shutdowns. And further, that Enbridge start that reporting within 18 months following LTO.

3823. And a little background on that. Misinterpreted imbalance systems were a problem at Marshall [Ex. C59-10-2, findings 13-15 at p. 119] and at a 2009 spill in Odessa, Saskatchewan [NEB Report P09H0084, B19-29, p. 48] to which we’ve referred in the evidence. And in that latter case, the MBS misinterpretation was associated with the addition of DRA material.

3824. The addition of DRA material is an important part of the current application. Enbridge indicated that:

*“Specific procedures have been created to manage the types of  
changes that can be performed [on the MBS system] during  
DRA injection.” [B19-29, p. 49]*

3825. However, there’s no reporting to the NEB of these imbalance alarms or occurrences when they are overridden or occurrences when the pipeline shuts down. And without such reporting, the NEB lacks important information on system performance and hence, that proposed condition.

3826. Those then are the additions we would suggest to the Board's conditions pertaining to integrity management.
3827. We draw comfort from the Board's conditions and from the Overland Pipeline Regulation, particularly the amendments made in March of 2013, as well as CSA Z662-11, the standard applicable to oil and pipeline systems. Together, these should provide a regulatory framework that can manage the risks inherent in the operation of this facility.
3828. We also appreciate and look forward to the active role of the NEB in monitoring the implementation of these measures, including all of the measures committed to in the information responses from Enbridge, through the commitment tracking table that's referred to in NEB proposed Condition 5. *[Ex. A47-7]*
3829. I'll now move to the second area of concern, the spill contingency issue which relates to NEB Issues 6 and 9. And I'll divide this issue into emergency preparedness, drinking water and what I'll call the TTC issue.
3830. The first area I'll discuss will be emergency preparedness. Many of the municipalities with whom we have worked on this project had similar concerns in this area. That's hardly a surprise. These are hazardous materials; they are being moved in great quantities. They are moving through the most densely populated areas in Canada. In the event of a spill, there may be significant delays for Enbridge crews to arrive on scene. And at those times, it will fall to local emergency staff to respond, and they do so, within minutes.
3831. This response is often dangerous, complex, costly. Municipalities do not and will not shy away from fulfilling this role. They do want to be sure though, that all necessary measures are in place in advance to facilitate their response, and that this Board enshrines those measures in its conditions.
3832. The NTSB report on Marshall stated that a contributing factor to the accident was "failure to identify and ensure the availability of -- and I'll pause to underline -- "well trained emergency responders" -- and again underline -- "with sufficient response resources..." *[Ex. C59-10-2, p 121]*
3833. It's not fair to suggest that there has been no emergency planning and liaison. There has been, and the evidence spells out what. But the question we all want answered is, is it enough.

3834. And of course what the public wants, and what the municipalities want in addressing this community safety perspective is the highest level of planning and preparedness. We want the Cadillac version, not the Chevy. Not to denigrate Chevy's. I actually drive one.

--- (Laughter/Rires)

3835. **MR. REMPE:** But I think you get the point.

3836. Let's be more tangible, though. What do firefighters and emergency responders expect? The Toronto expectations are set out in paragraphs 15 through 19 of the Toronto evidence. *[Ex. C40-2, at pp. 4-5]*

3837. I pause to note that District Chief Noormahamud, who prepared that portion of the evidence, is very experienced in hazardous material and emergency preparedness planning, as you can see from his qualifications which are also filed. *[Ex. C40- 7-9, at p.6]* His advice, and that of other firefighters and emergency personnel, should be taken very seriously and given great weight. They reflect a level of expertise in emergencies and in the local context, and how this information can shape and improve emergency response plans.

3838. So what does the Toronto Fire Service ask for? That meetings take place involving municipal officials; that response mechanisms be developed to spell out specifically -- and I underline that -- how municipal emergency personnel will be involved; that documentation be prepared based on this discussion, and made available to the municipal staff. Detailed specifications of these requirements are spelled out in our paragraphs 19 and 20 to 24 within our evidence. *[Ibid, pp. 4-6]*

3839. Now, you may ask, why not rely on the proposed conditions to achieve this, particularly Conditions 13 and 23. *[Ex. 47-7, pp. 4,6]* We are concerned that there is a bit of a one size fits all approach. What makes sense in rural north Westover may not make sense in urban North York or vice versa, and that is the heart of the matter. Hands on exchange of ideas and plans tailored to the locale are what's called for.

3840. So we ask the Board to ensure through its conditions that the consultation referred to in Condition 23 be, and I quote, "specific, meaningful, ongoing and iterative", and that municipal responders not simply be presented

- with a fait accompli. And we ask that municipal responders be provided with up to date copies of key documents.
3841. We also suggest that a new Condition 21j be added to the Engagement Report requirement proposal from the Board to require, and I quote, “details regarding discussions with municipal emergency responders”. So let’s get it on the record.
3842. Now, Mr. Richmond, you’ve asked a number of questions of the municipal intervenors throughout the proceedings about the information that they have received and the liaison that they have had, and I believe you too, monsieur Gauthier, and I’ve anticipated that you may have the same questions for Toronto, so good on me. So let me try and address them for you.
3843. First, did we get the USB key with the emergency information? Well, the answer to that is yes and no. District Chief Noormahamud provided me with this one. I’ll just hold it up so folks can see what it is. I cannot advise how many copies the city got of this but we certainly did have a copy. And I did have a chance to look at it, and what it shows is, I think, illustrative of the Fire Service concern that the level of detail that’s really needed isn’t there.
3844. The key has a summary of MSDS sheets or material safety data sheets for products carried in the Enbridge system. These include crude. However, the actual MSDS sheet for crude is not on the key but there are other MSDS sheets on that key. So we see this one size fits all approach and the crucial information would seem to be missing.
3845. Now, in fairness, Enbridge has provided municipalities with a paper version, or at least the City of Toronto with a paper version of the crude MSDS but I think it would be very helpful if this information contained it.
3846. The key also has maps of Line 9. They’re not at the detail that are provided in response to the Board’s queries. [Exs. B21-4,5 and 6] I think it’s 127 from memory, but the maps on the key are better than nothing, to be sure.
3847. But the better approach may be to provide either a link, or a CD to emergency staff with the more detailed version. I understand that there may be a problem with the technology here but, as with all things electronic, a solution can surely be identified. Perhaps, if we wait for three weeks there will be some sort of upgrade provided. That’s what seems to happen with this electronics these days.

3848. Toronto has, I mentioned parenthetically, provided Enbridge with GIS mapping [Ex. C40-7-7] that is at the level of detail we think is appropriate in a large urban area. These maps show catch basins. And I pause to mention that both TRCA and Mississauga felt that this information was crucial, and I think probably everyone shares that concern, because those catch basins run into the rivers which in turn run into Lake Ontario. They also show hydrants. They show land uses relative to the pipeline, including densities, and types of use. They are, in our submission, a useful planning tool.
3849. By the way, the one that's shown up there is not a particularly good example. We had it printed. Really the best way to see these things is actually get onto them through your computer and then you can look in great detail. This one, if you blow it up, it just becomes blurred. So it's something that's meant to be reviewed online.
3850. The key also contains the pamphlet that Enbridge has been distributing for many years. This pamphlet shows maps of continental North America and that sort of thing. It's very generic; it's interesting, but not very helpful in a fire or evacuation. The entirety of the safety information can best be summarized as common sense. And there is certainly nothing wrong with that. But it is precious little help in the way of preparation for emergency responders should the worst happen. Something more, we submit, is in order.
3851. The key also has two movies on it. I regret to say neither of them is "Gravity" or "Rush". But there is a very snazzy production called CSI 811. This is about call before you dig programs. The 811 number unfortunately is a U.S. number and doesn't apply in Canada. And no number is provided for Line 9. But even if the number were provided, of course, it really doesn't have very much to do with how firefighters or police should respond.
3852. And finally, there is a second movie which is really a recap of the pamphlet. Lots of promotional stuff but little that would actually aid responders (sic); basic instructions. Responders I should say.
3853. Ultimately, the advice is, as we've heard, simply secure the area and assist with evacuation if need be. Well, that's pretty slim if it's supposed to constitute an emergency plan. And it contains no discussion at all of what may need to get done if oil is gushing into a waterway for four hours while the Enbridge response crew is fighting traffic on the 401.

3854. The key and the pamphlet then are a good start but they don't equal an emergency management plan along the lines of what was suggested elsewhere. And so we have a concern where counsel is noting that we have this material and the Board is asking about it, that there not be an impression left that everything that is needed is there because, in our submission, it isn't.
3855. We also obtained a version of Enbridge Book 7 "Emergency Response" that was referred to earlier. We did not get this volume as a matter of course. We were not consulted in its preparation, we were not provided with a copy. In order to prepare for this hearing, we asked Enbridge for a copy, and we were provided with a reference from the Phase I hearing to the old copy that was out of date within, I think, two weeks of our having been referred to it as a result of the regulatory amendment I mentioned.
3856. We were not consulted on the revised version. We were not provided with a copy of the revised version. We got that through the information request process. Hopefully, Condition 23, as we proposed amendments, will improve the availability of this information.
3857. Now, we've had a long, hard look through the current version [*Ex. B22-19*] working our way through what I can only really summarize as in a sense a puzzling array of redactions and areas where whole pages are being blanked out. And we looked for information and details that would explain how Toronto or other large urban settings would be addressed in a major spill situation. We found nothing of that sort.
3858. The need for it, though, is obvious. One need do no more than look at the pictures that were filed with the Toronto evidence. [*Ex. C40-7-6*] These are Mr. Monroe's pictures, and I believe he's an intervenor here. And when you look at those pictures you can see this is not a green field like the one in the CSI 811 movie. A Marshall style leak here has major implications.
3859. And don't take me to say that pipelines cannot co-exist with subways and apartment buildings as they're shown in those pictures. They can and they do. Rather, our submission is that where they are close by, the emergency plans in place need to be that much more detailed. Generic plans are fine, but we all know that the devil is in the details, and the details here are missing.
3860. I'd also like to comment on some remarks made -- observations made

- by Mr. Crowther in Montreal that the response time issue is not regulated, and in any event, the predicted times here are better than the 6 to 12 hours allowed by the regulatory authority in the U.S. PHMSA.
3861. We urge this Board to avoid any sort of lowest common denominator approach to emergency response. I'd like to quote from again the NTSB investigation of Marshall where they conclude in their finding 23 that, quote, "PHMSA's regulatory requirements for response capability planning do not ensure a high level of preparedness..."-- end quote. And they go on that PHMSA's, quote, "weak regulation" - -end quote -- was a contributing factor. *[Ex. C59-10-2, pp 120-121]*
3862. So the bottom line is it's cold comfort to say that no one's forcing us to meet deadlines and, in any event, we're better than the weak regime that contributed to the Marshall disaster.
3863. Firefighters and other emergency officials are expected to respond to fires in a matter of minutes. In our submission, it's a recipe for disaster to say that a crude leak, with the potential, as we have tragically and so recently seen, to level entire sections of a city can wait for up to four hours.
3864. We'd also like to refer to the exercises that have been carried out. We participated in one big one, and we're grateful for that, on the Don River, and we participated in several other table-top exercises.
3865. That is the, if I can, hands on stuff, which is what is needed and for which meetings with political staff is not a substitute, although we certainly don't in any way suggest that those meetings are not necessary as well, just not a substitute. The majority of the exercises are table-top exercises. We don't denigrate those exercises, we simply stress that they are not a substitute for the in vivo exercises such as the one on the Don. And that's what we'd like to see more of.
3866. We acknowledge the reasonable concern I believe that you expressed, Madam Chair, in Montreal, about repetition or overlap among different fire departments. We all look for methods to keep our costs at a prudent and financially responsible level. The reality is that just as the conditions on the ground in each municipality differ, so too do the challenges faced by its emergency responders. They are unique at many different levels. While it may be time consuming and expensive, there is no substitute for local input, planning,

and training.

3867. The documents referred to in Condition 23 need to be prepared in consultation with the municipal first responders along the Line to reflect in detail the requirements of those municipalities. They must have an appropriate level of specificity. Each municipality should be provided with copies of the documents as amended from time to time. In other words, more specificity, more hands on liaison.

3868. I now turn to drinking water protection. Before I do I'm going to have a little sip of our own Toronto delicious drinking water here.

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3869. **MR. REMPE:** The Toronto and region source protection area is shown at our paragraph 43 of our evidence. [EX. C-40-7-2, p. 11] It's a densely populated area projected to grow substantially in a short period of time. A significant oil spill in this region would have potentially catastrophic impacts on people, businesses, and the environment.

3870. One of Toronto's chief concerns is the effect a spill would have on the quality of the city's drinking water. This is a concern that is shared by many other municipalities that draw water from Lake Ontario. [EX. 40-7-4, pp. 2, 8-9, 18, 20, 37]

3871. I'd like to highlight briefly, as an aside for the Board, the qualifications of the city witness that prepared this evidence, Michael D'Andrea. His CV has been filed. [Ex. C40-7-9, pp. 1-5] And he has extensive experience in infrastructure and environmental planning, especially as it relates to Toronto water and wastewater systems. So we hope that his evidence will be of value and assistance to the Board.

3872. The source water protection plan for the Credit Valley, Toronto and region, and Central Lake Ontario, or the CTC source protection area -- and what's happened here is as a result of the incident in Walkerton, Ontario where there were deaths as a result of contamination, there was an enactment of a *Clean Water Act* in Ontario which required these planning zones to protect drinking water. This is all set out in our evidence but just as a little background for now.

3873. And as a result, each source protection area is required to develop a

- plan and policy. In other words, exactly the kind of, if I may, prophylactic approach to problems, let's figure out what they might be and put policies in place.
3874. So a policy was prepared using computer simulation modelling, based on the 2010 Marshall spill. This policy was mandated by provincial legislation and endorsed by city council. [*Ibid, paras. 41 and 67, at pp. 10, 16*] And most significantly, this policy identifies a petroleum pipe spill as a potential threat to water quality.
3875. Enbridge, in our submission, can only benefit from ensuring that its environmental plans and policies, as they relate to waterways, are consistent with those policies, which are intended to provide -- to protect the area's drinking water quality.
3876. The Board has encouraged, and Enbridge has expressed a willingness to discuss these CTC policies. Given that willingness, we reiterate our request that Enbridge be required, through an amendment to Condition 23, to have regard for and include the CTC LOPIPE -- that's what they're called -- LOPIPE policies. It's set out, again, in the evidence -- in developing its own emergency procedures manual, plans and policies.
3877. Now, to step back a little bit, an oil spill that enters a water treatment plant is a threat primarily because the benzene in the material is not removed by the treatment process used at municipal plants. So operators may need to shut pumps down to prevent the stuff from getting in.
3878. It's critical, in our submission, for Enbridge to incorporate modelling information that estimates travel times for a spill from 9B to reach the treatment plants under different circumstances. Primarily under different weather conditions and flow rates, and I believe this is something TRCA is also encouraging.
3879. Toronto is concerned that Enbridge has not shown that its targeted response time of 1.5 to 4 hours is appropriate without having conducted that sort of modelling.
3880. The application notes that "the frequency of -- and this is part of the ESEIA document.

*"The frequency of extreme weather events such as heavy downpours, floods, heat waves, droughts, tornadoes, and snowstorms [--sounds like a terrible world we live in, doesn't it --] are predicted to increase, with data already showing trends in this direction." [Ex. B1-20, p. 27]*

3881. Now, should a spill occur during these extreme weather conditions, treatment plants could become more vulnerable to contamination. So again, such events should be considered in the range of possibilities, through this modelling exercise and so we will be requesting that Condition 13 be modified to specify spill modelling as a requirement of the environmental framework that the Board proposes.
3882. We'd also like to discuss briefly the excellent -- in my submission -- conditions proposed by the Toronto Region Conservation Authority or I'll say the TRCA on this subject. We were a little disappointed to hear counsel for Enbridge in Montreal almost casually dismiss them. These folks are the experts. Their submissions and conditions were carefully crafted to give us the highest standard in this oh so important area.
3883. Enbridge should be embracing these conditions. These are the sorts of standards that will inform, for example, courts considering due diligence. They fit right into the "culture of safety" that we understand Enbridge to support and understand that Enbridge wishes to reinforce. Generally, we support all of the TRCA's proposed conditions. I think they really break down into three principal ones.
3884. Specifically, we support the TRCA on the need to monitor for cover near waterways [Ex. C39-7-2, para. 14, p 4], and the use of their erosion control monitoring program [Ibid, para. 17, p 7]. We support a condition that would require monitoring consistent with that program. [Ibid, para. 19, p 8]
3885. Similarly, we support the continuation of assessment of the shutoff valve placement location based on updated information as it becomes available [Ibid, para. 21, p 8] and the submission that Enbridge be required to obtain and assess baseline environmental information available from TRCA. [Ibid, para. 24, p 9]
3886. And you can see in their evidence at paragraph 24, they set out quite a long, and in my submission, very useful list of what this baseline information

- includes. And one may ask the question, how can you properly plan to deal with a problem unless you know what the baseline is in the first place, which is why we emphasize this condition.
3887. Enbridge itself has identified Lake Ontario as a "high consequence area" [Ex. B19-29, p. 81] and has performed an analysis to determine which segments of the pipe, if ruptured, could potentially impact the lake. We're encouraged that this type of analysis is being undertaken, but further work needs to be done, including that modelling that I've been referring you to.
3888. Toronto is also encouraged that Enbridge has prepared a tactical response plan for the Don River and will be developing a similar plan for the Humber River. In our view, these plans need to be in place for all significant watercourses and they must take into account all potential weather conditions. And it is our hope and expectation that the Board's conditions can assist in addressing that.
3889. We support the TRCA request for detailed spill plans for each watershed through which the line passes. [Ex. C39-7-2, para. 28, p 10] We agree and we request that this be added, again, as a modification to Condition 13. These plans should include the factors set out in detail in the TRCA submissions. [Ibid, p 11]
3890. And we agree with the TRCA that watersheds should be assessed and prioritized for the purposes of spill response planning, and these include the rivers; the Don, the Humber, the Rouge, and the creeks; Duffins, Etobicoke, Mimico, Petticoat, and Carruthers and Highland Creeks in the Toronto region. [Ibid, p. 12 paras. 31, 33-34]
3891. And finally, there's a proposal for an additional GTHA -- and that's the Greater Toronto and Hamilton Area, which we now say, I guess, instead of the Greater Toronto Area -- and I do pause parenthetically to mention and thank for their input my colleagues from the Municipality of Hamilton who have been quite active in assisting us -- prepare for these proceedings.
3892. A spill response team -- an additional GTHA spill response team was suggested both by the TRCA [Ibid, para. 35, p 12] and by Mississauga [Ex. C45-9-2, para. 7(vii), p. 3] and we support both. The evidence suggests that the time to mobilize spill response is about the same as the time it would take a spill to reach the lake and obviously that is not good enough. [Ibid, paras. 29-30, p.10-

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3893. It should be a shorter time period and there should be certainty that the right people are informed to make the decisions that need to be made, for example, shutting off the water in the water intake plants, if need be.
3894. We do understand that a new spill response team -- and we're grateful to Mr. Crowther for pointing this out -- is going to be put in place in Mississauga and we would like to be sure that this is enshrined in the Board's conditions as new Condition 25b. And we would also ask, in a general way, that the NEB to revisit these spill response times in the future to see how we're doing with them.
3895. Finally, a few words about what I've called the TTC issue, which has received a fair bit of attention. Concerns were expressed about the proximity of Line 9B to the Yonge Street subway line. Similar concerns would apply to the University/Spadina subway extension. This is the new piece that they're building up through York University, which also crosses Finch Avenue, and therefore Line 9B.
3896. As a result, the TTC required assurance that the highest standards of risk avoidance be employed. They requested that Enbridge conduct a site-specific risk assessment and an emergency response plan for the Finch station area. Similar planning should be conducted in relation to the new -- the university crossing and really anywhere where there's a major transit facility nearby. [*COT Evidence, EX. C-40-7-2, paras. 25-28*] This is all part of the specificity that we feel may be lacking in some of this generic material.
3897. We are advised that a meeting has been scheduled with Enbridge -- I believe next week -- with TTC and Toronto Fire to follow-up on this issue. This is very good news. There will also be discussions about other transit facilities.
3898. Nonetheless, in order to ensure all concerned that this exercise is underway, we are requesting an amendment to Condition 13 to provide that Enbridge be required to consult and develop specific emergency response provisions applicable to subway crossings in the event of a spill.
3899. The third and final issue, having gone through the three spill preparedness pieces, is that of financial assurance. As is evident to everybody, a rupture in the GTHA would impact a large number of people, property and businesses, and the costs would be enormous. And I'm probably understating it

- there.
3900. Enbridge has confirmed that it would pay for not just containment and remediation costs, but also evacuation costs, should evacuation be necessary [*Exhibit B35-3, p. 43*] and the provision of drinking water if that water quality is compromised [*Exhibit B35-3, pp. 49-50*]. So again that's good news.
3901. Enbridge may also be responsible for fines and penalties, as well as related legal costs and all of that adds up to a lot of money. [*Ex. C21-8-7, pp. 6-7*]
3902. And as such, like many other municipalities, Toronto strongly supports a condition, which I propose as new 25C, that would ensure that a report is prepared and submitted to the Board, explaining how adequate financial resources are in place to address all costs arising from a major spill of this pipeline.
3903. And as an aside, I would also refer you to the answers provided to the Board's Request Number 1 to Équiterre at pages 8 to 15 of their response document. I'm sorry I do not have the reference for that. But they talk about financial insurance -- assurance and what sort of nuts and bolts you might be looking for.
3904. We know Enbridge has comprehensive property and liability insurance through 2014, with a current aggregate limit of 685 million U.S. [*Exhibit C21-8-7, p. 7*]
3905. Further financial resources need to be committed to provide assurance that Enbridge would be able to cover all costs arising from a major spill.
3906. It's not enough to say that Enbridge is well capitalized since the level of capitalization is of course vulnerable to the vagaries of the market which today may be a very significant consideration. Hopefully not by the end of the day, I'm just thinking of the events in the U.S. Congress.
3907. The other point I would make is -- as an aside, is this is, I believe, consistent with an announcement by the Minister of Natural Resources, Minister Oliver, in June -- June 26<sup>th</sup>, who has talked about a minimum financial capability of 1 billion being in place. So something along those lines is definitely, in our submission, in order.

3908. Financial resources dedicated to the potential cost of a major spill is prudent to avoid shortfalls that may occur if you had more than one spill at a time. That's another concern, if we had a big spill here, two weeks after a big spill in Marshall, Michigan, when would we be then -- where would we be then, would everything just be split down the middle?
3909. So we'd like to see some provision for that and accordingly we request, again, a specific condition to ensure financial security be set aside to cover 9B costs. And in our submission, this is a reasonable condition, even if it's never been imposed in the past.
3910. So I approach the end of my submissions. To sum up, we listened with interest to the submissions made by all in Montreal. We could not help but observe the number of occasions on which the Applicant pointed out that there was no regulatory requirement to take certain actions. For example, preparation of tactical response plans. *[Transcript, Oct 9, para. 413]* No regulatory requirement. But handy if you had a spill into, say, the Rouge River in the east end of Toronto, whereas you may be aware, they are putting in a big national park -- urban national park right now.
3911. Another example; a requirement to arrive at the scene of an emergency within a specified time and we've heard others refer to that. No regulatory requirement. *[Ibid, para. 432]*
3912. But handy -- again, if you had a million litres of oil draining into the Rouge River, you would want someone there very quickly. Another example is a fund to ensure that Enbridge has the sufficient financial resources to fulfill its obligations. No regulatory requirement. *[Ibid, para. 446]*
3913. It is absolutely vital to know though, if the worst happens, that funds are in place, and not find out as others recently have, that there is no money available when it's really needed.
3914. Enbridge also was somewhat dismissive of the input from TRCA on its erosion control or ECMP program that I referred to earlier. And we expect probably roughly the same reaction with respect to the city's -- the CTC's LOPIPE policies. Again, as: "not required, and not necessary". *[Ibid, para. 527]*
3915. But we are assured by Enbridge that, notwithstanding the tongue lashing it received from the NTSB as a result of Marshall, that everything is going

to be fine partly because, as counsel summarized, the recent actions taken by Enbridge include a: "reinforcement of safety culture". *[Ibid, para. 407]*

3916. These are nice words but actions speak louder. The concern of the NTSB in its 2012 report was that Enbridge's actions suggested, quote:

*"...a systemic deficiency in the company's approach to safety."  
[Ex. 59-10-2, p. 114]*

3917. Inadequate public awareness, inadequate firefighter training, inadequate spill preparedness. *[Ibid, pp119-120]*

3918. We appreciate that a lot of steps have been taken by Enbridge at great cost since Marshall. If only they had not been necessary.

3919. We have proposed measures that we believe are consistent with the "safety culture framework", we understand the NEB is currently working on as part of its "Action Plan on Safety and Environmental Protection". *[see NEB press release of 13/08/27]*

3920. We respectfully request this Board to impose those and other conditions in order to ensure that we end up with the Cadillac and not the Chevy version of pipeline safety.

3921. The City of Toronto concludes that, provided the conditions advanced by the NEB, as amended by our submissions are met, and provided there is ongoing consultation and review with emergency response stakeholders, the necessary due diligence is in place for the proposed operation of this facility.

3922. Toronto looks forward to a continuing and productive working relationship with Enbridge staff in developing the procedures, policies and training to ensure that the problems of Marshall will never, never be visited upon the GTHA or anywhere along Line 9.

3923. Now, I have attached as an appendix to these submissions, a list of the proposed conditions. I think I have covered them mostly verbatim. I'm reluctant to read them into the record. I can imagine how interesting that would be for you, but I can do so if there's any reservation of ---

3924. **THE CHAIRPERSON:** I would rather you read onto the record.

3925. **MR. REMPE:** Yes.

3926. **THE CHAIRPERSON:** Because transcripts, you know, if they're on our site. They'll ask ---

3927. **MR. REMPE:** Absolutely, Madam Chair. What I will do is, I've listed them here as they came up in my argument. But what I will simply do is address the proposed condition numbers. So I may jump around a little bit so forgive me for that.

3928. So Condition 21, we'd like to add a new sub-clause -- oops, I think I've jumped ahead of myself one page. Pardon me.

3929. Condition Number 15 we would like to add, after the first sentence quote:

*"That evaluation should include consideration of valve placements adjacent to the east branch of the Don River."*

3930. End quote.

3931. We propose a new paragraph 17A, quote:

*"At least 30 days prior to applying for LTO, Enbridge will confirm that it has completed the corrective actions referred to in Toronto IR No. 1.14. [Ex. B19-29, p. 34]"*

3932. End quote.

3933. We propose a new Condition 19A, quote:

*"Enbridge shall file with the Board within 30 days following LTO the leak sensitivity study referred to in IR No. 2.21. [Ex. B35-3, p. 32]"*

3934. End quote.

3935. We propose the following be added to the end of paragraph 24 -- Condition 24, quote:

*"The plan shall include analysis of sediment and water collected during pig runs, and shall provide for measures to mitigate the presence of these materials."*

3936. End quote.

3937. We propose a new 24A:

*"Enbridge shall be required to report annually to the Board on sediment and water testing, excursions above S&W limits, and injections that are not tested for S&W content."*

3938. End quote.

3939. We propose a new 25A, quote:

*"Enbridge shall file within 30 days of LTO a procedure to report to the Board on all MBS alarms and unusual event shutdowns. Enbridge shall start reporting under this procedure within 18 months of LTO."*

3940. End quote.

3941. We propose to add to Condition 23, after the word "consult" in the last line, quote:

*"...in a meaningful -- sorry. In a specific, meaningful, ongoing and iterative fashion."*

3942. End quote.

3943. In addition, the following should be added to the end of the clause after the word "manual", quote:

*"...and shall provide municipalities with a copy of the manual as updated, from time to time."*

3944. We propose a new sub-clause (j) to Condition 21, quote:

*“Details regarding discussions with municipal emergency responders.”*

3945. End quote.

3946. We propose to add at the end of clause 23, quote:

*“Enbridge shall, in developing a manual, have regard for and include the CTC LOPIPE policies referred to in the Toronto Evidence at paragraph 64.”*

3947. End quote.

3948. We proposed an addition to the end of clause 13 as follows, quote:

*“The framework shall include spill modelling and detailed spill pans for each watershed through which Line 9 passes, and shall have regard for and include the available baseline environmental information and the erosion control monitoring program available from TRCA.”*

3949. End quote.

3950. We propose a new 25B, quote:

*“Within 15 days of LTO Enbridge shall establish an additional spill response team in or around Mississauga.”*

3951. End quote.

3952. We propose a new paragraph at the end of Condition 13. Quote:

*“As part of the framework, Enbridge shall consult with the TTC and Toronto Fire Services, and develop an emergency response plan applicable to the Toronto subway system where Line 9 crosses it.”*

3953. And finally, we propose a new 25C, quote:

*“Within 30 days of LTO Enbridge shall prepare and submit to*

*the NEB a report explaining how adequate financial resources are in place to address all costs arising in the event of a Line 9 spill and how financial security has been set aside to cover all such costs related to Line 9.”*

3954. And so Madam Chair and Members of the Board, I do appreciate your attention, and particularly in the length of that last piece, and am available if you have any questions that we can assist you with.

3955. **THE CHAIRPERSON:** Just if you give us a few minutes, please?

3956. **MR. REMPE:** Certainly.

--- (A short pause/Courte pause)

3957. **THE CHAIRPERSON:** Mr. Richmond will go first this time.

3958. **MEMBER RICHMOND:** Thank you.

3959. So I've got a number of questions. I hope you won't take from my questions that we don't value the contributions you've made this morning. We certainly do and obviously, as you can understand, my questions are related to those specific points where I do have more questions on these things now.

3960. **MR. REMPE:** Of course. Yes, sir.

3961. **MEMBER RICHMOND:** Don't take it as anything more than that.

3962. But first with respect to the subway and the Finch subway station, so it's my understanding that Line 9B passes above the station and adjacent to the stairs. And I also understand from the submissions that the station was open one year prior to the construction of the pipeline.

3963. So in 1975 when that happened, did the TTC or the city give Enbridge permission to put the pipeline there?

3964. **MR. REMPE:** I can't answer that question. I can tell you that one of the concerns was that we didn't have as-built or the TTC didn't have as-built drawings, and in one of the information requests we did get some information from Enbridge about what as-built conditions are.

3965. I really can't answer what happened at that time. You know, it would largely depend on what was the planning regime at the time.
3966. And I think one of the issues to me that it highlights is that there is a lot of stuff going on and over time it may be that differing approaches are appropriate and yes, exactly, there's stacking going on and, you know, it may be that it could have been done in a different fashion back then than it would have made sense.
3967. I suppose our submission today is let's get together and make sure that the appropriate considerations are in place today.
3968. **MEMBER RICHMOND:** You also refer to the new subway line, I guess up the Spadina side. So presumably, the location of that tunnel and your stations is within TTC's control and not within Enbridge's control?
3969. **MR. REMPE:** Absolutely.
3970. **MEMBER RICHMOND:** So I guess my question would be as between TTC and Enbridge, whose responsibility do you think it would be to ensure that the subway is not at risk from the pipeline?
3971. **MR. REMPE:** I would very much look at it the other way, sir. I mean, the difficulty is there's tank farms, there's trucks, there's all kinds of materials. Our expectation, and speaking not particularly for the TTC because they're not here, and I'm probably speaking more generically for the city, but we would certainly hope and expect that those who are making their living from the handling of these hazardous materials would be the ones to take that initiative and would sort of give us the latest detail. I'd stress again that -- or the appropriate levels of detail and measures.
3972. I stress again that we have -- we have had these discussions, there are a number of these types of activities that are there. Ultimately, we're looking now that this issue is -- has been raised to get the best in place. But we're not saying -- I don't think anybody is saying that, you know, you can't have a pipeline anywhere near the subway because that would just be, you know, completely impractical.
3973. So I think it's a bit of an exercise in just making sure that everything is

- now as good as it can be. And we hope that this Board will assist in achieving that objective, at least with respect to this particular infrastructure. There's lot of other infrastructure out there and perhaps we can look at some of that in greater detail as well.
3974.           **MEMBER RICHMOND:** I guess my question is if the pipeline is there now and not near a subway because there's no subway and then TTC or the city goes and builds a subway right next to the pipeline, would it be then your suggestion you'd want to -- you'd want us to tell them they've got to change their pipeline to make -- because it's now next to a subway?
3975.           **MR. REMPE:** No, and we're not asking for changes to the pipeline, I don't think. What we're asking for is that spill response mechanisms be considered and put in place.
3976.           It boils down to that specificity business that, you know, we want to make sure that that's -- we've got the appropriate level of detail.
3977.           **MEMBER RICHMOND:** Still on the subway question. So I -- I hear your critique that Enbridge needs to have a site-specific emergency response plan and needs to share it with the city and its location with the TTC. I would have also presumed that the TTC has an emergency response and evacuation plan for its entire system at all stations ---
3978.           **MR. REMPE:** Yes, it does.
3979.           **MEMBER RICHMOND:** --- including Finch. So has the TTC shared those with Enbridge?
3980.           **MR. REMPE:** I think -- I'm not sure again what the sort of exchange is. Again, what we're asking the Board to do today is to endorse specific exchange on this. And we're not -- I don't think we're asking for this to be a one-sided piece.
3981.           As I said, you know, we have tank farms, we have an airport, we have railway lines, et cetera, et cetera. So we have lots of different operations and it would be very difficult for the city or the TTC to take into account all the aspects of those hazardous operations that it might need to.
3982.           However, if there is an opportunity now to get into a higher level of

specificity, we think this is the appropriate time. And generally, that's an appropriate thing to do.

3983.           **MEMBER RICHMOND:** Right. And I just -- if I can infer from your comments earlier that coordination is important. So -- and that exchange of information goes two ways. That's the one thing I wanted to highlight and make sure you're aware of it.
3984.           **MR. REMPE:** Oh, absolutely. And if I can assure you that if the TTC staff are there with the -- and the fire staff with Enbridge, it won't be exclusively to say, you know, you're completely in the driver's seat here. Everyone has a role to play. I think the importance is that we just all agree that that role needs to be acted upon.
3985.           **MEMBER RICHMOND:** I want to move to the financial assurances portion of your argument.
3986.           I don't want to get into at the moment how much Enbridge would have to compensate. I think that's fact specific scenarios, but once a legal determination is made as to the number, can you expand on or provide concrete suggestions as to what you would like to see to give you the comfort that you said that Enbridge has financial capacity to pay whatever the number is that's legally determined? In particular, in your evidence -- in your written evidence, you state that Enbridge should have adequate resources including coverages that are, and I quote, "quickly available". So what types of resources would fit that bill for you?
3987.           **MR. REMPE:** Well, I think obvious one is insurance. There might be others, sort of letter of credit or line -- or letter of credit kind of instruments that are available and could be drawn upon. There are others as well.
3988.           And again, I refer you to the Équiterre submissions where they, I think, set out in quite a bit more detail.
3989.           But what we're looking for basically, one, is something that is not sort of fluctuating too much and two, is something that would have some level of commitment to this particular piece of infrastructure so that, as I said, if we had an incident at one location or on one line and then one very closely thereafter another that we -- you know, we would minimize the amount that either would be prejudiced by financial access.

3990.           **MEMBER RICHMOND:** In your submissions and today you've explained -- done a good job of explaining the history and development of the local water source protection plans.
3991.           **MR. REMPE:** Yes.
3992.           **MEMBER RICHMOND:** And in paragraph 64 of your evidence you list 13 requirements set out in the source protection plan --- there you go ---
3993.           **MR. REMPE:** Oh, thank you.
3994.           **MEMBER RICHMOND:** --- from an oil pipeline incident ---
3995.           **MR. REMPE:** Yes.
3996.           **MEMBER RICHMOND:** --- related to an oil pipeline incident.
3997.           So I wonder if you can expand on that. How many, if any, of these 13 requirements have -- are -- have been satisfied with respect to Line 9B either thanks to Enbridge's cooperation or without Enbridge's ---
3998.           **MR. REMPE:** Yeah.
3999.           **MEMBER RICHMOND:** --- cooperation because it doesn't necessarily require it.
4000.           **MR. REMPE:** Well ---
4001.           **MEMBER RICHMOND:** Sorry.
4002.           **MR. REMPE:** Sorry. Well, Mr. Richmond, you know, to not take too much of the Board's time because I could probably sit down and go through them one by one. It's certainly fair to say that some of these objectives have been accomplished by Enbridge. There are others that we would look to have a little more detail on that and we would look to have that included in their preparation of their emergency planning and an opportunity for some feedback on that, which is why we included that have regard for and include provision in our draft language.
4003.           If it's of some assistance to you, I could perhaps identify and report

- back to the Board tomorrow as to specifically which conditions we think would be of help. It might be -- there might be some that are somewhat fulfilled and others that aren't. I'm in your hands.
4004.           **MEMBER RICHMOND:** If that's something you're able to specify in more detail tomorrow that would be helpful. Just so we know where to -- what to really focus on in this list.
4005.           **MR. REMPE:** Yeah. I can certainly undertake to do that.
4006.           **MEMBER RICHMOND:** And I guess the other question would be for those that we need to focus on, because they're not there yet, has Enbridge been sort of formally asked to provide these ---
4007.           **MR. REMPE:** Well outside of the -- outside of the -- this process, the petrol industry has been a participant, certainly in the development of these policies.
4008.           I should say now, as I'm sure Mr. Crowther is going to later on, that the CTC policies have been developed for -- it's a large number of these source protection areas and submitted to the province. They haven't been approved by the province. I would invite you not to take anything from that because I think the problem is the province has got a whole whack of stuff and they're going to work through it in due course.
4009.           So these are not approved by the province as yet. They have been approved by the council and, in any event, our submission would be they are provisions that make sense. They are provisions that inform the very exercise that we certainly hope that Enbridge would be interested in anyway because our understanding is that, you know, they don't want these kinds of problems either. So it's really a question of how we get there. But I'll try and elaborate a little on that tomorrow morning if that's satisfactory to you, Madam Chair, Mr. Richmond.
4010.           **MEMBER RICHMOND:** That'll be great.
4011.           You suggested that there should be a requirement upon Enbridge to do an assessment to determine sort of what that lag time is between a release and the time it hits the drinking water ---
4012.           **MR. REMPE:** Yes.

4013.           **MEMBER RICHMOND:** --- intake. So in the absence of that at the moment, do you have any sense of, I guess in particular in relation to the 1.5 to 4-hour window, I guess was my question, is that, in your view, completely out of whack or in the ballpark or ---
4014.           **MR. REMPE:** Sorry, is there 1.5 to 4 hours out of whack or ---
4015.           **MEMBER RICHMOND:** When you compare ---
4016.           **MR. REMPE:** --- with respect to dealing with a water problem?
4017.           **MEMBER RICHMOND:** When you compare it to the time it would take ---
4018.           **MR. REMPE:** Yeah.
4019.           **MEMBER RICHMOND:** --- to monitor effects ---
4020.           **MR. REMPE:** Well, all I can say is that the modelling that was done as the basis for the CTC plan identified this as a threat based on the Marshall kind of numbers. So it's not really a hypothetical. And we rely largely on the evidence of the -- pardon me, of the TRCA in the times appear to be close.
4021.           If -- and it depends largely -- which is why we were stressing the modelling, it depends on what's going on in that river. If that river is -- it's a nice day and it's flowing at low volume, probably no problem or less of a problem. If, on the other hand -- and that was the problem at Marshall -- you've just had a heavy rain before and the Rouge River's running like the Niagara Gorge, it's going to be a different kettle of fish.
4022.           So what we're looking at I think fairly is those worst case scenarios. But I think there is an alarm bell definitely here and that's what we're trying to get at.
4023.           **MEMBER RICHMOND:** And a final question. The commitment to place an incident management team in Mississauga, does that help alleviate your concerns or are you looking for something in the City of Toronto properly?
4024.           **MR. REMPE:** Well I think, you know, we're being realistic about

this. I mean, we can't expect actual spill response teams every hundred metres along the Line, although we might like it.

4025.           But certainly, the Mississauga location is a lot better than -- I think they have a contractor at Stoney Creek and then they have their own facility I believe at North Westover. And those are significantly further away.

4026.           **MEMBER RICHMOND:** Those are my questions. Thank you.

4027.           **MR. REMPE:** Thank you, sir.

4028.           **MEMBER GAUTHIER:** Mike's questions covered mine also.  
Thank you.

4029.           **MR. REMPE:** Oh, thank you, sir.

4030.           **THE CHAIRPERSON:** Those are all our questions but I would just like to acknowledge and note that we saw that there was a liaison done with the different municipality.

4031.           **MR. REMPE:** Yes.

4032.           **THE CHAIRPERSON:** That's very much appreciated and the Board encourages parties to get together whenever they can so that we get a more efficient process. So we thank you very much and we'll see tomorrow morning if you have something for us.

4033.           **MR. REMPE:** Yes.

4034.           **THE CHAIRPERSON:** Thank you.

4035.           **MR. REMPE:** Thank you very much, Madam Chair, Members.

4036.           **THE CHAIRPERSON:** You're welcome.

4037.           I see the time running. So maybe we should take a 20-minute break and reconvene at 10 to 4:00 and then we will hear from Mr. Doug Anderson from DurhamCLEAR.