

June 27, 2022

**Rodney Northey**

<contact information removed>

**Via Email**

conditions@iaac-aeic.gc.ca

Impact Assessment Agency of Canada  
22<sup>nd</sup> Floor, Bell Place  
160 Elgin Street  
Ottawa, ON K1A 0H3

Dear Sir or Madam:

**Re: CN Milton Logistics Hub CIAR Ref.No. 80100  
Proposed Changes to the Project  
Response to June 6, 2022 Notice of Opportunity for Public Comment**

We are writing on behalf of our clients, The Regional Municipality of Halton, The Corporation of the City of Burlington, The Corporation of the Town of Halton Hills, The Corporation of the Town of Milton, The Corporation of the Town of Oakville, and the Halton Regional Conservation Authority (together, the “Halton Public Authorities”).

The Halton Public Authorities are very concerned with the present consultation initiated by your Agency. They consider this consultation to be inconsistent with cooperative federalism. The consultation concerns the relocation of a pipeline that is owned by Sun-Canadian Pipe Line Company Limited (“Sun-Canadian”) and regulated as a pipeline wholly within Ontario under provincial laws, including the *Ontario Energy Board Act* and Ontario’s *Technical Standards and Safety Act, 2001*.

Halton Region, the Town of Milton, and Conservation Halton identified both of these points to CN in their January 2022 responses to CN’s December 23, 2021 letters that advise of this relocation. These responses asked CN to address the applicable law and the required provincial approval(s).

Further, pursuant to section 2.4 of the federal Decision Statement that triggered CN’s consultation, our clients’ responses noted that where consultation is required, CN shall provide all information “available and relevant” to the scope of consultation. Our clients therefore requested “a copy of all available information on the required Ontario approvals, including any existing and/or anticipated application(s) for approval by Sun-Canadian and/or CN.” They also requested “contact information for Sun-Canadian so that we may understand who is directly responsible for this matter at Sun-Canadian.”

To date, CN has not responded to any these requests.

Moreover, we see no consideration of Ontario law or approvals in your draft June report or the April 2022 report provided to you by CN.

Nevertheless, according to your Agency’s *Analysis Report* (DRAFT), your Agency proposes to regulate, among other things, the method of relocation and the mitigation of effects without any regard to applicable Ontario laws or approvals.

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The Decision Statement in this matter was issued under the authority of the former *Canadian Environmental Assessment Act, 2012*. This Decision Statement advises under the heading, “Conditions,” that:

These conditions are established for the sole purpose of the Decision Statement issued under the Canadian Environmental Assessment Act, 2012. They do not relieve the Proponent from any obligation to comply with other legislative or other legal requirements of the federal, provincial, or local governments. Nothing in this Decision Statement shall be construed as reducing, increasing, or otherwise affecting what may be required of the Proponent to comply with all applicable legislative or legal requirements.

Further, the actions of your Agency depend entirely on the authority of the *Impact Assessment Act* (the “IAA”). In its Preamble, the IAA expressly recognizes the importance of cooperating with “jurisdictions” that have “powers, duties, and functions” in relation to the assessment of the effects of designated projects. Further, pursuant to s.6(1), one statutory purpose of the IAA is

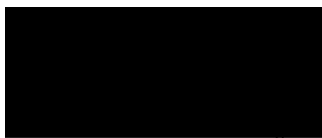
(e) to promote cooperation and coordinated action between federal and provincial governments — while respecting the legislative competence of each — and the federal government and Indigenous governing bodies that are jurisdictions, with respect to impact assessments;

Our clients consider the present consultation to be contrary to the IAA Preamble and Purposes. More seriously, CN’s document and your draft “Analysis Report” fail to identify that the pipeline in question is an *intraprovincial* pipeline that is regulated by provincial law(s), not federal laws or thus the IAA. As such, your Agency’s purported regulation of any aspect of the proposed relocation seems to be an example of federal overreach that was recently criticized by the Alberta Court of Appeal in its Constitutional Reference on the IAA.

Our clients therefore seek information from the Agency on whether you have reached out to Ontario regulators – i.e., the Ontario Energy Board and the Technical Standards and Safety Authority - to obtain information and otherwise ensure that the proposed relocation complies with the Ontario laws and approvals that they administer. If so, we request a copy of relevant correspondence. If you have not done so, we request that you do so and ask that we be copied on this correspondence so that our clients may follow and, as needed, participate in this provincial regulatory review.

Sincerely,

Gowling WLG (Canada) LLP



<Original signed by>

Rod Northey

cc. Bob Gray, Commissioner, Legislative & Planning Services, Halton Region (email only)  
Jill Hogan, Commissioner of Planning and Development, Town of Milton (email only)  
Hassaan Basit, Chief Executive Officer, Conservation Halton (email only)  
Jane Clohecy, CAO, Town of Oakville (email only)  
Tim Comisso, CAO, City of Burlington (email only)  
Chris Mills, CAO, Town of Halton Hills (email only)  
Andrew Bernstein, Torys (email only)