



# Ontario Energy Board Commission de l'énergie de l'Ontario

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## DECISION AND ORDER

EB-2018-0096

## ENBRIDGE GAS DISTRIBUTION INC.

Liberty Village Project

**BEFORE:**        **Susan Frank**  
                      Presiding Member

**Emad Elsayed**  
                      Member

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September 27, 2018

**TABLE OF CONTENTS**

**1 INTRODUCTION..... 1**

**2 PROCESS ..... 2**

**3 LEAVE TO CONSTRUCT..... 3**

    3.1 NEED FOR THE PROJECT ..... 3

    3.2 PROPOSED FACILITIES ..... 3

    3.3 ENVIRONMENTAL MATTERS..... 4

    3.4 INDIGENOUS CONSULTATION ..... 4

    3.6 CONDITIONS OF APPROVAL ..... 6

**4 LAND MATTERS..... 7**

**5 ORDER ..... 8**

**SCHEDULE A – MAP**

**SCHEDULE B – CONDITIONS OF APPROVAL**

## 1 INTRODUCTION

On April 6, 2018, Enbridge Gas Distribution Inc. (Enbridge) applied to the Ontario Energy Board (OEB) under sections 90 and 97 of the *Ontario Energy Board Act, 1998* (OEB Act) for approvals that would allow Enbridge to construct pipeline facilities to meet current and future natural gas demand in the Liberty Village neighbourhood of the City of Toronto (Project). Enbridge filed updates to its application on June 14 and July 16, 2018.

Specifically, Enbridge is seeking the following orders:

- a) Under section 90 of the OEB Act, leave to construct three segments of natural gas pipeline totalling approximately 1.2 km.
- b) Under section 97 of the OEB Act, approval of the proposed form of easement agreements.

A map of the proposed Project is attached as Schedule A to this Decision and Order.

Enbridge intends to commence construction no later than October 2018. This start date is necessary to meet the construction timing requirements for certain permits and enable Enbridge to meet the in-service date of February 2019.

The OEB has examined all aspects of this leave to construct application and is satisfied that the project is acceptable. Leave to Construct the Project is granted, subject to the Conditions of Approval attached as Schedule B to this Decision and Order (Conditions of Approval). The OEB also approves the forms of easement agreement.

## 2 PROCESS

A Notice of Hearing (Notice) was issued on August 1, 2018. Enbridge served and published the Notice as directed. No one requested intervenor status.

The OEB proceeded by way of a written hearing. In accordance with the procedural order issued on August 24, 2018, the interrogatory phase was completed on September 5, 2018. OEB staff filed a written submission on September 12, 2018 in support of Enbridge's application. Enbridge filed its reply submission on September 19, 2018 confirming its acceptance of the Conditions of Approval proposed by OEB staff.

### 3 LEAVE TO CONSTRUCT

This application seeks an order for leave to construct a natural gas pipeline under section 90 of the OEB Act. Section 96 of the OEB Act provides that the OEB shall make an order granting leave if the OEB finds that “the construction, expansion or reinforcement of the proposed work is in the public interest”. When determining whether a project is in the public interest, the OEB typically examines the need for the project, the nature of the proposed facilities, environmental matters, Indigenous consultation, the project economics, and conditions of approval.

#### 3.1 NEED FOR THE PROJECT

Enbridge established the need for the Project based on recent requests for gas service and forecasted growth in Liberty Village. The Project will make natural gas available to seven new condominiums and mixed use towers in Liberty Village. The Project will also ensure that four hundred and eleven existing commercial, industrial and residential customers will have uninterrupted natural gas distribution service.

#### Findings

Enbridge clearly described the forecasted imminent growth in service area and the lack of current facilities to meet this growth. The OEB finds that this Project is needed.

#### 3.2 PROPOSED FACILITIES

Enbridge is proposing to construct three segments of natural gas pipeline totaling approximately 1.2 km. Enbridge retained GHD Consulting (GHD) to complete an Environmental Report (ER) and to propose a route for the pipeline.

The first segment is approximately 900 m of nominal pipe size (NPS) 8 inch intermediate pressure steel pipe that will serve to reinforce the existing natural gas distribution system. The second segment is approximately 200 m of NPS 6 inch intermediate pressure plastic pipe. The third segment is approximately 85 m of NPS 4 inch intermediate pressure plastic pipe. The latter two segments are main extensions that will provide natural gas service to a number of new condominiums and mixed use towers.

Enbridge has provided the design specifications of the Project to the Technical Standards and Safety Authority (TSSA). The TSSA has not expressed concern with the safety or design of the proposed facilities. OEB staff had no concerns with the proposed facilities.

## Findings

The OEB agrees with the OEB staff assessment of the appropriateness of the proposed facilities. The determination of the preferred alternative is consistent with the GHD Consulting report recommendation that followed community consultation. In addition, the TSSA expressed no concern with the safety or design of the proposed facilities. The preferred alternative proposed facilities are accepted.

### 3.3 ENVIRONMENTAL MATTERS

Enbridge followed the OEB's environmental guidelines<sup>1</sup> to assess the potential environmental impact of the Project. The environmental assessment, including alternative routing and proposed mitigation measures, was documented in an Environmental and Socio-Economic Impact Assessment Report (ER) completed by GHD on behalf of Enbridge.

The Ministry of Tourism, Culture, and Sport (MTCS) has reviewed the Project's Stage 1 Archaeological Assessment and issued a clearance letter on April 9, 2018. The Stage 1 Archaeological Assessment determined that the study area does not require a Stage 2 Archaeological Assessment.

## Findings

The OEB accepts GHD Consulting's opinion that there will be no long-term impacts from the construction and / or operation of the proposed pipeline assuming that Enbridge follows the recommended mitigation. The OEB is encouraged that a detailed Traffic Management Plan will be developed in collaboration with the City of Toronto. Finally, the Ministry of Tourism, Culture, and Sport Archaeological Assessment clearance letter satisfies OEB requirements.

### 3.4 INDIGENOUS CONSULTATION

In accordance with the OEB's Environmental Guidelines, Enbridge contacted the Ministry of Energy (MOE)<sup>2</sup> with respect to the Crown's duty to consult on January 29, 2018. Enbridge received a written reply from the MOE on February 7, 2018. The MOE

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<sup>1</sup> *Environmental Guidelines for the Location, Construction and Operation of Hydrocarbon Pipelines in Ontario*, 7th Edition, 2016

<sup>2</sup> Subsequent to Enbridge filing its application, the MOE became the Ministry of Energy, Northern Development and Mines.

indicated that no duty to consult has been triggered, and it will not be necessary for the MOE to provide a letter of opinion regarding the sufficiency of consultation. In a second letter to Enbridge dated May 8, 2018, the MOE reconfirmed that no duty to consult is triggered.

As directed by the OEB, Enbridge served notice to the Métis Nations of Ontario. No intervention requests were received.

## Findings

The Ministry of Energy letters indicating that no duty to consult has been triggered satisfy the OEB's Indigenous consultation requirements.

### 3.5 PROJECT ECONOMICS

In accordance with the EBO 188 Guidelines, Enbridge determined the Project's Profitability Index to be 1.00.

OEB staff asked Enbridge to explain the need for a 25% contingency included in the capital cost of \$3.62 million. Enbridge responded that it followed its established guidelines for a project at this stage of scope development and risk profile. OEB staff submitted that the contingency is high given that the project appears to be at an advanced stage of planning (e.g., the preferred routing is known, land requirements are known, the construction contractor is known).

OEB staff asked Enbridge to compare the total capital cost of the Project to one or more comparable projects completed by Enbridge in the last five years.<sup>3</sup> Enbridge provided a table summarizing the Parliament Street Replacement project and the Brimley Replacement project.

## Findings

The profitability index of 1.0 satisfies the OEB's economic test for this project. However, the OEB shares the OEB staff concern about the costing of the project.

Both the comparison to other projects provided and the 25% contingency raise issues. The OEB finds that there is insufficient evidence to support the assumed 25%

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<sup>3</sup> EB-2018-0096 OEB staff interrogatory #6, 3).

contingency level given the advanced stage of the project. Enbridge submitted that the Brimley Project's estimated cost (\$3.3 million) is very similar to the Liberty Village Project estimated cost (\$3.1 million). However, the Brimley Project actual cost (\$2.4 million) was 27% lower than the original estimate (\$3.3 million). Enbridge did not provide an explanation for this significant under-expenditure and did not explain what contingency level was assumed for the Brimley Project.

The OEB directs Enbridge to provide a detailed review of the final costs of the Project as part of its next rate application. The review shall provide a variance analysis of project cost, schedule and scope compared to the original estimates, including the extent to which the project contingency was utilized.

### **3.6 CONDITIONS OF APPROVAL**

OEB staff proposed the conditions of service typically attached to leave to construct decisions. Enbridge agreed to inclusion of these conditions to the approval.

#### **Findings**

The approved Conditions of Approval are attached as Schedule B to this Decision and Order.

The OEB finds that Enbridge's compliance with the Conditions of Approval will ensure that the requirements of other approvals, permits, licences, and certificates are fully addressed.

## 4 LAND MATTERS

The total length of the three sections of the Project is approximately 1.2 kilometers and is entirely located within the municipal road allowance; Enbridge has not identified any requirements for non-municipally owned land.

The first section is 900 m and originates at King Street and Jefferson Avenue (where it connects to an existing natural gas main) and terminating at Pirandello Street. The second segment, which is approximately 200 m, starts at Strachan Avenue and Ordnance Street heads east on Ordnance Street and following Ordnance Street south for approximately 90 m. The third segment is approximately 85 m and begins on Western Battery Road where it connects to an existing gas main at the intersection of Western Battery Road and East Liberty Street.

Enbridge has held discussions with the municipality and public meetings with its residents. To date, Enbridge has not received any objections to the Project.

Although Enbridge does not expect to require the use of private land, it has filed three forms of land use agreements which Enbridge would offer affected landowners should the need arise. Two of the three, namely the Form of Agreement to Grant Easement and the Form of Easement Agreement, have been previously approved by the OEB for Enbridge's use.<sup>4</sup> The proposed Form of Working Area Agreement has been updated, however OEB staff had no issue with the proposed Form of Working Area Agreement and recommended its approval.

### Findings

Enbridge submitted that the entire proposed route is located within municipal road allowances. However, Enbridge filed three forms of land use agreements should the need arise to acquire access to private land. The OEB approves these forms that are either the same or similar to previously approved land use agreement forms.

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<sup>4</sup> Enbridge's Innes Road Pipeline Replacement Project (EB-2012-0438) and its Seaton Land Development Pipeline Project (EB-2016-0054).

## 5 ORDER

### THE ONTARIO ENERGY BOARD ORDERS THAT:

1. Enbridge Gas Distribution Inc. is granted leave, pursuant to subsection 90(1) of the OEB Act, to construct approximately 1.2 within the Liberty Village neighbourhood of the City of Toronto, as described in its application.
2. The OEB approves the proposed forms of easement agreement that Enbridge has offered or will offer to each owner of land affected by the approved pipeline route for the Project.
3. Enbridge Gas Distribution Inc. shall provide a detailed review of the Project as part of its next rate application. The review shall provide a variance analysis of project cost, schedule and scope compared to the original estimates, including the extent to which the project contingency was utilized.
4. Leave to construct is subject to Enbridge Gas Distribution Inc. complying with the Conditions of Approval set forth in Schedule B.
5. Enbridge Gas Distribution Inc. shall pay the OEB's costs incidental to this proceeding upon receipt of the OEB's invoice.

**DATED** at Toronto September 27, 2018

**ONTARIO ENERGY BOARD**

*Original Signed By*

Kirsten Walli  
Board Secretary



## **SCHEDULE B – CONDITIONS OF APPROVAL**

### **LEAVE TO CONSTRUCT CONDITIONS OF APPROVAL**

#### **Application under Section 90 of the OEB Act**

#### **Enbridge Gas Distribution Inc.**

#### **EB-2018-0096**

1. Enbridge Gas Distribution Inc. (Enbridge) shall construct the facilities and restore the land in accordance with the OEB's Decision and Order in EB-2018-0096 and these Conditions of Approval.
2. (a) Authorization for leave to construct shall terminate 18 months after the decision is issued, unless construction has commenced prior to that date.  
  
(b) Enbridge shall give the OEB notice in writing:
  - i. of the commencement of construction, at least ten days prior to the date construction commences;
  - ii. of the planned in-service date, at least ten days prior to the date the facilities go into service;
  - iii. of the date on which construction was completed, no later than 10 days following the completion of construction; and
  - iv. of the in-service date, no later than 10 days after the facilities go into service.
3. Enbridge shall implement all the recommendations of the Environmental Report filed in the proceeding, and all the recommendations and directives identified by the Ontario Pipeline Coordinating Committee review.
4. Enbridge shall advise the OEB of any proposed change to OEB-approved construction or restoration procedures. Except in an emergency, Enbridge shall not make any such change without prior notice to and written approval of the OEB. In the event of an emergency, the OEB shall be informed immediately after the fact.
5. Concurrent with the final monitoring report referred to in Condition 6(b), Enbridge shall file a Post Construction Financial Report, which shall indicate the actual capital costs of the project and shall provide an explanation for any significant variances from the cost estimates filed in this proceeding. Enbridge shall also file a copy of the Post Construction Financial Report in the proceeding where the actual capital costs of the project are proposed to be included in rate base or any proceeding where Enbridge proposes to start collecting revenues associated with the project, whichever is earlier.

6. Both during and after construction, Enbridge shall monitor the impacts of construction, and shall file with the OEB one paper copy and one electronic (searchable PDF) version of each of the following reports:
  - a) a post construction report, within three months of the in-service date, which shall:
    - i. provide a certification, by a senior executive of the company, of Enbridge's adherence to Condition 1;
    - ii. describe any impacts and outstanding concerns identified during construction;
    - iii. describe the actions taken or planned to be taken to prevent or mitigate any identified impacts of construction;
    - iv. include a log of all complaints received by Enbridge, including the date/time the complaint was received, a description of the complaint, any actions taken to address the complaint, the rationale for taking such actions; and
    - v. provide a certification, by a senior executive of the company, that the company has obtained all other approvals, permits, licences, and certificates required to construct, operate and maintain the proposed project.
  - b) a final monitoring report, no later than fifteen months after the in-service date, or, where the deadline falls between December 1 and May 31, the following June 1, which shall:
    - i. provide a certification, by a senior executive of the company, of Enbridge's adherence to Condition 3;
    - ii. describe the condition of any rehabilitated land;
    - iii. describe the effectiveness of any actions taken to prevent or mitigate any identified impacts of construction;
    - iv. include the results of analyses and monitoring programs and any recommendations arising therefrom; and
    - v. include a log of all complaints received by Enbridge, including the date/time the complaint was received, a description of the complaint, any actions taken to address the complaint, the rationale for taking such actions.