



Ontario
Energy
Board

Commission
de l'énergie
de l'Ontario

Ontario

DECISION AND ORDER

EB-2018-0226

ENBRIDGE GAS INC.

Application for leave to construct natural gas pipelines and associated facilities to serve the Georgian Sands planned subdivision in Simcoe County

BEFORE: **Susan Frank**
Presiding Member

Michael Janigan
Member

July 25, 2019

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1 INTRODUCTION AND SUMMARY

Enbridge Gas Inc. (Enbridge Gas) applied to the Ontario Energy Board (OEB) under section 90(1) of the *Ontario Energy Board Act, 1998* (OEB Act) for an order granting leave to construct approximately 14.4 kilometres of natural gas pipeline and ancillary facilities required to provide gas distribution service to the future customers of the Georgian Sands planned subdivision in Simcoe County (Proposed Project). Enbridge Gas is also seeking approval for its proposed forms of easement agreement, pursuant to section 97 of the OEB Act.

The Proposed Project is an extension from Enbridge Gas' existing natural gas distribution system and is composed of two pipelines: an 8 metre section of NPS 8 pipeline and a 6.4 kilometre section of NPS 6 pipeline. A map of the Proposed Project is attached as Schedule A to this Decision and Order. Enbridge Gas plans to start construction of the Proposed Project in July 2019 for an in-service date of December 2019.

The OEB examined all aspects of Enbridge Gas' leave to construct application and is satisfied that the Proposed Project is in the public interest. Leave to construct the Proposed 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 proposed forms of easement agreement.

2 THE PROCESS

On February 27, 2019, Enbridge Gas filed its application with the OEB for an order granting leave to construct the Proposed Project.

A Notice of Hearing was issued by the OEB on March 27, 2019. Anwaatin Inc. (Anwaatin) applied for, and was granted, intervenor status.

The OEB proceeded by way of a written hearing. In accordance with Procedural Order No. 1, OEB staff and Anwaatin filed interrogatories regarding Enbridge Gas' application on May 9, 2019, while Enbridge Gas filed its responses to interrogatories on May 23, 2019.

On June 20, 2019, Enbridge Gas filed updated evidence that included a letter from the Ministry of Energy, Northern Development and Mines (MENDM) stating that MENDM found the procedural aspects of consultation with Indigenous communities undertaken by Enbridge Gas to date for the Proposed Project to be satisfactory.

In accordance with Procedural Order No. 2, OEB staff and Anwaatin filed written submissions with the OEB on June 27, 2019, and Enbridge Gas filed its reply submission on July 9, 2019.

3 LEAVE TO CONSTRUCT

This application seeks an order granting 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 to construct 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 project cost and economics; the environmental impacts; impacts on landowners; and Indigenous consultation.

3.1 Need for the Project

Enbridge Gas stated that the Proposed Project is required in order to meet identified customer demand and potential growth. The developer of the subdivision, ELM Development, has requested natural gas service, which requires an expansion and reinforcement of Enbridge Gas’ gas distribution system. The forecast indicates 1,174 commercial and residential customers will be added by 2023 in the Georgian Sands subdivision. The addition of these customers will cause the existing network to experience low pressures.

In its submission, OEB staff agreed with Enbridge Gas that there is a need for the Proposed Project.

Findings

The OEB accepts that the Proposed Project is required to service the new Georgian Sands subdivision and finds that the Proposed Project is needed.

3.2 Proposed Facilities and Alternatives

The Proposed Project is comprised of approximately 8 metres of NPS 8 Extra High Pressure (XHP) steel natural gas pipeline, and approximately 6.4 kilometres of NPS 6 inch Intermediate Pressure (IP) polyethelene natural gas pipeline.

The route and location of the proposed facilities were selected by an independent environmental consultant through the process outlined in the OEB’s *Environmental Guidelines for the Location, Construction, and Operation of Hydrocarbon Pipelines and Facilities in Ontario* (Environmental Guidelines)¹. Stantec Consulting Ltd. (Stantec)

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

found that due to technical and environmental constraints in the study area, the preferred pipeline route was the only feasible route for the Proposed Project. Other options considered were either longer, resulting in additional costs; had environmental impacts; or did not have access to existing pipelines.

The preferred pipeline route is located within Simcoe County's municipal road allowance. The entirety of this road allowance has been disturbed by previous road or utility maintenance activities and no significant impacts are anticipated resulting from the Proposed Project. Enbridge Gas indicated that no issues were identified during its consultation program with federal and provincial agencies, conservation authorities, municipal personnel and elected officials, Indigenous communities, special interest groups, and residents and businesses within 500 metres of the preliminary preferred route (Consultation Program)².

Demand side management (DSM) for existing customers on upstream networks was not pursued as an alternative to the Proposed Project because it would not reduce the scope of facilities required to connect and service the new customers.

OEB staff has no concerns with the preferred route or route selection methodology of the Proposed Project. OEB staff submitted that an infrastructure solution as proposed by Enbridge Gas in this application is appropriate.

Findings

Enbridge Gas relied upon the findings of Stantec that there were no feasible alternatives to the proposed route. The Proposed Project will be located within municipal road allowances which will allow for easy access and have no significant impacts. Finally, no concerns were identified by OEB staff or during the Consultation Program discussed above³.

The OEB accepts the route and location for the proposed facilities.

² Application, Exhibit C, Tab 1, Schedule 1, pp. 1-3

³ *Ibid.*

3.3 Project Costs and Economics

In accordance with the *OEB's Guidelines for Assessing and Reporting on Natural Gas System Expansion in Ontario* (E.B.O. 188 Guidelines)⁴, Enbridge Gas determined the Proposed Project's Profitability Index (PI) to be 1.0.

The Proposed Project's upfront capital cost is estimated to be \$2,827,537 and includes the costs for pipelines, a district station, land rights, contingencies, and overheads. There is also an additional estimated capital cost of approximately \$2,947,298 associated with connecting the 1,174 customers within the Georgian Sands subdivision. Enbridge Gas is not seeking approval of these connecting assets as part of this application.

Enbridge Gas submitted that the evaluation of the economic feasibility determined that the Proposed Project had a zero net present value based on the incremental cash flows forecasted over 40 years.

OEB staff had no significant concerns with the economics or feasibility of the Proposed Project. However, OEB staff expressed concern that the forecasted customer additions might not be achieved and requested Enbridge Gas to explain, in its reply submission, what would happen if the forecasted customer additions do not fully materialize.

To respond to OEB staff concerns about the customer forecast, Enbridge Gas noted that its approach to attaching new business continues to be consistent with the principles identified in the E.B.O. 188 Guidelines. Enbridge Gas engages in system expansion where it is economic to do so using the E.B.O. 188 Guidelines' portfolio approach accepted by the OEB. This approach ensures that the cost of the new business portfolio for the year will not create an undue burden on existing customers.

Findings

The risk highlighted by OEB staff about the customer additions forecast is a common concern for expansion projects. Enbridge Gas' portfolio approach to system expansions mitigates the risk of creating an undue burden on existing customers. Enbridge Gas maintains a rolling profitability index of at least 1.0 for the entire distribution portfolio.

⁴ E.B.O. 188 "Report to the Board" dated January 30, 1998 (E.B.O. 188) outlines principles regarding matters such as the portfolio approach; methods for financial feasibility analysis; customer connection and contribution policies; environmental planning requirements for system expansion; and monitoring and reporting requirements.

The OEB encourages Enbridge Gas to continue to monitor the economics of the portfolio of distribution expansion projects.

The forecasted PI of 1.0 satisfies the OEB's economic test for this project.

3.4 Environmental Matters

Enbridge Gas retained Stantec to complete an environmental assessment and to propose a route for the pipeline. Enbridge Gas followed the OEB's Environmental Guidelines to assess the potential environmental impact of the Proposed Project. The environmental assessment, including alternative routing and proposed mitigation measures documented in an Environmental Report (ER) was submitted to the Ontario Pipeline Coordination Committee (OPCC) on December 4th, 2018. No comments have been received from the OPCC regarding content of the ER.

Enbridge Gas submitted a Stage 1 Archaeological Assessment (AA) to the Ministry of Tourism, Culture and Sport (MTCS) on October 17, 2018. The Stage 1 AA indicated that a Stage 2 AA is required. Enbridge Gas indicated that it anticipates receiving approval from the MTCS before August 2019. Enbridge Gas stated that no issues were identified during the Consultation Program.

OEB staff did not have concerns with the environmental aspects of the Proposed Project. However, OEB staff submitted that Enbridge Gas should have requested OEB approval for the construction of the distribution system within the Georgian Sands subdivision (Customer Connection Lines) and that its ER also does not include an environmental assessment for the Customer Connections Lines⁵. To address this concern, OEB staff recommended a Condition of Approval be added requiring Enbridge Gas to update the ER and that construction on the Customer Connection Lines does not commence until the ER is updated. OEB staff also submitted that the Conditions of Approval should include a requirement that Enbridge Gas obtain a clearance letter from the MTCS.

In its reply argument, Enbridge Gas indicated that it will file the clearance letter from the MTCS upon receipt. Enbridge Gas stated that the Customer Connection Lines in the Georgian Sands subdivision are being added in four distinct phases, with Phase 1 commencing in 2020 and ending with Phase 4 in 2023. In each phase, the construction of these Customer Connection Lines would not trigger the statutory criteria for a leave to

⁵ Section 90 of the OEB Act requires an order of the OEB granting leave before constructing a 'hydrocarbon line'.

construct application as the pipelines are too small⁶. Enbridge Gas cited several other cases where the Customer Connection Lines required no leave to construct or an ER.

Findings

The OEB accepts Stantec's opinion that there will be no long-term impacts from the construction and/or operation of the Proposed Project assuming that Enbridge Gas follows the recommended mitigation measures. The OPCC has not raised any outstanding concerns.

As noted in Enbridge Gas' reply argument, the issue of approval and ERs for Customer Connection Lines raised in OEB staff's submission in this proceeding was also addressed by the OEB in its decision in the EPCOR South Bruce application⁷. The OEB found that EPCOR Natural Gas Limited Partnership (ENGLP) accurately described the typical practice for distribution pipelines and that the OEB typically granted leave to construct approval to "backbone" pipelines without requiring the approval of distribution portions of systems. However, in the EPCOR South Bruce decision, the OEB stated that, "if any single service line of NPS 2 or NPS 4 from the mainline to an individual customer or group of customers meets the criteria set out in section 90 of the OEB Act and the associated regulation, then ENGLP is required to seek leave to construct from the OEB prior to construction"⁸.

Furthermore, Enbridge Gas' reply submission provided four cases where the OEB approved a pipeline project without requiring approval of the Customer Connection Lines. The OEB finds that the cases referenced by Enbridge Gas accurately describe the typical practice for distribution lines, which is that the OEB has granted leave to construct approval for the mainlines without inclusion of customer connection portions of systems.

The OEB accepts Enbridge Gas' submission that the Customer Connection Lines for the Proposed Project do not require leave to construct approval.

⁶ Enbridge Gas Reply Submission, p. 5

⁷ EB-2018-0263, Decision and Order issued by the OEB on July 11, 2019

⁸ Ibid., p. 6

3.5 Land Matters

The preferred pipeline route will be located within the municipal road allowance. The forms of agreement that Enbridge Gas will offer to landowners if and as required, include:

- a) The Agreement to Grant Easement (Attachment 1)
- b) The Standard Easement Agreement (Attachment 2)
- c) Working Area Agreement (Attachment 3)

Enbridge Gas confirmed that it has a Municipal Franchise Agreement with the County of Simcoe and that it has Certificates of Public Convenience and Necessity for geographic areas covering the Township of Springwater and Towns of Wasaga Beach.

OEB staff expressed no concerns with the permanent or temporary land use agreements and submitted that the proposed forms of land agreement should be approved as they are consistent with a form of agreement previously approved by the OEB.

Findings

As indicated by OEB staff, the forms of temporary land use agreement filed are consistent with the forms of agreement previously approved. The OEB approves the proposed forms of temporary land use agreement.

3.6 Indigenous Consultation

Enbridge Gas provided the MENDM with a project description for the Proposed Project on June 22, 2018. The MENDM identified six Indigenous communities to be consulted⁹.

On June 19, 2019, the MENDM provided Enbridge Gas with a letter regarding Indigenous engagement activities for the Proposed Project. In that letter, the MENDM indicated that the procedural aspects of the Indigenous consultation undertaken by Enbridge Gas to date for the purposes of the Proposed Project are satisfactory.

Enbridge Gas indicated that it will continue to engage the Indigenous communities during the regulatory process and throughout the life of the Proposed Project.

Anwaatin requested that the OEB determine whether Enbridge Gas has adequately consulted with affected Indigenous communities, particularly in relation to cultural

⁹ Application, Exhibit G, Tab 1, Schedule 1, p. 1

heritage, archaeology, socio-economic, and environmental rights and interests. No specific areas of potential infringement on Indigenous rights or potential harm were identified by Anwaatin.

Anwaatin submitted that the Official Plan of Simcoe County (Official Plan) identified several obligations including the need to conserve cultural heritage landscapes and archaeological resources. Anwaatin requested that the OEB impose several conditions associated with each work site, both during construction and for the lifecycle of the Proposed Project and to require Enbridge Gas to have adequate insurance.

In response to Anwaatin's request for additional conditions, Enbridge Gas noted that it already has processes in place to facilitate ongoing consultation; to allow active participation in the Proposed Project; to provide funding to participate; and to ensure adequate insurance is in place, which are the matters that Anwaatin proposed should be the subject of additional conditions. Enbridge Gas noted that there are two First Nations communities in close proximity to the Proposed Project and both communities already have distribution services provided by Enbridge Gas.

OEB staff submitted that Enbridge Gas appears to have made adequate efforts to engage with affected Indigenous groups and noted that no concerns that could materially affect the Proposed Project have been raised through the Consultation Program. OEB staff concluded that the procedural aspects of the duty to consult have been sufficiently discharged for the Proposed Project.

Findings

The OEB finds that Enbridge Gas followed the OEB's Environmental Guidelines with respect to Indigenous consultation. As part of these requirements, Enbridge Gas contacted the MENDM with respect to the Crown's duty to consult on the Proposed Project. MENDM advised that the procedural aspects of consultation undertaken by Enbridge Gas had been satisfactory for the purposes of the OEB's leave to construct.

While the OEB is not bound to accept the determination of the MENDM, the evidence on the record of this proceeding confirms that conclusion. Although directly served with notice of Enbridge Gas' application, none of the six First Nation communities identified by the MENDM intervened in this proceeding. Enbridge Gas provided consultation materials, including a summary of meetings, concerns identified, and Enbridge Gas' responses¹⁰.

¹⁰ Application, Exhibit C, Tab 1, Schedule 3, Attachment 1

Although Anwaatin has asked the OEB to examine if consultation has been sufficient, it has not alleged that the Proposed Project presents any specific potential infringements of a particular Aboriginal or treaty right. The Proposed Project is being built on existing road allowances which suggests that the potential for harm is limited. The discussion on the Official Plan obligations did not highlight any current or expected problems. As well, compliance with the Official Plan is not an issue to be determined by the OEB in this proceeding¹¹.

The entire evidentiary record in this case does not support Anwaatin's concern about the sufficiency of Indigenous consultation. The OEB also finds that it is not necessary to include any of the conditions of approval suggested by Anwaatin. The OEB accepts that Enbridge Gas already has a program in place that covers much the same issues as Anwaatin's proposed conditions. As a result, the standard conditions of approval that are used for a LTC application are sufficient and that no additional conditions will be added to address Anwaatin's concerns. OEB expects that Enbridge Gas will continue its consultation activities with affected Indigenous communities throughout the life of the Proposed Project.

The OEB therefore finds that Enbridge Gas' efforts to date, together with its ongoing plans, are sufficient for the OEB to conclude that Enbridge Gas has satisfied the duty to consult for the purposes of this approval of the leave to construct.

Anwaatin also requested that the OEB stipulate that all affected First Nations communities receive reliable and affordable natural gas services. Enbridge indicated that the two communities in close proximity to the Proposed Project already have distribution services provided by Enbridge Gas. Anwaatin's broader enquiry into the provision of natural gas service to, and natural gas rates for Indigenous communities is beyond the scope of this proceeding.

3.7 Conditions of Approval

In addition to the standard Conditions of Approval, OEB staff submitted that the leave to construct should be conditional on Enbridge Gas filing with the OEB a clearance letter from the MTCS for the Proposed Project. Enbridge Gas agreed to the inclusion of the condition of filing a clearance letter from the MTCS to the approval.

¹¹ Official Plans are under the jurisdiction of the Minister of Municipal Affairs and Housing and not the OEB.

Findings

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

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

4 ORDER

THE ONTARIO ENERGY BOARD ORDERS THAT:

1. Enbridge Gas Inc. is granted leave, pursuant to section 90(1) of the OEB Act, to construct approximately 8 meters of 8 inch diameter pipeline and 6.4 kilometers of 6 inch diameter pipeline in Simcoe County, as described in its application.
2. The OEB approves the proposed forms of easement agreement that Enbridge Gas Inc. has offered or will offer to each owner of land affected by the approved pipeline route for the Proposed Project.
3. Leave to construct is subject to Enbridge Gas Inc. complying with the Conditions of Approval set out in Schedule B.
4. Eligible intervenors shall file with the OEB and forward to Enbridge Gas Inc. their respective cost claims in accordance with the OEB's *Practice Direction on Cost Awards* on or before August 8, 2019.
5. Enbridge Gas Inc. shall file with the OEB and forward to intervenors any objections to the claimed costs of the intervenors on or before August 22, 2019.
6. If Enbridge Gas Inc. objects to any intervenor costs, those intervenors shall file with the OEB and forward to Enbridge Gas Inc. their responses, if any, to the objections to cost claims on or before September 5, 2019.
7. Enbridge Gas Inc. shall pay the OEB's costs incidental to this proceeding upon receipt of the OEB's invoice.

DATED at Toronto July 25, 2019

ONTARIO ENERGY BOARD

Original signed by

Kirsten Walli
Board Secretary

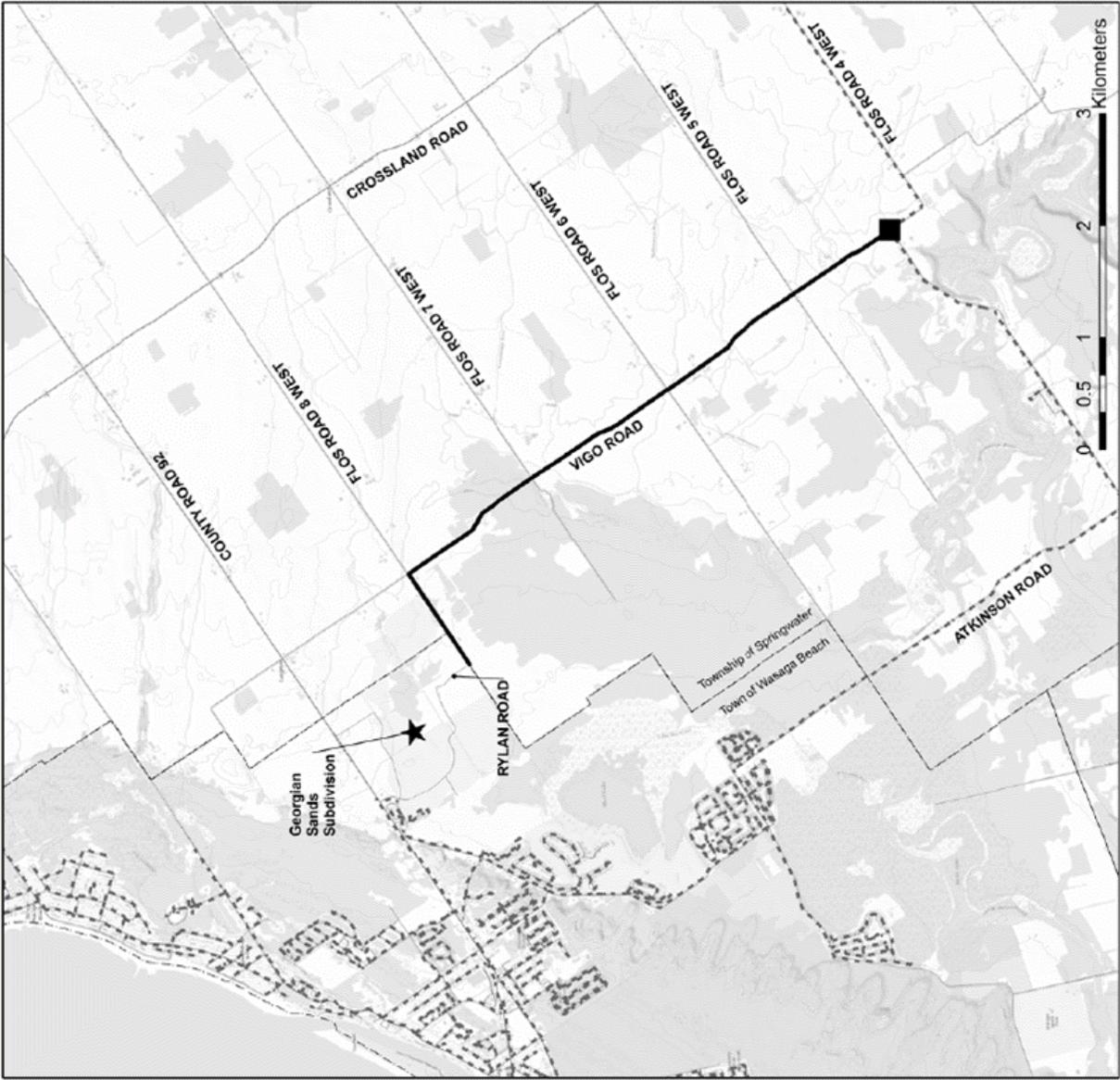
SCHEDULE A
DECISION AND ORDER
ENBRIDGE GAS INC.
EB-2018-0226
JULY 25, 2019

Project Area



Legend

- - - Existing Pipelines
- Proposed Pipeline Segment
- District Station
- Municipal Boundary



SCHEDULE B
DECISION AND ORDER
ENBRIDGE GAS INC.
EB-2018-0226
JULY 25, 2019

SCHEDULE B – CONDITIONS OF APPROVAL

Application under Section 90 of the OEB Act

Enbridge Gas Inc.

EB-2018-0226

1. Enbridge Gas Inc. (Enbridge Gas) shall construct the facilities and restore the land in accordance with the OEB's Decision and Order in EB-2018-0226 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 Gas 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 Gas shall implement all the recommendations of the Environmental Protection Plan and Environmental Report filed in the EB-2018-0226, and all the recommendations and directives identified by the Ontario Pipeline Coordinating Committee review.
4. Authorization for leave to construct is granted conditional on Enbridge Gas filing with the OEB a clearance letter from the Ministry of Tourism, Culture and Sport for the project.
5. Enbridge Gas shall advise the OEB of any proposed change in the project, including but not limited to changes in: OEB-approved construction or restoration procedures, the proposed route, construction schedule and cost, the necessary environmental assessments and approvals, and all other approvals, permits, licences, certificates and rights required to construct the proposed facilities.

Except in an emergency, Enbridge Gas 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.

6. Concurrent with the final monitoring report referred to in Condition 7(b), Enbridge Gas shall file a Post Construction Financial Report, which shall provide a variance analysis of project cost, schedule and scope compared to the estimates filed in this proceeding, including the extent to which the project contingency was utilized. Enbridge Gas 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 Gas proposes to start collecting revenues associated with the project, whichever is earlier.
7. Both during and after construction, Enbridge Gas 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, Enbridge Gas' 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 Gas, 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
 - 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 certification, by a senior executive of the company, Enbridge Gas' adherence to Condition 3
 - ii. Describe the condition of any rehabilitated land
 - iii. Describe the effectiveness of any such 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
 - v. Include a log of all complaints received by Enbridge Gas, 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
8. Enbridge Gas shall designate one of its employees as project manager who will be responsible for the fulfillment of these conditions, and shall provide the employee's name and contact information to the OEB and to all the appropriate landowners, and shall clearly post the project manager's contact information in a prominent place at the construction site.

The OEB's designated representative for the purpose of these Conditions of Approval shall be the OEB's Manager of Supply and Infrastructure (or the Manager of any OEB successor department that oversees leave to construct applications).