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de l'énergie  
de l'Ontario

BY EMAIL

February 10, 2020

Ms. Christine Long  
Registrar & Board Secretary  
Ontario Energy Board  
2300 Yonge Street, 27<sup>th</sup> Floor  
Toronto, ON M4P 1E4  
[BoardSec@oeb.ca](mailto:BoardSec@oeb.ca)

Dear Ms. Long:

**Re: Ontario Energy Board (OEB) Staff Submission  
Enbridge Gas Inc. – Windsor Pipeline Replacement Project Application  
OEB File Number: EB-2019-0172**

In accordance with Procedural Order No. 5, please find attached the OEB staff submission in the above proceeding. The attached document has been forwarded to Enbridge Gas Inc. and to all other registered parties to this proceeding.

Yours truly,

*Original Signed By*

Judith Fernandes  
Project Advisor, Natural Gas Applications

Encl.



# **ONTARIO ENERGY BOARD**

## **OEB Staff Submission**

**Enbridge Gas Inc.  
Windsor Pipeline Replacement  
Project Application**

**Application for Leave to Construct**

**EB-2019-0172**

**February 10, 2020**

## Introduction

On August 9, 2019, Enbridge Gas Inc. (Enbridge Gas) applied to the Ontario Energy Board (OEB) under section 90(1) of the *Ontario Energy Board Act, 1998* for leave to construct a natural gas pipeline and associated facilities between the Port Alma Transmission Station in the Municipality of Chatham Kent and the intersection of Concession 8 and County Road 46, in the Town of Tecumseh (the Project). Enbridge Gas also applied under section 97 of the Act, for approval of the Form of Temporary Land Use Agreement to be offered to affected landowners.

The Project involves the replacement of a 64-kilometre section of the Windsor Line pipeline, comprising 8-inch and 10-inch diameter sections, with a new 6-inch diameter pipeline. According to the application, the need for the Project is to address several integrity concerns which, if not addressed, are expected to impact both the safety and security of supply of the pipeline. The total estimated cost of the Project is \$106.8M. This comprises \$77.4M for the main pipeline, \$15.3M for ancillary facilities (stations and services), and \$14.1M in indirect overhead costs.

In making submissions, OEB staff notes that through the course of this proceeding, issues were raised regarding the size and estimated costs of the pipeline that Enbridge Gas seeks to build as compared to the alternatives. Despite the OEB's provision for interrogatories, additional discovery through a technical conference, as well as undertakings, these issues remained in dispute. Consequently, the OEB required Enbridge Gas to file an Argument-in-Chief (AIC) specifically addressing the need and prudence of the size of the pipeline that Enbridge Gas seeks to build with reference to the appropriate sections of its evidence.

Having reviewed the record of the proceeding, OEB staff submits that the need for the replacement of the pipeline can be justified based on the integrity issues noted by Enbridge Gas and the age of the pipeline. However, OEB staff notes that inconsistencies in Enbridge Gas' evidence, as detailed in this submission, and the resultant lack of clarity make it challenging to fully support Enbridge Gas' leave to construct (LTC) application. In particular, OEB staff submits that Enbridge Gas has not demonstrated that its proposed design, i.e. NPS 6 pipeline is required for the entire section of the pipeline that is being replaced. In OEB's staff's view, a hybrid option (combined NPS 4 and NPS 6 pipeline) can meet the replacement need of the pipeline.

If the OEB were to grant approval for this application, OEB staff submits that the leave to construct approval should be subject to certain Conditions of Approval (see Appendix A).

## Process

The OEB issued a Notice of Hearing on September 13, 2019. The Energy Probe Research Foundation (Energy Probe) and the Federation of Rental-housing Providers of Ontario (FRPO) applied for intervenor status and cost eligibility. No objection was received from Enbridge Gas. Energy Probe and FRPO were approved as intervenors and found eligible to apply for an award of costs.

On October 11, 2019, the OEB issued Procedural Order No. 1, making provision for interrogatories, interrogatory responses and submissions. Interrogatories were filed by OEB staff on October 17, 2019 and by Energy Probe, and the FRPO on October 21, 2019. Enbridge Gas filed its responses to interrogatories on November 1, 2019.

On November 11, 2019, FRPO filed a letter requesting additional discovery on the application by means of a technical conference. The OEB issued Procedural Order No. 2 on November 13, 2019, which sought submissions from parties on the merits of FRPO's request, and suspended the dates set out in Procedural Order No. 1 for submissions on the application. FRPO's request was supported by Energy Probe and OEB staff.

On November 22, 2019, the OEB issued Procedural Order No. 3 ordering a transcribed technical conference, which was held on December 5, 2019. Enbridge Gas filed responses to undertakings on December 18, 2019. On December 23, 2019, the OEB issued Procedural Order No. 4 making provision for written submissions.

On January 4, 2020, FRPO filed a letter requesting an oral hearing. FRPO stated that the evidence filed by Enbridge Gas regarding the sizing of the pipeline and the costs of alternatives was confusing and that it would be in the public interest to hold an oral hearing to clarify the record. Enbridge Gas responded to FRPO's request on January 8, 2020 stating that an oral hearing was not necessary and that there is a full record to enable the OEB to determine if the application is in the public interest. FRPO filed another letter on January 10, 2020 reiterating its request for an oral hearing

On January 13, 2020, the OEB issued a letter stating that it would not proceed by way of an oral hearing and required Enbridge Gas to file an AIC addressing the need and prudence for the size of the pipeline sought to be built with reference to the appropriate sections of the evidence. The OEB issued Procedural Order No. 5 on January 15, 2020

setting out a revised schedule for the filing of written submissions. On January 27, 2020, Enbridge Gas filed its Argument-in-Chief (AIC).

## 1. Project Need

### *Integrity and Operational Concerns*

The Windsor Line is a large diameter high-pressure distribution pipeline that receives gas from the Enbridge Gas Panhandle Transmission System and provides natural gas service to residents and businesses from Port Alma, in the Municipality of Chatham-Kent to the City of Windsor, located in the County of Essex. A significant portion of the Windsor Line was installed in the 1930s, 1940s and 1950s.

Enbridge Gas states that surveys and inspections of the Windsor Line are undertaken annually. These inspections have identified multiple integrity issues that could pose safety and security of supply concerns if not addressed. These include a history of leakage with significant costs to repair, portions of the older vintage pipe that are not weldable, sections of the pipeline that cannot be isolated because of inoperable mainline valves, and sections that have poor depth of cover with less than 0.6m<sup>1</sup>.

In response to interrogatories, Enbridge Gas stated that the Windsor Line was deemed a high operational risk in April 2017.<sup>2</sup> The Project was identified in Enbridge Gas' Utility System Plan (USP) and Asset Management Plan (AMP) filed in Enbridge Gas' 2019 rate application.<sup>3</sup>

OEB staff requested an estimate of the costs that are likely to be incurred to mitigate the integrity concerns identified if the Project is delayed. Enbridge Gas stated that there is no practical way to estimate with any level of certainty the costs resulting from depth of cover resolution or leakage repairs as they are all independently estimated and responded to.<sup>4</sup> However, in responses to undertakings from the Technical Conference, Enbridge Gas was able to further elaborate on the costs for repair and maintenance, providing the table below reflecting maintenance costs of the line incurred over the past three years and amounts expected to be incurred over the next three years<sup>5</sup>:

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<sup>1</sup> Application, Exhibit B, Tab 1, Schedule 1,p.2

<sup>2</sup> Exhibit I, OEB Staff 2

<sup>3</sup> Exhibit I, OEB Staff 6

<sup>4</sup> Exhibit I,OEB Staff 2

<sup>5</sup> Exhibit JT1.18

	2017	2018	2019	2020	2021	2022
<b>Total</b>	\$203,085	\$169,185	\$250,485	\$381,000	\$685,000	\$857,000

Enbridge Gas stated that in addition to the estimated costs in the above table for 2020, 2021 and 2022, it expects incremental costs ranging from \$10 to \$18 million from 2020 to 2022 to address depth of cover issues.

Enbridge Gas submitted that there are currently three inoperable mainline valves and stated that as these valves were inoperable and if the pipeline had to be isolated, this would result in significant customer outages.<sup>6</sup> There are 399 residential and commercial customers directly served off the section of pipeline that Enbridge Gas proposes to replace.

Based on the evidence filed by Enbridge Gas, OEB staff submits that the need for the replacement is supported by the integrity concerns identified and the age of the pipeline.

### **Project Alternatives**

Enbridge Gas plans to replace the existing NPS 10 and NPS 8 pipeline currently operating at a maximum operating pressure (MOP) of 1380 kPa with NPS 6 pipeline operating at a MOP of 3450 kPa. The increase in the operating pressure will require upgrades to the 399 services and 14 stations directly connected to the higher operating pressure pipeline. Enbridge Gas plans to install five new stations and to abandon four existing stations. In areas where it is not practical to remove the existing pipeline (road and water crossings), it will be abandoned in place.

Enbridge Gas provided the following table comparing the Project to several alternatives that it considered. The costs of the Project shown includes ancillary facilities but excludes indirect overheads.

<sup>6</sup> Response to OEB Staff Interrogatory, Exhibit I, Staff 2, p.2

Alt #	Alternative Description	Rationale for Decision	Next Facility Required Based on FBP Growth	Cost (\$M)
	Proposed Pipeline Replace with 64km NPS 6 3450kPa MOP from Concession Road 8 to Port Alma	64km NPS 6 3450kPa provides an equivalent capacity to the current Windsor Line while also providing significant opportunity for growth with the completion of the replacement of the Remaining Pipeline	>2040	92.7
Alt 1	Replace with NPS 6 1380kPa MOP from Concession Road 8 to Port Alma	64km NPS 6 1380kPa replacement cannot support growth in Windsor. This alternative can only support the existing system demand	2021	92.0
Alt 2	Replace with NPS 8 1380kPa MOP from Concession Road 8 to Port Alma	64km NPS 8 1380kPa replacement can support up to five years of forecasted growth, however after that point reinforcement will be required. This project is also more expensive than the proposed project while providing less capacity	2025	103.1
Alt 3	Replace with NPS 10 1380kPa MOP from Concession Road 8 to Port Alma	64km NPS 10 1380kPa replacement is a size-for-size replacement of the existing pipeline. While this does provide capacity for system-wide growth, this alternative was rejected due to cost.	>2040	108.4
Alt 4	Replace with NPS 8 3450kPa MOP from Concession Road 8 to Port Alma	64km NPS 8 3450kPa replacement provides more capacity than the Proposed Pipeline; however the forecast cannot justify the increase in cost associated with generating the incremental capacity.	>2040	104.0
Alt 5	Replace with NPS 10 3450kPa MOP from Concession Road 8 to Port Alma	64km NPS 10 3450kPa replacement provides a significant surplus of capacity compared to the Proposed Pipeline, however the forecast cannot justify the increase in cost associated with generating the incremental capacity.	>2040	109.3
Alt 6	Replacing a Longer Section of the Windsor Line	Replacing the entire Windsor Line is not required at this time as the Remaining Pipeline has not presented the same integrity concerns as the rest of the line. Additionally, cost-saving opportunities are available by competing phased replacement projects alongside municipal road reconstruction projects.	>2040	110.6
Alt 7	Replacing a Shorter Section of the Windsor Line	Replacing ~48km NPS 6 3450kPa from Wheatley Road 1 to Concession Road 8 would leave a 16km section of 1950's vintage pipe still in service. This pipe has significant integrity concerns as the rest of the Windsor Line; however it has not exhibited the same leak frequency. Left to operate in its current state, it is only a matter of time before this section of the Windsor Line develops leaks at increasing frequency and severity.	>2040	74.7

Other alternatives considered and rejected in early analysis

Alt #	Alternative Description	Rationale for Decision
Alt 8	Installing a 1900kPa MOP Pipeline	If the Windsor Line is to be replaced at a higher MOP, a 3450kPa MOP would provide the most capacity with minimal cost increases compared to a 1900kPa MOP.
Alt 9	Installing a 6040kPa MOP Pipeline	The existing transmission and distribution systems would not fully utilize the potential of a 6040kPa line, meaning there is little justification to support the significant increase in cost associated with installing a new transmission line.
Alt 10	Installing a 420kPa MOP	Installing a 420kPa MOP would not provide any significant capacity to accommodate growth, even if the system were reinforced extensively. Growth can only be supported when large diameter pipe is installed, which in turn creates significant cost increases
Alt 11	Joining Previously Independent Distribution Pipelines	No nearby distribution pipelines with adequate capacity to serve the system demands.
Alt 12	Obtaining supply from non-Enbridge pipelines	No nearby pipelines with adequate, reliable capacity to serve the system demands.
Alt 13	Geo-targeted demand side management	The Proposed Pipeline is integrity driven, so DSM cannot defer or eliminate the project need. It was also evaluated to see if DSM would be viable to reduce the size of the proposed project, however it was found that an NPS 4 project could not serve the existing system demand, even with geo-targeted DSM being implemented.

Enbridge Gas stated that the Project was chosen as it offers the lowest cost while also providing the required capacity to serve the current and forecasted system demands. Enbridge Gas provided a ten year customer attachment forecast of demands from its Facilities Business Plan (FBP) that is used to forecast design day demand, i.e. the peak hourly demand of the customers served by the pipeline. The FBP is used to identify reinforcement facilities required to support forecasted growth for a specific geographic area.

FRPO filed several interrogatories asking Enbridge Gas whether it had considered the option of using a NPS 4 for some or all of proposed pipeline construction. In its responses, Enbridge Gas dismissed the use of a NPS 4 exclusively as this would not serve the existing demand requirements on design day. With respect to a hybrid option (combination of NPS 4 and NPS 6), Enbridge Gas stated that 40% of the proposed line requires the capacity of NPS 6. If the hybrid option were used, Enbridge Gas would be unable to meet unforecasted demand outside the FBP.<sup>7</sup> OEB staff notes that the proposed design appears to be designed to meet demand that is above the ten year demand forecast.

FRPO asked Enbridge Gas to provide information on the capacity east of Comber Transmission Station (Comber) under different sizing scenarios. Based on information provided by Enbridge Gas for Port Alma, the incremental capacity generated by the proposed NPS 6 pipeline at the end of ten years is 15,200 m<sup>3</sup>/hour; with the use of a hybrid option, the additional capacity is 4,700 m<sup>3</sup>/hour.<sup>8</sup> FRPO argued that the use of a NPS 6 pipeline results in surplus capacity that is over 200 times the forecasted need at the end of ten years while the hybrid option results in additional capacity that is over 70 times the need at the end of ten years and questioned the need for the NPS 6 pipeline.<sup>9</sup>

Enbridge Gas' response is that unforecasted demand arises from large agricultural and greenhouse customers whose locations and demands are difficult to predict and these demands are not included in the FBP. In response to OEB staff questions, Enbridge Gas indicated that it had received inquiries in the Port Alma area in the past two years for demands in excess of 6,600 m<sup>3</sup>/hour with the potential for additional future demands.<sup>10</sup> Enbridge Gas updated its response in its undertakings, advising that it had received four inquiries in the Port Alma and surrounding areas for firm demands of approximately 8,000 m<sup>3</sup>/hour east of Comber.<sup>11</sup> Enbridge stated that demands in these quantities at Port Alma will likely require reinforcement sooner if the hybrid option is pursued than if all NPS 6 is installed.<sup>12</sup>

In response to questions about the operational implications of a hybrid alternative, Enbridge Gas indicated that the hybrid option will reduce the pressure and flows available on the newly replaced pipeline, reducing its ability to provide a backfeed to other systems for both operational and emergency scenarios in the area.<sup>13</sup>

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<sup>7</sup> Exhibit I, FRPO 12

<sup>8</sup> Exhibit I, KT 1.2

<sup>9</sup> Technical Conference Transcript, pp 17-20, FRPO January 4, 2020 letter

<sup>10</sup> Exhibit KT1.5

<sup>11</sup> Exhibit JT 1.15

<sup>12</sup> Exhibit KT1.5 and Argument-in-Chief, p.10

<sup>13</sup> Exhibit KT1.6

FRPO requested cost estimates for the NPS 4 and the hybrid alternatives. Enbridge Gas did not provide cost estimates, stating that cost was not determined for these alternatives as they are either not feasible or not realistic options to meet the current and forecasted demand.<sup>14</sup> However, in response to questions by OEB staff on the cost of the hybrid option, Enbridge Gas provided an estimate of the hybrid option at \$0.8M less than the NPS 6 option.<sup>15</sup> This was further queried by FRPO during the Technical Conference and in Enbridge Gas' response to undertakings, the cost differential between a NPS 6 and hybrid option was \$1.3M.<sup>16</sup>

FRPO also requested unit costs for material for NPS 4 and NPS 6 pipelines. Based on the costs provided by Enbridge Gas, FRPO estimated that material costs of a NPS 6 is \$4.5M more than a NPS 4. When this differential was assessed against the overall costs of the NPS 6 and the hybrid options, it appears that contractor installation costs are \$3.2M more for the installation of the hybrid option than for installing NPS 6 for the entire route of the Project. FRPO argued that this result is inconsistent with the evidence presented by Enbridge Gas for three previous pipeline projects, which demonstrates that the unit cost for a NPS 4 was less than one-third of the cost of a NPS 6 and which also show the contractor cost per unit length for a NPS 4 as being less than half of the unit cost for NPS 6.<sup>17</sup>

In its AIC, Enbridge Gas submitted that comparison with these past projects is not appropriate as they are small pipeline projects such as new general infill expansion enhancement to existing pipelines while the proposed replacement is a much larger project. Enbridge Gas argued that the primary difference between the NPS 6 and the hybrid option costs stems from materials and re-affirmed that the cost differential between a NPS 6 and the hybrid option is \$0.8M.

While OEB staff considers that the costs of the hybrid option should be less than the NPS 6, the cost differential between the hybrid option and the proposed NPS 6 appears to be considerably understated. For example, it is not clear to OEB staff why contracting installation costs would be substantially more for the hybrid option. In the absence of better clarity from Enbridge Gas in its reply submission, in addition to confirmation that there are no additional technical or operational concerns with implementing the hybrid option, OEB staff recommends that the OEB approve the hybrid option.

OEB staff observes that significant additional capacity will be created by the Project, which Enbridge Gas considers to be necessary to meet future potential growth beyond its 10 year

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<sup>14</sup> Exhibit I, FRPO 16

<sup>15</sup> Exhibit KT 1.6

<sup>16</sup> Exhibit JT1.14

<sup>18</sup> EB-2018-0108, Decision and Order, p.6 and EB-2017-0118, Decision and Order, p.6

growth forecast. OEB staff submits that while it is reasonable to consider future growth potential in a reinforcement project, it is important that evidence on potential load additions to justify additional capacity be provided to enable the OEB to assess the need of a proposed project. Enbridge Gas' application considers current and forecasted growth, whereas the need for additional capacity to address unforecasted growth potential has only been raised by Enbridge Gas through an extensive discovery process and with no further evidence supporting its position other than to state that it has received inquiries from potential customers in the Port Alma area.

OEB staff accepts Enbridge Gas' statements that unforecasted demand relates to large agricultural and greenhouse customers whose locations and demands are difficult to predict. However, OEB staff submits that it is not clear when or if Enbridge Gas will be required to meet all or any of these potential demands.

Based on the evidence filed by Enbridge Gas, OEB staff submits that the need for the replacement is supported by the integrity concerns identified and the age of the pipeline. However, it appears that this need can be met with the hybrid option, i.e. this design can meet the current and forecasted demand subject to the clarifications that Enbridge Gas should provide in its reply submission noted earlier. In OEB staff's view, Enbridge Gas has not demonstrated that a NPS 6 pipeline is necessary for the entire route.

## 2. Economics

The total estimated cost of the Project is \$106.8M. This comprises \$77.4M for the main pipeline, \$15.3M for ancillary facilities (stations and services), and \$14.1M in indirect overhead costs.

Enbridge Gas states that is not seeking approval for the costs of the ancillary facilities (stations and services) in this application but has shown these costs in the total Project cost estimates for completeness.

A Discounted Cash Flow report was not completed as Enbridge Gas states that the Project is underpinned by the integrity requirements and will not create a significant change in capacity available on the Windsor Line.

OEB staff submits that the rationale for not conducting an economic analysis is acceptable and notes that the OEB has accepted the rationale in previous applications for leave to construct replacement projects where the need was driven by integrity

requirements.<sup>18</sup>

As previously stated, OEB staff believes that the need for replacement of the pipeline can be met by the hybrid option. While the quantification of the cost differential between the proposed Project and the hybrid option is unclear, it is however clear that the hybrid option should result in savings to ratepayers.

Enbridge Gas expects the Project will meet the criteria for rate recovery through the OEB's Incremental Capital Module (ICM) mechanism. The ICM request for the Project will form part of Enbridge Gas' 2020 rate application.

### 3. Routing and Environmental Matters

Enbridge Gas retained Stantec Consulting Ltd. (Stantec) to undertake an environmental assessment for the proposed pipeline. Stantec prepared an Environmental Report (ER) for the Project in accordance with the OEB's *Environmental Guidelines for the Location, Construction, and Operation of Hydrocarbon Pipelines and Facilities in Ontario, 7<sup>th</sup> Edition, 2016* (Environmental Guidelines).<sup>19</sup> The ER for the Project identified the environmental and socio-economic features along the route of the proposed pipeline. According to the ER, Stantec does not anticipate any permanent or adverse environmental impacts from the construction and operation of the Project, provided the mitigation measures recommended in the ER are followed.

Copies of the ER were submitted to the Ontario Pipeline Coordinating Committee (OPCC) for review and comment on July 22, 2019. As part of its interrogatory responses, Enbridge Gas filed a summary of responses received as part of the OPCC review noting a couple of outstanding matters. The Essex Region Conservation Authority (ERCA) stated that while it agreed with Stantec's assessment and proposed mitigation measure, the ERCA identified 127 crossings proposed for various municipal drains and watercourses for which a permit is required. As well, the ERCA noted that portions of the Project are within the Event Based Area as defined in the Essex Region Source Protection Plan, which has measures to protect Essex Region's municipal drinking water sources. The ERCA has recommended that a Risk Management Plan may be required if the handling and storage of fuel on-site meets the specific risk circumstances to be considered a significant drinking water threat. The ERCA recommended that Enbridge Gas contact the Essex Region Risk Management Official/Inspector. Enbridge Gas stated that it has contacted the Essex Region Risk

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<sup>18</sup> EB-2018-0108, Decision and Order, p.6 and EB-2017-0118, Decision and Order, p.6

<sup>19</sup> Application, Exhibit C, Tab 6, Schedule 1

Management Official/Inspector to discuss the Project and appropriate risk management measures and will work with the ERCA on its permit application for the identified water crossings.

Stantec completed a Stage 1 Archaeological Assessment (AA) which identified areas that retain archaeological potential and require a Stage 2 AA. In its interrogatory responses, Enbridge Gas confirmed that a Stage 1 AA report was submitted to the Ministry of Tourism, Culture, and Sport (MTCS) on March 11, 2019 and that the MTCS issued a compliant letter on April 12, 2019. Enbridge Gas stated that the Stage 2 AA began in June 2019 and field work is expected to complete by November 2019. Enbridge expects to submit the Stage 2 AA report to the MTCS in December 2019. Enbridge Gas anticipates a response from the MTCS regarding the Stage 2 AA prior to the start of construction.

Enbridge Gas stated that it will continue to work with agencies as well as municipalities throughout the Project area to secure any necessary permits and authorizations prior to construction.

According to the application, the proposed pipeline will be designed and constructed in accordance with the Ontario Regulations 210/01 of the *Technical Standards and Safety Act 2000, Oil and Gas Pipeline Systems* (TSSA). Enbridge Gas plans to abandon the existing pipeline in place in areas where it is not practical to remove the pipeline; this is likely to occur for road and water crossings, environmentally sensitive locations, and municipal road allowances. Enbridge Gas stated that it will adhere to the TSSA abandonment guidelines and the applicable current edition of the Canadian Standards Association, *CSA Z662 Oil and Gas Systems Standard*. Enbridge Gas also stated that to maintain continued delivery of natural gas service to customers, the existing pipeline will remain in-service until the proposed pipeline has been constructed and placed in-service.

OEB staff has no concerns with the environmental aspects of the Project, given that Enbridge Gas is committed to implementing the proposed mitigation measures. OEB staff notes that Enbridge Gas agrees with the draft Conditions of Approval proposed by OEB staff, including those that require environmental reporting and monitoring. OEB staff notes that Condition 6a)v. requires Enbridge Gas to certify that it has obtained all approvals, permits, licences, and certificates required to construct, operate and maintain the proposed Project.

## 4. Indigenous Consultation

In accordance with the Environmental Guidelines, on April 13, 2018, Enbridge Gas contacted the Ministry of Energy, Northern Development and Mines (MENDM) with respect to the Crown's duty to consult, providing the MENDM with a description of the Project. In a letter dated September 10, 2018, the MENDM delegated the procedural aspects of the Crown's duty to consult for the Project to Enbridge Gas. The letter identified six Indigenous communities<sup>20</sup> to be consulted.

On August 9, 2019, Enbridge provided the MENDM with its Indigenous Consultation Report for the Project and requested that the MENDM determine if the procedural aspects of the duty to consult are sufficient.

As part of its application, Enbridge Gas filed a summary of Enbridge Gas' Indigenous consultation activities for the Project as well as its Indigenous consultation matrix (and associated attachments).<sup>21</sup> Enbridge Gas stated that it will continue to engage with the identified Indigenous communities during the regulatory process and throughout the life of the Project.<sup>22</sup>

On January 22, 2020, Enbridge Gas updated its evidence with a letter received from the MENDM which stated that the MENDM is of the opinion that the procedural aspects of consultation undertaken by Enbridge Gas with respect to the Project are satisfactory.

Based on the above, OEB staff accepts that the procedural aspects of the duty to consult have been satisfied for the Project.

## 5. Land Matters

The proposed Project will follow the same route as the existing pipeline and will be located entirely within existing municipal road allowances. Enbridge Gas proposes to purchase land for five new station sites. In addition, Enbridge Gas will require Temporary Land Use rights on 28 properties adjacent to municipal road allowances to facilitate construction activities. Enbridge Gas stated that negotiations are ongoing with landowners and it expects to have all necessary land rights in place before construction begins.

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<sup>20</sup> Aamjiwnaang First Nation, Bkejwanong (Walpole Island) First Nation, Caldwell First Nation, Chippewas of Thames First Nation, Chippewas of Kettle and Stony Point, Oneida Nation of the Thames

<sup>21</sup> Application, Exhibit C, Tab 8, Schedules 1,2

<sup>22</sup> Application, Exhibit B, Tab 1, Schedule 8, p. 3

Enbridge Gas seeks approval of the form of Temporary Land Use Agreement, which has been approved by the OEB in previous pipeline projects.<sup>23</sup>

OEB staff has no concerns with respect to Enbridge Gas' proposed land use. OEB staff submits that the OEB should approve the proposed form of Temporary Land Use Agreement.

## 6. Conditions of Approval

Enbridge Gas reviewed and agreed with the draft Conditions of Approval proposed by OEB staff in its interrogatories.<sup>24</sup>

Section 23 of the OEB Act permits the OEB, when making an order, to impose such conditions as it considers appropriate. In the absence of better clarity from Enbridge Gas on the matters identified in this submission, OEB staff submits that the OEB should approve the hybrid option subject to the Conditions of Approval attached as Appendix A to this submission.

All of which is respectfully submitted.

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<sup>23</sup> Application, Exhibit C, Tab 7, Schedule 3

<sup>24</sup> Exhibit I, Staff 12

## **Appendix A**

**Leave to Construct Application under  
Section 90 of the OEB Act**

**Enbridge Gas Inc.  
EB-2019-0172**

**Conditions of Approval**

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-2019-0172 and these Conditions of Approval.
2. (a) Authorization for leave to construct shall terminate 12 months after the decision is issued, unless construction has commenced prior to that date.  
  
(b) Enbridge Gas shall give the OEB notice in writing of the following:
  - i. The commencement of construction, at least 10 days prior to the date construction commences
  - ii. The planned in-service date, at least 10 days prior to the date the facilities go into service
  - iii. The date on which construction was completed, no later than 10 days following the completion of construction
  - iv. 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 Report filed in EB-2019-0172, and all the recommendations and directives identified by the Ontario Pipeline Coordinating Committee review.
4. 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.
5. 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.

6. 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 of 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, of 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
7. 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 Natural Gas Applications (or the Manager of any OEB successor department that oversees natural gas leave to construct applications).