

**BOARD STAFF SUBMISSION**

**ENBRIDGE GAS DISTRIBUTION INC.**

**APPLICATION FOR LEAVE TO CONSTRUCT  
NATURAL GAS PIPELINE TO SUPPLY GAS TO YORK ENERGY CENTRE  
EB-2009-0187**

**Introduction**

On September 3, 2009 Enbridge Gas Distribution Inc (“Enbridge” or the “Applicant”) applied to the Ontario Energy Board (the “Board”) for an order for leave to construct a natural gas pipeline to supply gas to York Energy Centre (“YEC”). The application was assigned file number EB-2009-0187. By way of Procedural Order No. 1, issued on November 5, 2009, the Board set the schedule for the proceeding and gave Intervenor and Board Staff an opportunity to file submissions with respect to Enbridge’s leave to construct application.

The following submission of Board Staff reflects the issues as set out in the Board approved Issues List.

This submission includes proposed Conditions of Approval, attached as Appendix A, should the Board approve the application. Board Staff interrogatories, filed on December 11, 2009, asked Enbridge to comment on the draft Conditions of Approval. In its response, dated December 21, 2009, Enbridge agreed to the wording of all of the conditions of approval except for 5.3. which is discussed later in this submission.

After having reviewed all of the evidence filed in support of this application and the answers to the interrogatories, Board Staff submits that there are no outstanding issues in this proceeding.

Board Staff submits that the Applicant’s compliance with the proposed Conditions of Approval appropriately addresses the need for the pipeline, ratepayer protection, environmental, and land matters related to the proposed pipeline construction and operation. Each of the issues in this case is addressed below.

**Issue 1: Is there a need for the proposed pipeline?**

The need for the proposed pipeline is based on the requirement to provide a dedicated gas supply to the YEC generating peaking facility.

Board staff submits that the evidence supports the requirement for the pipeline. The financial risks to the Applicant and its ratepayers related to the potential failure of the YEC are addressed below.

**Issue 2: Are there any undue negative rate implications for Enbridge's rate payers caused by the construction and operation of the proposed pipeline?**

The YEC has a Gas Delivery Agreement ("GDA") with Enbridge which contains all the terms that protect the Applicant and its ratepayers from the financial harm should the pipeline construction be postponed or cancelled if the YEC is not built. The GDA has been filed in this proceeding (Exhibit A, Tab 3, Schedule 6).

The Applicant's evidence is that its ratepayers would be protected from financial risks occurring prior to pipeline construction, upon construction and during the operation of YEC.

The estimated capital cost of the pipeline is about \$ 39 million. An economic evaluation of the project was conducted using the Discounted Cash Flow methodology as set out in the "OEB Guidelines for Assessing and Reporting on Natural Gas System Expansion in Ontario" part of the "EBO 188 Report of the Board" dated January 1998. The Profitability Index ("PI") of the project is 1.0 over a 20 year customer horizon. This PI is achieved with the inclusion of a Contribution in Aid of Construction ("CIAC") to be paid by the YEC.

YEC also provided financial assurance to Enbridge in the form of an irrevocable Letter of Credit (Exhibit H, Tab 13, Schedule 3, page 2). The economic feasibility of the project is achieved by establishing the CIAC to be paid by the YEC in an estimated amount of \$12.3 million, which amount will be adjusted after the actual cost of construction is determined.

The revenues from the YEC are in accordance with Board approved Enbridge's Extra Large Firm Distribution Service Rate 125 (Exhibit E, Tab 1 Schedule 3), which is the

rate in the GDA. This rate is independent of the volume of gas YEC would consume. It protects the ratepayers during the operation of the YEC, because the revenues are based on the billing Contract Demand specified in the GDA. The Contract Demand is a maximum volume contracted that customer has a right to receive each day.

Monthly revenue consists of Monthly Customer Charge (\$500.00), plus Demand Charge (fixed at 9.0093 cents per cubic metre of the Contract Demand per month), plus Direct Purchase Administration Charge (\$50), plus Forecast Unaccounted for Gas Percentage (0.3%)/

The financial protections established for the ratepayers are specified in the GDA. As such, Board staff has included in the Conditions of Approval a requirement for Board approval of alterations and amendments to the GDA as follows:

*5.2 Enbridge shall not, without prior approval of the Board, consent to any alteration or amendment to the Gas Delivery Agreement dated and executed on August 28, 2009 where such alteration or amendment has or may have any material impact on Enbridge's ratepayers.*

With respect to the Board's monitoring of any changes to the letter of credit related to the costs of construction and CIAC calculation, Board staff originally proposed the following:

*5.3 Enbridge shall file with the Board, a copy of York Energy Centre LP's irrevocable bank letter of credit to Enbridge for an amount not less than cost estimate of the applied-for facilities; this filing shall take place not later than 14 days after the start of construction.*

Enbridge suggested the following modified wording for condition 5.3:

*5.3 Enbridge shall file with the Board, copies of changes to the York Energy Centre LP's irrevocable bank letter of credit and Contribution in Aid of Construction payments. This filing shall take place not later than 14 days after receipt of change or payment and shall be in place until the end of construction.*

Board staff support the wording proposed by Enbridge as it is more specific and reinforces the intent of the condition originally proposed.

**Issue 3: What are the environmental impacts associated with construction of the proposed pipeline and are they acceptable?**

The proposed route is located entirely within the road allowance. The routing and environmental assessment, including proposed mitigation for potential environmental impacts have been completed by Jacques Whitford Stantec Limited (“Stantec”), an independent environmental consultant, retained by the Applicant. The Environmental Report (“ER”) and supporting evidence filed in the proceeding relating to the proposed pipeline have been produced in accordance with the “OEB Environmental Guidelines for Hydrocarbon Pipelines and Facilities in Ontario”. The proposed pipeline is located in the area covered by “Oak Ridges Moraine Plan” and the “Greenbelt Plan”. Board Staff submits that the requirements of both plans are consistent with the location, mitigation and monitoring programs associated with the proposed pipeline by the Applicant.

Regarding other approvals and permits that the Applicant needs from other entities for construction and operation of the proposed pipeline, Board Staff submit that the proposed condition 5.1, addresses the matter appropriately:

- 5.1 *Enbridge shall obtain all other approvals, permits, licences, and certificates required to construct, operate and maintain the proposed project, shall provide a list thereof, and shall provide copies of all such written approvals, permits, licences, and certificates upon the Board’s request.*

Board Staff submits that the evidence supports the appropriate mitigation and restoration programs required to construct the pipeline. To ensure mitigation of impacts, restoration of land and protection of endangered species, land and water resources Board Staff proposed monitoring and reporting requirements in the proposed Conditions of Approval as follows:

3 *Monitoring and Reporting Requirements*

- 3.1 *Both during and after construction, Enbridge shall monitor the impacts of construction, and shall file four copies of both an interim and a final monitoring report with the Board. The interim monitoring report shall be filed within six months of the in-service date, and the final monitoring report shall be filed within fifteen months of the in-service date. Enbridge shall attach a log of all complaints that have been received to the interim and final monitoring reports. The log shall record the times of all complaints received, the substance of each complaint, the actions taken in response, and the reasons underlying such actions.*

- 3.2 *The interim monitoring report shall confirm Enbridge's adherence to Condition 1.1 and shall include a description of the impacts noted during construction and the actions taken or to be taken to prevent or mitigate the long-term effects of the impacts of construction. This report shall describe any outstanding concerns identified during construction.*
- 3.3 *The final monitoring report shall describe the condition of any rehabilitated land and the effectiveness of any mitigation measures undertaken. The results of the monitoring programs and analysis shall be included and recommendations made as appropriate. Any deficiency in compliance with any of the Conditions of Approval shall be explained.*

Board Staff notes that the Applicant agreed to implement these conditions.

**Issue 4: Are there any outstanding landowner matters for the proposed pipeline routing and construction?**

The proposed route is located in the road allowances. Enbridge needs permission from the Ministry of Transportation, the Region of York and the Township of King for the location of the pipeline. Enbridge stated in response to Board Staff interrogatories (Board Staff IR response #9) that approvals by the Region of York have to be acquired from the Engineer/Road Superintendent and that the process had been started and would be completed in time for construction. Also, the evidence stated that an Encroachment Permit to cross Hwy 400 was required from the Ministry of Transportation and that meeting Township of King's requirements for the project construction was also needed.

Board Staff submits that the proposed condition 5.1. (that requires that all other approvals be obtained by Enbridge) encompasses the approvals and permits needed to locate the pipeline within municipal road allowances.

Enbridge indicated that temporary easements may be required during the construction if the road allowance is not sufficient to complete construction. For these locations Enbridge stated it would obtain temporary easement agreements in the form approved by the Board.

Appendix A

To the Board Staff Submission on EB-2009-0187

**Proposed Conditions of Approval  
Leave to Construct**

**1 General Requirements**

- 1.1 Enbridge Gas Distribution Inc. ("Enbridge") shall construct the facilities and restore the land in accordance with its application and the evidence filed in EB-2009-0187 except as modified by this Order and these Conditions of Approval.
- 1.2 Unless otherwise ordered by the Board, authorization for Leave to Construct shall terminate December 31, 2010, unless construction has commenced prior to that date.
- 1.3 Except as modified by this Order, Enbridge shall implement all the recommendations of the Environmental Report filed in the pre-filed evidence, and all the recommendations and directives identified by the Ontario Pipeline Coordinating Committee ("OPCC") review.
- 1.4 Enbridge shall advise the Board's designated representative of any proposed material change in construction or restoration procedures and, except in an emergency, Enbridge shall not make such change without prior approval of the Board or its designated representative. In the event of an emergency, the Board shall be informed immediately after the fact.

**2 Project and Communications Requirements**

- 2.1 The Board's designated representative for the purpose of these Conditions of Approval shall be the Manager, Natural Gas Applications.
- 2.2 Enbridge shall designate a person as project engineer and shall provide the name of the individual to the Board's designated representative. The project engineer will be responsible for the fulfillment of the Conditions of Approval on the construction site. Enbridge shall provide a copy of the Order and Conditions of Approval to the project engineer, within seven days of the Board's Order being issued.
- 2.3 Enbridge shall give the Board's designated representative and the Chair of the OPCC ten days written notice in advance of the commencement of the construction.
- 2.4 Enbridge shall furnish the Board's designated representative with all reasonable assistance for ascertaining whether the work is being or has been performed in accordance with the Board's Order.

- 2.5 Enbridge shall file with the Board's designated representative notice of the date on which the installed pipelines were tested, within one month after the final test date.
- 2.6 Enbridge shall furnish the Board's designated representative with five copies of written confirmation of the completion of construction. A copy of the confirmation shall be provided to the Chair of the OPCC.

### **3 Monitoring and Reporting Requirements**

- 3.1 Both during and after construction, Enbridge shall monitor the impacts of construction, and shall file four copies of both an interim and a final monitoring report with the Board. The interim monitoring report shall be filed within six months of the in-service date, and the final monitoring report shall be filed within fifteen months of the in-service date. Enbridge shall attach a log of all complaints that have been received to the interim and final monitoring reports. The log shall record the times of all complaints received, the substance of each complaint, the actions taken in response, and the reasons underlying such actions.
- 3.2 The interim monitoring report shall confirm Enbridge's adherence to Condition 1.1 and shall include a description of the impacts noted during construction and the actions taken or to be taken to prevent or mitigate the long-term effects of the impacts of construction. This report shall describe any outstanding concerns identified during construction.
- 3.3 The final monitoring report shall describe the condition of any rehabilitated land and the effectiveness of any mitigation measures undertaken. The results of the monitoring programs and analysis shall be included and recommendations made as appropriate. Any deficiency in compliance with any of the Conditions of Approval shall be explained.

### **4 Easement Agreements**

- 4.1 Enbridge shall offer the form of agreement approved by the Board to each landowner, as may be required, along the route of the proposed work.

### **5 Other Approvals and Agreements**

- 5.1 Enbridge shall obtain all other approvals, permits, licences, and certificates required to construct, operate and maintain the proposed project, shall provide a list thereof, and shall provide copies of all such written approvals, permits, licences, and certificates upon the Board's request.
- 5.2 Enbridge shall not, without prior approval of the Board, consent to any alteration or amendment to the Gas Delivery Agreement dated and executed on August



28, 2009 where such alteration or amendment has or may have any material impact on Enbridge's ratepayers.

- 5.3 Enbridge shall file with the Board, copies of changes to the York Energy Centre LP's irrevocable bank letter of credit and Contribution in Aid of Construction payments. This filing shall take place not later than 14 days after receipt of change or payment and shall be in place until the end of construction.

~ All of which is respectfully submitted ~