

EB-2015-0033

IN THE MATTER OF the *Ontario Energy Board Act, 1998*, S.O. 1998, c. 15 (Schedule B);

AND IN THE MATTER OF an Application under section 95 of the Act for an order exempting Enbridge Gas Distribution Inc. from the requirement to obtain leave to construct a natural gas gathering pipeline in Concession 13, Lot 15 in the Township of Sombra, in the County of Lambton.

BEFORE: Ken Quesnelle
Presiding Member and Vice-Chair

DECISION AND ORDER

WILKESPORT GATHERING LINE EXEMPTION

April 30, 2015

Introduction and Summary

Enbridge Gas Distribution Inc. (Enbridge) is a natural gas distribution company based in Ontario that serves about 2.1 million customers across Ontario, including the Greater Toronto, Ottawa, and Niagara areas. Enbridge filed an application dated February 27, 2015 with the Ontario Energy Board (OEB) requesting an exemption from the need to obtain an order granting leave to construct a natural gas gathering pipeline at its existing Wilkesport Designated Storage Area near Sarnia, Ontario (Wilkesport DSA). The project consists of the replacement of about 500 metres of existing pipeline with 300 metres of new pipeline on lands within the Wilkesport DSA. Enbridge said the pipeline is needed to connect the gathering system to 2 new storage wells to be built on the site.

Enbridge requested an exemption under section 95 of the *Ontario Energy Board Act, 1998* (the Act) and asked that the OEB grant this exemption without the need for a hearing as may be permitted by sub-section 21(4) of the Act.

The OEB will grant Enbridge leave to construct the pipeline without a hearing pursuant to section 21(4)(b) of the Act. The OEB finds that no person will be adversely affected in any material way by its granting of leave for construction of the pipeline.

The Project

The project consists of the replacement or relocation of about 500 metres of Nominal Pipe Size 10 inch (NPS 10) pipe with 220 metres of NPS 16 pipe and 80 metres of NPS 10 pipe. The pipeline has a maximum operating pressure of 9,930 kPa.

The project is related to Enbridge's plans for the redevelopment of the Wilkesport DSA which also includes the drilling of two new storage injection/withdrawal wells to replace the deliverability of five abandoned or to-be-abandoned wells. Enbridge's storage operations at this location were designated by the OEB in 1978 and have been in operation since that time¹. The well drilling application is the subject of a currently-active OEB proceeding².

The existing gathering pipes must be relocated to provide for access to the new wells. With the exception of the 220 metres of NPS 16 pipeline, which is an upsizing, the remainder of the project does not meet the requirement for a leave to construct hearing because the facilities fall below the threshold set out in section 90(1) of the Act.

Enbridge's plan is to commence drilling of the wells and construction of the gathering lines in the spring of 2015. The construction is expected to take five months.

A map showing the location of the project is attached as Appendix B. A schematic of the project is attached as Appendix C.

Request for Exemption

Enbridge's request for the exemption application is made under section 95 of the Act and relates to the relocation of a pipeline on the Wilkesport DSA lands. Enbridge also

¹ File No. EBO 89, July 25, 1978

² File No. EB-2014-0378

requested that the OEB grant this exemption without the need for a hearing as may be permitted by sub-section 21(4) of the Act.

Enbridge submitted that the combination of the following factors constitute special circumstances required for the granting of an exemption pursuant to section 95 of the Act.

1. The relocation is functionally a like-for-like replacement, despite it being an upsizing of pipe. The change from five wells to two horizontal wells necessitates the change in location and configuration of the gathering pipes. The function of the replacement gathering pipe remains the same as before.
2. All the pipelines and wells are located in the Wilkesport DSA on land that is owned by Enbridge. No other landowners are involved and there is no need for a temporary working easement from any landowner.
3. The expected cost is approximately \$770,000 which is below the cost threshold of \$2 million for leave-to-constructs. The project's cost is contained within Enbridge's capital budget as part of its 2014 to 2018 Custom IR rate application which was approved by the OEB³. There is no additional cost impact to ratepayers.
4. Enbridge has completed an environmental screening report and does not anticipate any concerns.

Findings

The OEB will grant leave to construct without a hearing pursuant to section 21(4)(b) of the Act. The OEB will not consider the application under section 95. The OEB's reasoning is provided as follows.

Section 90(1) of the Act states the following:

No person shall construct a hydrocarbon line without first obtaining from the Board an order granting leave to construct the hydrocarbon line if,

³ Ref: Enbridge Custom IR proceeding File No. EB-2012-0459

- a) the proposed hydrocarbon line is more than 20 kilometres in length;
- b) the proposed hydrocarbon line is projected to cost more than the amount prescribed by the regulations [\$2 million pursuant to O.Reg 328/03];
- c) any part of the proposed hydrocarbon line,
 - i. uses pipe that has a nominal pipe size of 12 inches or more, and
 - ii. has an operating pressure of 2,000 kilopascals or more; or
- d) criteria prescribed by the regulations are met.

Due to the proposed upsizing of the pipeline to NPS 16, Enbridge's application requires leave to construct approval under section 90(1) of the Act.

Enbridge applied for an exemption pursuant to section 95 of the Act which would exempt it from the requirements of section 90(1) of the Act. Section 95 of the Act provides that "the Board may, if in its opinion special circumstances of a particular case so require, exempt any person from the requirements of section 90 or 92 without a hearing." The OEB finds that none of the reasons listed by Enbridge in its application constitute a special circumstance that would warrant consideration to grant an exemption pursuant to section 95 of the Act.

The OEB considers a special circumstance to be an unusual or uncommon circumstance. The OEB notes that the reasons provided by Enbridge for an exemption speak mainly to the re-development of the site including the new wells; the absence of landowner issues; the low cost of the project; and the fact that the project raises no environmental concerns. The evidence also highlights that the pipeline triggers the requirement for leave to construct approval only because of the relatively small section of new NPS 16 pipe. In the OEB's view, the reasons given by the applicant are not special circumstances. The OEB does not consider the technical characteristics of this project to be unusual or uncommon. The OEB does not consider the fact that the technical characteristics of the project only slightly surpass the triggering threshold metrics to be a special circumstance.

The common premise of the reasons provided by Enbridge is that there will be no negative impacts associated with the project. In light of the nature of the reasons provided in this case, the OEB finds that it is appropriate to invoke section 21(4)(b) of the Act.

The OEB notes that section 21(4)(b) of Act states the following:

Despite section 4.1 of the *Statutory Powers Procedure Act*, the Board may, in addition to its power under that section, dispose of a proceeding without a hearing if...

...the Board determines that no person, other than the applicant, appellant or licence holder will be adversely affected in a material way by the outcome of the proceeding and the applicant, appellant or licence holder has consented to disposing of a proceeding without a hearing.

Pursuant to section 21(4)(b) of the Act, the OEB has the necessary powers to dispose of an application for approval for leave to construct, pursuant to section 90(1) of the Act, without a hearing if it determines that no person will be adversely materially impacted by the outcome of the proceeding and the applicant has consented to do so.

The OEB construes Enbridge's application for a section 95 exemption as consent to dispose of this proceeding without a hearing and premises this decision accordingly. Enbridge is free to seek a review of this decision if this is not the case.

In applying the test for section 21(4)(b) approval, the OEB has looked at the perspectives typically considered in a section 90(1) application. In a section 90(1) application, the OEB grants approval for leave to construct if it finds, pursuant to section 96 of the Act, 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's examination includes the need for the project and the alternatives, the economics, the impact on the ratepayers, the environmental impact, the impact on landowners, and the pipeline design technical requirements. The OEB finds it appropriate to use these criteria in seeking to determine whether, pursuant to section 21(4)(b), any person will be adversely materially affected by the outcome of this proceeding. Specifically, in this case, the OEB has looked at the following:

- ratepayer impact
- land interests impact
- environmental impact including the archaeological assessment
- technical design, construction and operating requirements

Concerning ratepayer impact, Enbridge's evidence is that the project's total cost is about \$770,000. This is a very small portion of Enbridge's total capital budget which for

2015 is projected at \$832 million⁴. The impact on rates from this project has already undergone OEB review as part of an Enbridge-wide capital budget review in the 2014 to 2018 Custom Incentive Regulation proceeding.⁵ The rate impact of the project is approved and embedded within the Custom IR revenue framework. This means that there should be no additional costs for consideration in rates. The OEB finds that the ratepayer impact is not a concern.

In terms of landowner impact, the OEB accepts the applicant's characterization of the pipeline as "functionally a like-for-like replacement" (emphasis in original). Given this characterization, coupled with the fact that the project is located entirely on land owned by Enbridge with no other landowners involved, the OEB finds that there will be no adverse material impact stemming from the pipeline in terms of land use as it relates to land interest impact. Neighbours and interested parties have been aware of Enbridge's storage operations at this location as it has been an operating storage field since 1978. The OEB notes that in the current well drilling proceeding, no persons came forward to intervene or to file a letter of concern with the OEB⁶.

Enbridge commissioned an environmental screening report which was completed in February 2015. The area is agricultural in nature and the screening report identified no significant concern in relation to wildlife habitat, soil or other impacts. An archaeological report was completed for the area of the new well sites and proposed gathering lines in January 2015. The archaeological report did not identify any archaeological concerns with the pipeline.

Enbridge stated that it will obtain the required permits from other regulatory bodies and adhere to the conditions of such approvals. The environmental report made certain recommendations and proposed certain mitigation requirements which Enbridge said it will adhere to in the completion of the construction. Enbridge also said it will incorporate the recommended mitigative measures in the scope of work bid documentation for the contractors. The measures would be enforced by the onsite inspector during project execution.

In view of the above facts, the OEB concludes that there are no adverse material environmental impacts or archaeological concerns that arise from the proposed pipeline.

⁴ Ref: OEB July 17, 2014 Decision with Reasons EB-2012-0459, page 30

⁵ Ref: OEB File No. EB-2012-0459

⁶ Ref: File No. EB-2014-0378

Enbridge noted that the pipeline will be designed, constructed, and operated in compliance with O. Reg 210/01 *Oil and Gas Pipeline Systems* as well as Enbridge's own design, construction and operating standards. The OEB finds that Enbridge has met the technical requirements and therefore has no concern that any person will be adversely materially impacted by the pipeline's design or construction standards, or in its operation.

For all of the above reasons, the OEB finds that no person will be adversely materially impacted by the outcome of the subject pipeline project. The OEB finds that it is appropriate to grant leave to construct without a hearing pursuant to section 21(4)(b) of the Act.

THE OEB ORDERS THAT:

1. Enbridge Gas Distribution Inc. is granted leave, pursuant to section 90(1) and section 21(4)(b) of the Act, to construct approximately 220 metres of NPS 16 pipeline in Concession 13, Lot 15 in the Township of Sombra, in the County of Lambton, subject to the Conditions of Approval set forth in Appendix A, without a hearing.
2. Enbridge Gas Distribution Inc. shall pay the OEB's costs incidental to this proceeding upon receipt of the OEB's invoice.

DATED at Toronto, April 30, 2015

ONTARIO ENERGY BOARD

Original signed by

Kirsten Walli
Board Secretary

APPENDIX A
DECISION AND ORDER
EB-2015-0033
DATED: April 30, 2015
Conditions of Approval

EB-2015-0033

Enbridge Gas Distribution Inc.

Leave to Construct Application

Conditions of Approval

1. Unless otherwise ordered by the OEB, authorization for Leave to Construct shall terminate September 30, 2015, unless construction has commenced prior to that date. If Enbridge is unable to begin construction before the deadline, it shall file a letter with the OEB providing the reasons that construction has not yet begun and advising when it expects to begin construction.

APPENDIX B

DECISION AND ORDER

EB-2015-0033

DATED: April 30, 2015

Map of Proposed Pipeline Project

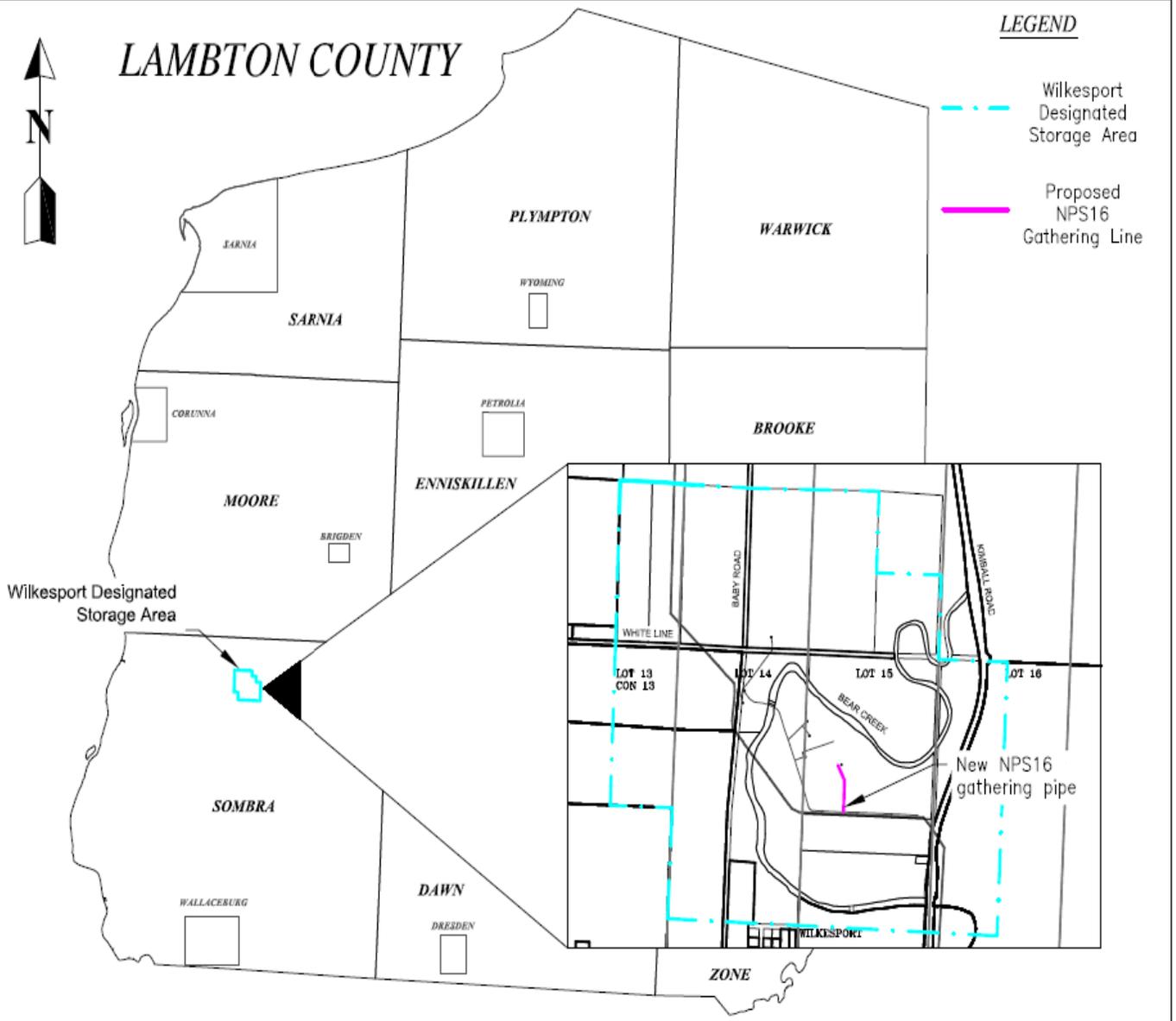


LAMBTON COUNTY

LEGEND

Wilkesport Designated Storage Area

Proposed NPS16 Gathering Line



APPENDIX C

DECISION AND ORDER

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DATED: April 30, 2015

Schematic of Proposed Facilities

WILKESPORT GATHERING LINE RELOCATION PROJECT

