

May 31, 2019

**VIA RESS, EMAIL and COURIER**

Ms. Kirsten Walli  
Board Secretary  
Ontario Energy Board  
Suite 2700, 2300 Yonge Street  
Toronto, Ontario, M4P 1E4

Dear Ms. Walli:

**Re: EB-2018-0188 Enbridge Gas Inc. - Chatham–Kent Rural Project**

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The following are the Enbridge Gas Inc. (“Enbridge Gas”) (formerly Union Gas Limited and Enbridge Gas Distribution Inc.) reply submissions for the Chatham-Kent Rural Project (“Project”) application (“Application”).

**Introduction**

In response to requests for incremental natural gas service for the residents and businesses in the Municipality of Chatham-Kent, Union Gas made an application under the Province of Ontario’s Natural Gas Grant Program (“NGGP”) to receive a business development grant. On September 26, 2018, Union Gas was informed that funding under the NGGP was no longer available. Government-directed funding for the Project was subsequently re-introduced through Bill 32 the Access to Natural Gas Act, and Ontario Regulation 24/19, Expansion of Natural Gas Distribution Systems (“Bill 32”). Under Bill 32, Enbridge Gas will collect customer contributions in order to fund up to \$8 million for the Project to assist local businesses to develop and grow in the Project area.

The Application was made under section 90 of the *Ontario Energy Board Act* to allow Enbridge Gas to construct 500 meters of NPS 12 pipeline and 13 kilometers of NPS 8 pipeline. Enbridge Gas has demonstrated in its pre-filed evidence that there is a need for the proposed facilities and that the alternative selected includes the right facilities to meet the Project needs. The economic analysis completed for the Project shows that the Project has a profitability index (“PI”) greater than 1.0. Enbridge Gas has committed to follow its standard practices in relation to pipeline design, construction, environmental protection, land rights’ negotiation and Indigenous consultation, in compliance with the Ontario Energy Board (“Board” or “OEB”) Environmental Guidelines for the Location, Construction and Operation of Hydrocarbon Pipelines and Facilities in Ontario (“Guidelines”).

Submissions were received from Board Staff, Anwaatin Inc. (“Anwaatin”), and the Industrial Gas Users Association (“IGUA”). Enbridge Gas addresses the issues raised by those parties below

### **Board Staff Submissions**

Board Staff has identified a concern with the economics and cost allocation aspects of the Application. They have no concerns with the other aspects of the Application. Board Staff has also proposed an additional condition of approval dealing with the archaeological assessments that are required for the Project.

#### (i) Economics and Cost Allocation

The Project is unlike a typical system expansion Project in that it is underpinned by two separate drivers: (1) the specific customers who have contracted for capacity on the new pipelines, and (2) the need to provide future economic development in the Project area. As noted in the evidence, the customers who have currently signed contracts do not account for all of the Project capacity at this point in time.

Since the final location of the uncontracted demands is not certain the amount of uncontracted Project capacity cannot be finalized. The ultimate Project capacity will depend upon the location and manner in which customers eventually connect. For example, if customers attach within a few hundred meters of the proposed facilities the capacity of the Project would increase; however, capacity would decrease if all the new customers attached in the Ridgeway area (Evidence, Schedule 8, Section 3.5.1.2)

In developing the hourly allocation factor (“HAF”) Enbridge Gas used a “best efforts” estimate of the capacity that will be created by the proposed facilities after forecasting the locations of the uncontracted demands. This estimate has not materially changed since the preparation of the NGGP application. Enbridge Gas submits that \$287m<sup>3</sup>/hour is an appropriate HAF.

Customers prefer certainty and in exchange for protecting themselves from a potential increase due to HAF cost allocation, they have indicated a willingness to give up the possibility of a slight reduction. In other words, certainty of cost allocation is valued. None of the customers in the project area have asked for a true-up mechanism.

If the HAF was true up at some point in the future and it declined by 6%, it would simply mean a shorter contract term of one year for each of the customers with a 15-year contract. Given market and business uncertainties, Enbridge Gas would argue that most customers will not perceive a one year difference in contract length to be a material change.

While Enbridge Gas could implement the true-up provision described in the Board Staff submissions, Enbridge Gas does not believe it is required. No customers are paying an up-front contribution in aid of construction (“CIAC”) and the only impact would be on contract length. As stated above, it is not expected that the length of contract term would be significantly reduced. Once Enbridge Gas has recovered the allocated capital, the application of the HAF will cease. Enbridge Gas is not proposing to over or under collect the costs

associated with the HAF. Holding the HAF constant will also better facilitate the transfer of capacity from one customer to another in the case identified in Exhibit B.Staff.2 s).

At the time of the NGGP application, Enbridge Gas estimated the incremental cost to increase the pipe size from NPS 6 to NPS 8 to be \$2 million. In Enbridge Gas's response to Exhibit B.Staff.4 a), Enbridge Gas indicated that 13 km of NPS 8 would be \$16.8 million and that 13 km of NPS 6 would be \$16.3 million. The difference in cost, as of the time of preparing the interrogatory response, has lowered from the initial \$2 million to only \$0.5 million.

Enbridge Gas anticipates that within a few years of the proposed Project being placed into service, a second Expression of Interest process will be conducted in the same general area (Phase 2). If there is sufficient interest, Enbridge Gas expects to advance another proposed project that is likely to require the incremental capacity associated with upsizing the Base Line Section from NPS 6 to NPS 8. The new pipeline will start from the eastern terminus of the proposed Base Line facilities and extend south along Kent Bridge Road to connect with the existing facilities at Kent Bridge as contemplated in the original Expression of Interest package (Enbridge Schedule #4 a). This roughly 8 km pipeline will provide significant new capacity to Kent Bridge and the Ridgetown area and back-feed the entire Chatham East system. If Enbridge does not upsize the 13 km Base Line Section as part of this Project, the majority of the Base Line Section would have to be looped to meet the requirements of Phase 2. Through the Application, Enbridge Gas is "right-sizing" the Project in order to account for expected growth and to ensure that Phase 2 will be a more economic and cost-effective project.

(ii) Archaeological Assessments

Enbridge Gas can accept the additional condition of approval which Board Staff has requested in relation to a clearance letter from the Ministry of Tourism, Culture and Sports ("MTCS"). Due to weather and ground conditions, Enbridge Gas has not been able to complete the archaeological assessments to date. These assessments are expected to be completed by June 7, 2019 and Enbridge Gas expects to receive a clearance letter from the MTCS by July 8, 2019.

**IGUA Submissions**

IGUA does not oppose the Project and Enbridge Gas confirms that IGUA's statements about cost allocation principles applicable to the Project (on page 1 of their submissions) are correct.

IGUA also raised the issue of a "true-up" which Enbridge Gas has addressed above.

**Anwaatin Submissions**

It is Enbridge Gas's position that meaningful consultation and accommodation in relation to the Project has occurred with the First Nations that were identified by the Ministry of Energy Northern Development and Mines ("MOENDM") and is sufficient for the Board to approve the Project without any additional conditions as suggested by Anwaatin.

Prior to issuing its letter of sufficiency on March 4, 2019 and after reviewing Enbridge Gas's Indigenous Consultation Report, the MOENDM contacted all of the First Nations potentially impacted by the proposed facilities to discuss the Project. These calls were made to ensure that all concerns were met and that there were no outstanding issues or questions. For this Project, MOENDM identified two communities that had concerns. Caldwell had just brought in a new Chief and did not have a consultation committee in place at the time of the initial filing. Oneida also expressed interest in a presentation as the person with whom the MOENDM spoke was not the person with whom Enbridge Gas met initially as roles had changed. In each case, Enbridge Gas met with the First Nation to address the issue and in the case of Oneida, a second meeting was held and they agreed that they had no concerns with the Project.

Enbridge Gas closely followed the Guidelines in its Indigenous consultation on the Project and has received the letter of sufficiency from the MOENDM and as Board Staff notes, Enbridge Gas has satisfied the procedural aspects of the duty to consult as concluded by the Ministry responsible for determining sufficiency for leave to construct projects. As required by the MOENDM and in accordance with its standard practices, Enbridge Gas will continue its consultation activities with the affected Aboriginal communities throughout the life of the Project.

It is not clear to what extent Anwaatin truly represents the Aboriginal communities identified by the MOENDM given that the consultations that Enbridge Gas has had with these communities, as documented in the evidence and confirmed by the MOENDM, conflict with the claims of Anwaatin. Anwaatin has not provided any evidence to refute the consultation records provided by Enbridge Gas or any evidence that Anwaatin has consulted with these communities in making its submissions

To nonetheless address the Anwaatin submissions, Enbridge Gas notes that the Model Franchise Agreement is an agreement between a municipality and the gas distributor and its form has been determined and standardized by the Board over decades of regulating municipal franchise and gas distribution relations. The Franchise Agreement outlines the terms and conditions of access to municipal infrastructure by the gas distributor, sharing of costs and restoration requirements. The Franchise Agreement does not extend to Aboriginal communities or other third parties and neither does it dictate the manner in which municipalities create or carry out municipal plans. The extent to which Chatham-Kent decides to consult with First Nations in its planning processes is not a matter for the Board to determine and is out of scope for this proceeding.

The Board decision in the Generic Proceeding on Community Expansion (EB-2016-0004) supports this position. In that proceeding, Anwaatin submitted that the OEB should require that both natural gas companies and municipalities be required to consult and engage with affected and potentially affected First Nations as part of any process to grant a municipal franchise to distribute natural gas. At that time Union Gas submitted that making any modifications to the current Model Franchise Agreement would, in all likelihood, be an extensive process. Union Gas proposed that the current Model Franchise Agreement continue to be adopted by all parties across the province, as opposed to allowing broad variations in Franchise Agreements to begin to occur.

On page 27 of its EB-2016-0004 Decision with Reasons (dated November 17, 2016), the OEB agreed with the views of some parties that no changes were required to the existing Model Franchise Agreement as it had been developed after negotiations between municipalities and gas distributors and has worked well for both parties over the years.

Anwaatin implies (at para.3) that First Nations with whom Enbridge Gas consulted did not know that the Application was proceeding. This is false. Enbridge Gas communicated with the First Nations when the Project was on hold and explained that when funding was reinstated, the Project would proceed. All First Nations were then copied on the updated Project filing

Anwaatin (at para. 19) erroneously characterizes the Ministry of Infrastructure (“MOI”) correspondence contained in Enbridge Gas’s evidence at Schedule 21, pp. 10-18. Enbridge Gas notes that the consultation requirements set out by the MOI on p.13 of Schedule B are only in relation to projects that utilize MOI lands (see p. 10 of Schedule B) which the Project does not.

With respect to the remaining submission of Anwaatin, specifically at paragraph 24, Enbridge Gas responds as follows:

- a) As noted, Enbridge Gas continues with consultation on the Project throughout its life cycle.
- b) Enbridge Gas has worked with the First Nations to offer monitors to actively participate in the Project. Two First Nations have agreed to participate and have been actively involved.
- c) Enbridge Gas provides capacity funding to the communities and such funding was offered on this Project.
- d) Enbridge Gas has adequate insurance to conduct the Project and operate its business in the normal course.
- e) There are two First Nation communities in close proximity to the project and both communities already have distribution services provided by Enbridge Gas.

## **Summary**

There is a demonstrated need for the Project and the proposed facilities will allow for additional needed economic development opportunities in the Municipality of Chatham-Kent.

A number of different alternatives were considered and the proposed facilities are the preferred alternative. These facilities also have a positive NPV and a PI greater than 1.0.

Enbridge Gas will follow its standard construction and environmental practices for the Project to ensure that construction can occur in a responsible manner and that there are no significant environmental impacts as a result of construction. Enbridge Gas also has all of the necessary land rights in place to construct the Project.

Issues identified by Board Staff, IGUA, and Anwaatin in relation to: true-up; the size of the pipe; and Indigenous consultation have been addressed above and no changes or additions to the conditions recommended by Board Staff are required.

Enbridge Gas therefore submits that the proposed facilities will be used and useful and constructing the Project is in the public interest and warrants Board approval in a timely manner.

If you have any questions or require additional information please contact the undersigned.

Yours truly,

*[original signed]*

W.T. (Bill) Wachsmuth RPF.  
Senior Administrator, Regulatory Projects

cc: N. Marconi  
A. Manzano  
Industrial Gas Users Association (IGUA)  
Anwaatin