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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. – 2021 Dawn Parkway Expansion Project Application  
OEB File Number: EB-2019-0159**

In accordance with Procedural Order No. 1, 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 parties to this proceeding.

Yours truly,

*Original Signed By*

Zora Crnojacki  
Project Advisor, Natural Gas Applications

Encl.



# **ONTARIO ENERGY BOARD**

## **OEB Staff Submission**

**Enbridge Gas Inc.**

**2021 Dawn Parkway Expansion  
Project**

**Application for Leave to Construct**

**EB-2019-0159**

**February 10, 2020**

## Background

Enbridge Gas Inc. (Enbridge) has filed an application with the OEB for an order granting leave to construct for a 10.2 km 48 inch diameter natural gas transmission pipeline and associated facilities from the Kirkwall valve site to the Hamilton valve site in the City of Hamilton (Project). Enbridge is also seeking approval for a number of forms of easement agreements related to the construction of the Project.

In Procedural Order No.1, the OEB asked for submissions on a draft issues list (Issues List), which was provided as Appendix A to the Procedural Order. It also sought submissions on the “extent to which [the OEB] should consider a) impacts related to the methods of upstream natural gas extraction (such as hydraulic fracturing) for natural gas that will be transported through the pipeline, and b) impacts related to the ultimate downstream consumption of the natural gas transported through the pipeline.” With respect to potential downstream impacts, many participants expressed concerns regarding greenhouse gas (GHG) emissions resulting from the ultimate consumption (i.e. burning) of the natural gas. OEB staff’s submissions on this issue assume that “downstream impacts” means GHG emissions from the final consumption of the natural gas.

### I. The draft Issues List

OEB staff supports the inclusion of all of the draft issues in Appendix A. These issues are all directly related to the costs and impacts of the Project itself, and are consistent with the public interest test and the OEB’s objectives from the *Ontario Energy Board Act, 1998* (the Act). Further, they are all issues that the OEB considers in most natural gas leave to construct applications under section 90 of the Act.

Some participants voiced concerns about potential impacts of the proposed pipeline on the environmentally sensitive lands and wetland systems that are crossed by the proposed pipeline route. OEB staff submits that these concerns are in scope of the proceeding and are covered under issue no. 6 in the draft Issues List: “Does the Project’s environmental assessment meet the OEB Environmental Guidelines for Hydrocarbon Pipelines? “

The OEB’s *Environmental Guidelines for the Location, Construction and Operation of Hydrocarbon Pipelines and Facilities in Ontario* (7th Edition, 2016) (Environmental Guidelines for Hydrocarbon Pipelines) define the scope of environmental matters that the OEB considers in its review of section 90 applications. This scope includes (amongst other things) selection of a route, environmental assessment of impacts on bio-physical, socio-economic and physical environment, cumulative effects assessment, mitigation and monitoring of impacts during construction and operation of a pipeline.

Concerns relating to potential impacts on wetland systems and environmentally sensitive lands (and indeed any lands) on the route of the proposed pipeline, therefore, can be explored under issue no. 6.

OEB staff further notes that, although the OEB has determined that Enbridge's broad Integrated Resource Planning (IRP) proposal will be reviewed through a separate process, the draft Issues List does include an issue related to the consideration of alternatives (issue no. 2). OEB staff submits that this issue can include consideration of whether conservation activities would be an appropriate alternative to the Project.

## **II. Upstream and downstream impacts**

With respect to a potential issue or issues regarding upstream and/or downstream impacts of the Project, OEB staff submits that these issues should be excluded from the Issues List. OEB staff submits that the focus of the OEB's review with respect to an application under section 90 should be on the need for and the impacts of the Project itself, and should not include consideration of upstream or downstream impacts. These impacts are not directly caused by the construction of the Project, which is the matter that is before the OEB in this proceeding. Enbridge is not seeking any approvals from the OEB in the current proceeding relating to either the upstream sourcing nor the downstream use of any of the natural gas that would pass through the pipeline. The OEB has no jurisdiction over upstream gas extraction practices outside of Ontario, nor does it regulate by whom gas is consumed or in what quantities. Moreover, there are no Federal or Provincial laws that restrict the transportation of hydraulically fracked natural gas or that directly limit the consumption of natural gas by end-users.

### **The "public interest" test and the OEB's objectives**

Section 90 of the Act provides that "[n]o person shall construct a hydrocarbon line without first obtaining from the Board an order granting leave to construct the hydrocarbon line..." Section 96 of the Act states that the test that the Board is to apply is the public interest test: "[i]f, after considering an application under section 90, 91 or 92 the Board is of the opinion that the construction, expansion or reinforcement of the proposed work is in the public interest, it shall make an order granting leave to carry out the work."

In this proceeding as all others, the OEB is guided by the objectives set out in section 2 of the Act:

The Board, in carrying out its responsibilities under this or any other Act in relation

to gas, shall be guided by the following objectives:

1. To facilitate competition in the sale of gas to users.
2. To protect the interests of consumers with respect to prices and the reliability and quality of gas service.
3. To facilitate rational expansion of transmission and distribution systems.
4. To facilitate rational development and safe operation of gas storage.
5. To promote energy conservation and energy efficiency in accordance with the policies of the Government of Ontario, including having regard to the consumer's economic circumstances.
- 5.1 To facilitate the maintenance of a financially viable gas industry for the transmission, distribution and storage of gas.
6. To promote communication within the gas industry and the education of consumers.

### **Upstream Impacts**

Virtually all of the gas transported or distributed through Enbridge's system comes from outside of Ontario. One of the sources of the gas is the Appalachian Basin in the eastern United States, and Enbridge has indicated that this will be the source of much of the gas transported on the Dawn Parkway System. The use of hydraulic fracturing to extract gas is common in the Appalachian Basin. Some participants in this proceeding have expressed concerns relating to the environmental impacts of hydraulic fracturing, and argue that the OEB should consider these impacts when deciding whether to approve the Project.

It is clear that the OEB has no jurisdiction with respect to natural gas extraction or environmental regulation in the United States. These fall under the jurisdiction of various state governments and the United States Federal government. None of the OEB's gas objectives relate directly to gas extraction in jurisdictions outside of Ontario. Enbridge is not seeking any approvals from the OEB with respect to natural gas extraction.

Although there is a potential connection between the Project and natural gas sourced from the Appalachian Basin, OEB staff submits that any environmental impacts related to extraction practices in the Appalachian Basin are not directly linked or necessarily incidental to any OEB approval of the Project. The Project itself does not include upstream

production.

In EB-2012-0451, the OEB was asked by a party to deny an application for leave to construct a natural gas pipe line application based on harmful environmental impacts related to the upstream extraction of shale gas (by hydraulic fracturing) from the Appalachian Basin. The OEB denied this request, noting that natural gas extracted by hydraulic fracturing could come from many places in North America, and that there are no Federal or Provincial laws restricting the transportation of hydraulically fracked natural gas.<sup>1</sup>

OEB staff submits that any upstream impacts related to the extraction of natural gas outside of Ontario are outside the scope of a section 90 proceeding, and that no issues related to the impacts of the upstream sourcing of the gas that will be used by the Project should be added to the Issues List.

### **Downstream Impacts**

A number of participants have indicated an interest in GHG emissions related to the downstream consumption of natural gas that will be transported through the Project. OEB staff submits that any downstream impacts related to the final use of the gas is also beyond the scope of this proceeding.

The OEB does not regulate the use of natural gas once it leaves Enbridge's system, whether inside or outside of Ontario.

The OEB's objectives provide it with a mandate to consider energy conservation and energy efficiency in accordance with the policies of the Government of Ontario. However, this is not a free-standing power, and must be applied by the OEB in the context of executing its statutory responsibilities under the Act.

The current application is for leave to construct a gas pipe line under section 90 of the Act. The OEB must consider the public interest test in the context of its statutory objectives (including those related to conservation and efficiency). In a leave to construct application, the OEB considers conservation and efficiency primarily through the consideration of alternatives. One of the alternatives that parties are free to pursue is a conservation (or demand side management (DSM)) option. To the extent that conservation can eliminate or delay the need for a project, that is one of the things that the OEB will consider in its deliberations. As noted above, OEB staff submits that the fact that Enbridge's IRP policy has been moved to a separate proceeding does not mean that conservation will not be

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<sup>1</sup> EB-2012-0451, Decision and Order, January 30, 2014, pp. 23-24.

considered as a potential alternative in the current case.

OEB staff therefore submits that both upstream and downstream impacts are beyond the scope of the current application.

All of which is respectfully submitted.