

**ONTARIO ENERGY BOARD**

**Enbridge Gas Inc.**

**Application to construct natural gas pipeline and associated  
facilities in the City of Hamilton and  
Request of review of Integrated Resource Plan (IRP) Proposal**

**INDUSTRIAL GAS USERS ASSOCIATION (IGUA)**

**Issues List Submissions**

**Summary of Position**

1. IGUA submits that the Draft Issues List attached to the Board's Procedural Order No. 1 is appropriate.
2. IGUA opposes the addition of issues related to impacts of upstream extraction, or ultimate downstream consumption, of the natural gas to be transported through the proposed pipeline.
3. Reliable and reasonably priced gas supply is critical to Ontario's large industrial gas consumers. While IGUA members support environmental stewardship, they cannot accept responsibility for gas extraction activities in other jurisdictions which are subject to their own regulatory standards set by duly elected officials and subject to legal enforcement regimes in those other jurisdictions, and the OEB cannot and should not regulate those activities. It would be inappropriate, illegal, and in any event ineffective, for the OEB to suspend or deny Ontario projects which enhance gas supply reliability and affordability in attempts to regulate, generally, particular gas extraction or processing activities in other jurisdictions, or the amount of gas provided to the market.
4. The pull for growth in unconventional natural gas production is truly global when one includes LNG considerations. To seek to link this particular \$200 million Dawn-Parkway

system expansion with methane emissions from hydraulic fracturing extraction methodologies (“fracking”) in North America is a bit of a stretch. The evidence filed indicates that gas everywhere (including the Western Canadian Sedimentary basin (WCSB)) is being extracted by fracking. Whether the supply route to market is via the applied for Dawn-Parkway expansion, the cross-Canada TC Energy system, or any of the dozens of gas transmission pipelines which criss-cross the United States, there will be more gas used and that gas is likely to be extracted by fracking. It is well beyond the jurisdiction of this Board to seek to regulate or otherwise influence North American natural gas supply or how that gas is being extracted in other jurisdictions.

5. In respect of downstream consumption of the gas to be transported through the proposed expansion, climate change and other environmental impacts of natural gas consumption is a complicated, multi-fuel, multi-jurisdictional, multi-faceted (including socio-economic impacts, quality of life, wealth distribution, and so on) issue which is beyond the OEB’s mandate, and in any event practical ability, to regulate. More gas consumption in the markets to be served by the expansion might actually reduce GHG emissions.
6. In respect of natural gas consumption outside of Ontario, the impact on emissions is an issue for government policy and regulation in those markets.
7. In respect of consumption within Ontario, this Board is not mandated to regulate GHG emissions, nor is it responsible for implementing Ontario government climate change targets. That is the government’s responsibility, through tools that it already employs pursuant to its electoral and legislative mandates.

## Discussion

8. EG has brought the instant application under section 90 of the *Ontario Energy Board Act, 1998 (OEB Act)*. Under that section the Board governs the construction of pipelines in Ontario, not the extraction or consumption of natural gas (in Ontario or elsewhere), and much less the regulation of carbon or other GHG emissions.
9. In governing the construction of pipelines, the Board has historically considered the public interest to encompass the economics of the pipeline proposed (in instances where costs therefore are to be recovered in rates regulated by the Board), the impacts of the

construction and operation of the pipeline on the local environment, and, as appropriate, the broader economic impacts in Ontario of the construction and operation of the pipeline. The Draft Issues List attached to the Board's Procedural Order captures all of these issues.

10. Some parties have proposed that the Board in this application expand its historical approach to protecting the public interest (i.e. in the economics of, and the environmentally sound construction and operation of, the proposed pipeline) to consider GHG emissions associated with how the gas to be transported through the proposed pipeline is extracted and ultimately consumed.
11. This Board does not have jurisdiction over the environmental impacts of gas extraction activities in Ontario, nor over emissions arising from the gas consumption activities in Ontario, and by definition (given that it is a creature of provincial legislation) cannot have jurisdiction over such activities outside of the province. Various aspects of the upstream and downstream impacts of the gas to be transported through the proposed pipeline are the purview of various national, provincial, and state governments and specialized regulatory authorities created and empowered by the legislative action of those governments. Overall fuel mix and associated GHG emission impacts are the purview of provincial/state and national governments. The matters that are properly within the jurisdiction of these other elected and regulatory authorities cannot be incorporated, as well, into this Board's jurisdiction merely by virtue to the "*public interest*" that the Board must, and does, consider in a section 90 application pursuant to section 96(1) of the *OEB Act*.
12. The nature of the "*public interest*" that the Board can appropriately consider in a section 90 application is reflected in the Board's statutory objectives in carrying out its responsibilities under the *OEB Act* in relation to gas, as set out in section 2 of the *OEB Act*. While those objectives include a mandate to promote the efficient use of gas (in accordance with the policies of the Government of Ontario)<sup>1</sup>, that mandate cannot reasonably be "read up" to be a mandate to effectively limit or constrain the use of gas or its transit through Ontario in order to regulate provincial/state or national GHG emissions.

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<sup>1</sup> *OEB Act*, section 2, clause 5.

13. Put simply, the jurisdiction within which the Board governs gas matters does not extend to governance of extra-provincial gas extraction activities nor to natural gas consumption by Ontario citizens, businesses and organizations.
14. Further, as this Board has previously observed, engaging in an environmental review associated with the use of energy would, in addition to the jurisdictional problems inherent in such an undertaking, be wholly impractical. In its January, 2006 *Decision and Order* in respect of (two) leaves to construct a gas pipeline to connect the Greenfield Energy Centre (GEC), the Board stated<sup>2</sup>:

*In general, the gas pipeline construction proposals reviewed by the Board are not tied to a single end use. In some cases, the load which drives the initial need for a pipeline changes or disappears and other loads are served. It would be highly impractical for the Board to attempt to assess the environmental impacts of loads to be served by a gas pipeline. As a matter of general policy, it would be undesirable to find that the Board's public interest mandate under section 96 of the OEB Act requires such an assessment.*

15. In the case at hand, the sources of gas to be transported through the proposed expansion are varied and extra-jurisdictional (including the WCSB and various sources of production in the United States, and potentially beyond), as are the identities and locations (which include locations outside of Ontario) of customers to be served by the proposed pipeline at any given time. There is no way to determine the net environmental impacts of extraction or consumption of the gas to be transported through the proposed pipeline, even if it were within the Board's jurisdiction to consider such impacts (which it is not). Indeed, for some of these customers, using natural gas in substitute for alternative fuels might be environmentally beneficial. The net environmental impact of burning the particular gas to be delivered through the expansion is a complicated, multi-jurisdictional and multi-fuel question that is beyond the practical abilities, let alone legal mandate, of this Board in this application.
16. In previously addressing what "cumulative effects" the Board should consider in reviewing a pipeline leave to construct (LTC) application<sup>3</sup>, the Board made clear its view that the

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<sup>2</sup> OEB *Decision and Order*, January 6, 2006, EB-2005-0442/0443/0473, Greenfield Energy Centre and Union Gas Leave to Construct Applications, page 18.

<sup>3</sup> OEB *Decision and Order*, January 6, 2006, EB-2005-0442/0443/0473, Greenfield Energy Centre and Union Gas Leave to Construct Applications, page 10.

“effects” in issue in an LTC application are those from the construction of the pipeline which may be made worse or act to increase environmental damage caused by similar effects of other projects in the area. The Board explained [our emphasis]:

*To be clear, only those effects that are additive or interact with the effects that have already been identified as resulting from the pipeline construction are to be considered under cumulative effects. If the environmental impacts are compounded, the applicant will, with the help of experts in the field, determine whether these effects warrant mitigation measures such as alterations in routing, timing of construction or other measures that can address cumulative impacts and the Board will review the adequacy of those measures.*

17. The Board in that decision went on to consider one of the examples in the Board's *Environmental Guidelines for Location, Construction and Operation of Hydrocarbon Pipelines and Facilities in Ontario (Guideline)*; forest cover. Using this example, the Board noted that while removal of a few trees might be a minor issue in most pipeline LTC cases, if a nearby and contemporaneous housing development entails removal of considerable forest cover the removal of the few more trees for pipeline construction could take on a greater local ecological significance than in the ordinary course. In the end, however, the Board was clear that “*there must be some effect caused by the pipeline construction itself to trigger an assessment of similar effects caused by other projects*”.<sup>4</sup>
18. The case cited from was an application for leave to construct a short gas pipeline to serve a new Ontario gas fired generator (Greenfield Energy Centre). The Society of Energy Professionals and the Power Workers Union, as intervenors in that case, argued that air emissions and water discharges from the generation facility, and the loss of jobs and other socio-economic impacts consequent on the closure of the Lambton generation station, were considerations for this Board in considering the “public interest” of the proposed connecting gas pipeline. The Board disagreed, and held that<sup>5</sup>;

*...the fact that the existence of the pipeline will enable a certain end use to occur does not mean that the environmental effects of that end use are within the realm of “cumulative effects” as contemplated in the Board's Guideline.*

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<sup>4</sup> OEB *Decision and Order*, January 6, 2006, EB-2005-0442/0443/0473, Greenfield Energy Centre and Union Gas Leave to Construct Applications, page 11.

<sup>5</sup> OEB *Decision and Order*, January 6, 2006, EB-2005-0442/0443/0473, Greenfield Energy Centre and Union Gas Leave to Construct Applications, page 11, bottom to page 12, top.

19. The Board in that case determined that *“the proposed work is the construction of a pipeline, not of an electricity generating station”*. The Board found that the jurisdiction regarding environmental impacts of the end use (the generating station in that case) for the gas to be conveyed through the proposed pipeline fell under the Ontario *Environmental Assessment Act* administered by the Ministry of the Environment, and not with the OEB, and concluded that:<sup>6</sup>

*...an assessment of the environmental and socio-economic effects of the construction and operation of the GEC generating station are outside the scope of [the Board's] jurisdiction, with the exception of the narrower issue of “cumulative effects” as outlined above.*

As already highlighted, the “cumulative effects” referred to were found to be the cumulative effects of construction of the pipeline itself.

20. The Board’s reasoning in the GEC case applies even more so in the case at hand; i.e. expansion of the Dawn-Parkway system where the evidence reveals various sources of gas outside of Ontario (including outside of Canada) and various destinations for the gas, both within and outside of Ontario (and potentially outside of Canada).

## Conclusion

21. For both legal and practical reasons, IGUA endorses the previous findings of this Board in respect of consideration in a leave to construct application of upstream and downstream activities. This Board has stated<sup>7</sup>:

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<sup>6</sup> OEB *Decision and Order*, January 6, 2006, EB-2005-0442/0443/0473, Greenfield Energy Centre and Union Gas Leave to Construct Applications, page 18.

<sup>7</sup> OEB *Decision on Motion*, November 7, 2005, RP-2005-0022/EB-2005-0441/0442/0443/0473, page 6, top.

*In determining whether to grant leave to construct, the Board must determine whether the pipeline itself is in the public interest, not whether facilities connected to it will be in the public interest.*

**ALL OF WHICH IS RESPECTFULLY SUBMITTED by:**

  
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**GOWLING WLG (CANADA) LLP, per:**  
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February 10, 2020

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