

February 20, 2020

**RESS, EMAIL & COURIER**

Ms. Christine Long  
Board Secretary  
Ontario Energy Board  
PO Box 2319  
2300 Yonge Street, 27th Floor  
Toronto, ON M4P 1E4

Dear Ms. Long:

**Re: Enbridge Gas Inc. (“Enbridge Gas”)  
2021 Dawn Parkway System Expansion Project (EB-2019-0159)  
Applicant’s Submission Re: Issues Proposed by Intervenor**

We are legal counsel to Enbridge Gas in this matter. Further to Enbridge Gas’ submissions dated February 10, 2020, we are writing to provide specific comments on certain issues that were proposed in intervenors’ submissions related to the scope of this proceeding.

As discussed in our February 10<sup>th</sup> submissions:

- the Board’s statutory jurisdiction over a pipeline leave to construct application pertains to the proposed pipeline and does not extend to matters relating to the upstream extraction or downstream consumption of gas (including associated emissions); and
- given the Board’s direction that the Integrated Resource Planning (“IRP”) Proposal is out of scope for purposes of assessing the current application, the scope of specific issues for that future IRP Proposal review should not be decided in this proceeding.

To further assist the Board in its determination on the Issues List, this letter addresses some of the specific arguments and proposals made by intervenors:

- I. SEC’s and GEC’s submissions ask the Board to consider economic risks of the 2021 Dawn-Parkway System Expansion Project (the “Project”) due to climate change. This proposal should be rejected, because it is predicated on mere speculations about the possible trajectory and implications of future climate change policies, while disregarding the current and forecast robust gas demand in Ontario based on known information (including supply/demand risks that are reasonably understood).
- II. Environmental Defence questions the need for the Project in relation to ex-franchise demand. It also alleges that the Project involves Ontario customers subsidizing and incurring financial risks on behalf of U.S. customers given the purported risk of capacity

turn-back and regulatory disallowance of pipelines in the U.S. Northeast. This argument is inaccurate and relies on a partial and selective view of the evidence. In fact, Enbridge Gas has clearly shown that the Project is needed primarily to supply robust existing demand and ongoing projected demand growth in Ontario.

- III. GEC not only asks the Board to consider upstream extraction and downstream consumption in assessing the Project, but also argues that the Board should as part of its public interest assessment consider the adequacy of environmental regulation in other jurisdictions. This argument is untenable since the Board as the economic regulator of Ontario utilities should not and cannot assume the role of a political body that in effect regulates matters impacting inter-provincial and international commerce.

**I. THE PROPOSAL TO ASSESS CLIMATE CHANGE-RELATED ECONOMIC RISKS IS BASED ON SPECULATION**

SEC argues that the Project risks being a stranded asset and that this proceeding should include consideration of climate change-related risks to the economic viability of the Project (beyond the Board's current economic feasibility model for pipelines).<sup>1</sup> Similarly, GEC argues Issue 5 should include risks to the Project, including risks due to changes in the broader economy to limit emissions.<sup>2</sup> In this regard, other than speculating (and inviting the Board to speculate) about a future scenario with drastically diminished or zero gas demand, neither intervenor has provided any credible basis to demonstrate that the economic risk due to climate change can be evaluated by the Board and as such be a genuine issue that should and can be assessed in this proceeding.

At the outset, it is important to distinguish a proper issue for adjudication versus one that is speculative and not reasonably assessable based on facts. In the current circumstance, to show that a risk warrants consideration by the Board, it is not sufficient for a party to merely assert the possibility of the risk materializing in the future or to theorize about its implications. A genuine issue must be "real and actual, authentic and not spurious".<sup>3</sup> GEC and SEC should at least provide some evidence to demonstrate that the Board can properly assess the issue based on understood facts (and not mere theoretical possibilities). Specifically, SEC theorizes about a myriad of hypothetical scenarios, such as "a ban on fracking in all nearby jurisdictions", "tougher regulation of gas-burning equipment or buildings", and "a major shift to geothermal in the 905 region due to more costly natural gas supplies".<sup>4</sup> In doing so, SEC does not cite facts to reasonably support these assertions. SEC tries to distill its speculation to "just math",<sup>5</sup> which is wholly an over-simplification. Insofar as Enbridge Gas can tell, the only substantive governmental policy referenced by SEC seems to be "carbon pricing"<sup>6</sup> (presumably, the federal carbon price back-stop); and it is not at all clear why SEC believes the policy would lead to any of the hypothetical scenarios where the need for natural gas becomes insignificant or obsolete.

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<sup>1</sup> SEC Submissions, pp. 3-4.

<sup>2</sup> GEC Submissions, p. 2.

<sup>3</sup> See, for example, *Horton v. Joyce*, [1990] O.J. No. 1641.

<sup>4</sup> SEC Submissions, p. 4.

<sup>5</sup> *Ibid.*

<sup>6</sup> *Ibid.*, p. 3.

To the contrary, based on the current federal environmental action plan, natural gas is expected to continue to play a significant role in supplying Canada's overall energy consumption.<sup>7</sup>

Notably, Environmental Defence believes that if the Project is not rejected by the Board, it "should be deferred until the impact of market forces and government regulation relating to climate change is better known".<sup>8</sup> Enbridge Gas agrees that predicting the evolution and impact of future climate change policies would be difficult. However, it does not then logically follow that the sensible option is to "wait-and-see", as Environmental Defence recommends. As a prudent steward and planner of a natural gas delivery system that serves millions of consumers, Enbridge Gas cannot simply ignore known information about current and forecast demand growth (considering reasonably understood risks) and arbitrarily defer investments that are required to meet that growth in a timely and reliable manner.

Enbridge Gas submits that the proposed assessment of project economic risks due to climate change is not an appropriate issue for this leave to construct proceeding. On this basis, SEC's proposal to expand the economic feasibility analysis beyond the Board's current model should also be rejected. In any event, even if the Board were inclined to review or update its current model, given the broader policy questions and industry implications which would arise, this leave to construct proceeding is not the right forum to do so.

## **II. ENVIRONMENTAL DEFENCE'S ARGUMENT RE SUSIDY FOR U.S. CONSUMERS IS INCORRECT**

Environmental Defence questions the need for the Project in relation to ex-franchise demand. It also alleges that the Project involves Ontario customers subsidizing and incurring financial risks on behalf of U.S. customers given the purported risk of capacity turn-back and regulatory hurdles for pipeline projects in the U.S. Northeast. As discussed below, Environmental Defence's argument is incorrect and relies on a partial and selective reading of the evidence.

First, Environmental Defence's suggestion that the Project is "justified on the need to satisfy export contracts"<sup>9</sup> is misleading. Ontario ratepayers have long benefitted and will continue to benefit from a robust and liquid market for natural gas that is enabled by the existence of the Dawn Hub and Dawn-Parkway System. In this case, the Project will further enhance access to the liquidity and diversity of competitively priced supply at the Dawn Hub.<sup>10</sup> As detailed in the leave to construct application, the need for the Project is primarily driven by Ontario demand for incremental supply – with existing and future Ontario demand accounting for 67% and 22% of the required incremental capacity, whereas allocations to U.S. Northeast utilities account for only 11% of that requirement.<sup>11</sup> The Project would need to proceed regardless of demand in the U.S.

Second, Environmental Defence incorrectly asserts that the Project involves a subsidy from Ontario to U.S. customers. Enbridge Gas provides transportation on the Dawn-Parkway System for both in-franchise and ex-franchise customers and does not provide preferential treatment to one type of customer over another based on where the natural gas is ultimately consumed. Cost

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<sup>7</sup> See, for example: Government of Canada, *Federal Actions for a Clean Growth Economy*, p. 15; and Government of Canada, *Pan-Canadian Framework on Clean Growth and Climate Change*, pp. 11, 19, 51.

<sup>8</sup> Environmental Defence Submissions, p. 2.

<sup>9</sup> *Ibid*, p. 3.

<sup>10</sup> Exhibit A-3, p. 3.

<sup>11</sup> *Ibid*, p. 4.

allocation methodologies ensure the costs of the Dawn-Parkway System are allocated to all customers in a rational manner through consistent rates between both in-franchise and ex-franchise customers in proportion to distance weighted design day demands on the system.

Third, Environmental Defence's argument about the risks of capacity turn-back from U.S. Northeast utilities and regulatory uncertainties in that region is based on a partial and selective view of the evidence. Environmental Defence took two specific quotes from the application out of context to support its flawed assertion about Ontario consumers incurring unacceptable financial risks on behalf of U.S. consumers. In the same section of the ICF report from which Environmental Defence quoted regarding capacity turn-back, ICF clearly concluded that the risk is limited when relevant considerations are taken into account.<sup>12</sup> Similarly, with respect to the risk of pipeline projects being denied by U.S. regulators, this is a reason for ICF's expectation that continued supply to the region from the Dawn Hub would be needed and the risk of capacity turn-back is low.<sup>13</sup>

Despite all of the concerns expressed by Environmental Defence that purportedly influence project need and economics, none of the risks are materially novel or have materialized since Enbridge Gas held its Dawn Parkway System capacity open season in August 2018. In fact, Enbridge Gas' latest demand forecasts continue to show robust demand growth into the future and government policy in Ontario continues to support Enbridge Gas's distribution system expansion into new communities across Ontario.<sup>14</sup>

### **III. GEC'S ARGUMENT THAT THE BOARD SHOULD CONSIDER THE ADEQUACY OF ENVIRONMENTAL REGULATION IN OTHER JURISDICTIONS IS MISPLACED**

With respect to the jurisdictional question set out in Procedural Order No. 1, GEC not only asks the Board to consider upstream extraction and downstream consumption in assessing the Project, but also argues that the Board should in this leave to construct proceeding consider the adequacy of emissions control regulation in other jurisdictions. GEC asserts:

“...there is a public interest in avoiding projects or activities in Ontario that will significantly increase GHG emissions in another jurisdiction where the other jurisdiction has not committed to a cap on its emissions consistent with internationally supported goals and policy choices subscribed to by Ontario and Canada (as is certainly the case for the U.S.).”<sup>15</sup>

Enbridge Gas will not repeat all the detailed reasons outlined in its February 10<sup>th</sup> submissions which demonstrate that upstream extraction and downstream consumption are issues that

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<sup>12</sup> Exhibit A-5, Attachment 1, p. 37.

<sup>13</sup> *Ibid.*

<sup>14</sup> On December 12, 2019, the Minister of Energy, Northern Development and Mines issued a letter to the OEB requiring it to examine and report back on potential projects to expand access to natural gas distribution systems for new customers in Ontario. The Minister also stated its intention to commit approximately \$130 million to support new natural gas projects that can reasonably be expected to commence construction between 2021 and 2023 <<https://www.oeb.ca/sites/default/files/Letter-to-OEB-natural-gas-expansion-20191212.pdf>>.

<sup>15</sup> GEC Submissions, p. 3.

exceed the scope of this proceeding and the Board's public interest jurisdiction therein.<sup>16</sup> However, in response to GEC's argument, it is worth emphasizing that the Board must exercise this jurisdiction within the confines of its statutory mandate and powers, and that the Board cannot regulate upstream and downstream activities indirectly when it cannot do so directly. Taken to its logical conclusion, GEC's argument would effectively have the Board make political decisions with significant repercussions on inter-provincial and international commerce.

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Based on the foregoing, Enbridge Gas submits that the scope of the current Issues List as set out in Procedural Order No. 1 should not be expanded as proposed by certain intervenors.

Yours truly,

*[Original signed by]*

Charles Keizer

cc: Enbridge Gas  
All Parties

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<sup>16</sup> Enbridge Gas' February 10<sup>th</sup> submissions were consistent with several other submissions filed on the jurisdictional question, including submissions by Board Staff, APPrO, Energy Probe, FRPO and IGUA.