Ontario Energy Board | Commission de l'énergie de l'Ontario

Ontario

DECISION AND ORDER

EB-2019-0172

ENBRIDGE GAS INC.

Application for approval to construct a natural gas pipeline and associated facilities in the Municipality of Chatham-Kent and the Towns of Lakeshore and Tecumseh

BEFORE: Michael Janigan
Presiding Member

Robert Dodds
Vice Chair and Member

April 1, 2020

Ontario Energy Board | Commission de l'énergie de l'Ontario

Ontario

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1 INTRODUCTION AND SUMMARY

This is the Decision and Order of the Ontario Energy Board (OEB) regarding an application filed by Enbridge Gas Inc. (Enbridge Gas) on August 9, 2019.

Enbridge Gas applied under section 90(1) of the *Ontario Energy Board Act, 1998* (Act) for approval to construct a natural gas pipeline and ancillary facilities replacing approximately 64 kilometres of the Windsor pipeline in the Municipality of Chatham-Kent and the Towns of Lakeshore and Tecumseh (the Project). Enbridge Gas also applied under section 97 of the Act for approval of the forms of agreement it will offer to landowners to use their land for routing or construction of the proposed pipeline.

Enbridge Gas stated that the Project is needed to address multiple pipeline integrity concerns that it has identified in order to ensure the safety and reliability of the Windsor pipeline. Construction of the Project is scheduled to begin in May 2020 and is expected to be in-service in November 2020.

A map of the Project is attached as Schedule A to this Decision and Order.

The OEB examined all aspects of Enbridge Gas' leave to construct application and while it is satisfied that the replacement of the pipeline is in the public interest, the OEB only approves the construction of the hybrid option, the reasons for which are detailed in Section 5 below. Furthermore, leave to construct the Project is granted subject to the conditions of approval attached as Schedule B to this Decision and Order (Conditions of Approval). The OEB also approves the proposed form of agreement that Enbridge Gas will offer to affected landowners.

2 THE PROCESS

Enbridge Gas filed the leave to construct application on August 9, 2019.

The OEB issued a Notice of Hearing on September 13, 2019. Energy Probe Research Foundation (Energy Probe) and Federation of Rental-housing Providers of Ontario (FRPO) applied for, and were granted, intervenor status and cost eligibility.

On October 11, 2019, the OEB issued Procedural Order No. 1, indicating that it was proceeding by way of written hearing and making provision for interrogatories, interrogatory responses and submissions. Interrogatories were filed by OEB staff on October 17, 2019 and by Energy Probe, and FRPO on October 21, 2019. Enbridge Gas filed its responses to interrogatories on November 1, 2019.

On November 11, 2019, FRPO filed a letter requesting additional discovery on the application by means of a technical conference. The OEB issued Procedural Order No. 2 on November 13, 2019, which sought submissions from parties on the merits of FRPO's request, and suspended the dates set out in Procedural Order No. 1 for submissions on the application. FRPO's request was supported by Energy Probe and OEB staff.

On November 22, 2019, the OEB issued Procedural Order No. 3 ordering a transcribed technical conference, which was held on December 5, 2019. Enbridge Gas filed responses to undertakings on December 18, 2019. On December 23, 2019, the OEB issued Procedural Order No. 4 making provision for written submissions.

On January 4, 2020, FRPO filed a letter requesting an oral hearing. FRPO stated that the evidence filed by Enbridge Gas regarding the sizing of the pipeline and the costs of alternatives was confusing and that it would be in the public interest to hold an oral hearing to clarify the record. Enbridge Gas responded to FRPO's request on January 8, 2020 stating that an oral hearing was not necessary and that there is a full record to enable the OEB to determine if the application is in the public interest. FRPO filed another letter on January 10, 2020 reiterating its request for an oral hearing.

On January 13, 2020, the OEB issued a letter stating that it would not proceed by way of an oral hearing and required Enbridge Gas to file an Argument-in-Chief (AIC) addressing the need and prudence for the size of the pipeline sought to be built with reference to the appropriate sections of the evidence.

The OEB issued Procedural Order No. 5 on January 15, 2020 setting out a revised schedule for the filing of written submissions. On January 27, 2020, Enbridge Gas filed its AIC. OEB staff, FRPO, and Energy Probe filed submissions on February 10, 2020 followed by a reply submission from Enbridge Gas on February 24, 2020.

3 THE PUBLIC INTEREST TEST

This proceeding concerns an application by Enbridge Gas under section 90(1) of the Act seeking an order for leave to construct a natural gas pipeline.

Section 96(1) of the Act provides that the OEB shall make an order granting leave to construct if the OEB finds 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 typically examines the need for the project, project alternatives, project cost and economics, environmental impacts, land matters, and Indigenous consultation.

4 NEED FOR THE PROJECT

The Windsor Line is a large diameter high-pressure distribution pipeline that receives gas from the Enbridge Gas Panhandle Transmission System and provides natural gas service to residents and businesses from Port Alma, in the Municipality of Chatham-Kent to the City of Windsor, located in the County of Essex. A significant portion of the Windsor Line was installed in the 1930s, 1940s and 1950s.

Enbridge Gas stated that surveys and inspections of the Windsor Line that are undertaken annually have identified multiple integrity issues which, if not addressed, are expected to impact both the safety and security of supply of the pipeline. These include a history of leakage with significant costs to repair, portions of the older vintage pipe that are not weldable, sections of the pipeline that cannot be isolated because of inoperable mainline valves, and sections that have poor depth of cover with less than 0.6 metre.[1]

In responses to questions from parties, Enbridge Gas confirmed that there are currently 24 active leaks and 3 inoperable mainline valves and also provided information showing that leaks had increased from 20 in 2017 to 34 in 2019. Enbridge Gas stated that the most recent depth of cover survey identified approximately 19 kilometres of pipe at a depth of cover of less than 0.6 metre, with 23 locations with exposed pipe.[2]

Enbridge Gas estimated that maintenance costs of the line could range from $381,000 in 2020 rising to $857,000 in 2022. Enbridge Gas also stated that it expects incremental costs ranging from $10 to $18 million from 2020 to 2022 to address depth of cover issues.[3]

Enbridge Gas submitted that as there are currently three inoperable mainline valves and if the pipeline had to be isolated, this would result in significant customer outages.[4] There are 399 residential and commercial customers directly served off the section of pipeline that Enbridge Gas proposes to replace.

Enbridge Gas submitted that the Windsor Line was deemed a high operational risk in April 2017.[5] The Project was identified in Enbridge Gas' Utility System Plan and Asset Management Plan filed in Enbridge Gas' 2019 rate application.[6]

[1] Application, Exhibit B, Tab 1, Schedule 1,p.2
[2] Exhibit I, OEB Staff 2 and Exhibit JT1.19
[3] Exhibit JT1.18
[4] Response to OEB Staff Interrogatory, Exhibit I, Staff 2, p.2
[5] Exhibit I, OEB Staff 2
[6] Exhibit I, OEB Staff 6

Energy Probe submitted that there is inadequate evidence provided by Enbridge Gas that the OEB can rely upon regarding the various integrity concerns that necessitates the replacement of the pipeline. Energy Probe argued that there is no integrity report provided by an independent expert that verifies the integrity issues claimed by Enbridge Gas. In Energy Probe's view, the evidence provided is of a summary nature. Energy Probe also argued that Enbridge Gas was unable or unwilling to provide clarifying evidence as to the extent and nature of the identified integrity issues (leaks, depth of cover issues, inoperable valves, and vintage pipe that is not weldable) during the technical conference. Energy Probe submitted that without this evidence, it is not possible to draw a reasonable conclusion regarding the urgency for the replacement of the pipeline.[7] FRPO supported the submissions of Energy Probe on integrity issues.

OEB staff submitted that based on the evidence filed by Enbridge Gas, the need for the replacement is supported by the integrity concerns identified and the age of the pipeline.

In its reply submissions, Enbridge Gas reiterated that if the multiple integrity issues identified are not addressed, they are expected to impact both the safety and security of supply of the pipeline. Enbridge Gas submitted that a large proportion was installed from the 1930s to the 1950s and that there are sections that are between 70 and 90 years, emphasizing that Enbridge Gas witnesses at the Technical Conference had expressed that the Windsor line is near end of life. Enbridge Gas submitted that the OEB in its leave to construct decision on the Sudbury Line Replacement Project had acknowledged that age was a consideration that justified the need for the project in addition to multiple integrity concerns.

Findings

On balance, the OEB finds that the need for the replacement project is supported by the integrity concerns identified and the age of the pipeline. The OEB would have been better assisted in making this conclusion if Enbridge Gas had offered more comprehensive supporting evidence as to the extent of the integrity issues and the ability of those issues to be rectified without necessitating the replacement. Safety and security of supply concerns are of paramount importance in determining need for the Project particularly given the age of the existing Windsor Line. However, the OEB has a responsibility to ensure that the proposed ratepayer-funded capital expenditure of $106.8 million is based on clear, well-supported and objective evidence. While the OEB does find that the Project is required and in the public interest, it generally expects a more thorough presentation of Project need given the funding requested.

[7] Energy Probe Argument, p.5

5 PROPOSED FACILITIES AND ALTERNATIVES

Alternatives Assessed

Enbridge Gas plans to replace the existing pipeline, comprised of NPS 10 and NPS 8 pipe and currently operating at a maximum operating pressure (MOP) of 1380 kPa with a NPS 6 pipeline operating at a MOP of 3450 kPa at a cost of $92.7M (excluding overheads).

Enbridge Gas stated that the Project was chosen as it offers the lowest cost while also providing the required capacity to serve the current and forecasted system demands. Enbridge Gas used a ten year customer attachment forecast of demands on the pipeline to identify reinforcement facilities required to support forecasted growth.[8]

Enbridge Gas reviewed several different pipeline operating pressures when considering alternatives for the Project. Enbridge Gas also reviewed options of installing a NPS 6, NPS 8 or a NPS 10 replacement pipeline.

The first MOP considered for the Project was to replace the existing 1380 kPa pipeline with a new pipeline also operating at 1380 kPa. Enbridge determined that a NPS 6 was the minimum size required for a replacement project operating at a 1380 kPa MOP. However, this option costs $92M and was rejected as it would only provide enough capacity to satisfy the current system demands, leaving little remaining capacity to support the forecasted system growth.

Enbridge Gas considered a NPS 8 replacement option costing $103M, but this option would only provide enough capacity to support approximately five years of forecasted growth. A NPS 10 option was also considered. This option offers capacity to support significant system-wide growth. However, this option was rejected due to the significant cost ($108.4M) when compared to the Project.

Enbridge Gas also examined the options of using NPS 8 and NPS 10 pipeline to replace the existing pipeline, operating at 3450 kPa. The NPS 8 and NPS 10 provide more capacity than the proposed pipeline, however Enbridge Gas stated that the forecast could not justify the increased costs ($104M for the NPS 8 and $109.3M for the NPS 10) associated with generating the incremental capacity.

[8] Exhibit C, Tab 3, Sch 1, p.11

Other alternatives that were considered and rejected in early analysis included the installation of a 1900kPa MOP, 6040 kPa MOP, and 420kpA MOP pipelines. Enbridge Gas determined that if the Windsor Line is to be replaced at a higher MOP, a 3450kPa MOP would provide the most capacity with minimal cost increases.

In its review of alternatives, Enbridge Gas considered replacing both a longer section of the line as well as a shorter section of the line. Enbridge Gas determined that replacement of the entire Windsor Line was not currently required, as the portion of the pipeline that is not proposed to be replaced at this time has not presented the same integrity concerns as the rest of the line and costs significantly more ($110M). With respect to replacing a shorter section (48 kms) of the Windsor line, Enbridge Gas stated that this would leave a 16km section of 1950's vintage pipe still in service which has significant integrity concerns.

Enbridge Gas evaluated options of joining previously independent distribution pipelines as well as obtaining supply from non-Enbridge pipelines but determined that there were no nearby distribution pipelines with adequate reliable capacity to serve the system demands.

Finally, Enbridge Gas considered geo-targeted demand side management (DSM) but stated that as the proposed pipeline is integrity driven, DSM cannot defer or eliminate the project need. Enbridge Gas also evaluated whether DSM would be viable to reduce the size of the proposed project; however, it was found that an NPS 4 project could not serve the existing system demand, even with geo-targeted DSM being implemented.

FRPO questioned whether Enbridge Gas had considered the option of using a NPS 4 for some or all of proposed pipeline construction. In its response, Enbridge Gas dismissed the use of a NPS 4 exclusively as this would not serve the existing demand requirements on design day. With respect to a hybrid option (combination of NPS 4 and NPS 6), Enbridge Gas stated that 40% of the proposed line requires the capacity of NPS 6 and that a hybrid option would be unable to meet unforecasted demand.[9]

Enbridge Gas stated that the proposed pipeline was designed as a "like-for-like" replacement with the existing NPS 10 Windsor Line in terms of capacity. FRPO argued that a "like-for-like" replacement should not constitute a disciplined approach to investment as prudent sizing is accomplished by design, using the best information available on current and future needs.

[9] Exhibit I, FRPO 15

FRPO asked Enbridge Gas to provide information on the capacity east of the Comber Transmission Station (Comber), (a midway point on the section of Windsor pipeline that is proposed to be replaced) under different sizing scenarios. Based on Enbridge Gas' response, FRPO argued that the use of a NPS 6 pipeline results in surplus capacity that is over 200 times the forecasted need at the end of ten years while the hybrid option results in additional capacity that is over 70 times the need at the end of ten years and questioned the need for the NPS 6 pipeline. FRPO questioned how much speculative capacity should be allowed to be installed and argued that Enbridge Gas should be held to a standard of prudent investment.[10]

OEB staff submitted that the proposed design appears to be designed to meet demand that is above the ten-year demand forecast. OEB staff further submitted that while it is reasonable to consider future growth potential in a reinforcement project, it is important that evidence on potential load additions to justify additional capacity be provided to enable the OEB to assess the need of a proposed project. Energy Probe submitted that the evidence and submissions of Enbridge Gas on alternative pipe sizes was inadequate and supported FRPO's submissions.

Enbridge Gas stated that un-forecasted demand arises from large agricultural and greenhouse customers whose locations and demands are difficult to predict.

OEB staff submitted that it is not clear when or if Enbridge Gas will be required to meet all or any of these potential demands.

In its reply submission, Enbridge Gas clarified that it has received five separate customer inquiries in the Port Alma and surrounding areas for demands for over 8,000 m^3/hour east of Comber.[11] Enbridge Gas acknowledged that not all these potential loads may proceed; however, it noted that many of these requests were received in the last two years and are expected to continue in the future. Enbridge Gas also stated that demands in these quantities will likely require reinforcement sooner if the hybrid option is pursued than if all NPS 6 is installed.[12]

Enbridge Gas indicated that the hybrid option will reduce the pressure and flows available on the pipeline, reducing its ability to provide a backfeed to other systems for both operational and emergency scenarios in the area.[13] FRPO argued that the Windsor line has interconnections which could provide feed that could potentially meet un-

[10] Technical Conference Transcript, pp 17-20, FRPO January 4, 2020 letter and Final Argument, p.3
[11] Exhibit JT 1.15 and Reply Submission
[12] Exhibit KT1.5 and Argument-in-Chief, p.10
[13] Reply Submission, p. 7 and Exhibit KT1.6

forecasted load and that now, the OEB does not have evidence to understand the capabilities of alternatives to meet the un-forecasted load.

In its reply submissions, Enbridge Gas submitted that one benefit that was not accepted by OEB staff and FRPO is that the NPS 6 pipeline provides the same capacity as the existing pipeline. Enbridge Gas argued that in addition to maintaining a "like-for-like" comparison from a capacity perspective, the advantage of using the NPS 6 pipeline is the ability to meet the increasing un-forecasted demand that Enbridge Gas has been receiving from greenhouse customers within the general area of the Project. Enbridge Gas also stated that it had expressed in its interrogatory responses and in its Argument-in-Chief that the hybrid option would not be able to meet this un-forecasted demand.

With respect to the un-forecasted demand, Enbridge Gas stated that as it continues to receive these customer requests, the hybrid option is not the best alternative to serving these customer requests. Enbridge Gas also stated that if the un-forecasted demand is added, the NPS 4 may not be able to meet the future demands that the NPS 6 could provide.

Enbridge Gas submitted that the NPS 6 is the more prudent option because it supports the economic growth in the Windsor-Essex area, provides more flexibility for emergency response, and it will allow Enbridge Gas to meet the increasing demands sought by the greenhouse industry. Enbridge Gas also submitted that from a design perspective it is more efficient to proceed with the NPS 6 today, particularly when considered against the incremental costs for creating the surplus capacity of an NPS 6 vs the hybrid option.

Cost of proposed facilities and hybrid alternative

FRPO and OEB staff requested a cost estimate for the hybrid alternative at different stages of the discovery process. Prior to the technical conference, OEB staff requested a cost estimate of the hybrid option. In its response, Enbridge Gas did not provide a cost estimate but stated that the hybrid option is estimated to be $0.8M less than the NPS 6 option.[14] However, in undertaking responses to FRPO, Enbridge Gas stated that the cost of the proposed Project is estimated to be $77.4M while the hybrid option is estimated to be $76.1M, or a difference of $1.3M.[15]

FRPO requested information on costs, including unit cost per km, for OEB approved projects ranging from NPS 2 to NPS 6 over the past 10 years. Enbridge Gas provided

[14] Exhibit KT 1.6
[15] Exhibit JT1.14

costs for three previous pipeline projects, which FRPO argued demonstrates that the unit cost for a NPS 4 was less than one-third of the cost of a NPS 6 and which also showed the contractor cost per unit length for a NPS 4 as being less than half of the unit cost for NPS 6.[16]

In its AIC, Enbridge Gas submitted that comparison with these past projects is not appropriate as they are small pipeline projects such as new general infill expansion enhancement to existing pipelines while the proposed replacement is a much larger project.

OEB staff submitted that while the costs of the hybrid option should be less than the NPS 6, the cost differential between the hybrid option and the proposed NPS 6 appears to be understated. OEB staff recommended that in the absence of better clarity from Enbridge Gas in its reply submission that the OEB approve the hybrid option.

FRPO submitted that Enbridge Gas has not met its onus to demonstrate that NPS 6 is the appropriate size for the eastern leg of the Windsor line replacement and urged the OEB not to approve the application as presented until the applicant can provide more compelling evidence.

In its reply submissions, Enbridge Gas stated that the Windsor Line replacement is far more complex than the previous pipeline projects provided by Enbridge Gas for comparison purposes. Enbridge Gas submitted that comparison based on a simple per kilometre cost ratio is not appropriate. There are multiple factors that differentiate this Project from the previous projects which influence the cost. There are a number of conditions that are present in this Project that would not be reflected in the construction costs of the comparator projects. These include:

- 19 new station installations with 5 abandonments with bypass or stop and tap activities for NPS 10;
- NPS 4 and NPS 2;3 complex river crossings within wetland designated areas West of Comber Transmission;
- An extensive list of landowner purchase agreements and temporary land use agreements; abandonment of sections of NPS 10 main;
- both in place and full removal of natural gas delivery is required through both NPS 10 and NPS 6 for all residents throughout construction.

Enbridge Gas argued that in its decision on the Sudbury Replacement Project, the OEB granted the approval because the new replacement line provided incremental capacity

[16] FRPO submission, p.7

at a modest cost (i.e. the difference between NPS 10 and NPS 12 was $1.5 million) and also submitted that in this proceeding, in order to meet the un-forecasted demands (i.e. greenhouse and agricultural customers) in the Windsor-Essex area the NPS 6 design is more efficient than the hybrid option.

Enbridge Gas asserted that for a small incremental cost of $0.8M, the NPS 6 creates surplus capacity that would avoid or delay potential future reinforcements and accommodate the growing demand in the area.

Findings

The OEB approves construction of the hybrid option combining the use of NPS 4 and NPS 6 pipeline sizes estimated to cost $76.1 M, some $1.3M less than the cost of the completion of the Project using only the NPS 6 pipeline capacity.

The OEB acknowledges the potential benefits of planning to meet un-forecast demand by the construction of NPS 6 line throughout the length of the Project but the evidence of Enbridge Gas on the record concerning this demand, which was not set out in its original application, is somewhat speculative. The OEB acknowledges that Enbridge Gas may choose of its own volition to construct a NPS 6 line throughout but the incremental increase in cost over the hybrid option will not be eligible for inclusion in rate base until the need for NPS 6 actually arises.

The existence of inquiries from potential customers provides some, but not conclusive evidence of the need to accommodate future demand. It would have also been helpful for Enbridge Gas to have addressed in its original application the need for the Project to ensure back feed capacity and avoid pressure reductions – needs that were raised by Enbridge Gas later in the proceeding.

In weighing the merits of the arguments of Enbridge Gas, OEB staff and intervening parties, the OEB finds a lack of sufficient evidentiary support for the Project using the Enbridge Gas pipeline size option instead of the less expensive hybrid.

6 PROJECT COST AND ECONOMICS

Enbridge stated that total estimated cost of the Project is $106.8M. This comprises $77.4M for the main pipeline, $15.3M for ancillary facilities (stations and services), and $14.1M in indirect overhead costs.

Enbridge Gas stated that a Discounted Cash Flow report was not completed as the Project is underpinned by the integrity requirements and will not create a significant change in capacity available on the Windsor Line.

OEB staff submitted that the rationale for not conducting an economic analysis is acceptable and notes that the OEB has accepted the rationale in previous applications for leave to construct replacement projects where the need was driven by integrity requirements.[17]

Enbridge Gas expects the Project will meet the criteria for rate recovery through the OEB's Incremental Capital Module (ICM) mechanism. The ICM request for the Project will form part of Enbridge Gas' 2020 rate application.

Findings

The OEB approves a total estimated cost of the Project of $105.5 M. This comprises $76.1M for the main pipeline, $15.3M for ancillary facilities (stations and services), and $14.1M in indirect overhead costs.

The OEB accepts the rationale from Enbridge Gas for not conducting an economic analysis. The OEB has accepted the rationale in previous applications for leave to construct replacement projects where the need was driven by integrity requirements.

[17] EB-2018-0108, Decision and Order, p.6 and EB-2017-0118, Decision and Order, p.6

7 ENVIRONMENTAL MATTERS

Enbridge Gas retained Stantec Consulting Ltd. (Stantec) to complete an environmental assessment of the proposed pipeline.

Enbridge Gas followed the OEB's *Environmental Guidelines for the Location, Construction, and Operation of Hydrocarbon Pipelines and Facilities in Ontario, 7th Edition, 2016* (Guidelines) for the environmental assessment. This was documented in an Environmental Report (ER) prepared by Stantec examining the potential effects of the Project on the environmental and socio-economic features of the area. According to the ER, Stantec does not anticipate any permanent or adverse environmental impacts from the construction and operation of the Project, provided the mitigation measures recommended in the ER are followed.

Enbridge Gas has committed to complying with all mitigation measures recommended in the ER.[18]

Enbridge Gas submitted copies of the ER to the Ontario Pipeline Coordinating Committee (OPCC) for review and comment on July 22, 2019. Enbridge Gas provided a summary of the OPCC review comments, noting a couple of outstanding matters relating to comments from the Essex Region Conservation Authority (ERCA).[19] Enbridge Gas stated that it has contacted the Essex Region Risk Management Official/Inspector as recommended by the ERCA to discuss the Project and appropriate risk management measures and will also work with the ERCA on a permit application for identified water crossings.

Enbridge Gas confirmed that a Stage 1 Archaeological Assessment (AA) report was submitted to the Ministry of Heritage, Sport, Tourism and Culture Industries (MHSTCI) on March 11, 2019 and that the MHSTCI issued a compliant letter on April 12, 2019. Enbridge Gas stated that a Stage 2 AA began in June 2019 and a Stage 2 AA report was submitted to the MHSTCI in December 2019. On January 9, 2020, Enbridge Gas received a letter of acceptance from the MHSTCI regarding the Stage 2 AA.[20] On March 26, 2020, Enbridge Gas provided an update on the Stage 2 AA stating that a number of additional properties located within the Project area were identified for assessment following the submission of the December 2019 Stage 2 AA report. These additional properties will be assessed in Spring 2020 and an additional Stage 2 AA report will be submitted to MHSTCI for review and acceptance. Enbridge Gas stated

[18] Application, Exhibit B, Tab 1, Schedule 6, p.3
[19] OEB Staff Interrogatory 8
[20] OEB Staff Interrogatory 9 and Enbridge letter of March 26, 2020

that it will not conduct works within these areas until MHSTCI acceptance letters are received.

Enbridge Gas stated that it will continue to work with agencies as well as municipalities throughout the Project area to secure any necessary permits and authorizations prior to construction.

OEB staff submitted that it has no concerns with the environmental aspects of the Project, given that Enbridge Gas is committed to implementing the mitigation measures set out in the ER. OEB staff also submitted that Enbridge Gas agrees with the draft conditions of approval proposed by OEB staff, including those that require Enbridge Gas to certify that it has obtained all approvals, permits, licences, and certificates required to construct, operate and maintain the proposed Project.[21]

Findings

The OEB finds that Enbridge Gas has complied with the OEB's Guidelines for the environmental assessment and notes that Enbridge Gas is committed to implementing the mitigation measures set out in the ER.

The OEB also notes that Enbridge Gas agrees with the draft conditions of approval proposed by OEB staff, including those that require Enbridge Gas to certify that it has obtained all approvals, permits, licenses, and certificates required to construct, operate and maintain the proposed Project.

[21] OEB Staff Interrogatory 12

8 INDIGENOUS CONSULTATION

In accordance with the OEB's Guidelines, on April 13, 2018, Enbridge Gas contacted the Ministry of Energy, Northern Development and Mines (MENDM) with respect to the Crown's duty to consult, providing the MENDM with a description of the Project.

The MENDM sent a letter to Enbridge Gas on September 10, 2018 delegating the procedural aspects of the Crown's duty to consult for the Project to Enbridge Gas.

On August 9, 2019, Enbridge Gas provided the MENDM with its Indigenous Consultation Report for the Project and requested that the MENDM determine if the procedural aspects of the duty to consult have been sufficiently addressed.

As part of its application, Enbridge Gas filed a summary of Enbridge Gas' indigenous consultation activities for the Project.[22]

On January 22, 2020, Enbridge Gas updated its evidence with a letter from the MENDM that stated that the MENDM is of the opinion that the procedural aspects of consultation undertaken by Enbridge Gas with respect to the Project are satisfactory.

Findings

The OEB finds that the procedural aspects of consultation undertaken by Enbridge Gas with respect to the Project are satisfactory.

[22] Application, Exhibit C, Tab 8, Schedules 1,2

9 LAND MATTERS

Enbridge Gas indicated that the Project will follow the same route as the existing pipeline and will be located entirely within existing municipal road allowances.

Enbridge Gas proposes to purchase land for five new station sites. In addition, Enbridge Gas will require Temporary Land Use rights on 28 properties adjacent to municipal road allowances to facilitate construction activities. Enbridge Gas stated that negotiations are ongoing with landowners and it expects to have all necessary land rights in place before construction begins.

Enbridge Gas seeks approval of the form of Temporary Land Use Agreement, which has been approved by the OEB in previous pipeline projects.[23]

OEB staff submitted that it has no concerns with respect to Enbridge Gas' proposed land use. OEB staff submitted that the OEB should approve the proposed form of Temporary Land Use Agreement.

Findings

The OEB approves the proposed form of Temporary Land Use Agreement.

[23] Application, Exhibit C, Tab 7, Schedule 3

10 CONDITIONS OF APPROVAL

Section 23 of the OEB Act permits the OEB, when making an order, to impose conditions of approval as it considers appropriate.

OEB staff proposed a number of conditions of approval for the Project based on conditions approved by the OEB for similar projects.

Enbridge Gas accepted the proposed conditions of approval with the exception that the minimum 10 day OEB notice period prior to construction be lifted (i.e., construction can commence at any time leave to construct has been granted).[24]

Findings

The OEB notes that the standard conditions of approval require compliance with all recommendations of the Environmental Protection Act, the Environmental Report and the Ontario Pipeline Coordinating Committee. Accordingly, the OEB accepts the Enbridge Gas request that the minimum 10 day OEB notice period prior to construction be lifted (i.e., construction can commence at any time leave to construct has been granted). The OEB finds that compliance of Enbridge Gas with the conditions of approval will ensure that the requirements of other approvals, permits, licenses, and certificates are fully addressed.

The approved conditions of approval are attached as Schedule B to this Decision and Order.

[24] Reply Submission, p. 2

11 ORDER

THE ONTARIO ENERGY BOARD ORDERS THAT:

1. Enbridge Gas Inc. is granted leave, pursuant to section 90(1) of the OEB Act, to construct approximately 64 kilometers of natural gas pipeline and associated facilities to replace a section of the Windsor pipeline located in the Municipality of Chatham-Kent and the Towns of Lakeshore and Tecumseh, using the hybrid option.

2. The OEB approves the proposed form of temporary land use agreement that Enbridge Gas Inc. has offered or will offer to each owner of land affected by the approved pipeline route for the Project.

3. Leave to construct is subject to Enbridge Gas Inc. complying with the conditions of approval set out in Schedule B.

4. Eligible intervenors shall file with the OEB and forward to Enbridge Gas Inc. their respective cost claims in accordance with the OEB's *Practice Direction on Cost Awards* on or before April 15, 2020.

5. Enbridge Gas Inc. shall file with the OEB and forward to intervenors any objections to the claimed costs of the intervenors on or before April 29, 2020.

6. If Enbridge Gas Inc. objects to any intervenor costs, those intervenors shall file with the OEB and forward to Enbridge Gas Inc. their responses, if any, to the objections to cost claims on or before May 13, 2020.

7. Enbridge Gas Inc. shall pay the OEB's costs incidental to this proceeding upon receipt of the OEB's invoice.

DATED at Toronto April 1, 2020

ONTARIO ENERGY BOARD

Original Signed By

Christine E. Long
Registrar and Board Secretary

SCHEDULE A

DECISION AND ORDER

ENBRIDGE GAS INC.

EB-2019-0172

APRIL 1, 2020


Michigan
Lake St. Clair
Municipality Of
Chatham-Kent
Windsor
Tecumseh
E C Row Expressway
Lakeshore
401
Sandwich
Compressor
Station
County Road 46
Lakeshore Road 309
Port Road
Comber
Transmission
Station
Goodreau Line
Essex
77
Wheatley Road
Port Alma
Transmission
Station
3
County
Of Essex
Talbot Trail
Windsor Line Replacement Project
Existing Enbridge Gas Station
Preferred Route
0 5 10
km
Kingsville
Lake Erie

SCHEDULE B

DECISION AND ORDER

ENBRIDGE GAS INC.

EB-2019-0172

APRIL 1, 2020

CONDITIONS OF APPROVAL
Application under Section 90(1) of the OEB Act
Enbridge Gas Inc.
EB-2019-0172

1. Enbridge Gas Inc. (Enbridge Gas) shall construct the facilities and restore the land in accordance with the OEB's Decision and Order in EB-2019-0172 and these Conditions of Approval.

2. (a) Authorization for leave to construct shall terminate 12 months after the decision is issued, unless construction has commenced prior to that date.

   (b) Enbridge Gas shall give the OEB notice in writing of the following:

   i. The planned in-service date, at least 10 days prior to the date the facilities go into service
   ii. The date on which construction was completed, no later than 10 days following the completion of construction
   iii. The in-service date, no later than 10 days after the facilities go into service

3. Enbridge Gas shall implement all the recommendations of the Environmental Report filed in EB-2019-0172, and all the recommendations and directives identified by the Ontario Pipeline Coordinating Committee review.

4. Enbridge Gas shall advise the OEB of any proposed change in the project, including but not limited to changes in: OEB-approved construction or restoration procedures, the proposed route, construction schedule and cost, the necessary environmental assessments and approvals, and all other approvals, permits, licences, certificates and rights required to construct the proposed facilities. Except in an emergency, Enbridge Gas shall not make any such change without prior notice to and written approval of the OEB. In the event of an emergency, the OEB shall be informed immediately after the fact.

5. Concurrent with the final monitoring report referred to in Condition 6(b), Enbridge Gas shall file a Post Construction Financial Report, which shall provide a variance analysis of project cost, schedule and scope compared to the estimates filed in this

proceeding, including the extent to which the project contingency was utilized. Enbridge Gas shall also file a copy of the Post Construction Financial Report in the proceeding where the actual capital costs of the project are proposed to be included in rate base or any proceeding where Enbridge Gas proposes to start collecting revenues associated with the project, whichever is earlier.

6. Both during and after construction, Enbridge Gas shall monitor the impacts of construction, and shall file with the OEB one paper copy and one electronic (searchable PDF) version of each of the following reports:

   (a) A post construction report, within three months of the in-service date, which shall:

      i. Provide a certification, by a senior executive of the company of Enbridge Gas' adherence to Condition 1

      ii. Describe any impacts and outstanding concerns identified during construction

      iii. Describe the actions taken or planned to be taken to prevent or mitigate any identified impacts of construction

      iv. Include a log of all complaints received by Enbridge Gas, including the date/time the complaint was received, a description of the complaint, any actions taken to address the complaint, the rationale for taking such actions

      v. Provide a certification, by a senior executive of the company, that the company has obtained all other approvals, permits, licences, and certificates required to construct, operate and maintain the proposed project

   (b) A final monitoring report, no later than fifteen months after the in-service date, or, where the deadline falls between December 1 and May 31, the following June 1, which shall:

      i. Provide certification, by a senior executive of the company, of Enbridge Gas' adherence to Condition 3

      ii. Describe the condition of any rehabilitated land

iii. Describe the effectiveness of any such actions taken to prevent or mitigate any identified impacts of construction

iv. Include the results of analyses and monitoring programs and any recommendations arising therefrom. Include a log of all complaints received by Enbridge Gas, including the date/time the complaint was received, a description of the complaint, any actions taken to address the complaint, the rationale for taking such actions

7. Enbridge Gas shall designate one of its employees as project manager who will be responsible for the fulfillment of these conditions, and shall provide the employee's name and contact information to the OEB and to all the appropriate landowners, and shall clearly post the project manager's contact information in a prominent place at the construction site.

The OEB's designated representative for the purpose of these Conditions of Approval shall be the OEB's Manager of Natural Gas Applications (or the Manager of any OEB successor department that oversees natural gas leave to construct applications).