

May 13, 2020

RESS & EMAIL

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 Expansion Project (EB-2019-0159)**

We are legal counsel to Enbridge Gas in this matter. On May 4, 2020, Enbridge Gas requested a temporary adjournment of this proceeding on the condition that it will report to the Ontario Energy Board (“OEB” or “Board”) as soon as reasonably possible (and no later than six months from the date of adjournment) on whether Enbridge Gas has sufficient clarity as to any COVID-19 related impact on the project and to proceed with the application. Pursuant to Procedural Order No. 6 dated May 7, we hereby submit Enbridge Gas’s reply to various parties’ submissions regarding the conditions of adjournment, including several intervenors’ request that Enbridge Gas be required to file some or all completed interrogatory (“IR”) responses at this time.

No party has objected to the need to adjourn the proceeding, and the OEB stated in Procedural Order No. 6 that it intends to grant the adjournment. OEB Staff and five intervenors¹ fully support Enbridge Gas’s request for adjournment (including the proposed reporting condition). Moreover, OEB Staff, CCC, CME, Energy Probe and IGUA² all submitted that Enbridge Gas should not be required to file IR responses based on facts and assumptions that may need to be materially updated due to the ongoing pandemic.

Several other parties proposed additional or revised conditions of adjournment:

- In their respective letters dated May 5, Environmental Defence (“ED”), the Federation of Rental-housing Providers of Ontario (“FRPO”), the Green Energy Coalition (“GEC”), and

¹ See: May 5th submission of The Association of Power Producers of Ontario (“APPrO”), May 8th submission of Energy Probe, and May 11th submissions of OEB Staff, Consumers Council of Canada (“CCC”), Canadian Manufacturers and Exporters (“CME”), and Industrial Gas Users Association (“IGUA”).

² Note that APPrO’s letter in support of Enbridge Gas’s request was filed on May 5, prior to the issuance of Procedural Order No. 6, and did not include specific submissions on the filing of IR responses as the OEB set out in that Order.

Pollution Probe (“PP”)³ requested that the OEB adjourn the proceeding on the condition that Enbridge Gas file completed IR responses. In support of their position, they argue that obtaining IR responses will assist with the assessment of non-facility alternatives in this proceeding and will inform the Integrated Resource Planning (“IRP”) Proposal proceeding (EB-2020-0091).

- In its letter dated May 8, the School Energy Coalition (“SEC”) submitted that, among other things: the adjournment should not affect the continuation of the IRP proceeding; Enbridge Gas should explain the impact of the adjournment on the project’s schedule and regulatory process; the OEB should make clear that work on the project should include continued consideration of alternatives; and Enbridge Gas should be ordered to answer all IRs that it can now and be permitted to defer responses where the forecasts and assumptions will be under review during the adjournment.
- In its letter dated May 11, the Building Owners and Management Association (“BOMA”) concurred generally with SEC’s submissions. It also proposed requiring that none of the regulatory steps/timeline be “conflated or shortened as a result of the adjournment” and that Enbridge Gas’s IR responses include “both its originals and assumptions and the changes to the forecasts and assumptions which have been made to reflect the impact of the pandemic”.
- In its letter dated May 11, the City of Hamilton proposed shortening the reporting condition period from six months within the date of adjournment (as proposed by Enbridge Gas) to one month.⁴

As further explained below, requiring the submission of any IR responses amidst the current uncertainty is not regulatorily efficient and ignores the issue that led to the need for adjournment – i.e., the unknown COVID-19 related impact on the demand forecast needs to be clarified in the coming months. Further, the attempt of the parties to leverage IR responses from this proceeding to inform and prepare for the separate IRP proceeding is inappropriate since it disregards the fact that no specific IRP alternative is at issue in either proceeding and is wholly inconsistent with the OEB’s clear direction on the scope of each proceeding. Enbridge Gas completely agrees with the submissions of OEB Staff in this regard:

“OEB staff expects that significant updates of the evidence may be required before the hearing can re-commence. OEB staff does not see value in Enbridge Gas filing interrogatory responses at this time given that the evidence might be materially updated following the adjournment period. With respect to the submissions of some parties that the responses to certain interrogatories may be beneficial for the current Integrated Resource Plan (IRP) proceeding, OEB staff submits that these parties will have an opportunity to ask the relevant interrogatories in that proceeding.”

³ PP additionally recommended that the OEB “include a step in the process (perhaps a short technical conference early June) for Enbridge to consult with interested stakeholders on options after stakeholders have had a[n] opportunity to review Enbridge’s Interrogatory responses”. Enbridge Gas opposes this recommendation for the same reasons outlined in this reply submission.

⁴ The City of Hamilton also requested the “completion of interrogatory responses” as a condition of adjournment but did not provide arguments in support of this position. Enbridge Gas maintains its objection to this request based on the reasons set out in this reply submission.

Uncertain Impact of COVID-19 on the Proposed Project and Application

As the applicant, Enbridge Gas adduces evidence to discharge its burden of proof in respect of the relief sought, i.e., that the OEB grant leave to construct the proposed project as it is in the public interest. Enbridge Gas is committed to provide evidence (including IR responses) that is accurate and reliable based on relevant information. In this regard, Enbridge Gas's adjournment request, due to COVID-19 related uncertainty, is necessary to obtain clarity regarding the likely impact of the pandemic on the application, including the demand forecast underpinning project need, and to properly and accurately answer the numerous related IRs.

Given the recognized need for clarity and the fact future updates will very likely be required once greater certainty is obtained, providing any IR responses now is not regulatorily efficient. In fact, relying upon uncertain and potentially inaccurate information to draw conclusions in either the current proceeding or the IRP proceeding, as suggested by ED, FRPO, GEC and PP, may render such conclusions meaningless and limit the value and integrity of the associated regulatory process.

The fundamental issue is that contrary to these intervenors' suggestions, the purpose of filing evidence is to furnish accurate information on which the applicant may rely in proving key aspects of its case (e.g., pipeline need as supported by the demand forecast) and on which the OEB may rely in making its decision. It is certainly not to enable intervenors to advance their knowledge or interests using such uncertain information in preparation for a separate proceeding.

For these reasons, SEC's proposal (which BOMA generally endorses) that some IR responses be provided now to "reduce the impacts of any delay if the process is then restarted" and to "likely be helpful to all parties in the EB-2020-0091 proceeding" should be rejected by the OEB. As OEB Staff pointed out, parties will have an opportunity to ask the relevant IRs in the IRP proceeding. Given the inter-related nature of IR responses and their intended purpose (i.e., to clarify the evidence in this application), Enbridge Gas should be allowed to provide a complete set of responses once there is sufficient clarity to do so. Enbridge Gas should not be required to file its responses piecemeal and months apart to help the parties to another proceeding or due to purported efficiency benefits that are unfounded and inconsistent with the very reason for the adjournment.

With respect to non-pipeline alternatives, at such time that Enbridge Gas provides responses to the IRs and/or updated evidence in support of the 2021 Dawn Parkway Expansion Project, it expects that, consistent with the Issues List, the OEB and intervenors will have the opportunity to assess the facility and non-facility alternatives reflected by that evidence in determining whether the project as the preferred alternative is in the public interest. This would include any additional assessment of non-facility alternatives conducted by Enbridge Gas. Similarly, intervenors will be afforded the opportunity to present their own evidence on the basis of a more certain and up-to-date demand forecast at that time.

Scope of Current Leave-to-Construct Proceeding and IRP Proposal Proceeding

In Procedural Order No. 1, the OEB indicated that its review of Enbridge Gas's IRP Proposal, as it relates to future Enbridge Gas projects and broader policy issues, should occur separately outside of the context of a project-specific leave to construct proceeding. In its Notice of Hearing dated April 28, 2020, the OEB initiated that IRP proceeding (EB-2020-0091) and established the expectation that the proceeding will:

“... address the specific elements of Enbridge Gas' IRP proposal, and will also

consider the broader issues of whether Enbridge Gas' IRP proposal adequately responds to previous OEB direction and guidance on IRP, and whether Enbridge Gas' IRP proposal necessitates consequential changes to any other OEB policies, codes, or guidelines.”⁵

Despite the OEB's clear direction and process, the IRs submitted in relation to the 2021 Dawn Parkway Expansion Project included numerous questions pertaining to issues of broader applicability, including the consideration of 40-year forecasting, demand side management (“DSM”) and IRP. By requesting all or some IR responses in this proceeding to inform the IRP review, ED, FRPO, GEC, PP and SEC are effectively disregarding the scope of the two proceedings as determined by the OEB. Furthermore, the fact is that no specific IRP alternative is at issue in either the current leave to construct proceeding⁶ or in the IRP Proposal.

It is inappropriate for the above-noted OEB direction to be circumvented by advancing consideration of broader policy issues in the context of a project-specific application. These complex and far-reaching issues warrant the appropriate review and determination by the OEB. Doing so through the IRP review proceeding, which is specifically designated for that purpose, would not in any way prejudice the consideration of non-facility alternatives to the 2021 Dawn Parkway Expansion Project.

Furthermore, with respect to non-facility alternatives, ED's claims that Enbridge Gas has not given DSM due consideration are misplaced and unfounded. Enbridge Gas did consider non-facility alternatives, including DSM in its pre-filed evidence set out at Exhibit A, Tab 7. What is relevant to the adjournment is the necessary clarity related to COVID-19 and the fact that without such clarity fully responsive and accurate evidence is not in Enbridge Gas's view available. The assertions of ED to require Enbridge Gas to further explore DSM during the adjournment is tantamount to requiring the OEB to evaluate and assess Enbridge Gas's treatment of non-facility alternatives as part of an adjournment request. The viability and evaluation of the non-facility alternatives is part of the evidentiary burden that Enbridge Gas must discharge in the manner that it believes appropriate in its application. It would be premature for the OEB to consider the evidentiary basis of non-facility alternatives as part of the adjournment request and to impose conditions requiring Enbridge Gas to take certain actions in respect of such alternatives. Whether the evaluation of such alternatives by Enbridge Gas (including during the adjournment) is sufficient relative to the proposed project is for the OEB to consider during the course of the hearing when fully accurate and responsive evidence can be relied upon as part of the OEB deliberations. Enbridge Gas notes that it is incented, through its OEB-approved DSM scorecard targets, to maximize DSM-related energy savings and participation levels using its OEB-approved budgets. These savings are already reflected in Enbridge Gas's annual demand forecasts, effectively deferring the need for infrastructure reinforcement and expansion across all rate zones.

In response to SEC's concern regarding the continuation of the IRP proceeding, Enbridge Gas confirms that its adjournment request applies to the leave to construct proceeding for the 2021 Dawn Parkway Expansion Project and not to the IRP proceeding.

⁵ OEB Notice of Hearing for Enbridge Gas Integrated Resource Planning Proposal - EB-2020-0091 (April 28, 2020), p. 3.

⁶ In the leave-to-construct application for the 2021 Dawn Parkway Expansion Project, Enbridge Gas did not put forward an IRP alternative for OEB review. However, it included an assessment of all alternatives (facility and non-facility) as part of the application.

Practical Considerations

ED's claim that it would not be onerous to produce IR responses is misplaced. In reality, due to the large volume of data requests that parties posed through IRs, and in light of the unprecedented nature of the COVID-19 outbreak, it was necessary for Enbridge Gas to redirect resources from the preparation of IR responses to COVID-19 related issues, including impacts to the demand forecast. This work led to the initial delay in filing the IRs and the conclusion that Enbridge Gas adjourn the proceeding until there is sufficient certainty in the data and assumptions underlying its application. As such, contrary to ED's assumption, even if the responses were to be provided based on current uncertain information (which Enbridge Gas submits the OEB should not direct Enbridge Gas to do in whole or in part), the completion of those responses would require significant additional time. For similar reasons, BOMA's request for two sets of responses to forecast-related IRs (i.e., based on the original and updated assumptions) should not be granted. Enbridge Gas will file completed responses reflecting valid and reliable information when the proceeding resumes and does not see value in the onerous exercise of preparing responses based on outdated information that is no longer being relied on to discharge the onus of proof.

Both SEC and BOMA express concerns that the adjournment will cause the remaining regulatory steps of the application to be shortened. SEC claims that a six-month adjournment means a decision cannot be obtained in time to meet the planned project in-service date of November 2021. In this regard, Enbridge Gas is committed to continue the application (once it resumes) according to the process and timeline that the OEB establishes at its discretion. In addition, it is not the case, as predicted by SEC, that the adjournment will "leave a Board decision happening well after actual construction is presumed to have started".

First, project construction will not commence until the OEB grants leave to construct. Secondly, using the OEB's performance standards for processing applications as a guideline, Enbridge Gas believes there is sufficient time for the regulatory process to run its course without significantly impacting the planned in-service date. Based on the standard timeline of 210 days (for a leave to construct proceeding with an oral hearing), and given that 170 days have elapsed since the letter of completeness, this leaves about 40 days in the standard proceeding timeline. Even assuming a 90 day extension due to COVID-19 (i.e., 130 days remaining in the timeline), this means that restarting the proceeding, at the latest, after six months in November 2020 will lead to a decision by late March 2021. With the diligent advancement of project development during the adjournment, and subject to the availability of materials and labour upon approval to commence construction, an in-service date that is close to November 2021 remains feasible, particularly if the adjournment lasts shorter than six months. In any event, by the end of the adjournment period, Enbridge Gas will update the evidence to reflect its up-to-date assessment (including impact on project timeline) at that time.

The City of Hamilton proposed that the reporting condition period be shortened from six months to one month, which is not a feasible or realistic requirement. Governments, businesses and consumers across Canada and around the globe are grappling with the many unknowns related to COVID-19. No one, including the City of Hamilton, can accurately state what will occur in one month's time. Enbridge Gas will not have obtained sufficient clarity regarding the impact on this application within a month of adjournment.

For the above reasons, we submit that the OEB should grant the temporary adjournment sought by Enbridge Gas (as outlined in its May 4th letter and supported by OEB Staff and various intervenors) and that the additional or revised conditions of adjournment being proposed by other intervenors are not appropriate.

Yours truly,

per 
Charles Keizer

cc: Enbridge Gas
All Parties