



Enbridge Gas Inc.

**Application to construct natural gas pipeline and associated
facilities in the City of Hamilton**

**PROCEDURAL ORDER NO. 8
FINAL COST AWARDS PROCESS AND APPLICATION WITHDRAWAL
November 18, 2020**

Enbridge Gas Inc. (Enbridge Gas) filed an application with the Ontario Energy Board (OEB) pursuant to section 90(1) and 97 of the *Ontario Energy Board Act 1998*, S.O. 1998, c.15 (Schedule B) for leave to construct approximately 10.2 kilometres of 48-inch diameter natural gas transmission pipeline and associated facilities in the City of Hamilton (Project or 2021 Dawn Parkway Expansion). Enbridge Gas also applied for approval of the forms of easement agreements related to the construction of the Project.

On May 4, 2020, Enbridge Gas requested that the OEB temporarily adjourn the proceeding due to uncertainties resulting from the COVID-19 pandemic impacts on the Project. No party opposed the adjournment.

On May 19, 2020 the OEB adjourned the proceeding until further notice. The OEB conditioned the adjournment by Enbridge Gas filing an update on the status of the Project by November 19, 2020.

On July 15, 2020 the OEB issued a Decision and Order on Interim Costs Awards (Decision on Interim Costs). The Decision on Interim Costs ordered Enbridge Gas to pay awarded interim costs subject to certain conditions regarding the final cost awards.

Notice of Withdrawal and Submissions of Parties

On October 22, 2020 Enbridge Gas filed a notice of withdrawal of the application in accordance with section 20 of the OEB's *Rules of Practice and Procedure* (Rules). Enbridge Gas stated that there is no longer a need for the Project in the time frame as originally proposed on account of the on-going COVID-19 pandemic. Enbridge Gas further stated that it will reassess customer demand for the Dawn Parkway capacity and the need for the Project in 2021 to determine if a new application should be filed.

On October 26, 2020 a number of intervenors proposed certain conditions that the OEB should impose on Enbridge Gas with respect to the withdrawal under section 20.03 of the Rules.

Green Energy Coalition (GEC) proposed a set of withdrawal conditions which were supported by Environmental Defence, the Federation of Rental-housing Providers of Ontario (FRPO), Pollution Probe and School Energy Coalition (SEC).

The withdrawal conditions proposed by these intervenors are:

- Enbridge Gas should file an updated demand forecast explaining the basis for determining that the Project is no longer needed.
- Enbridge Gas should immediately start analyses and report, within three months, to the OEB and the parties in the proceeding, on the updated review of alternatives to the Project, including Demand Side Management (DSM) programs, demand response, delivery contract innovations and fuel switching which may defer or displace the need for the Project.
- After the OEB renders its findings on the current Integrated Resource Planning (IRP)¹ proceeding, Enbridge Gas should update analyses of alternatives that may defer or displace the need for the Project and report to the OEB the results of these analyses.

SEC argued that "...there is a strong likelihood that, at some point in the future, the Applicant Enbridge Gas will file an application that encompasses the same, similar, or replacement capital projects. If that were the case, the Board (and the customers) should not be put in the position...[that] the utility is once again saying it is too late to use IRP principles to avoid significant capital spending." ED, FRPO and Pollution Probe made similar comments and supported the conditions proposed by GEC.

On October 30, 2020 Enbridge Gas opposed the conditions of withdrawal proposed by the intervenors.

Enbridge Gas noted that the "likelihood of a new application is contingent on confirmed "sufficient need" and to the extent that it can be confirmed, Enbridge Gas has the expectation of bringing a separate and distinct application in the future." Enbridge Gas also stated that it has withdrawn the application and has no plans to proceed with the Project as originally proposed.

¹ EB-2020-0091

Findings

The OEB accepts Enbridge Gas's withdrawal of its 2021 Dawn Parkway Expansion Application and will not impose any conditions.

With the withdrawal of the application, the Project described therein is effectively no longer before the OEB. The OEB will not require Enbridge Gas to file a demand forecast showing why the Project is no longer needed. To the extent that the Project (or something similar) is revived through a new application, evidence of the need for that project, which will be informed in part by the load forecast, will be an important component of that application. The OEB will review that evidence if and when such an application is filed.

With respect to the proposed condition of reporting based on the future OEB findings in the IRP proceeding, Enbridge Gas pointed out that "...the generic parameters that will be used to assess non-facility alternatives to any future project are currently being considered within the Board's Integrated Resource Plan (IRP) Proposal proceeding in EB-2020-0091, where the Board has the full benefit of argument and evidence."

The OEB has already determined, at the onset of the leave to construct proceeding in Procedural Order No. 1, dated January 30, 2020, that the IRP Proposal "...as it relates to future Enbridge projects, will be reviewed separately...". The OEB also stated that "...the IRP Proposal raises issues of broad applicability that are best dealt with outside of the context of a project-specific Leave to Construct proceeding".

Consistent with these findings the OEB will not impose the proposed condition that Enbridge Gas be required to file an updated assessment of alternatives to the Project based on future OEB findings in the ongoing IRP Proposal proceeding. This does not mean that Enbridge Gas is relieved of the obligation to consider alternatives to any future leave to construct proposal, which may include IRP alternatives. The extent to which Enbridge Gas's proposed alternative meets the public interest, however, will be considered by the OEB panel assigned to that proceeding.

Final Cost Awards Process

Prior to the adjournment on May 19, 2020, the OEB conducted several steps of a written hearing according to the procedural schedule, which included the Issues List process and a process for written interrogatories to Enbridge Gas. The OEB also set the schedule for the filing of intervenor evidence. The proceeding was adjourned prior to Enbridge Gas filing its interrogatory responses and prior to the filing of intervenor evidence. GEC,

FRPO and Environmental Defence indicated on the record that they would file Intervenor Evidence.

In the Decision on the Interim Cost, the OEB ordered that Enbridge Gas pay out cost claims to the eligible intervenors up to a maximum of \$30,000. The following intervenors filed cost claims, over \$30,000:

	Total Cost Claimed
GEC	\$34,988.41
FRPO	\$59,365.68
Pollution Probe	\$41,429.19

Each of GEC, FRPO and Pollution Probe received \$30,000 in cost awards. All other intervenors received full cost awards as claimed.

The OEB's findings in the Decision on the Interim Cost stated the following: ...the OEB will make an interim cost order providing for the payment of interim cost claims up to an amount of \$30,000 subject to the following conditions and understandings: (i) the amounts will be awarded on an interim basis and will be considered in terms of assessing the reasonableness of any final cost claim. This will be done in accordance with the OEB's approach to compensating for value in the context of the entire participation; (ii) those intervenors who have invested significantly greater amounts of time in the process to date, including preparation for the oral hearing will be expected to show the results of such investments in reductions to the amount of time spent on these tasks included in the final claim. This is particularly the case for those parties who will not be offering evidence in this proceeding; (iii) intervenors should ensure that there is no double billing for tasks that have been included in the claim for an interim cost order.²

Enbridge Gas in a letter dated June 16, 2020, agreed that interim costs be awarded. However, Enbridge Gas submitted that it was not possible to comment on the relevance of intervenor evidence or on duplication of efforts in evidence preparation and associated cost claims. Enbridge Gas also submitted that "...it is also appropriate to take such interim awards into account at the time that final costs are assessed once the relevance and overall contribution of intervenors (and any expert evidence they produce) can be assessed".

² Decision and Order on Interim Cost Awards, July 15, 2020, page 4

In a letter dated October 26, 2020, Pollution Probe requested the OEB's consideration for the residual balance of its cost claim submitted June 2, 2020. GEC and FRPO in their letters dated October 26, 2020 each requested that the OEB award the remaining costs not awarded in the Decision on Interim Cost. No other intervenor commented on this matter.

In accordance with the OEB's conditions and understandings set in the Decision on Interim Cost, the OEB will provide an opportunity for GEC, FRPO and Pollution Probe to file written submissions, and for Enbridge Gas to reply. The submissions should focus on the rationale for awarding the costs for work completed prior to closing of the proceeding in excess of the interim costs awarded. GEC, FRPO and Pollution Probe are expected to submit more details on the hours and the quantum of cost claims incurred for the preparation of the intervenor evidence and in anticipation of the oral hearing.

Additionally, the OEB will provide an opportunity for all parties that filed comments on the notice of withdrawal, to submit cost claims for that work, all subject to reply from Enbridge Gas.

Parties are responsible for ensuring that any documents they file with the OEB, do not include personal information (as that phrase is defined in the *Freedom of Information and Protection of Privacy Act*), unless filed in accordance with rule 9A of the OEB's *Rules of Practice and Procedure*.

IT IS THEREFORE ORDERED THAT:

1. The OEB accepts the withdrawal of **EB-2019-0159** application without conditions.
2. GEC, FRPO and Pollution Probe shall file submissions on the reasonableness of their final cost claims.

Parties that filed comments on the notice of withdrawal from Enbridge Gas may file related additional cost claims together with any accompanying submissions with the OEB and Enbridge Gas by **November 30, 2020**

3. Enbridge Gas shall file with the OEB and forward to intervenors reply submission by **December 7, 2020**.

All materials filed with the OEB must quote the file number, **EB-2019-0159** and be submitted in a searchable/unrestricted PDF format with a digital signature through the OEB's web portal at <https://pes.ontarioenergyboard.ca/eservice>. Filings must clearly state the sender's name, postal address, telephone number, fax number and e-mail address. Parties must use the document naming conventions and document submission standards outlined in the [Regulatory Electronic Submission System \(RESS\) Document Guidelines](#) found at www.oeb.ca/industry. We encourage the use of RESS; however, parties who have not yet [set up an account](#), may email their documents to registrar@oeb.ca.

All communications should be directed to the attention of the Registrar and be received no later than 4:45 p.m. on the required date.

With respect to distribution lists for all electronic correspondence and materials related to this proceeding, parties must include the Case Manager, Zora Crnojacki at Zora.Crnojacki@oeb.ca and Board Counsel, Michael Millar at Michael.Millar@oeb.ca.

Email: registrar@oeb.ca
Tel: 1-888-632-6273 (Toll free)
Fax: 416-440-7656

DATED at Toronto, **November 18, 2020**

ONTARIO ENERGY BOARD

Original Signed By

Christine E. Long
Registrar