



Enbridge Gas Inc.

**Application for leave to construct a natural gas pipeline
and associated facilities in the in the City of Toronto**

DECISION ON JURISDICTION

January 22, 2021

1. Introduction and Summary of Findings

Enbridge Gas Inc. (Enbridge Gas) applied to the Ontario Energy Board (OEB) under sections 90 and 97 of the *Ontario Energy Board Act, 1998* (OEB Act), for an order granting leave to construct (LTC) approximately 1.9 kilometres of 20-inch diameter and approximately eight metres of 24-inch diameter natural gas pipeline and ancillary facilities in the City of Toronto (Proposed Pipeline). Enbridge Gas stated that the Proposed Pipeline is required because of the need to relocate a section of existing pipeline (Existing Pipeline) that is located on the Keating Railway Bridge (Bridge) that is in conflict with the construction of Toronto Waterfront Revitalization Corporation's (Waterfront Toronto) Port Lands Flood Protection and Enabling Infrastructure Project (Flood Protection Project). The abandonment of the Existing Pipeline and construction of the Proposed Pipeline are collectively referred to as the Project.

The estimated capital cost of the Project is approximately \$70.5 million. Enbridge Gas stated that it has advised Waterfront Toronto that Waterfront Toronto is responsible for 100% of the costs of the Project because Waterfront Toronto has requested the relocation of the Existing Pipeline.

The current location of the Existing Pipeline on the Bridge appears to be pursuant to a permission granted by the Toronto Harbour Commissioners to Enbridge Gas's predecessor, Consumer's Gas Company of Toronto, in 1955 to utilize the Bridge to support the Existing Pipeline (1955 Permission). In its intervention request, filed with the OEB on November 30, 2020, the City of Toronto advised that it had terminated the 1955 Permission on October 30, 2020.

In its intervention request, filed on November 30, 2020, Waterfront Toronto indicated that at no time did it ask for or accept the solution proposed by Enbridge Gas and stated that it believes that the OEB does not have the jurisdiction to allocate the cost of the Project to Waterfront Toronto.

Enbridge Gas filed with the OEB a letter addressed to the City of Toronto dated November 10, 2020, in which it stated that the issue of cost responsibility for the completion of the Project is an issue for review and determination by the OEB as part of the LTC approval process.¹

The OEB issued Procedural Order No. 1 on December 10, 2020 which provided for, among other things, the filing of written submissions on two questions:

- a) Does the OEB have the jurisdiction to determine cost responsibility for the Proposed Pipeline, including any allocation of costs to Waterfront Toronto? If the answer to this question is “yes”, what steps, if any, should the OEB take to address this situation?
- b) If the answer is “no”, what steps can the OEB take to ensure that the costs of the Proposed Pipeline are not unfairly shifted to ratepayers and that the OEB is able to meet its statutory objectives which include protecting the interests of consumers with respect to prices and the adequacy, reliability and quality of gas service (OEB Act, s.2)?

Submissions on the two questions were received from Enbridge Gas, City of Toronto, Energy Probe Research Foundation (Energy Probe), Environmental Defence Canada Inc. (ED), Federation of Rental-housing Providers of Ontario (FRPO), OEB staff, Pollution Probe, School Energy Coalition (SEC) and Waterfront Toronto.

Summary of Findings

The OEB finds that it has full jurisdiction to determine cost responsibility for the Project to the extent that it is pertinent to the OEB’s rate-setting mandate and its consideration of the public interest in a leave to construct proceeding as articulated in the OEB Act. However, the OEB does not have jurisdiction to order Waterfront Toronto to pay all or part of the Project cost.

Although Enbridge Gas has provided an assessment of a number of project alternatives, that list may not have included some potentially more cost-effective

¹ Enbridge Gas’s response to the City of Toronto’s intervention request, filed December 1, 2020

solutions such as the new utility corridor proposed by Waterfront Toronto to serve utilities currently using the Bridge to carry utility assets across the Don River (Utility Corridor).

A settlement conference has been scheduled for January 25-26, 2021 where parties are to address whether all viable alternatives, including the Utility Corridor, have been properly considered, and what should be the cost responsibility for the pipeline relocation between Enbridge Gas and Waterfront Toronto and/or the City or Toronto.

2. Process to Date

Enbridge Gas filed its LTC application on October 13, 2020.

Procedural Order No. 1 was issued on December 10, 2020 and granted intervenor status to the City of Toronto, ED, Energy Probe, FRPO, Pollution Probe, SEC, the Toronto and Region Conservation Authority (TRCA), and Waterfront Toronto.

Procedural Order No. 1 also provided for written submissions on two questions regarding the OEB's jurisdiction to determine cost responsibility for the Proposed Pipeline, to be filed with the OEB and served on all parties by December 17, 2020.

Procedural Order No. 2, which was issued on December 14, 2020 revised part of the schedule set out in Procedural Order No. 1 for the filing of submissions on the questions, interrogatories and interrogatory responses.

Procedural Order No. 3, issued on December 22, 2020, revised the schedule set out in Procedural Order No. 2 and provided for revised dates for the filing of submissions on the questions, interrogatories and responses to interrogatories.

A first set of submissions on the questions was filed by Enbridge Gas and Waterfront Toronto on December 17, 2020. Pollution Probe filed its submission on January 7, 2021. Each of the City of Toronto, ED, Energy Probe, FRPO, OEB staff, SEC and Waterfront Toronto filed submissions on January 8, 2021.

In its submission, Pollution Probe recommended that the interrogatory phase be placed on hold until Enbridge Gas has an opportunity to update its evidence based on a more cost-effective solution and any cost sharing agreements it is able to secure. In its submission, OEB staff suggested a settlement conference to address the cost responsibility aspect of this application as well as alternatives to the Proposed Pipeline advocated by other parties such as Waterfront Toronto. On January 12, 2021, Enbridge Gas filed a letter requesting that the OEB schedule a mediation session at the earliest opportunity. That same day, SEC filed a letter in support of Enbridge Gas's request.

Procedural Order No. 4, issued on January 14, 2021, deferred the interrogatory stage of this proceeding and directed that a settlement conference be convened on January 25-26, 2021 to address the following issues:

1. Is the Proposed Pipeline the most cost-effective solution and have all viable alternatives been properly considered, including the Utility Corridor proposed by Waterfront Toronto?
2. What should be the cost responsibility for the pipeline relocation between Enbridge Gas and Waterfront Toronto and/or the City of Toronto?

Procedural Order No. 4 also ordered Waterfront Toronto to file evidence on its proposed Utility Corridor alternative.

On January 14, 2021 the OEB received correspondence from SEC expressing concern about the procedure set out in Procedural Order No. 4, namely the lack of discovery preceding the settlement conference.

On January 18, 2021 the OEB issued a letter stating that the provision of pre-settlement conference questions and answers is sufficient for the parties to proceed with the settlement conference, and that several parties are amenable to this approach.

3. Submissions of Parties on Question a)

Does the OEB have the jurisdiction to determine cost responsibility for the Proposed Pipeline, including any allocation of costs to Waterfront Toronto? If the answer, to this question is “yes”, what steps, if any, should the OEB take to address this situation?

Enbridge Gas

Enbridge Gas submitted that the OEB has jurisdiction to determine the cost responsibility for the Project, including the jurisdiction to allocate 100% of the costs to Waterfront Toronto, as requested in the Application.²

Enbridge Gas also stated that there is “no dispute” regarding the OEB’s jurisdiction to approve projects that require LTC; that Enbridge Gas is subject to the OEB’s oversight; and that costs are usually considered by the OEB in assessing the public interest.³

² Enbridge Submission, page 2

³ Enbridge Reply Submission, page 7

Enbridge Gas submitted that there are only three groups or persons that can pay for the relocation of a pipeline:

- (a) the third party that drives the need for the relocation, such as Waterfront Toronto
- (b) ratepayers
- (c) where costs were not prudently incurred, Enbridge Gas shareholders

Enbridge Gas submitted that, in the present case, a third party (Waterfront Toronto) should pay for the cost of the Project, as the Project is necessary to accommodate Waterfront Toronto's Flood Protection Project and that, absent the project, there would be no need to relocate the Existing Pipeline from the Bridge.

Enbridge Gas further stated that the notion that a non-customer cannot be imposed costs is contrary to law and that Waterfront Toronto's submission fails to account for the current practice for relocation work. Where a relocation is not subject to an agreement or a statutory regime, the party requesting the relocation is expected to pay 100% of the relocation cost. By way of example, Enbridge Gas indicated that it recovers 100% of relocation costs when the Toronto Transit Commission (TTC) requests relocation. In such cases, the TTC is not a customer of Enbridge Gas and yet pays 100%.⁴

According to Enbridge Gas, its right to locate the Existing Pipeline on the Bridge is subject to the 1955 Permission which contains no express right of termination or revocation. Enbridge Gas therefore submitted that it is not evident that the termination is effective and therefore, Enbridge Gas still retains the right to occupy the Bridge.⁵

Enbridge Gas submitted that the issue of cost responsibility is a relevant factor in determining whether the Project is in the public interest and whether LTC should be granted. If the OEB lacks jurisdiction to determine cost responsibility for the Project, it will be impeded in fulfilling its statutory mandate to set just and reasonable rates and in making the determination as to whether the Project is in the public interest as it considers whether to grant LTC.⁶

Enbridge Gas submitted that, while the OEB may not have the jurisdiction to obligate a third party to enter into an agreement (to pay some or all of the Project costs), it can decide that the Project is not in the public interest and could prohibit Enbridge Gas from

⁴ Enbridge Reply Submission, pages 2, 4-5

⁵ Enbridge Reply Submission, pages 6-7

⁶ Enbridge Submission, page 7

completing the Project absent contribution. Enbridge Gas submitted that its position is consistent with the principles of cost causality utilized in the utility industry.⁷

Waterfront Toronto

Waterfront Toronto disputed that the OEB has jurisdiction to order that any of the costs of the Project be paid by Waterfront Toronto. Waterfront Toronto stated that it suggested a number of alternatives to the Proposed Pipeline that could be implemented on a cost-effective basis, but that Enbridge Gas rejected them.⁸

Waterfront Toronto submitted that a statutory tribunal has no powers other than those given to it by statute, either expressly or impliedly. If the OEB's jurisdiction to order Waterfront Toronto to pay \$70 million for a pipeline cannot be found either expressly or impliedly in a statute, then it does not exist. The object of the legislation and the reason the OEB was established is to protect gas customers from monopoly pricing which is not just and reasonable.⁹ However, Waterfront Toronto noted that nothing prevents a third party from offering to fund a pipeline.¹⁰

Waterfront Toronto referred to a case in which the OEB found that it had authority to determine the amount of a capital contribution a customer was paying to a utility for the construction of a pipeline. The OEB found that the capital contribution was part of the ratemaking process the OEB was authorized to engage in and that was not the case here; as a charge to a non-customer is not a rate.¹¹

Waterfront Toronto submitted that, even if the OEB finds that it has jurisdiction to allocate costs to Waterfront Toronto, it would not be responsible for any cost as it is not a gas customer nor will it be using the gas being transported on the Proposed Pipeline. The principle that the 'beneficiary pays' underlies the need for capital contributions and that any unfairness to ratepayers should be addressed when the OEB applies its well-established cost-allocation rules.¹²

Waterfront Toronto stated that it has never argued that the OEB does not have jurisdiction to allocate costs. What Waterfront Toronto is arguing in this proceeding is

⁷ Enbridge Reply Submission, page 5

⁸ Waterfront Toronto Submission, filed December 17, 2020 (Waterfront Toronto First Submission), page 4 and Appendix, page 9

⁹ Waterfront Toronto submission, filed January 8, 2021 (Waterfront Toronto Second Submission), page 5

¹⁰ Waterfront Toronto Second Submission, page 7

¹¹ Waterfront Toronto Second Submission, pages 9-11, and referring to Natural Resource Gas Limited, EB-2012-0396 (February 7, 2013) page 4

¹² Waterfront Toronto First Submission, page 7

that OEB jurisdiction does not extend to ordering parties who are not customers of the utility to pay for the cost of a pipeline unless they volunteer and consent, in which case an order is not required.¹³

City of Toronto

The City of Toronto submitted that the OEB has jurisdiction to determine cost responsibility for the Project but only insofar as it may determine that it is appropriate to allocate the costs to ratepayers through the exercise of its rate setting function or decide that the costs must be borne by Enbridge Gas's shareholders.¹⁴

While the OEB Act grants the OEB flexibility with respect to the methodology by which it establishes rates, it does not explicitly or by necessary implication grant the OEB authority to make orders against entities who have no commercial dealings subject to the OEB Act and who have no other legal obligation in law or contract to indemnify Enbridge Gas.¹⁵

The City of Toronto submitted that the OEB cannot order an entity without a legal relationship with Enbridge Gas, grounded either in contract or statute, to pay a rate untethered to the sale or purchase of any good or service, and the OEB has no other source of jurisdiction permitting it to order that an entity pay Enbridge Gas for the cost to relocate infrastructure.¹⁶

Energy Probe

Energy Probe submitted that the OEB has the jurisdiction to determine cost responsibility for the Project. Specifically, the OEB has the jurisdiction to determine what portion of the costs of the Project should be allowed for addition to rate base of Enbridge Gas for rate setting purposes and recovery from ratepayers in rates. Energy Probe submitted that this jurisdiction is stated in the OEB's objectives under the OEB Act and specifically, the objective to protect the interest of consumers.

Energy Probe submitted that the OEB Act does not give the OEB the power to compel a party to pay costs unless that party is providing OEB-regulated distribution, storage, or transmission of gas or is requesting any of these services. Neither Waterfront Toronto nor the City of Toronto are providers of gas services regulated by the OEB nor are they

¹³ Waterfront Toronto Second Submission, page 15

¹⁴ City of Toronto Submission, page 1

¹⁵ City of Toronto Submission, page 2

¹⁶ City of Toronto Submission at page 6

requesting such services. Therefore, the OEB does not have the power to compel them to pay for the relocation.

Environmental Defence (ED)

ED submitted that the OEB does not have the jurisdiction to make an order requiring that Waterfront Toronto pay \$70 million to replace and relocate the relevant pipeline. The OEB is a creature of statute and obtains its jurisdiction from the OEB Act, which does not provide the OEB with the jurisdiction to grant the relief that Enbridge Gas seeks.

ED submitted that the OEB may set rates, but Waterfront Toronto is not a gas customer and does not pay gas rates. Furthermore, it would be unfair to shift these costs to Waterfront Toronto and thus to taxpayers. ED stated that Enbridge Gas plans to replace this pipeline in any event and has a variety of options to do so, including those proposed by Waterfront Toronto.

Federation of Rental-housing Providers of Ontario (FRPO)

FRPO indicated that it had reviewed the submissions on jurisdiction of Enbridge Gas and Waterfront Toronto and was not supporting one group over another and, instead, offered some specific concerns for the OEB's consideration in determining the issue and the next procedural steps with respect to this application, which are discussed below in the section on submissions with respect to the second question.

Pollution Probe

Pollution Probe submitted that the OEB does not have jurisdiction to order costs on Waterfront Toronto, which is an entity created by three levels of government - Canada, Ontario and the City of Toronto – and the OEB does not have the authority to upload costs on the Federal Government.¹⁷

However, Pollution Probe noted that is critical to understand cost responsibility prior to consideration of the LTC approval.

Pollution Probe also submitted that, given that the Project driver is the need to abandon the pipeline attached to the Bridge and that the Bridge is owned by the City of Toronto, it is unclear what cost responsibility Waterfront Toronto would have regardless of the answer to the question on jurisdiction.

¹⁷ Pollution Probe Submission, filed January 8, 2021, page 2

School Energy Coalition (SEC)

SEC agreed that the OEB has the jurisdiction and authority to make determinations such as whether Waterfront Toronto, by way of example, is legally obligated to pay all or any part of the cost of the Project.¹⁸ However, while the OEB can determine who *should* pay, its express statutory jurisdiction appears to extend only to ordering ratepayers (or the utility) to pay.¹⁹

In SEC's view, the jurisdictions conferred on the OEB do not expressly grant the power to order non-customers to make payments to a utility and the OEB should not proceed on the basis that it has any authority to order a non-customer – whether Waterfront Toronto or anyone else – to pay for the cost of the Project.

SEC agreed that it is difficult for the OEB to determine whether the Project is in the public interest without knowing who is going to pay for it and that, if Enbridge Gas will seek rate recovery later, it is reasonable for the OEB to set expectations now as to whether full rate recovery is implied by (or at least one of the possibilities of) the OEB's approval of a LTC application.²⁰

OEB Staff

OEB staff submitted that consideration of the cost of the Project is within the scope of a LTC proceeding, including consideration of whether any other entity should be contributing to the costs. However, OEB staff does not believe that the OEB can impose cost responsibility on Waterfront Toronto absent an agreement or statutory provisions to that effect.²¹

OEB staff noted that, in almost every LTC application driven by a third party request, the OEB will note if the costs are being recovered from the third party in considering the “project cost and economics” and whether the proposed project is in the public interest. OEB staff also noted that, in most cases, a gas utility will have an agreement with the party requesting the relocation, such as a Municipal Franchise Agreement that governs, among other things, cost responsibility for pipeline relocation projects.²²

OEB staff further stated that, the OEB's findings in a LTC application with respect to project costs will inform the consideration of the prudence of the cost in a future rate

¹⁸ SEC Submission, filed January 8, 2021, page 2

¹⁹ SEC Submission, page 3

²⁰ SEC Submission, page 3

²¹ OEB Staff Submission, filed January 8, 2021, page 6

²² OEB Staff Submission, page 8

application in which Enbridge Gas may seek to recover some or all of the costs of the Project from ratepayers.²³

OEB staff noted that, although the OEB cannot compel Waterfront Toronto to contribute to the Project costs absent an agreement or statutory provisions to that effect, the OEB does have jurisdiction to consider a voluntary agreement with respect to cost responsibility in this proceeding. OEB staff submitted that a settlement conference should be held to address the cost responsibility aspect of this application as well as alternatives to the Proposed Pipeline advocated by other parties such as Waterfront Toronto, for example.

4. Findings on Question a)

The OEB has full jurisdiction to determine cost responsibility for the Project, which is pertinent to the OEB's rate-setting mandate and its consideration of the public interest in a leave to construct proceeding as articulated in the OEB Act. However, the OEB does not have jurisdiction to order Waterfront Toronto to pay all or part of the Project cost. Although the OEB Act provides the OEB with the jurisdiction to determine what portion of the Project cost is prudently incurred and should be allowed for recovery in rates, the OEB Act does not give the OEB the power to compel a party, such as Waterfront Toronto, to pay costs unless that party is providing OEB-regulated services for distribution, storage or transmission of gas or requesting or receiving any of these services, or there is a statutory provision or agreement (such as a Municipal Franchise Agreement) to that effect.²⁴ Waterfront Toronto is not a provider of gas service nor is it requesting such services.

The OEB is not aware of any agreement between Enbridge Gas and Waterfront Toronto or the City of Toronto dealing with relocation costs. While the OEB takes note of the 1955 Permission, the OEB understands that there is a dispute between Enbridge Gas and the City of Toronto concerning the terms and termination of the 1955 Permission and makes no findings at this time with respect to the 1955 Permission.

5. Submissions of Parties on Question b)

If the answer (to Question a)) is “no”, what steps can the OEB take to ensure that the costs of the proposed Pipeline are not unfairly shifted to ratepayers and that the OEB is able to meet its statutory objectives which include protecting the

²³ OEB Staff Submission, page 9

²⁴ For example, a statutory provision such as the *Public Service Works on Highways Act*, R.S.O. 1990, c.49, or a Municipal Franchise Agreement which must be approved by the OEB.

interests of consumers with respect to prices and the adequacy, reliability and quality of gas service (OEB Act, s. 2)?**Enbridge Gas**

Enbridge Gas submitted that there is no need to answer the second question set out in Procedural Order No. 1 because, in its view, the OEB has the jurisdiction to determine cost responsibility for the Project, including any allocation of costs to Waterfront Toronto.

City of Toronto

The City of Toronto submitted that, in order to ensure that the costs of the Project are not unfairly shifted to ratepayers and that the interests of consumers with respect to price and the adequacy, reliability and quality of gas service are appropriately weighed, the OEB should, during the hearing, consider whether the Proposed Pipeline represents the most efficient, cost effective plan to deal with the fundamental issue, which is that the Existing Pipeline cannot remain in place on the Bridge, and whether and how the Proposed Pipeline may benefit Enbridge Gas and its customers, and how the modernization of Enbridge Gas's infrastructure may improve reliability and security of service and also reduce potential hazards to the Existing Pipeline, among other aspects customarily evaluated.²⁵

Energy Probe

Energy Probe submitted that, if the OEB decides to approve the application, it can impose a condition of approval that requires that Enbridge Gas, prior to the start of construction, to file a contract with either Waterfront Toronto or the City of Toronto or both where those parties agree to pay for the cost of relocation. Section 23 of the OEB Act gives the OEB wide powers to impose conditions of orders.²⁶

Environmental Defence (ED)

ED submitted that Enbridge Gas had prior plans to replace this pipeline and that it would be unfair to shift the cost of this “fossil fuel infrastructure” to taxpayers.²⁷ ED stated that the Project will serve gas customers and not everyone is a gas customer;

²⁵ City of Toronto Submission, page 2

²⁶ Energy Probe Submission, page 5

²⁷ Environmental Defence Submission, page 2

shifting the cost to Waterfront Toronto would be an unreasonable and unfair fossil fuel subsidy.

Federation of Rental-housing Providers of Ontario (FRPO)

FRPO stated that, along with other ratepayer groups, it recognizes that, if the OEB determines that it lacks authority to assess cost responsibility to Waterfront Toronto and the pipe needs to be moved, then Enbridge Gas will likely seek recovery of the Project costs from ratepayers.²⁸

In the event the OEB approves recovery from ratepayers, Enbridge Gas shareholders will benefit from the additional recovery of return on the amount spent as opposed to just recovering that amount from Waterfront Toronto.

Pollution Probe

Pollution Probe submitted that, in the absence of OEB approval for rate recovery of capital costs, any expenditures not reimbursed by a third party would be the responsibility of Enbridge Gas (i.e., Enbridge Gas shareholders) and that this is the default regardless of whether those costs were prudently incurred or not. Should Enbridge Gas request rate recovery for capital costs incurred, one of the aspects reviewed is prudence.²⁹

Pollution Probe stated that, even if the OEB determines that it does not have jurisdiction to order costs on Waterfront Toronto, there is still the potential that Waterfront Toronto could be willing to enter a contribution agreement for a down-sized version of the Project.

Pollution Probe recommended that the OEB request that Enbridge Gas undertake the full assessment of (integrated resource planning) options and present the full analysis, options and related costs by April 1, 2021. That would enable sufficient time for OEB review, approvals and construction prior to the May 2022 deadline for removing the Existing Pipeline.

Pollution Probe submitted that if the OEB determines that it does not have jurisdiction to order costs on Waterfront Toronto, it does not preclude the ability for Waterfront Toronto to voluntarily sign a contribution agreement for the Project.

²⁸ FRPO Submission, page 1

²⁹ Pollution Probe Submission, page 1

Pollution Probe submitted that, if ratepayers are to carry the costs of a project resulting from removal of the Existing Pipeline from the Bridge, then the need and a more thorough assessment of options based on future demand is required.

School Energy Coalition (SEC)

SEC submitted that it is reasonable to conclude that the question of the cost responsibility of Waterfront Toronto (or the City of Toronto) will be determined in a binding manner either by agreement between Enbridge Gas and the third party, or by the courts. In the former case, agreement, the OEB would obviously have the jurisdiction to conclude that the agreement was or was not fair to ratepayers, and determine how much of the remaining cost was recoverable from ratepayers. In the latter case, a court decision, the OEB would presumably be guided by the legal conclusion of a court of competent jurisdiction.³⁰

SEC submitted that, while the OEB probably cannot order a non-customer to pay, it should decide whether the third-party should pay as a matter of cost causality, and if so how and whether in the opinion of the OEB the non-customer could be required to pay the amount the OEB says is reasonable.³¹

SEC also submitted that it would not be appropriate for the OEB to consider the Project without making a thorough assessment of who should pay for it.

OEB Staff

OEB staff submitted that, if cost responsibility is not addressed in the LTC proceeding, it can be expected that Enbridge Gas will file a rate application to recover some or all of the Project costs from ratepayers. If project cost reasonableness and responsibility are not addressed in this proceeding, the question of whether ratepayers are responsible for the Project cost remains an open issue to be determined in a subsequent rate application. If Enbridge Gas applies to recover the Project costs from ratepayers, it will be required to provide justification that the Project costs were prudently incurred and at that time the OEB would determine cost allocation between ratepayers and Enbridge Gas's shareholders.

6. Findings on Question b)

While the OEB has determined that it does not have the jurisdiction to order Waterfront Toronto to pay all or part of the Project cost, the OEB does have the authority to decline

³⁰ SEC Submission, page 4

³¹ SEC Submission, page 4

granting leave to construct the Project if the OEB is not satisfied that a thorough assessment of alternatives has been undertaken and there is no agreement on cost responsibility. LTC applications require that the OEB determine whether the Project is in the “public interest” which includes consideration of the project need, the project cost and economics including an assessment of alternatives, environmental impacts, consultation, and impact on landowners. The OEB would approve a LTC application only if it determines that the project is in the public interest and after considering all of the appropriate factors.

The OEB needs to be satisfied that a thorough assessment of all feasible alternatives is presented and, if Enbridge Gas eventually puts costs forward for recovery from ratepayers, it will have to demonstrate that the costs were prudently incurred and are fully justified. This includes full justification for any portion of the Project cost that Enbridge Gas may seek to shift to ratepayers.

Enbridge Gas based its application on the presumption that 100% of the relocation cost would be the responsibility of Waterfront Toronto. Although Enbridge Gas provided an assessment of a number of alternatives, that list may not have included some other potential lower cost options such as the utilization of the Utility Corridor being built by Waterfront Toronto and utilized by Toronto Hydro for a similar purpose.

The January 25/26, 2021 settlement conference will address the issues of cost-effective alternatives for relocating the Existing Pipeline as well as the cost responsibility for the pipeline relocation.

DATED at Toronto January 22, 2021

ONTARIO ENERGY BOARD

Original Signed By

Christine E. Long
Registrar