



Enbridge Gas Inc.

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

**PROCEDURAL ORDER NO. 5
January 29, 2021**

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.

In its intervention request, Waterfront Toronto stated that it believes that the OEB does not have the jurisdiction to allocate the cost of the pipeline to Waterfront Toronto.

Procedural Order No. 1 was issued on December 10, 2020 and granted intervenor status to the City of Toronto, Energy Probe Research Foundation (EP), Environmental Defence Canada Inc. (ED), Federation of Rental-housing Providers of Ontario (FRPO), Pollution Probe, Toronto and Region Conservation Authority (TRCA), Toronto Waterfront Revitalization Corporation (Waterfront Toronto), and School Energy Coalition (SEC).

Procedural Order No. 1 also provided for written submissions from Enbridge Gas, OEB staff and the intervenors on two questions regarding the OEB's jurisdiction to determine cost responsibility for the Proposed Pipeline.

Procedural Orders No. 2 and No. 3 revised the schedule for the filing of submissions, interrogatories, and responses to interrogatories.

A first set of submissions 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, EP, ED, FRPO, Waterfront Toronto, SEC and OEB staff filed submissions on January 8, 2021.

In its submission, the City of Toronto noted that it had terminated its 1955 permission for Enbridge Gas to use the Bridge and had advised Enbridge Gas that it is required to remove the Existing Pipeline from the Bridge by May 2, 2022.

In its submission, Waterfront Toronto stated that it is building a new utility corridor to serve utilities currently using the Bridge to carry utility assets across the Don River (Utility Corridor) and that this facility has been offered to Enbridge Gas for its use.

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 was issued on January 14, 2021 and deferred the interrogatory stage of the proceeding until a settlement conference could be held to consider two specific 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?

The settlement conference was scheduled for January 25 and 26, 2021. To inform the settlement conference, Waterfront Toronto was ordered to file additional evidence on the Utility Corridor alternative.

On January 22, 2021 the OEB issued its Decision on Jurisdiction. The OEB found 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 stated that it does not have jurisdiction to order Waterfront Toronto to pay all or part of the Project cost. The Decision also noted that, although Enbridge Gas had provided an assessment of a number of project alternatives, that list may not have included some potentially more cost-effective solutions such as the Utility Corridor.

The settlement conference commenced on January 25, 2021. After the first day of the settlement conference, Enbridge Gas filed a letter advising that it is withdrawing its application. Enbridge Gas stated that, given the Decision on Jurisdiction, other options discussed in the Application, which were not pursued due to timing and other restrictions, should be investigated further.

On January 26, 2021, Waterfront Toronto filed a letter objecting to the withdrawal of the Application. Waterfront Toronto stated that, "[a] major part of the dispute in this matter concerns the Enbridge refusal to remove Enbridge pipe located on the Keating Street Bridge owned by the City of Toronto". Waterfront Toronto submitted that a delay in the removal of the Existing Pipeline from the Bridge could have costly impacts on the Flood Protection Project and increase the potential damage from floods on the Don River. Waterfront Toronto suggested that the OEB convene a hearing to hear submissions regarding a possible solution to the Bridge dispute as soon as possible.

On January 27, 2021, Enbridge Gas filed a letter responding to Waterfront Toronto's objection. Enbridge Gas stated that there is no application before the OEB for the Utility Corridor and maintained that the Utility Corridor is not an acceptable alternative. Enbridge Gas stated that it had prepared the Application based upon a need for the Existing Pipeline to be relocated by May 2, 2022, but had recently come to understand that the May 2, 2022 was not as firm as it had been previously told. Enbridge Gas submitted that, absent contribution from either Waterfront Toronto or the City of Toronto, the costs of any relocation would be borne by the ratepayers and that it would be prudent to consider less expensive alternatives in order for the OEB to be able to ensure the any relocation is in the public interest. Enbridge Gas stated that it is planning to review at least 2 other options, that were discussed in the Application, (i) micro-tunneling under the Don River; and (ii) Villiers Island. These options, based upon preliminary Class 5 estimates, were more than \$20 million less than the current Application. Both of these options were considered early on in the evaluation process but were not pursued given Waterfront Toronto's schedule. Enbridge Gas stated that, given the complexities of the alternatives, the need for input from third parties and experts in tunneling, it cannot commit to a specific date to file a new application.

Enbridge Gas understood from Waterfront Toronto that, with its expanded timeline, it would allow sufficient time for the alternatives to be considered as well as complete the relocation.

On January 28, 2021 Waterfront Toronto filed a second letter stating that it does not object to Enbridge Gas electing to not proceed with and withdrawing the Application to build the approximately \$70 million pipeline in order to consider other alternatives. However, the issue regarding the status of the Enbridge Gas pipeline on the Bridge has been before the OEB in this case since the beginning. Waterfront Toronto noted that Enbridge Gas has not indicated when it will refile a new leave to construct application. Waterfront Toronto also indicated that it is working on a proposal for a new river crossing to address the stated concerns of the parties within the next three weeks.

On January 29, 2021, TRCA filed a letter supporting Waterfront Toronto's position on the Enbridge Gas request to withdraw the Application.

Finding

In order to determine whether withdrawal of the Application may adversely affect the interests of any party or be contrary to the public interest, the OEB finds that it would be assisted by submissions from parties on whether the OEB should allow the Application to be withdrawn or what conditions should be applied if the withdrawal is allowed.

The OEB has considered the correspondence filed by Enbridge Gas and Waterfront Toronto and the *OEB Rules of Practice and Procedure* (Rules)¹ with respect to withdrawal or discontinuance of an application.

Rule 20.01 of the Rules provides that an applicant may withdraw an application: (a) at any time prior to the hearing, by filing and serving a notice of withdrawal or (b) at the hearing with the permission of the Board. However, Rules 20.03 and 20.05 provide as follows:

20.03 The Board may impose conditions on any withdrawal or discontinuance, including costs, as it considers appropriate.

...

20.05 If the Board has reason to believe that a withdrawal or discontinuance may adversely affect the interests of any party or may be

¹ OEB Rules of Practice and Procedure, last revised October 28, 2016

contrary to the public interest, the Board may hold or continue the hearing, or may issue a decision or order based upon proceedings to date.

Waterfront Toronto has objected to the withdrawal of the Application and raised concerns about delay to the Flood Protection Project and the reliability of gas supply, which indicate that, at least in Waterfront Toronto's view, withdrawal could adversely affect its interests and be contrary to the public interest.

The aforementioned submissions should focus on the following topics:

1. Adverse Impacts on Waterfront Toronto: What impact could the withdrawal of the application have on the Flood Protection Project schedule, if any? Can Waterfront Toronto adjust its schedule such that Enbridge Gas has more time to assess alternatives to the Project proposed in this Application?
2. Public Interest and Reliability of Natural Gas supply: If the Application is withdrawn, how can Enbridge Gas ensure the security of gas supply to its customers in the City of Toronto while addressing the removal of the Existing Pipeline from the Bridge?
3. Withdrawal with Conditions: If the OEB allows the Application to be withdrawn what, if any, conditions should it include in its decision? For example, should Enbridge Gas be required to provide a schedule for filing a new Leave to Construct application?

It is necessary to make provision for the following matters related to this proceeding. Further procedural orders may be issued by the OEB.

IT IS THEREFORE ORDERED THAT:

1. The remaining procedural schedule set out in Procedural Order No. 4 is cancelled.
2. Any written submissions from OEB staff and intervenors shall be filed with the OEB and served on all parties by **February 5, 2021**.
3. Any written reply submissions from Enbridge Gas shall be filed with the OEB and served on all parties by **February 12, 2021**.

Parties are responsible for ensuring that any documents they file with the OEB, such as applicant and intervenor evidence, interrogatories and responses to interrogatories or any other type of document, 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*.

All materials filed with the OEB must quote the file number, **EB-2020-0198**, and be submitted in a searchable/unrestricted PDF format with a digital signature through the OEB's web portal at <https://p-pes.ontarioenergyboard.ca/PivotalUX/>. 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 at the address below 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, Ritchie Murray at ritchie.murray@oeb.ca and OEB Counsel, Ljuba Djurdjevic at ljuba.djurdjevic@oeb.ca.

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

DATED at Toronto, **January 29, 2021**

ONTARIO ENERGY BOARD

Original Signed By

Christine E. Long
Registrar