



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

**BY EMAIL**

February 5, 2021

Ms. Christine E. Long  
Registrar  
Ontario Energy Board  
2300 Yonge Street, 27<sup>th</sup> Floor  
Toronto ON M4P 1E4

Dear Ms. Long:

**Re: Enbridge Gas Inc.  
Waterfront Relocation Project  
OEB Staff Submission on Request to Withdraw Application  
Ontario Energy Board File Number: EB-2020-0198**

In accordance with Procedural Order No. 5, please find attached the OEB staff submissions for the above proceeding regarding Enbridge Gas Inc.'s request to withdraw the application. This document has been sent to Enbridge Gas Inc. and to all other registered parties to this proceeding.

Yours truly,

Ritchie Murray  
Project Advisor, Natural Gas Applications

c. Applicant and intervenors

Encl.



**OEB Staff Submission  
on Request to Withdraw Application**

**Waterfront Relocation Project**

**Enbridge Gas Inc.**

**EB-2020-0198**

**February 5, 2021**

# 1 INTRODUCTION

## 1.1 Overview of Application and Process to Date

On October 13, 2020, 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 states that the Proposed Pipeline is required because of the need to relocate a section of the existing pipeline that is located on the Keating Railway Bridge (Existing Pipeline), which is in conflict with the construction of Toronto Waterfront Revitalization Corporation (Waterfront Toronto) Port Lands Flood Protection and Enabling Infrastructure Project (PLFPEI). The abandonment and removal of the Existing Pipeline and construction of the Proposed Pipeline and associated facilities are collectively called 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. Waterfront Toronto stated that it had proposed that Enbridge Gas move its pipeline to a new utility corridor where the facilities of Toronto Hydro and other utilities would be located (Utility Corridor) but that the proposal was rejected by Enbridge Gas<sup>1</sup>.

## 1.2 Process to Date

Procedural Order No. 1 was issued on December 10, 2020 and granted intervenor status to the City of Toronto (Toronto), Energy Probe Research Foundation (Energy Probe), Environmental Defence Canada Inc. (ED), Federation of Rental-housing Providers of Ontario (FRPO), Pollution Probe, Toronto and Region Conservation Authority (TRCA), 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 the cost responsibility for the Proposed Pipeline.

---

<sup>1</sup> Waterfront Toronto Submission on Jurisdiction, filed January 8, 2021, at paragraph 14

Procedural Orders No. 2 and No.3 revised the schedule set out in Procedural Order No. 1 for the filing of submissions, interrogatories and interrogatory responses.

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 beginning on January 25, 2021.

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 ratepayers and that it would be prudent to consider less expensive alternatives in order for the OEB to be able to ensure that it is in the public interest. Enbridge Gas stated that it is planning to review at least two 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 about \$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, and 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 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.

Procedural Order No. 5 was issued on January 29, 2021. The OEB found that in order to determine whether the withdrawal of the Application may adversely affect the interests of any party or be contrary to the public interest, the OEB would be assisted by submissions from parties on whether the OEB should allow the Application to be withdrawn and what conditions should be applied if the withdrawal is allowed. The OEB cancelled the remaining procedural schedule set out in Procedural Order No. 4 and set a procedural schedule for written submissions from OEB staff and intervenors and reply submissions from Enbridge Gas. The OEB instructed parties that any 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?

OEB staff and intervenors' submissions are due by February 5, 2021. Enbridge Gas's reply submission is due by February 12, 2021.

## **2 OEB STAFF SUBMISSION**

### ***Topic 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?**

OEB staff is of the view that there is insufficient information on the record of this proceeding to determine whether there is flexibility in the schedule of the Flood Protection Project. OEB staff submits that Waterfront Toronto is in the best position to address this topic and OEB staff expects that Waterfront Toronto will do so in its submission.

OEB staff submits that, if there is sufficient flexibility in the schedule of the Flood Protection Project, then it would be prudent for Enbridge Gas to further investigate other potentially lower cost options.

If there is no flexibility in the schedule of the Flood Protection Project to accommodate a long term cost-effective alternative to the Project, then OEB staff's near-term concern is how Enbridge Gas will deal in a cost effective way with the imminent need to move the Existing Pipeline from the Bridge while ensuring the reliability and security of natural gas supply to the City of Toronto.

While OEB staff expects Enbridge Gas and the other directly-involved parties to act responsibly under either of the above scenarios, OEB staff submits that there is merit in the OEB making its expectations known. The addition of conditions to an order approving the withdrawal of the Application, as further discussed under Topic 3 below, would be one means of doing so.

### ***Topic 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?**

OEB staff submits that Enbridge Gas is in the best position to address how it intends to ensure the reliability and security of gas supply to its customers in the City of Toronto while addressing the removal of the Existing Pipeline from the Bridge. OEB staff submits that, if the OEB approves the withdrawal of the Application, there is merit in the OEB maintaining oversight of Enbridge Gas' plans in that regard.

***Topic 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?**

OEB staff notes that, while the OEB's *Rules of Practice and Procedure* provide that the OEB may impose conditions on any withdrawal or discontinuance as it considers appropriate<sup>2</sup>, the OEB does not necessarily impose conditions when an applicant utility withdraws an application<sup>3</sup>. If the current Application is withdrawn, Enbridge Gas would need to file a new leave to construct application, either for an alternative to the Project or to revive the Project proposed in the current Application, following which the OEB would make a decision on the new application<sup>4</sup>. However, the circumstances surrounding this Application are unusual as there are unresolved issues with respect to the schedule of the Flood Protection Project and the timing for the removal of the Existing Pipeline. OEB staff notes that in the interest of time and regulatory efficiency, the unresolved issues ought to be managed and resolved by Enbridge Gas and Waterfront Toronto, even after the Application is withdrawn and well before Enbridge Gas files a new application.

---

<sup>2</sup> Rule 20.03 of OEB Rules of Practice and Procedure, last revised October 28, 2016  
<https://www.oeb.ca/industry/rules-codes-and-requirements/rules-practice-procedure>

<sup>3</sup> See, for example, EB-2019-0159 (Hamilton Reinforcement), Procedural Order No. 8 (Final Cost Awards Process and Application Withdrawal), November 18, 2020. In this case, several intervenors proposed conditions that the OEB should impose on Enbridge Gas with respect to the withdrawal under section 20.03 of the Rules. The OEB found that, given activities occurring in a separate proceeding (Integrated Resource Planning, EB-2020-0091), there was no need in the current proceeding to impose the suggested conditions.

<sup>4</sup> In Procedural Order No. 8 of the Hamilton Reinforcement proceeding, EB-2019-0159, the OEB stated: "With the withdrawal of the application, the Project described therein is effectively no longer before the OEB.... 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."

OEB staff submits that, if the OEB approves the withdrawal of the Application, the OEB should include a number of conditions that require Enbridge Gas to report to the OEB and the parties in the proceeding, on a monthly basis, on the following matters until such time as Enbridge Gas files a new leave to construct application:

- a) Its review of viable and cost-effective alternatives to the Project as well as the status of discussions with Waterfront Toronto with respect to finding mutually acceptable solutions having regard to the Flood Protection Project schedule and the relocation work that Enbridge Gas needs to carry out
- b) Any updates on the City of Toronto's requirement to remove the Existing Pipeline from the Bridge, including updates on any extensions to the May 2, 2022 deadline
- c) Measures that Enbridge Gas is considering to ensure the cost effective removal of the Existing Pipeline from the Bridge and the schedule of removal activities (if the removal of the Existing Pipeline from the Bridge is required by May 2, 2022) and any measures that may be needed to be implemented as a temporary relocation and how any such measure will ensure reliability and security of gas supply
- d) Updates on when Enbridge Gas plans to file a new leave to construct application for a temporary relocation of the Existing Pipeline, if required, as well as a long-term (permanent) relocation.

In OEB staff's view, six month appears to be a reasonable estimate of the amount of time for Enbridge Gas to assess the alternatives identified to date and to file a new leave to construct application.

*All of which is respectfully submitted.*