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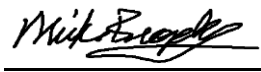
January 11, 2022

**EB-2021-0205 – Greenstone Pipeline Leave to Construct
Pollution Probe Submission**

Dear Ms. Long:

In accordance with Procedural Order No. 2, the OEB requested parties to file submissions by January 14, 2021. Please find attached Pollution Probe's submission which has been filed early to assist all other parties.

Respectfully submitted on behalf of Pollution Probe.



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ONTARIO ENERGY BOARD

**Enbridge Greenstone Pipeline
Leave to Construct Application**

POLLUTION PROBE SUBMISSION

January 11, 2022

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Background

Enbridge Gas Inc. (Enbridge) applied to the Ontario Energy Board (OEB) on September 10, 2021, under sections 90 and 97 of the *Ontario Energy Board Act*, for an order granting leave to construct of approximately 13 kilometres of natural gas pipeline and associated facilities in the Municipality of Greenstone. Enbridge has entered into a Gas Distribution Contract with Greenstone Gold Mine LP (Greenstone Mine) to provide natural gas service to the Greenstone Mine Project, an open pit gold mine located near the Town of Geraldton, in the Municipality of Greenstone.

In accordance with Procedural Order No. 2, this is the written submission of Pollution Probe.

Introduction

This application on its face appears to be a simple Leave to Construct approval for a pipeline supporting a single customer, Greenstone Gold Mine. However, there on closer examination there are a number of relevant regulatory, policy and project issues that require close consideration in this proceeding including, the useful life of the proposed pipeline vs. the amortization period proposed, the potential for this project to become a stranded asset, the scope of the proposed project, the project estimated costs, the appropriateness of other Ratepayers to pay a portion of project costs when the project is solely for the benefit of one customer, confidentiality issues and related environmental and socio-economic issues. It is not common in the era of lower carbon solutions for large industrial customers like gold mines to increase greenhouse gas emissions through the increased use of fossil fuels, particularly for cogeneration purposes. Similar mine operations are moving to lower carbon options or have already made the move¹. However, based on the Greenstone Gold Mine decision to sign a contract committing to natural gas, then from a purely economic perspective the OEB would only need to ensure that there is sufficient protection in place to protect Ontario Ratepayers from increases costs, contract default or stranded assets related to this project. Other non-economic consideration is also required.

Pollution Probe has focused in this submission on the factors for OEB consideration and some conditions or direction that the OEB may wish to also consider.

¹ [hp-ggm-ev-001-0001_environmental-policy001.pdf \(greenstonegoldmines.com\)](https://www.greenstonegoldmines.com/wp-content/uploads/2021/01/hp-ggm-ev-001-0001_environmental-policy001.pdf) The Greenstone Gold Mine Environment Policy commits to “Provide clear leadership and accountability for our environmental performance”, but does not appear to make any explicit commitments to reduce greenhouse gas emissions.

Scope of the Project

The scope of the facilities for purposes of this Leave to Construct application were confirmed by Enbridge to be 13 kilometers of NPS 6 XHP Steel natural gas pipeline². Costs approval is not requested in this application, but a Leave to Construct proceeding can typically assess the reasonableness of costs, unless otherwise deferred by the OEB. Ancillary facilities and costs have been included in various parts of Enbridge's evidence, but for Leave to Construct approval purposes, the OEB should be clear on what it has reviewed and what project scope is being addressed in its Leave to Construct decision. That will help Enbridge, stakeholders and future panels when project costs or ancillary facility costs are assessed in the future.

Project Costs and Amortization

Total estimated costs for the project (including ancillary facility costs) are \$25.8 million, consisting of \$23.0 million pipeline costs and \$2.7 million of ancillary facilities costs. Enbridge indicated that the majority of these costs are relate to the scope of the project (noted above) for Leave to Construct purposes, but was not able to provide the exact breakdown of costs specific to Leave to Construct approval³. Based on the evidence it appears that the project scope for Leave to Construct purposes equates to \$23 million and that \$2.7 million of ancillary facility costs are not in scope for the Leave to Construct application review of reasonableness.

The Contribution in Aid of Construction (CIAC) is set at \$20.3 million and the contract provides for a true up once the actual costs are incurred. The net project costs for Ratepayers (assuming that all CIAC payments are made over the life of the contract) is estimated at \$5,523,788⁴. This amount is based on year 1 cost estimates and the incremental Ratepayer costs over 10 years are estimated to be \$7.831 million⁵. In contrast, the same project net cost estimate in 2020 was \$3,655,000⁶. It is unclear why costs have increased since 2020.

Although this project is driven by a single customer⁷. There are portions of the project costs that will be paid for by other Ratepayers. It is unclear to Pollution Probe why the CIAC agreement was not drafted to ensure that Greenstone Gold Mine would cover the full costs of the project. Enbridge will likely provide clarity on this in their Reply Argument.

² Exhibit I.PP.3a

³ Exhibit I.PP.3b

⁴ Exhibit D, Tab 1, Schedule 1, page 1, Table 1: Estimated Project Costs and also summarized in Exhibit I.STAFF.4

⁵ Exhibit I.ED.2a

⁶ EB-2020-0181, Exhibit C, Tab 2, Schedule 1, page 381

⁷ Exhibit I.PP.2

Amortization for the proposed pipeline is proposed to be 55 years⁸. The CIAC contract with the customer is for a period of 10 years. This leaves a 45 year difference from when the customer has no residual commitment to the point that the capital assets are fully recovered from Ratepayers. This creates a potential risk that the OEB needs to be comfortable with and amortizing the project over 10 years could be considered to reduce Ratepayer risks of stranded assets or other Ratepayer costs. Enbridge confirms that beyond a 10 year time horizon there are too many uncertainties to assess cost impacts and allocation⁹.

Stranded assets and their impact on Ratepayers have been an increasing concern¹⁰, particularly as decarbonization becomes a larger commitment for industrial customers and financial markets (i.e. shareholders). If the pipeline becomes stranded before 2077, Ratepayers are still on the hook to pay for it. Based on Net-Zero goals typically being in the range of 2030-2050¹¹, there is a high likelihood that this pipeline will not be useful (in part or whole) past 2050. Also, if Greenstone Gold Mine were to go bankrupt, the full cost liability of the project could fall onto Ratepayers unless otherwise determined by the OEB. Enbridge Gas has not received any financial guarantees from the parent companies of Greenstone Gold at this time, and Enbridge is still working with Greenstone Gold to evaluate credit support options¹². The proper time to assess all these issues is before the project is approved, built and the funds are spent. Future OEB panels will have little room to mitigate issues and costs following project construction.

Due to the fact that the proposed project is driven by a single customer (not a common factor for a many Leave to Construct projects), the OEB could consider adding a project specific condition that Enbridge must notify the OEB if the CIAC agreement or any material factor change occurs related to the ability of the customer to pay the CIAC outlined in the application. If the project needs to be halted due to a material change in the ability for the customer to fund the project, it is expected that Enbridge would cease the project and take a best-efforts basis to recover any sunk costs in order to protect Ratepayers.

This proceeding is not to permit Enbridge to include these costs to into rate base, but it may include a review of the reasonableness of the project costs. Approval for rate recovery would occur in a future proceeding, such as an annual rate case. However, if the OEB approves Leave to Construct for this project, it will be perceived that the OEB endorses the project and inclusion of project costs, subject to a future panels approval to include in rates. It is important that the OEB is clear in the decision for this

⁸ Exhibit I.PP.6b

⁹ Exhibit I.PP.6 c&d

¹⁰ EB-2020-0293 PollutionProbe_IR_AppendixD_2021OEANetZeroReport_20211122. Page 31

¹¹ Corporate commitments to net-zero (like those of Enbridge) are typically based on a 2050 timeline, but some are as early as 2030.

¹² Exhibit I.ED.3g

proceeding what costs have been validated and how those cost relate to the scope of the project. The scope of the project for Leave to Construct purposes includes only the 13 kilometers of NPS 6 XHP steel natural gas pipeline and does not include ancillary facilities outlined in this application.

Planning and Option Consideration

Enbridge Gas indicated that because the project is driven entirely by the contract to deliver natural gas for operation of the gold mine, the project is the only viable option to provide for the contracted demand. No other alternatives to the Project were considered¹³. Planning for this project began in 2014¹⁴ and over the 7 year period no alternatives to the project were investigated or considered. The initial forecasted service date was November 2016 and the date was ultimately delayed to the most recent proposed service date.

Enbridge indicates that if an identified system need has been underpinned by a specific customer's (or group of customers') clear request for a facility project and either the choice to pay a Contribution in Aid of Construction or to contract for long-term firm services delivered by such facilities, then an IRP evaluation is not required. This assumes that the customer pays the full amount for the project (i.e. no other Ratepayer impact) and that it would have not been prudent to consider the project in a broader scope of system needs that would have resulted in a more cost-effective solution than separately executed siloed projects¹⁵. Aside from the recent gas IRP¹⁶ requirements, the OEB has also included requirements to consider DSM options when appropriate.

OEB Staff requested analysis Enbridge used to determine that there is no need to provide additional capacity for future growth in the area¹⁷. The interrogatory response indicated that analysis was conducted but a copy of the analysis was not provided to illustrate the scope of analysis or support the proposition that there is no need to provide additional capacity for future growth in the area. It would have been preferential to include a copy of that analysis on the public record to validate that this stand-alone project is a prudent option. The interrogatory response also confirms that there was no consultation or community outreach conducted to assess other energy plans for the surrounding community. When a large project that significantly exceeds current system capacity is considered, it is not unreasonable to include broader community consultation on potential demand changes (i.e. new customers, increased load or decrease load due to Integrated Resource Plan, DSM or mitigation of greenhouse gas emissions) at the same time as the OEB mandated public consultation is conducted.

¹³ Exhibit C, Tab 1, Schedule 1, page 1

¹⁴ Exhibit I.PP.1

¹⁵ Similar to the recent OEB requirements outlined in EB-2020-0181 EGI_Correspondence_20210210 and EB-2020-0006 OEB Decision.

¹⁶ EB-2020-0091

¹⁷ EB-2021-0205 Exhibit I.STAFF.1

Demand Forecast

OEB Staff correctly identified the opportunity to apply DSM analysis and programs to the proposed Greenstone Gold Mine site¹⁸. Large industrial customers provide one of the largest and most cost-effective opportunities for energy efficiency (DSM) analysis and measures. Applying DSM prior to construction is also the most appropriate time since post-construction the opportunity to reduce natural gas use will be lost. Cogeneration of heat and electricity uses large amounts of natural gas and application of DSM analysis and measures can lead to significant savings and GHG reductions¹⁹. Given that the proposed pipeline is solely required to supply the proposed Greenstone Gold Mine facility, any DSM analysis and measures that can be applied will directly result in reduced costs for the customer, Ratepayers and proposed project costs. There may be an inherent disincentive for Enbridge to apply DSM to new customers such as Greenstone Gold Mine since it reduces the project gas volumes that (in part) fund the project. DSM also has an opportunity to reduce pipeline size, particularly when it serves a single large customer.

No DSM analysis²⁰ was conducted on this project and there is no evidence of DSM incentives offered to the customer to reduce natural gas consumption for the proposed facility. Pollution Probe is a strong supporter of leveraging DSM and other IRP alternatives for new construction and system expansion. This Leave to Construct proceeding is an opportunity for stakeholders and the OEB to understand why DSM was not considered or offered for this specific project. During the IRP proceeding it was identified that a Leave to Construct proceeding is an appropriate safety check for the OEB to ensure that the best option is being considered.

Enbridge indicates that “in Enbridge Gas’s experience, the majority of costs associated with pipeline construction relate to labour and construction activities/equipment that would be incurred regardless of the ultimate size of pipeline installed”²¹. This seems to suggest that pipeline size is irrelevant and that the OEB should not take it into consideration during a Leave to Construct proceeding. Pollution Probe disagreed with that premise. Although no detailed evidence was provided in this proceeding to show the cost savings that would result is a smaller pipeline diameter, it is logical that Ratepayer costs (and environmental impacts) will decrease with a smaller diameter pipeline, all other things being equal. If that were not true, pipeline diameter could be doubled for all projects without any cost consequences. In fact, previous cases have

¹⁸ EB-2021-0205 Exhibit I.STAFF.3

¹⁹ Proposed new construction Cogeneration projects have been claimed under Enbridge’s DSM program and OEB approved, including the cogeneration project at York University.

²⁰ Or IRP alternative analysis in general once the project was screened out as exempt.

²¹ EB-2021-0205 Exhibit I.STAFF.3

shown a significant variation in cost when a larger diameter pipeline is installed²². That is a logical assumption and verified by facts. Applying DSM analysis and measures to reduce required pipeline size has a material impact on project economics, environmental impacts and Ratepayer costs. In Pollution Probe's opinion, Enbridge has not met the need to properly assessing DSM alternatives set by the OEB in its January 2021 EB-2020-0192 Decision. The OEB specifically indicated that "Enbridge Gas has an obligation to conduct a more rigorous Integrated Resource Planning assessment at the preliminary stage of projects development in future cases. As OEB staff also notes the failure to present detailed analyses makes it unlikely that Enbridge Gas would select an alternative including DSM or other non-build project option. The OEB acknowledges that more direction is likely to be provided to Enbridge Gas in future leave to construct projects as part of the ongoing IRP proceeding. In the interim, however, the OEB believes that all parties would be assisted if Enbridge Gas would, in the future, undertake in-depth quantitative and qualitative analyses of alternatives that specifically include the impacts of DSM programs on the need for, or project design of facilities for which Enbridge Gas has applied for leave to construct²³".

Environmental & Scio-Economic Considerations

Procedural Oder No. 1 indicated that OEB Staff intend to do a detailed assessment of the environmental and socio-economic issues related to the proposed pipeline, including a detailed review of feedback from the public consulted stakeholder agencies circulated with the environmental report²⁴. There are several consultation gaps evident in the consultation logs provided but Pollution Probe will avoid duplication with OEB Staff detailed assessment of those issues.

For efficiency and in alignment with Procedural Order No. 1, Pollution Probe has only included limited comments related to the environmental and socio-economic impacts that will occur from the proposed project and has withheld detailed comments on those issues assuming that OEB Staff will address these in detail.

It should not be taken lightly that the project traverses several sections of wetland that were documented in the Environmental Report to be sensitive from an ecological and water recharge perspective. Wetlands are the most sensitive ecological areas in Ontario and provide many essential functions for local communities and the natural ecosystem. Many mitigation measures have been recommended to protect disturbance and

²² Example from EB-2020-0192 Exhibit I.STAFF.11, please refer to data columns for Pipe Size Diameter and \$/meter estimated.

²³ 2020-0192 OEB Decision, Page 20

²⁴ EB-2021-0205 Procedural Oder No. 1, page 5 – "In reviewing any environmental matters, the OEB requires that Pollution Probe tailor its participation in keeping with the scope of the OEB's review and avoid duplication by canvassing issues that may have been addressed through the other reviews".

contamination, but these will need to be transferred into the Environmental Protection Plan and mitigation maps. Approvals are required for the five watercourses along the proposed route. Based on the evidence provided no permit approvals have been currently secured²⁵ and Pollution Probe recommends that the OEB include the standard condition that all approvals and permits be obtained prior to commencing construction. Pollution Probe also recommends inclusion of a condition that Enbridge Gas shall implement all the recommendations of the Environmental Report, and all the recommendations and directives identified by the Ontario Pipeline Coordinating Committee review²⁶.

It is important that applicants include the Environmental Protection Plan and mitigation maps in the application so that the OEB and stakeholders have the ability to review their adequacy to mitigate harmful environmental and socio-economic impacts. They also provide comfort that appropriate planning has been conducted which can also impacts costs estimates for the project. Review of environmental and socio-economic impacts related to the proposed project are a core part of a Leave to Construct proceeding and nothing on the record in this proceeding has provided evidence that the outstanding gaps will be resolved. The agency circulation process undertaken (on its own) is not sufficient to mitigate these issues (further details below).

Enbridge did not complete an Environmental Protection Plan or mitigation maps for this project²⁷. However, Enbridge commits to an Environmental Protection Plan in accordance with the Environmental Report and its Construction and Maintenance Manual²⁸. It is always preferential for the OEB and stakeholders to have those document when reviewing an application. However, in cases when the proponent has failed to provide those documents during the proceeding, the OEB has provided a condition of approval that they be filed in advance of project construction²⁹. Pollution Probe recommends that approach in this case and suggests that Enbridge be encouraged to file an Environmental Protection Plan and related mitigation maps as part of a complete application for future Leave to Construct projects.

In Pollution Probe's view and based on the evidence in this application the current application of the OEB's Environmental Guidelines³⁰ and related Ontario Pipeline Coordination Committee (OPCC) process is not functioning effectively or in alignment with similar standards and outcomes for environmental assessment (EA) processes.

²⁵ Exhibit E, Tab 1, Schedule 1

²⁶ Example condition #3 from EB-2019-0172

²⁷ Exhibit I.PP.9a

²⁸ Exhibit F, Tab 1, Schedule 1, Page 3 of 5

²⁹ Example: EB-2019-0006 OEB Decision, page 6.

³⁰ OEB Environmental Guidelines for Location, Construction and Operation of Hydrocarbon Pipelines in Ontario, 7th Edition, 2016

The OEB process is intended to provide equivalent diligence and protection to the environmental assessment and stakeholder consultations process requirement for large projects at the Provincial or federal level. Authority for regulatory assessment of environmental and socio-economic issues is delegated to the OEB in order to avoid duplication with other Provincial and federal EA requirements, but this is not meant in any way to dilute the level of diligence in protecting the environment and public.

EA processes require proponents to ensure that they have proactively and meaningfully engaged all relevant stakeholders (not just one-way letters without a response) and that permits and approvals are obtained to ensure that no significant barriers exist that would preclude the proponent from satisfying all statutory requirements prior to construction of the proposed project. This Leave to Construct proceeding is meant to ensure all these requirements have been satisfied and a “wait and see” approach following an OEB decision does not meet that standard. The OEB should expect a complete record to base its review and decision on and significant risks result from skipping or truncating that critical regulatory process.

In this proceeding, there is a lack of positive confirmation from almost all of the OPCC agencies and related permitting authorities. In fact, the project is still under active review from OPCC agencies³¹ and the outcome of that review are not currently known. Enbridge filed this application on September 10, 2021 before the OPCC review process was completed, which is not typical practice. Enbridge circulated the Environmental Report to OPCC agencies August 10, 2021 and requested feedback for September 20, 2021³². Not only was the application and stakeholder log filed with the OEB prior to completion of agency review, but the four-week time period for OPCC agency review is far below the standard for agency review timelines. The OEB also requires a TSSA technical review and sign off letter that Pollution Probe was not able to find in the materials filed. As outlined above, At a high level it appears that less than 10% of review agencies³³ have provided the sign off needed to support the project. Additionally, based on the evidence provided 8/9 or 89% of permits and approvals are still outstanding. This could pose a serious challenge if there is urgency for Enbridge to start construction.

Negative confirmation³⁴ (i.e. assumed endorsement or approval without receiving a positive confirmation) is not an appropriate approach³⁵ for agency and stakeholder

³¹ Exhibit I.STAFF.5, Attachment 1, Page 5 of 99, row 1.

³² Row 1 - Exhibit I.STAFF.5, Attachment 1, Page 1 of 99

³³ Based on list in Exhibit I.PP.7, Attachment 1.

³⁴ Less than 10% of OPCC and review agencies have provided confirmation of a completed review.

³⁵ Positive confirmation is a standard approach for environmental assessment processes at the Provincial and federal level. Gaps in filing positive confirmation with a Leave to Construct application have led to significant issues including a project cancellation in EB-2020-0198. Negative confirmation has not been acceptable by regulators including the OEB which recently supported positive confirmation in EB-2019-0194 Settlement Proposal Decision, page 4.

consultation and this approach has led to significant delays, costs and other negative impacts³⁶ when tried for other projects. Ontarians rely on the OEB to protect our environment and socio-economic features through a transparent, thorough, defensible and replicable process.

Although these gaps extend beyond this specific application, Pollution Probe proposes that for this application that the OEB assess the specific risks and impact that these gaps and issues will cause in this instance. The OEB may also wish to consider a broader formal consultation to enhance the OEB Environmental Guidelines, OPCC process and related processes to mitigate these gaps in the Leave to Construct process. Pollution Probe would support such a review and consultation.

Confidentiality

In this proceeding the OEB assessed the appropriateness of confidentiality for certain information redacted from the Enbridge application evidence. It is becoming more frequent in regulatory proceedings (such as Leave to Construct) for Enbridge to redact information in its filing or omit information in response to interrogatories³⁷. This is a trend that the OEB should consider. Due to the process in this proceeding, it is an appropriate place to comment on the issue of confidentiality and how the OEB expects Enbridge to apply the OEB's guidelines and specifically the OEB's Practice Direction on Confidential Filings. Ignoring the OEB's Practice Direction can result in additional time and costs for the regulatory process that can easily be avoided.

The OEB specifically noted in its Decision on Confidentiality dated November 26, 2021, that "Enbridge Gas's request had not been made in the manner set out in section 5 of the OEB's Practice Direction". For efficiency, the OEB skipped that procedural step and moved right to an assessment of the redacted information. Each circumstance where information is redacted or withheld by Enbridge due to their opinion of confidentiality should be accompanied by the appropriate request to the OEB for confidential treatment in accordance with the Practice Direction.

Furthermore, the OEB has consistently indicated that business information, including names and business titles is not considered confidential personal information and should not be redacted. This applies to all such information from Enbridge or other parties in business contracts that have been executed. This also applies to all portions of the evidence including non-personal information in Landowner lists and consultation logs³⁸. The OEB

³⁶ Examples include lack of consultation and approvals that led to a Section 101 application and project removal in EB-2020-0160 and recently an adjournment to EB-2020-0293 due to OPCC member (MTO) comments not properly considered or included in the application. Lack of positive confirmation with approval agencies also led to cancellation of a Leave to Construct project in EB-2020-0194.

³⁷ Interrogatory example Exhibit I.MDLP.2a

³⁸ Business information was also redacted including from MNMNR correspondence which was not included in the request for confidential treatment and was not provided confidential treatment by the OEB.

may see a benefit in suggesting that Enbridge update their policies, process and procedures to ensure that they properly align with the OEB's requirements on confidentiality.

In its Decision on Confidentiality, the OEB retained the confidential treatment of the detailed CIAC schedule and specific customer distribution parameters. This type of information has been provided in previous proceedings, but based on the specifics of this proceeding the OEB deemed confidential treatment is appropriate. In this specific application, the project is proposed to support a request from a single customer which suggests that all project parameters are solely calculated for that single customer. Pollution Probe agrees that in cases where a project is to serve a single customer and where appropriate evidence is provided to support confidentiality, it can be appropriate to treat certain information as confidential and provide adequate access to OEB Staff and parties that execute the appropriate declaration provide for under the OEB's Practice Direction.

It is important that the OEB's Decision on Confidentiality in this specific case is not considered a precedent for future applications where the customer characteristics differ from Greenstone Gold Mine (i.e. a single customer). Following the process outlined in the OEB's Practice Direction in future proceedings will also help ensure that each request for confidentiality is properly assessed based on all the relevant facts for each situation.