

February 17, 2022

Ritchie Murray
Case Manager, Natural Gas Applications
Ontario Energy Board
2300 Yonge Street, 27th Floor
Toronto, ON M4P 1E4

By Email

Dear Mr. Murray:

**Re: Draft Natural Gas Facilities Handbook
Ontario Energy Board File Number: EB-2022-0081**

These are the submissions of Enbridge Gas in response to the letter dated February 3, 2022 from the Ontario Energy Board requesting comment on a draft Natural Gas Facilities Handbook designed to enhance the timeliness and efficiency of natural gas facilities proceedings.

Section 1 – General

Page 6, footnote

This footnote is related to “other types of natural gas related applications”. Leave to construct applications under Section 91 of the *Ontario Energy Board Act* are specifically addressed in the draft Handbook so reference in footnote appears redundant.

1.4.1 Contact Information

It is not clear whether the requirement “*The primary and legal representative of any affected municipality should also be included*” (page 8) applies to leave to construct and storage applications. While this information may be provided to identify a potential approver, this information has not typically been provided in previous leave to construct or storage applications.

1.4.4 Personal Information

Enbridge Gas agrees that an application should include a certification by a senior officer of the applicant stating that the application and any evidence filed in support of the application does not include any personal information unless it is filed in accordance with Rule 9A of the OEB’s Rules and Part 10 of the Practice Direction (page 9). This is something that has typically been provided as part of the cover letter to applications and Enbridge Gas seeks confirmation from the OEB that this practice is acceptable.

1.4.5 Certification of Evidence

Enbridge Gas has no concerns related to the statement that “*An application must include a certification by a senior officer of the applicant that the information filed is accurate, consistent and complete to the best of their knowledge*” (page 9) as a new requirement for facilities applications (it is already required for cost of service rates applications). However, Enbridge Gas seeks confirmation from the OEB whether they prefer this certification to remain separate from the personal information certification, or can they be combined into one certificate?

1.4.10 Interrogatories

While the OEB intends to use the cost award process to determine whether intervenors made reasonable efforts to ensure that their participation in the hearing was focused on material issues (page 10), it is not clear how the participation of parties not eligible for a cost award will be proactively governed.

1.5 Indigenous Consultation

The reference to the duty to consult most often arising in the context of applications for leave to construct natural gas facilities under section 90 (page 10) should also reference section 91 applications.

Section 3 - Certificate of Public Convenience and Necessity

The OEB's position that it "*...will generally only grant certificates at the lower-tier municipal level*" (page 15) appears to ignore the fact that some areas in which gas facilities are constructed are county roads which are under the jurisdiction of an upper-tier municipality. There does not appear to be a justification to deny an upper-tier certificate based on competition and potentially overlapping certificates held by different distributors for the same geographical service area because the OEB has an established practice of amending certificates as required. Enbridge Gas believes that certificates at the upper-tier municipal level are still a valid requirement and allows gas distributors to assure upper-tier municipalities that rights are in place to allow for the regulated construction of facilities on county roads under their jurisdiction.

3.4.1 Community Expansion Projects

"Community expansion projects are projects intended to serve customers in communities or parts of communities that do not currently have access to natural gas service". (page 16)

The requirement for a "*...proponent whose system expansion project may trigger a competitive process is required to file a letter that notifies the OEB of its intent to pursue the proposed project*" (page 17) is vague on how the proponent will determine that such a notification is required. Is it the OEB's intention that the onus is on the applicant to make this determination or that every community expansion project requiring leave to construct or a new / amended certificate will require advance notification to the OEB?

The related footnote (15) is also vague regarding determining the best timing for the notification letter to the OEB. It would be helpful to know how much time the OEB would typically require to make its determinations regarding a competitive process.

3.4.2 Small Projects in Another Person's Certificate Area

"The person should file written confirmation that the incumbent certificate holder ~~consents to~~ does not oppose the proposal". (page 18)

3.6.1 Municipal Name Changes

The requirement to notify the OEB within 90 days of the date that a new name takes effect if the name of a municipality changes after the OEB has issued a certificate is a bit onerous (page 19). The names of municipalities are often changed based on motions that are raised during municipal council meetings and Enbridge does not monitor every council meeting. It may be more appropriate to require the certificate holder to notify the OEB within 90 days of becoming aware of a municipality's name change.

3.6.2 Municipal Changes that do not affect another Person's Certificate Rights

The requirement to notify the OEB within 90 days of the date that the boundaries of a person's existing certificate are affected by a municipal amalgamation or annexation is a bit onerous (page 19). It may be more appropriate to require the certificate holder to notify the OEB within 90 days of becoming aware of a municipality's boundary change.

Enbridge Gas also questions whether certificates that have been issued to cover an entire municipality without any reference to "as currently constituted" are actually impacted by any changes to municipal boundaries as a result of amalgamation or annexation.

3.8 Filing Requirements for New Entrants

It is not clear what happens to applications from new entrants that are not able to or refuse to provide a current credit rating, financial statements, evidence of their ability to access the debt and equity markets or evidence of their technical expertise to develop, construct, operate and maintain the natural gas works.

Section 4 - Leave to Construct

4.2.1 Leave to Construct

While the leave to construct thresholds listed under section 90(1) of the *Ontario Energy Board Act* do specifically reference "*The projected cost of the pipeline is more than the amount prescribed by regulation*" (page 23), it may be more useful to specifically refer to the regulation (e.g., Ontario Regulation 328/03) and the specific cost threshold (e.g., \$2 million) and then keep the Handbook current as the regulation is updated.

4.4.2.2 Integrated Resource Planning

It is not appropriate to refer to "*the applicant should provide evidence of how IRP, including demand side management (DSM), has been considered...*" because there is a DSM framework that is separate and distinct from the IRP framework. The reference under IRP should be to incremental energy efficiency programming, or Enhanced Targeted Energy Efficiency programming or something similar. It is unclear why there is only a single form of IRP alternative identified. The IRP Framework recognizes multiple alternatives so may be more appropriate to refer to them all to avoid appearing to convey a preference.

The reference to "*The aim of IRP is to avoid building additional pipeline infrastructure where there are other options available...*" implies that if there are non-pipeline alternatives, those should be the priority. This reference should either be removed or elaborated upon to explain the economic test that should apply and the OEB's intention to balance low cost against cross subsidization and societal costs/benefits.

4.4.3 Project Costs and Economics

The reference to "*...and that not all transmission projects will require a PI of at least 1.0*" seems to imply that some transmission projects will require a PI of at least 1.0. Given the Stage 2 and Stage 3 cost/benefit analyses included under EBO 134, this wording should be updated to indicate that there is no requirement for PI to be at least 1.0.

4.5 Filing Requirements

With respect to Exhibit D - Project Cost and Economics:

- Could the requirement to “*Provide a summary table that compares the estimated capital cost of the project with the forecast and actual capital costs of at least three recent and comparable projects*” (page 35) be adjusted to filing information on up to three recent and comparable projects, if available? There will rarely be comparator projects with similar scopes, and even less that would be considered recent and relevant to a current cost of building pipelines. Finding “at least three recent and comparable projects” may be very difficult.
- “*Leave to construct applications for system expansion projects must provide separate costs for the transmission and distribution segments of the project as well as any upstream reinforcement costs, even if the applicant is not seeking leave to construct the transmission distribution segments*”. (page 35)
- The requirement to “*Describe how project costs will be allocated between rate classes, as applicable. To the extent that cost impacts on ratepayers can be quantified, provide details of the cost impacts (e.g., the annual impact on a typical residential customer’s bill in dollars per year)*” (page 35) may be difficult to address other than by a reference to ensuring that cost allocations will be in accordance with the OEB approved methodology in place at the time of rebasing. The detail required in the draft Handbook would be better left to the applicable rate application.

With respect to Exhibit G - Indigenous Consultation, the requirement to provide all project-related documentation from the Ministry of Energy before the record of the proceeding is closed (page 38, footnote 51) implies that a sufficiency letter is required before the OEB can make a decision on the proposed project rather than making sufficiency a condition of approval. The wording for this requirement should be clarified.

With respect to Exhibit H - Conditions of Approval, the reference to “*One of the OEB’s standard conditions of approval for LTCs requires the applicant to advise the OEB of any proposed change to OEB-approved construction or restoration procedures (Change Request)*” (page 38) is a bit vague. Given the different approaches taken by companies over the years, it may be better to more explicitly define “any potential change” and to establish a materiality caveat for a change.

Section 5 – Natural Gas Storage and Related

Enbridge Gas suggests that the title for section 5 should be “Natural Gas Storage and Related Applications”.

Under section 5.1 – Introduction – “*...These pools are then usually filled with natural gas in the non-heating season and the natural gas is withdrawn during the heating season, which serves to significantly reduce natural gas commodity and transportation charges.*” (page 39)

Under Section 5.3 - Summary of Types of Natural Gas Storage and Related Applications – “Storage Related LTC Application – an application under sections 90 or 91 of the OEB Act seeking leave to construct a pipeline that meets statutory LTC criteria and that is part of natural gas storage operations” (page 42).

The filing requirement to “Provide evidence that demonstrates that the project cannot be deferred” (page 42) is confusing. If an applicant has identified a need then why would they need to demonstrate that the project cannot be deferred? Doesn't this potentially cause unnecessary pressure from an execution standpoint? It is not clear what is meant by this filing requirement.

Under the Land Matters filing requirements – “The results of the Hydrology Report (if applicable)” and “A description of the Water Well Monitoring Program (if applicable)” (page 44).

Appendix C

Enbridge Gas has attached suggested edits to Appendix C. This appendix should refer to “Land Use Agreements” as not all land agreements that the OEB may be asked to approve are easements. An applicant may file a temporary land use agreement, or in some rare cases, a lease or license agreement. Note that only an easement runs with the land and the latter are strictly agreements between the parties.

If the OEB is only intending to set out standard elements for easement agreements, the text under Exhibit F - Route Map and Landowner Agreements on page 37 of the draft Handbook should be clear about this and several of the suggested edits to Appendix C attached should be considered in that context.

Should you have any questions on this submission, please do not hesitate to contact me.

Yours truly,

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Appendix C: Standard Elements of ~~Easement~~ Land Use Agreements

~~This below elements provide form of agreement will be~~ the initial starting point for a negotiation between a landowner and a LTC applicant. However, it is open to the landowner and applicant to develop the substantive content of these ~~clauses~~ elements and any other mutually-agreed ~~clauses~~ items to include in the agreement. ~~Adhering to this form of agreement~~ Incorporation of these elements does not limit the OEB's discretion to either approve or not approve a form of agreement submitted in a proceeding.

1. *Legal description of properties*

A section in the form of agreement for identifying the full legal description of each of the affected properties.

2. *Description of the ~~lease or easement~~ Area in use*

The portion of property to which the applicant is granted permission to use or access must be depicted visually. Such a depiction need not be elaborate, but a clear "drawing" of the relevant easement area will help provide clarity and avoid potential disputes. ~~A professional survey is helpful. The OEB recognizes that tools to identify impacted lands should be commensurate with the nature of rights being obtained. For instance, it may be financially prohibitive to obtain a professional survey for temporary unregistered agreements.~~

3. *Covenant not to disturb the ~~grantee's use of the easement~~ Right of A ~~access~~*

Although it may have a clearly defined right to use the owner's property, the ~~party-granted easement rights~~ grantee must also be sure that the owner's use of the property will not create practical problems. The ~~easement~~ agreement should include language that protects the rights of the ~~party-granted the easement~~ grantee to undisturbed use of the ~~easement~~ area. ~~This element may not be relevant for temporary land use agreements.~~

4. *Determination of maintenance obligations*

Even after rights and non-disturbance issues are clarified, the parties to an easement agreement face the issue of who will take care of that portion of the property, pay for any needed repairs or address related problems that occur. The parties should determine who will maintain the ~~easement~~ area in use.

5. *Decommissioning*

A decommission clause should set out that the applicant will be responsible to cover the cost of decommissioning the facilities and restoring any damage done to the ~~easement~~

~~lands~~area in use by such decommissioning. This clause should also have specific procedures for the decommissioning process. It shall be permissible for the utility to determine if a pipeline should be removed or abandoned in place subject to compliance with appropriate decommissioning procedures (i.e., taken out of active use and purged in accordance with applicable legal requirements).

6. *Independent Legal Advice (ILA)*

Provision ~~must~~should be made that both parties have had the option to obtain independent legal advice. ILA is commonly paid for by the applicant. [Enbridge Gas Comment: This element should be optional because the utility often negotiates land use with business landowners and ILA is implied.]

7. *Liability: Indemnity and exculpation*

The agreement should reflect the parties' consideration of their potential liabilities with respect to their ownership or use of the property.

8. *Insurance*

An easement agreement should clearly state any obligations of the parties to maintain any forms of insurance. Considerations would include property insurance, but may also include other coverage as well, as dictated by the circumstances. [Enbridge Gas Comment: Enbridge Gas easement agreements do not contain insurance obligations. It would be an unnecessary administrative burden and expense given Enbridge Gas' strong financial viability and the practical reality that land use claims are typically self-insured.]

9. *Default provisions and termination*

Some consideration must be made for events or behavior on the part of either party that will terminate the easement.

10. *Dispute resolution*

Provision setting out the dispute resolution procedure to be used in case of disagreement.