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June 9, 2022
Our File: EB-2022-0003

Ontario Energy Board
2300 Yonge Street
27th Floor
Toronto, Ontario
M4P 1E4

Attn: Nancy Marconi, Registrar

Dear Ms. Marconi:

Re: EB-2022-0003 Enbridge Waterfront Relocation LTC – SEC Submissions

We are counsel for the School Energy Coalition (SEC). Pursuant to Procedural Order #1, this letter constitutes SEC's submissions in this proceeding.

Summary of Submissions:

SEC submits that the OEB should:

1) subject to our comments below, approve the leave to construct application;
2) encourage EGI to provide more comprehensive studies with respect to future load on proposed pipelines in future LTC applications;
3) allocate 55% of the Net Project Costs to ratepayers for the purpose of EGI's rate recovery of this project.

History and Background:

In 2018, Enbridge Gas Inc. ("EGI") learned that the Keating Railway Bridge segment (the 154m segment at issue) of an NPS 20 gas main will be in conflict with Waterfront Toronto's Port Lands Flood Protection and Enabling Infrastructure Project ("PLFPEI"). Although EGI held a license to occupy the bridge at that time, on October 30, 2020, the City of Toronto purported to terminate EGI's license to occupy the Keating Railway Bridge.

EGI brought an LTC application in 2020 (EB-2020-0198) which it later withdrew due to lack of sufficient information on project alternatives, and a change in circumstances with regard to PLFPEI construction timeline.

One important issue involved in the previous LTC application was the shares of cost responsibility of the pipeline relocation project between EGI and Waterfront Toronto. In that case, the OEB decided the OEB 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."[1]

After EGI withdrew the previous application, there were important developments with respect to both a) the negotiation between EGI and Waterfront Toronto, and b) the engineering solutions to the pipeline relocation issue. Based on these developments, and the court order described below, EGI filed the current LTC Application for a new project proposal.

On May 18, 2021, Ontario Superior Court of Justice decided and ordered that EGI has to remove the segment of pipeline at issue by August 31, 2022 (CV-21-00654243-0000). The Court specifically stated in its decision that it is not ordering an injunction against EGI, but rather that EGI would need to pay damages instead if it fails to meet that deadline.[2]

On July 29, 2021, the City of Toronto agreed to allow EGI to remain on the Keating Railway Bridge to April 30, 2023, 8 months past the August 31, 2022 deadline established by the Ontario Superior Court.[3]

In the present Application, EGI proposes a project in two parts (the "Proposed Project"). First will be a temporary relocation of the pipeline to the south of the Keating Railway Bridge. This will be followed by a permanent relocation of the pipeline to a designated utility corridor on the north side of the Keating Railway Bridge after the completion of the PLFPEI project by Waterfront Toronto (Proposed Project). EGI agreed to Waterfront Toronto's proposal to contribute $5 million to the total project costs, which according EGI would be $23.5 million in total. The City's extension of the court-ordered deadline from August 31, 2022 to April 30, 2023, described above, is conditional on this split of project costs.

Issues in this LTC Application

This proceeding concerns an application by Enbridge Gas under section 90(1) of the Act seeking an order for leave to construct a natural gas pipeline.

Section 96(1) of the Act provides that the OEB shall make an order granting leave to construct if the OEB finds that the "construction, expansion or reinforcement of the proposed work is in the public interest". When determining whether a project is in the public interest, the OEB typically examines the need for the project, project alternatives, project costs and economics, environmental impacts, land matters, and Indigenous consultation.

The OEB has also provided expectations specific to this Application, namely that:

• Enbridge Gas would assess all feasible alternatives, with a focus on protecting the interests of ratepayers with respect to prices and the reliability and quality of gas service.

• Ratepayers would not be asked to pay any amount that exceeds the benefits being delivered to them.

• Issues between Enbridge Gas and Waterfront Toronto and/or the City of Toronto regarding schedule, legal rights and cost responsibility would be resolved before the new application is filed.

• Enbridge Gas would allow sufficient time for the OEB to conduct a proper review of the new application.[4]

[1] *Decision on Jurisdiction*, EB-2020-0198, p.2
[2] B-1-1 Attachment 2, p.9
[3] B-1-1 Attachment 3
[4] *Decision and Order on Application Withdrawal Request*, EB-2020-0198, P.13

Need for the Project and Project Alternatives

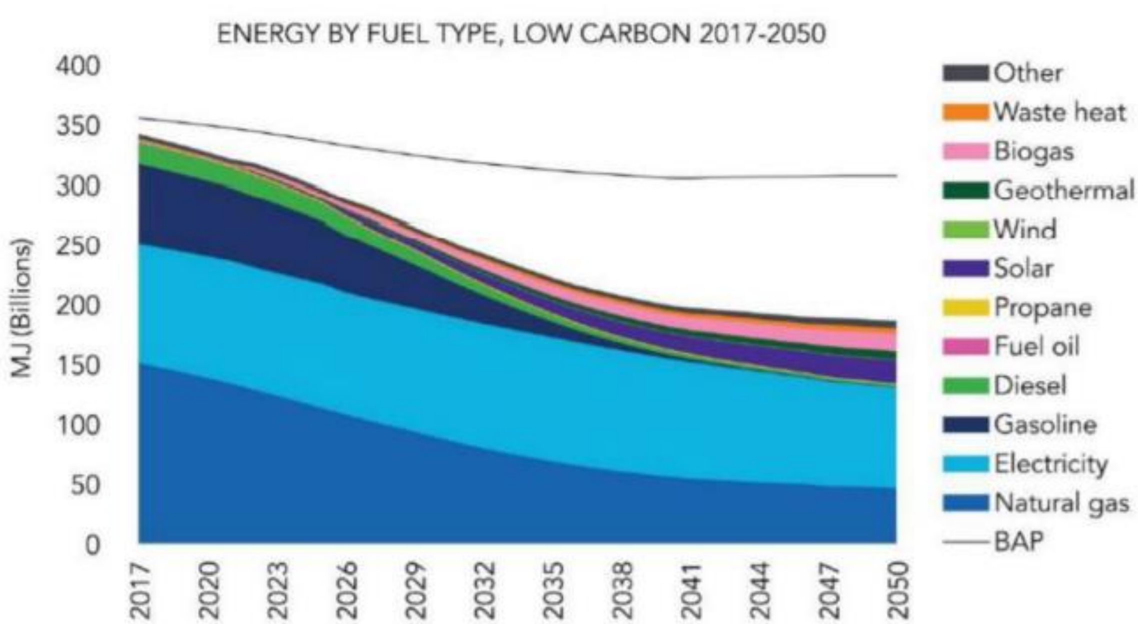
The need for the proposed project stems from EGI's legal obligation to remove the existing pipeline as ordered by the Superior Court of Justice. SEC does not dispute that the relocation of the existing pipeline is needed. A court order is sufficient evidence of that.

Instead, this section focuses on the design of the Proposed Project, specifically the size of the pipeline segment. However, like-for-like replacement may not be warranted in this case. EGI has not provided sufficient information to support the need for NPS 20 and the OEB has insufficient supporting evidence to assess whether NPS 20 is the prudent option for the project.

In interrogatory responses, EGI referenced its studies on the feasibility of using NPS 16 pipeline for the entire Cherry to Bathurst pipeline, and conclusively stated that NPS 16 pipeline will reduce capacity to service areas.[5] However, the study result may be inapplicable to the present Application because the segment of pipeline relevant to this Application is only a 154 meter segment while Cherry to Bathurst pipeline is a much longer and holistic pipeline.

EGI did not consider this pipeline relocation project to be an opportunity to reassess the demand for natural gas in the City of Toronto. As EGI indicated in interrogatory responses, EGI has not conducted a peak demand assessment of the future load Kipling Oshawa Loop, and/or downtown Toronto over the life of the proposed pipeline.[6] As various levels of government have implemented policies and programs that aim to reduce natural gas consumption and in turn reduce greenhouse gas emissions, there is a strong case that EGI should revaluate the demand for natural gas in the City of Toronto. Potentially reduced demand capacity may justify a smaller pipe to be used. For example, the table set out as a reference by Pollution Probe in their interrogatory #6 may be indicative of the direction of natural gas use in Toronto (see below).

City of Toronto Transform TO Report, Figure 33



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[5] IRR Staff-2

[6] IRR PP-6(a),(d)

Project Costs and Economics

SEC believes that the proposed budget is overstated, and the Board should approve a smaller budget for the following reasons.

As OEB Staff indicated in their interrogatories, the Proposed Project has much higher costs on a per-meter basis than other projects.[7] This is true even when compared to a project that uses the same NPS 20 pipe (EB-2020-0136). The unit cost for the Proposed Project is more than twice the unit cost for the Cherry to Bathurst project, where the same NPS 20 pipe is used.

Project	Cherry to Bathurst	St. Laurent North Ph-3	St. Laurent North Ph-4	Waterfront Relocation
Docket	EB-2020-0136	EB-2020-0293	EB-2020-0293	EB-2022-0003
NPS	20	2, 4, 6, 12, 16	4, 12	20
Material	Steel	Steel & Plastic	Steel & Plastic	Steel
Length (m)	4,500	13,713	6,100	350
Material Costs	$3,486,320	$358,484	$1,268,313	$2,531,319
Labour Costs	$71,820,730	$20,369,317	$49,053,572	$10,176,815
External Permiting & Land Costs	$1,055,700	$6,303	$687,387	$20,241
Outside Service Costs	$5,199,780	$2,783,359	$4,523,815	$2,230,858
Direct Overhead Costs	$950,975	$531,061	$605,700	$272,759
Sub-Total	$82,513,505	$24,048,524	$56,138,787	$15,231,992
Contingency %	30.0	14.1	29.5	30.0
Budgeted Contingency	$24,754,052	$3,384,108	$16,551,960	$4,569,598
Indirect Overhead Costs	$24,073,159	$5,647,458	$15,228,034	$3,251,073
Interest During Construction	$1,707,176	$348,748	$673,345	$407,708
Total Project Costs	**$133,047,922**	**$33,428,852**	**$88,592,155**	**$23,460,401**
Unit Cost ($/m)	**$29,566**	**$2,438**	**$14,523**	**$67,030**

In order to justify the high unit cost, EGI has made two arguments: 1) the Proposed Project includes four “tie-ins”, and 2) the Proposed Project is a small project, and hence lacks economies of scale.

EGI then argues that the Proposed Project should be compared against the project in EB-2018-0108, because that is also a shorter pipeline project.[8] The project in that application is not comparable because it consists of 326 meters of large NPS 30 pipeline, where the Proposed Project uses NPS 20. With that being said, it is interesting to note that EGI did not mention whether the EB-2018-0108 project has more or less tie-ins per kilometers than the Proposed Project.

One factor, among many others, that potentially contributes to the higher budget of the Proposed Project is its high contingency. The budget includes a 30% contingency, and EGI claims this contingency is reflective of the risks unique to this 154-meter pipeline relocation project.

SEC notes that there are circumstances that actually make this project less risky than other projects in terms of budget certainty. For example, the cost for constructing the utility corridor and the deck for Temporary Bypass will be borne by Waterfront Toronto, and EGI will not be affected by the uncertainties associated with that construction. Furthermore, as far as complexity of the project is concerned, the only aspect of this project that stands out from other pipeline cut out or replacement projects is the Temporary Bypass phase, which EGI admits to be “a commonly utilized design during tie-ins to avoid supply disruption.”[9] As such, SEC submits that EGI has not provided circumstances unique to this project that justify the 30% contingency.

[7] IR Staff-3 Preamble
[8] IRR Staff-3(d)
[9] IRR PP-7(a)

The Board should make its decision based on the best information available. Absent specific examples of how additional "tie-in" operations could contribute to 125% increase in unit cost, or special circumstances that make this relocation project significantly risky, SEC submits that the Board should not approve the budget as proposed.

Cost Responsibility

As SEC anticipated in the submissions for EB-2020-0198, EGI and Waterfront Toronto agreed to a deal. Waterfront Toronto agrees to contribute $5 million to the proposed budget, which essentially reflects the additional costs associated with the temporary relocation, as well as be responsible for the costs of removal and abandonment of the existing pipeline. This implies that if EGI's shareholders do not bear any portion of the costs, all $18.5 million will be borne by ratepayers by being added to rate base.

The Board has set out four expectations for this Application. One of them is that "ratepayers would not be asked to pay any amount that exceeds the benefits being delivered to them." Guided by this principle, SEC submits that ratepayers will only receive a benefit equivalent to 55% of the value of the Proposed Project. This is because the Proposed Project in effect advances the replacement of the pipeline approximately 18 years out of an expected 40 year life.

The pipeline segment on the Kipling Railway Bridge was replaced in 2000.[10] Assuming an amortization period for a pipeline like this of 40 years, this pipeline would have 18 years left, which represents 45% of its lifetime. The Proposed Project is the equivalent of an 18 year early replacement of the pipeline. In another words, this new pipeline will not provide additional benefits to ratepayers until 18 years later, which means the value that ratepayers actually enjoy from the new pipeline is 22 years of its lifetime (55%) as opposed to the whole 40 years. Therefore, ratepayers are only receiving 55% of the equivalent value of the Proposed Project and they should only bear 55% of the total cost of the Proposed Project.

Table 1: Estimated Project Costs

Item No.	Description	Cost
1.0	Material Costs	$2,531,319
2.0	Labour Costs	$10,176,815
3.0	External Permitting, Land	$20,241
4.0	Outside Services	$2,230,858
5.0	Direct Overheads	$272,759
6.0	Contingency Costs	$4,570,785
7.0	Direct Capital Costs	$19,802,777
8.0	Indirect Overheads	$3,251,073
9.0	Interest During Construction	$407,708
10.0	Total Project Cost	$23,461,558
11.0	Less: CIAC	$(5,000,000)
12.0	Net Project Costs	$18,461,558

The equivalent value of the Proposed Project should be the Net Project Cost because the Total Project Cost includes costs that are unique to the present situation where additional costs are incurred in order

[10] *Application*, EB-2020-0198, B-1-1 p.5 para.10

to accommodate Waterfront Toronto's construction.[11] The contribution amount by Waterfront Toronto is a reasonable indicator of the additional costs incurred due to their construction.

As such, using EGI's proposed budget as an example, 55% of $18.46 million should be included as rate base for rate recovery purposes in EGI's next rate application. In the event that the OEB approves a capital budget smaller than the $23.5 million budget proposed by EGI, then the ratepayers should be responsible for 55% of the difference between the total project cost approved by the OEB, less the $5 million contribution by Waterfront Toronto.

Conclusion

SEC therefore submits that the Application should be approved, but at a lower project cost, with the stipulation that 55% of the net project cost should be included in rate base.

SEC further submits that the OEB should provide the Applicant with guidance that future applications must include a review of future peak demands for the area being served.

All of which is respectfully submitted.

Yours very truly,
Shepherd Rubenstein P.C.

Fred Zheng
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Date: 2022.06.09 14:35:07 -04'00'

Fred Zheng

cc: All parties (by email)

[11] For example, a routine end-of-life replacement of the pipeline will not involve Temporary Bypass phase and the costs related to it.