



Ontario | Commission  
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**BY EMAIL**

December 16, 2022

Ms. Nancy Marconi  
Registrar  
Ontario Energy Board  
2300 Yonge Street, 27<sup>th</sup> Floor  
Toronto, ON M4P 1E4  
[Registrar@oeb.ca](mailto:Registrar@oeb.ca)

Dear Ms. Marconi:

**Re: Ontario Energy Board (OEB) Staff Submission  
Enbridge Gas Inc. (Enbridge Gas)  
Ridge Landfill RNG Project  
OEB File Number: EB-2022-0203**

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Please find attached OEB staff's submission in the above referenced proceeding, pursuant to Procedural Order No. 1.

Yours truly,

Catherine Nguyen  
Advisor, Natural Gas Applications

Encl.

cc: All parties in EB-2022-0203



# **ONTARIO ENERGY BOARD**

## **OEB Staff Submission**

**Enbridge Gas Inc.**

**Ridge Landfill RNG Project**

**EB-2022-0203**

**December 16, 2022**

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## Application Summary and Process

On August 30, 2022, Enbridge Gas filed an application seeking orders from the OEB:

- (a) Under section 90(1) of the Ontario Energy Board Act, 1998 (Act), for leave to construct approximately 5.7 kilometres of 4-inch extra high-pressure pipeline in Blenheim, in the Municipality of Chatham-Kent (the Project).
- (b) Under section 97 of the Act, for approval of the forms of agreement it offers to landowners to use their land for routing or construction of the proposed pipeline.

Enbridge Gas plans to commence construction of the Project in March/April 2023 and proposed an in-service date of November 1, 2023.

The OEB issued Notice on September 23, 2022. Federation of Rental-housing Providers of Ontario (FRPO), Ontario Petroleum Institute (OPI) and Pollution Probe applied for and were granted intervenor status.

On October 31, 2022, the OEB issued Procedural Order No. 1 setting the timeline for the proceeding. In accordance with the procedural schedule, written interrogatories by OEB staff, FRPO, and Pollution Probe were filed on November 16, 2022. Enbridge Gas responded to the interrogatories on November 30, 2022. OEB staff and intervenor written submissions are due by December 16, 2022 and Enbridge Gas may file a written reply submission by January 9, 2023.

OEB staff supports the approval of Enbridge Gas's leave to construct application, subject to the conditions of approval contained in Schedule A of this submission. OEB staff also supports the approval of the forms of agreement for permanent easement and temporary land use proposed by Enbridge Gas.

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## OEB Staff Submission

Consistent with the OEB's Standard Issues List for natural gas leave to construct applications, OEB staff's submission is structured to address the following issues:

1. Project Need
2. Project Alternatives
3. Project Cost and Economics
4. Environmental Impacts
5. Landowner Matters
6. Indigenous Consultation
7. Conditions of Approval

### Project Need

The proposed pipeline will connect Waste Connections of Canada Inc.'s (Waste Connections) planned renewable natural gas (RNG) facility at Ridge Landfill to Enbridge Gas's natural gas distribution system. Waste Connections requested that Enbridge Gas construct new pipeline facilities to connect its planned RNG facility to Enbridge Gas's existing local distribution system to facilitate injection of RNG supply volumes produced at the facility. The proposed pipeline is designed to meet the requested RNG injection volumes only and does not contribute to any future growth plans in the area.

Enbridge Gas stated that the nearest existing infrastructure that can facilitate the RNG injection volumes requested is 5.7 km from Ridge Landfill.

The Project need is underpinned by the M13 Service (Union South Transportation of Locally Produced Gas) contract executed between Enbridge Gas and Waste Connections, effective July 28, 2022.<sup>1</sup> The contract includes a provision for the payment by Waste Connections of a contribution in aid of construction (CIAC) for the full amount of the Project construction cost.

Based on the evidence filed by Enbridge Gas, OEB staff submits that there is a need for the Project.

### Project Alternatives

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<sup>1</sup> OEB staff notes that Enbridge Gas has no planned purchases of RNG from Waste Connections and is not seeking any approvals with respect to the purchase of RNG volumes as part of the current proceeding. Enbridge Gas noted that it would only procure RNG from Waste Connections if it was the successful bidder in a future Request for Proposal (RFP) process as part of the OEB-approved Voluntary RNG Program or if subsequent approvals were received to recover the costs associated with RNG in the gas supply portfolio.

Enbridge Gas considered the need to assess the viability of Integrated Resource Planning (IRP) alternatives to providing built capacity to deliver gas. Enbridge Gas applied the Binary Screening Criteria and determined that the Project falls under the definition of “customer-specific builds” in the IRP Framework approved by the OEB:

***Customer-Specific Builds*** – *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.*<sup>2</sup>

The Project is driven solely by Waste Connections’ request to connect to Enbridge Gas’s distribution system, and an IRP evaluation is therefore not required.

Enbridge Gas considered a number of potential routes for the Project. The Environmental Report (ER) notes that the proposed route is the preferred route from an environmental and socio-economic perspective as it is the shortest, most direct route; in proximity to the fewest natural Ecological Land Classification communities; passes the fewest number of residences and businesses; and avoids a key trucking route for the Ridge Landfill.<sup>3</sup>

Enbridge Gas stated that there is only one existing system in the area that is able to accommodate the proposed injection volumes of RNG. As such, Enbridge Gas stated that there are no other feasible facility alternatives able to meet Waste Connections’ need.

Based on Enbridge Gas’s evidence, OEB staff submits that the Project is the best alternative to meet the stated need and that the proposed route is acceptable.

## Project Cost and Economics

The total estimated cost of the Project is \$11.5 million, as set out in Table 1 below. These costs include materials, construction and labour, environmental protection measures, land acquisition, and contingencies. The estimated cost includes a 17.2% contingency applied to all direct capital costs. Enbridge Gas stated that the contingency amounts are consistent with similar projects approved by the OEB.

Table 1: Estimated Project Costs

<u>Item No.</u>	<u>Description</u>	<u>Pipeline Costs</u>	<u>Ancillary Costs</u>	<u>Total Costs</u>
1	Material Costs	\$ 614,615	\$ 928,750	\$ 1,543,365
2	Labour Costs	\$ 4,594,467	\$ 839,784	\$ 5,434,250

<sup>2</sup> EB-2020-0091, Decision and Order, July 22, 2021, Appendix A

<sup>3</sup> Application and Evidence, Exhibit F, Tab 1, Schedule 1, Attachment 1, page 90

3	External Permitting & Land	\$ 600,000	\$ -	\$ 600,000
4	Outside Services	\$ 829,467	\$ 135,500	\$ 964,967
5	Direct Overheads	\$ 977,250	\$ 274,129	\$ 1,251,379
6	Contingency Costs	\$ 1,142,370	\$ 544,541	\$ 1,686,911
7	Direct Capital Cost	\$ 8,758,168	\$ 2,722,704	\$ 11,480,872
8	Indirect Overheads	\$ -	\$ -	\$ -
9	Company Loadings & Interest During Construction	\$ -	\$ -	\$ -
10	Total Project Costs	\$ 8,758,168	\$ 2,722,704	\$ 11,480,872
11	Less: CIAC <sup>1</sup>	\$ 8,758,168	\$ 2,722,704	\$ 11,480,872
12	Net Project Cost	\$ -	\$ -	\$ -

Enbridge Gas and Ridge Holdings L.P., a wholly owned subsidiary of Waste Connections, have executed a contract under Rate M13- Union South Transportation of Locally Produced Gas. The contract includes a provision for the payment by Waste Connections of a CIAC for the full amount of the Project construction cost.

The total amount of the CIAC reflected in the M13 contract is \$12.25 million. This consists of two pre-payments (\$6.125 million (payable upon execution of the contract) plus \$6.125 million (payable upon installation of the receipt point)). In response to interrogatories, Enbridge Gas confirmed that the second pre-payment by Waste Connections will be trued-up to reflect the actual final Project cost, whether it is above, or below, the total \$12.25 million CIAC amount set out in the M13 contract.<sup>4</sup>

OEB staff has no concerns with the recovery of the Project costs based on Enbridge Gas's evidence that all the actual costs for the Project would be recovered from the customer, through the CIAC.

### Environmental Impacts

Enbridge Gas retained Dillion Consulting Ltd. to undertake a route evaluation and environmental and socio-economic impact study, which included a cumulative effects assessment, to select the preferred route for the Project. The results of the study are documented in the ER filed with the application. The ER also includes consultation input and mitigation measures to minimize impacts from the Project.

On June 17, 2022, Enbridge Gas circulated the ER to members of the Ontario Pipeline Coordinating Committee (OPCC), potentially impacted Indigenous communities, the Municipality of Chatham-Kent, and the Lower Thames Valley Conservation Authority. In response to interrogatories, Enbridge Gas filed an update on the comments received on the ER.

As part of the consultation process, the Technical Standards and Safety Authority

<sup>4</sup> Enbridge Gas response to OEB Staff-3a)

(TSSA) directed Enbridge Gas to submit an Application for Review of Pipeline Project to the TSSA. The TSSA completed its review on the technical aspects of the Project including design, material specification and suitability of the gas for appliances downstream of the customer meters and did not find any instance of non-compliance with the regulation or the adopted standard.<sup>5</sup>

Enbridge Gas stated it would prepare an Environmental Protection Plan (EPP) prior to mobilization and construction of the Project. The EPP will incorporate the recommended mitigation measures identified in the ER and received in the consultation from agencies for the environmental issues associated with the Project.

Enbridge Gas stated that “[u]sing the mitigation measures found within the ER, EPP and additional mitigation measures provided by regulatory agencies through the permitting and approval process (if received), no significant adverse effects from construction and operation of the Project are anticipated”.

A Cultural Heritage Assessment Report was completed and submitted to the Ministry of Tourism, Culture and Sport (MTCS) on November 4, 2022 and has not yet been reviewed by the MTCS.<sup>6</sup>

A Stage 1 Archaeological Assessment (AA) was completed and submitted to the MTCS on April 18, 2022. The Stage 1 AA concluded that a Stage 2 AA was required. In response to interrogatories, Enbridge Gas stated that the Stage 2 AA is planned to be completed in Spring 2023, once landowner agreements are in place.<sup>7</sup>

The application identified potential environmental/land permits and approvals from federal, provincial and municipal agencies that Enbridge Gas requires to construct the Project. In response to interrogatories, Enbridge Gas provided an update on the status and expected timing of the permits/approvals it requires for the Project.<sup>8</sup>

OEB staff submits that Enbridge Gas has completed the ER in accordance with the OEB’s *Environmental Guidelines for the Location, Construction and Operation of Hydrocarbon Pipelines and Facilities in Ontario* (Environmental Guidelines). OEB staff has no concerns with the environmental aspects of the Project, based on Enbridge Gas’s commitment to implement the mitigation measures set out in the ER and to complete the EPP prior to the start of construction. OEB staff submits that Enbridge Gas’s compliance with the conditions of approval outlined in Schedule A will ensure that impacts of pipeline construction are mitigated and monitored. OEB staff notes that the proposed conditions of approval also require Enbridge Gas to obtain all necessary

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<sup>5</sup> Enbridge Gas response to OEB Staff-4e)

<sup>6</sup> Enbridge Gas response to OEB Staff-5a)

<sup>7</sup> Ibid.

<sup>8</sup> Enbridge Gas response to OEB Staff-8b)



approvals, permits, licences, and certificates needed to construct, operate and maintain the Project.

## Landowner Matters

The Project will be largely located in the public road allowance. Enbridge Gas stated that temporary working areas will be required along the route where the road allowance is too narrow or confined to facilitate construction. Enbridge Gas also stated it will require permanent easements for the Project.

Enbridge Gas filed forms of temporary land use<sup>9</sup> and permanent easement<sup>10</sup> agreements. The same form of agreements were approved by the OEB in a previous proceeding, Enbridge Gas's Greenstone Pipeline Project.<sup>11</sup>

Enbridge Gas stated that it will acquire all easements and temporary land use agreements required for the Project prior to the start of construction.<sup>12</sup> In response to interrogatories, Enbridge Gas stated that it has begun preliminary discussions with landowners and that no concerns by the landowners have been raised.<sup>13</sup>

OEB staff submits that the OEB should approve the proposed forms of permanent easement and temporary land use agreements as both were previously approved by the OEB.

## Indigenous Consultation

In accordance with the OEB's Environmental Guidelines, on November 25, 2021, Enbridge Gas contacted the Ministry of Energy (MOE) in respect of the Crown's duty to consult related to the Project. The MOE issued a letter, delegating the procedural aspects of the Crown's duty to consult for the Project to Enbridge Gas on January 12, 2022 (Delegation Letter). In the Delegation Letter, the MOE identified the following Indigenous communities that Enbridge Gas should consult in relation to the Project:

- Aamjiwnaang First Nation (AFN)
- Bkejwanong (Walpole Island First Nation) (WIFN)
- Caldwell First Nation (CFN)
- Chippewas of the Thames First Nation (COTTFN)
- Chippewas of Kettle and Stony Point First Nation (CKSPFN)
- Oneida Nation of the Thames (Oneida Nation)

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<sup>9</sup> Application and Evidence, Exhibit G, Tab 1, Schedule 1, Attachment 2

<sup>10</sup> Application and Evidence, Exhibit G, Tab 1, Schedule 1, Attachment 3

<sup>11</sup> EB-2021-0205, Decision and Order, dated March 17, 2022

<sup>12</sup> Application and Evidence, Exhibit G, Tab 1, Schedule 1, page 2, paragraph 7

<sup>13</sup> Enbridge Gas response to OEB Staff-7c)

Direct notice of the application was provided to all of these Indigenous communities, and none of them sought to intervene or otherwise participate in the hearing.

As part of its application, Enbridge Gas filed an Indigenous Consultation Report dated August 8, 2022. In response to interrogatories, Enbridge Gas provided an update on its Indigenous consultation activities as of November 23, 2022.<sup>14</sup>

OEB staff notes that AFN, CKSPFN, WIFN and COTTFN provided several comments on the ER and that Enbridge Gas responded to these comments. Enbridge Gas indicated that in responding to these comments, it has highlighted and provided further information on Project plans and mitigation measures; clarified its commitments, including, for example, committing to providing opportunities for further Indigenous involvement; and encouraged ongoing engagement.<sup>15</sup> Enbridge Gas stated that it will continue to engage with affected Indigenous groups as appropriate throughout the lifecycle of the Project.<sup>16</sup>

As of this date, Enbridge Gas has not received a letter of opinion from the MOE regarding Indigenous consultation undertaken by Enbridge Gas for the Project (Letter of Opinion). In response to interrogatories, Enbridge Gas stated that it expects to receive the Letter of Opinion in advance of the OEB issuing its decision and order on the application.<sup>17</sup>

OEB staff submits that Enbridge Gas appears to have made efforts to engage with affected Indigenous groups and no concerns that could materially affect the Project have been raised through its consultation to date. OEB staff submits that no impacts to Aboriginal or treaty rights have been identified.

If the OEB determines that it is appropriate to grant Leave to Construct for the Project, OEB staff submits that the OEB should wait to receive the Letter of Opinion from the MOE before providing its final approval to grant Leave to Construct for the Project. If the Letter of Opinion is not filed prior to record close, the OEB can place the proceeding in abeyance until such time that the letter is filed. OEB staff notes that, assuming no further extended delays, this approach will not put the commencement date of the project at risk. Enbridge Gas stated that it requires a decision on this Leave to Construct application in March 2023, with construction scheduled to commence in March/April 2023.

OEB staff notes that, to the extent that the Letter of Opinion may identify outstanding issues, the OEB could elect to make provision for additional procedural steps to

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<sup>14</sup> Enbridge Gas response to OEB Staff-9b), Attachment 2

<sup>15</sup> Enbridge Gas response to OEB Staff-9b)

<sup>16</sup> Ibid.

<sup>17</sup> Enbridge Gas response to OEB Staff-9e)

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address these issues.

### **Conditions of Approval**

As part of its interrogatories, OEB staff suggested that the OEB's standard conditions of approval for leave to construct applications<sup>18</sup> should apply to the Project with a modification to Condition 6, which requires the applicant to confirm that the actual final Project costs are fully funded by the CIAC paid to Enbridge Gas by Waste Connections. Enbridge Gas agreed with this suggestion.<sup>19</sup>

OEB staff submits that the OEB should approve the Project subject to the Conditions of Approval attached as Schedule A to this submission.

~All of which is respectfully submitted~

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<sup>18</sup> Natural Gas Facilities Handbook, Appendix D

<sup>19</sup> Enbridge Gas response to OEB Staff-10a)

**Schedule A**

**Conditions of Approval**

**EB-2022-0203**

**December 16, 2022**

**Leave to Construct Application under  
Section 90 of the OEB Act**

**Enbridge Gas Inc.  
EB-2022-0203**

**Conditions of Approval**

1. Enbridge Gas Inc. shall construct the facilities and restore the land in accordance with the OEB's Decision and Order in EB-2022-0203 and these Conditions of Approval.
2. (a) Authorization for leave to construct shall terminate 12 months after the decision is issued unless construction has commenced prior to that date.  
(b) Enbridge Gas Inc. shall give the OEB notice in writing:
  - i. of the commencement of construction, at least 10 days prior to the date construction commences
  - ii. of the planned in-service date, at least 10 days prior to the date the facilities go into service
  - iii. of the date on which construction was completed, no later than 10 days following the completion of construction
  - iv. of the in-service date, no later than 10 days after the facilities go into service
3. Enbridge Gas Inc. shall obtain all necessary approvals, permits, licences, certificates, agreements and rights required to construct, operate and maintain the Project.
4. Enbridge Gas Inc. shall implement all the recommendations of the Environmental Report filed in the proceeding, and all the recommendations and directives identified by the Ontario Pipeline Coordinating Committee review.
5. Enbridge Gas Inc. shall advise the OEB of any proposed change to OEB-approved construction or restoration procedures. Except in an emergency, Enbridge Gas Inc. shall not make any such change without prior notice to and written approval of the OEB. In the event of an emergency, the OEB shall be informed immediately after the fact.
6. Concurrent with the final monitoring report referred to in Condition 7(b), Enbridge Gas Inc. shall file a Post Construction Financial Report, that:

- (a) provides a variance analysis of project cost, schedule and scope compared to the estimates filed in this proceeding, including the extent to which the project contingency was utilized
- (b) confirms that the actual final project costs are fully funded by the contribution in aid of construction payments from Waste Connections of Canada Inc.

Enbridge Gas Inc. shall also file a copy of the Post Construction Financial Report in the proceeding where Enbridge Gas Inc. proposes to start collecting revenues associated with the Project.

7. Both during and after construction, Enbridge Gas Inc. shall monitor the impacts of construction, and shall file with the OEB one electronic (searchable PDF) version of each of the following reports:

- (a) A post construction report, within three months of the in-service date, which shall:
  - i. provide a certification, by a senior executive of the company, of Enbridge Gas Inc.'s adherence to Condition 1
  - ii. describe any impacts and outstanding concerns identified during construction
  - iii. describe the actions taken or planned to be taken to prevent or mitigate any identified impacts of construction
  - iv. include a log of all complaints received by Enbridge Gas Inc., including the date/time the complaint was received, a description of the complaint, any actions taken to address the complaint, the rationale for taking such actions
  - v. provide a certification, by a senior executive of the company, that the company has obtained all other approvals, permits, licenses, and certificates required to construct, operate, and maintain the proposed project
- (b) A final monitoring report, no later than fifteen months after the in-service date, or, where the deadline falls between December 1 and May 31, the following June 1, which shall:
  - i. provide a certification, by a senior executive of the company, of Enbridge Gas Inc.'s adherence to Condition 4
  - ii. describe the condition of any rehabilitated land
  - iii. describe the effectiveness of any actions taken to prevent or mitigate any identified impacts of construction
  - iv. include the results of analyses and monitoring programs and any recommendations arising therefrom
  - v. include a log of all complaints received by Enbridge Gas Inc., including the date/time the complaint was received; a description of the

complaint; any actions taken to address the complaint; and the rationale for taking such actions

8. Enbridge Gas Inc. shall designate one of their employees as project manager who will be the point of contact for these conditions, and shall provide the employee's name and contact information to the OEB and to all affected landowners, and shall clearly post the project manager's contact information in a prominent place at the construction site.