

**ONTARIO ENERGY BOARD**

**EB-2022-0247**

**IN THE MATTER OF** the *Ontario Energy Board Act*, 1998, S. O. 1998, c. 15, Schedule B;

**AND IN THE MATTER OF** an application for leave to construct natural gas pipelines in the City of Toronto.

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**Submissions of Environmental Defence**

**Re: Kennedy Station Relocation**

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**March 20, 2022**

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## Overview

Enbridge Gas Inc. (“Enbridge”) is seeking leave to relocate certain gas pipelines and ancillary facilities in the City of Toronto in the vicinity of Eglinton Avenue and Midland Avenue. The total cost is \$5.4 million, which would be paid for by Metrolinx. The project is driven by the construction of the Scarborough Subway by Metrolinx, which requires certain pipes and ancillary facilities to be relocated.

Continued investments in fossil fuel pipelines should be avoided wherever there are feasible and cost-effective alternatives. This can help to reduce gas bills in the short term while also reducing the risk over the long life of pipeline assets that they may be underutilized or stranded due to the decarbonization of our economy. However, there are no feasible alternatives to the proposed project at this late stage because the Phase I in-service date is less than a year away (December 2023).<sup>1</sup> It is also important that the requests of Metrolinx are met expeditiously so as not to cause any delay with its Scarborough subway project.

Environmental Defence is not requesting any orders in this case because it is too late to conduct an appropriate integrated resource planning (“IRP”) analysis. However, it is important to note for future cases that Enbridge did not follow the OEB’s previous directions regarding IRP in this specific case. In particular, Enbridge mis-applied the screening criteria, as set out below.

## Timing

Enbridge screened this project out for IRP on the basis of the timing criteria, which applies when “an identified system constraint/need must be met in under three years.”<sup>2</sup> However, Enbridge was “first made aware of the general location of the Scarborough Subway Extension project” in January 2016.<sup>3</sup> It was then provided with sufficient details to identify infrastructure conflicts in November of 2019.<sup>4</sup> That is four years prior to the December 2023 in-service date for Phase I and seven years prior to the July 2025 in-service date for Phase II. The timing criteria should not have been applied to screen out this project.

Enbridge may be counting the three-year period from the date of the OEB IRP decision in July of 2021. However, that is not what the OEB IRP decision stated Enbridge should do. Instead, it refers to the time being counted from the date of the “identified system constraint/need.”<sup>5</sup> Furthermore, the obligation to conduct IRP assessments long pre-dated the OEB IRP decision. For instance, Enbridge was ordered to conduct robust IRP assessments in the 2012 GTA pipeline case, the 2014 DSM Framework decision, the 2016 DSM Plan decision, the 2018 DSM Mid-Term Review decision, the 2019 Bathurst Reinforcement decision, and the 2021 London Lines decision. Please see Appendix A to these submissions for a summary of those previous OEB decisions.

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<sup>1</sup> Exhibit A, Tab 2, Schedule 1, Page 3.

<sup>2</sup> EB-2020-0091, Decision and Order, July 22, 2021, p. 48.

<sup>3</sup> Exhibit I.ED.3

<sup>4</sup> *Ibid.*

<sup>5</sup> EB-2020-0091, Decision and Order, July 22, 2021, p. 48.

## Customer-Specific Build

Enbridge is generally not required to conduct an IRP assessment where there the project is a “customer-specific” build. The logic behind this screening criterion is that the customer knows best what they need, and if they indicate that they want more gas, they should get more gas. However, that logic does not apply here because Metrolinx does not want more gas, it simply wants the infrastructure conflicts resolved in the most cost-effective manner.

In addition, Metrolinx is not a customer in relation to this project. The IRP Decision defined this screening criterion as applying where “the customer fully pays for the incremental infrastructure costs associated with a facility project.” That would apply where a facility or group of facilities wants more capacity. In this case, Metrolinx is not a customer seeking expanded gas service.

But even if this can be characterized as a “customer-specific build,” Enbridge is not relieved from any IRP obligations. In its submissions to the OEB in the IRP decision, Enbridge expressly committed to discuss IRP options with proponents, stating as follows: “Enbridge Gas agrees that it will discuss IRP options with customers who are requesting a facility option underpinned by a CIAC or long-term contract...”<sup>6</sup> The OEB’s decision also expressed an expectation that this kind of IRP discussion take place.<sup>7</sup> There is no evidence that this occurred on the record.

## Technical and Financial Assessment

If a project passes the IRP screening criteria, a technical assessment takes place, followed by a financial assessment. Enbridge declined to answer interrogatories relevant to the potential outcome of a technical assessment.<sup>8</sup> Environmental Defence cannot speak to whether an IRP solution would or would not be appropriate and we make no submissions in that regard.

In response to these submissions, Enbridge may argue that an IRP alternative is not technically feasible nor economic. But that is not a valid excuse for misapplying the screening criteria. It would also be inappropriate to make arguments regarding the feasibility or cost-effectiveness of IRP alternatives when Enbridge did not undertake an IRP assessment, did not file assessment evidence, and declined to answer Environmental Defence’s questions relating thereto.

## Conclusion

As noted above, Environmental Defence is not requesting a specific order or relief in this case. It is now too late to conduct an IRP assessment and we do not have the data to comment on whether an IRP solution would be appropriate. But we do believe it is important to note for the next case that the screening criteria was not properly applied here.

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<sup>6</sup> EB-2020-0091, *Enbridge Gas Reply Argument*, April 21, 2021, Page 41.

<sup>7</sup> EB-2020-0091, *Decision and Order*, July 22, 2021, p. 48.

<sup>8</sup> Exhibit I.ED.1.

## Appendix A: Previous OEB Directions re IRP Decisions

The Board has directed Enbridge to practice Integrated Resource Planning many times over the past 30 years.<sup>9</sup> These directions date back to the OEB's IRP proceeding in the early 1990s.<sup>10</sup> This summary will focus on the directions provided by the OEB over the last decade. Through these directions, the OEB has repeatedly highlighted the importance of IRP, expressed concerns about the lack of progress by Enbridge in this area, and directed Enbridge to do IRP better and sooner.

In the decision in the GTA pipeline case (EB-2012-0451), the OEB directed Enbridge “to provide a more rigorous examination of demand side alternatives, including rate options, in all gas leave to construct applications.”<sup>11</sup> The decision also directed Enbridge to incorporate IRP in its planning in a more systematic way:

Environmental Defence urged the Board to send a signal to the companies that new supply-side investments will not be approved unless all lower cost DSM and/or interruptible service options have been explored and documented. Other parties agreed and argued that both Enbridge and Union should be required to do a better job...

In light of the evidence presented, the Board concludes that further examination of integrated resource planning for gas utilities is warranted. The evidence in this proceeding demonstrates that the following issues should be examined:

- The potential for targeted DSM and alternative rate designs to reduce peak demand
- The role of interruptible loads in system planning
- Risk assessment in system planning, including project prioritization and option comparison
- Shareholder incentives.<sup>12</sup>

In the 2014 DSM Framework decision, the Board again directed Enbridge to conduct IRP and develop a consistent IRP methodology:

As part of all applications for leave to construct future infrastructure projects, the gas utilities must provide evidence of how DSM has been considered as an alternative at the preliminary stage of project development.

In order for the gas utilities to fully assess future distribution and transmission system needs, and to appropriately serve their customers in the most reliable and cost-effective manner, the Board is of the view that DSM should be considered

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<sup>9</sup> E.g. EBO 169-III, *Report of the Board on the Demand-Side Management Aspects of Gas Integrated Resource Planning*, July 23, 1993, pp. 1-4; Ontario Energy Board, *Decision in EB-2012-0451/0433*, January 30, 2014, p. 46-47 (GTA Pipeline) ([link](#)); Ontario Energy Board, *DSM Framework*, December 22, 2014, p. 35-36 ([link](#)); EB-2018-0097, *Decision and Order*, January 3, 2019, pp. 6-7 (Bathurst Reinforcement) ([link](#)); EB-2020-0192 (London Lines), OEB *Decision and Order*, January 28, 2021, p. 20 ([link](#)).

<sup>10</sup> EBO 169-III, *Report of the Board on the Demand-Side Management Aspects of Gas Integrated Resource Planning*, July 23, 1993 ([link](#)).

<sup>11</sup> Ontario Energy Board, *Decision in EB-2012-0451/0433*, January 30, 2014, p. 46-47 (GTA Pipeline) ([link](#)).

<sup>12</sup> *Ibid.*

when developing both regional and local infrastructure plans. ...The Board expects the gas utilities to consider the role of DSM in reducing and/or deferring future infrastructure investments far enough in advance of the infrastructure replacement or upgrade so that DSM can reasonably be considered as a possible alternative. If a gas utility identifies DSM as a practical alternative to a future infrastructure investment project, it may apply to the Board for incremental funds to administer a specific DSM program in that area where a system constraint has been identified.

The Board is also of the view that the gas utilities should each conduct a study, completed as soon as possible and no later than in time to inform the mid-term review of the DSM framework. The studies should be based on a consistent methodology to determine the appropriate role that DSM may serve in future system planning efforts. As part of the multi-year DSM plan applications, the gas utilities should include a preliminary scope of the study it plans to conduct and propose a preliminary transition plan that outlines how the gas utility plans to begin to include DSM as part of its future infrastructure planning efforts.<sup>13</sup>

In the 2016 DSM Plan decision, the OEB found that Enbridge's proposed next steps would cause "delay" and directed them to develop an IRP transition plan:

The OEB agrees that a case study, as proposed by Enbridge, would assist in assessing the merits of a transition plan. However, the OEB is concerned that the time required to complete a case study would delay the utilities' infrastructure planning activities proposal and the transition plan would not be available in time for the mid-term review.

The OEB directs Enbridge and Union to work jointly on the preparation of a proposed transition plan that outlines how to include DSM as part of future infrastructure planning activities. The utilities are to follow the outline prepared by Enbridge, and should consider the enhancements suggested by the intervenors and expert witnesses. The transition plan should be filed as part of the mid-term review.<sup>14</sup>

In the 2018 DSM Mid-Term Review decision, the OEB expressed concerns about the lack of progress on IRP and directed Enbridge to do better.

Stakeholders indicated reservations in the usefulness of the transition plan provided by the natural gas utilities. The OEB agrees that although the progress made is at an early stage, the transition plan does not advance the understanding of the role and impact that energy conservation can play in deferring or avoiding capital projects. Currently, leave to construct applications do not include a description of the DSM alternatives considered to help avoid and/or defer the proposed capital project. The natural gas utilities should continue to develop rigorous protocols to include DSM as part of their internal capital planning process. This should include a comprehensive evaluation of conservation and

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<sup>13</sup> Ontario Energy Board, *DSM Framework*, December 22, 2014, p. 35-36 ([link](#)).

<sup>14</sup> EB-2015-0029/0049, *Decision and Order*, January 20, 2016 (2015-2020 DSM Plans), p. 84 ([link](#)).

energy efficiency considered as an alternative to reduce or defer infrastructure investments as part of all leave to construct applications.<sup>15</sup>

In the 2019 Bathurst Reinforcement decision, the OEB again directed Enbridge “to provide sufficient and timely evidence of how DSM has been considered as an alternative at the preliminary stage of project development.”<sup>16</sup> It also warned Enbridge that it “faces the risk that future application will be deemed incomplete.”<sup>17</sup>

In the 2021 London Lines decision, the OEB directed Enbridge to do better once again and to conduct an “in-depth quantitative and qualitative analyses of alternatives”.<sup>18</sup> In particular, the OEB said:

However, despite the OEB approval of the application for leave to construct this Project, the OEB agrees with Environmental Defence 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 construct.<sup>19</sup>

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<sup>15</sup> EB-2017-0127/0128, *Report of the Ontario Energy Board, Mid-Term Review of the Demand Side Management (DSM) Framework for Natural Gas Distributors (2015-2020)*, November 29, 2018, p. 20-21 ([link](#)).

<sup>16</sup> EB-2018-0097, Decision and Order, January 3, 2019, pp. 6-7 ([link](#)).

<sup>17</sup> *Ibid.*

<sup>18</sup> EB-2020-0192 (London Lines), OEB Decision and Order, January 28, 2021, p. 20 ([link](#)).

<sup>19</sup> EB-2020-0192 (London Lines), OEB Decision and Order, January 28, 2021, p. 20 ([link](#)).