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BY EMAIL

March 24, 2023

Ms. Nancy Marconi
Registrar
Ontario Energy Board
2300 Yonge Street, 27th Floor
Toronto, ON M4P 1E4
Registrar@oeb.ca

Dear Ms. Marconi:

**Re: Ontario Energy Board (OEB) Staff Submission
Enbridge Gas Inc. (Enbridge Gas)
Kennedy Station Relocation Project
OEB File Number: EB-2022-0247**

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

Yours truly,

Judith Fernandes
Senior Advisor, Natural Gas Applications

Encl.

cc: All parties in EB-2022-0247



ONTARIO ENERGY BOARD

OEB Staff Submission

Enbridge Gas Inc.

Kennedy Station Relocation Project

EB-2022-0247

March 24, 2023

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Application Summary and Process

On December 7, 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 831 metres of natural gas pipelines in the City of Toronto and to relocate a district station and bollard protection system onto a permanent easement (the Project).
- (b) Under section 97 of the Act, for approval of the forms of agreement it offers to landowners affected by the routing or location of the proposed pipelines.

Enbridge Gas stated that the Project will be constructed in two phases. Construction of the Project is planned to commence in September 2023 for Phase 1 and April 2025 for Phase 2. The proposed pipelines and facilities are expected to be placed into service in December 2023 and July 2025, respectively.

The OEB issued a Notice of Hearing on January 13, 2023. Environmental Defence and Pollution Probe applied for and were granted intervenor status.

On February 14, 2023, the OEB issued Procedural Order No. 1 setting the timeline for the proceeding. In accordance with the procedural schedule, written interrogatories by OEB staff, Environmental Defence, and Pollution Probe were filed by February 24, 2023. Enbridge Gas responded to the interrogatories on March 10, 2023. OEB staff and intervenor written submissions are due by March 24, 2023 and Enbridge Gas may file a written reply submission by April 6, 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.

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 Project is required to accommodate the Scarborough Subway Extension Transit Project (Subway Extension), which is being completed by Metrolinx in collaboration with the Province of Ontario, and the City of Toronto.

Metrolinx has requested that Enbridge Gas relocate certain existing natural gas pipeline assets in the vicinity of the Kennedy Station at Midland Ave. and Eglinton Ave. E., which are in conflict with the Subway Extension.

The Project aims to resolve all conflicts with Metrolinx's work and ensure that Enbridge Gas is able to maintain the provision of safe and reliable natural gas services for its existing customers. In response to an interrogatory on whether the Project is intended to serve additional loads in this area either now or in the future, Enbridge Gas confirmed that the scope of the Project work is to maintain existing service to meet the current demands of the network, and not to create any incremental capacity now or in the future.¹

The Project will be constructed in two phases as tunnelling work for the Subway Extension needs to be completed between the two phases:

- Phase 1 which is scheduled to begin in September 2023 involves the relocation and construction of approximately 455 metres of natural gas pipelines.
- Phase 2 is scheduled to start in April 2025 and will entail the relocation and construction of approximately 376 metres of natural gas pipelines.²

¹ EGI IRR, Exhibit I. STAFF.1

² EGI IRR, Exhibit I. STAFF.6

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

Project Alternatives

Enbridge Gas evaluated facility/route alternatives and determined that the Project is the optimal solution to meeting the identified customer need as it:

- Represents the lowest total project cost
- Meets the required December 2023 and July 2025 in-service dates for Phase 1 and Phase 2 respectively
- Maintains existing network connections and reliability and enables Enbridge Gas to readily access its facilities to ensure safe operation and maintenance.
- Results in the least significant environmental and socio-economic impacts relative to other alternatives assessed.

In response to interrogatories, Enbridge Gas provided further detail on why each of the alternatives examined were not considered feasible, mentioning factors such as logistical challenges, construction complexities arising from space restrictions, congestion of existing and proposed utilities, issues with future accessibility, and intolerable safety risks to Enbridge Gas's facilities and Metrolinx's station construction.³

Enbridge Gas applied the Binary Screening Criteria contained in the Integrated Resource Planning (IRP) Framework⁴ and concluded that the need for the Project does not warrant further IRP consideration based on the timing criteria, as the need must be met in under three years and is also driven by a customer-specific build, where Metrolinx will pay for the Project costs through a Contribution in Aid of Construction (CIAC).

Based on Enbridge Gas's evidence, OEB staff submits that the Project is the best alternative to meet the stated need. OEB staff also submits that Enbridge Gas appropriately applied the Binary Screening Criteria contained in the IRP Framework to determine that the Project does not warrant further IRP consideration. OEB staff notes that the timing criteria is appropriately measured from the date of the IRP Framework decision in July 2021 as the IRP Framework cannot be considered to have been implemented before that date.

While Enbridge Gas has previously been directed to give further consideration to demand-side or IRP alternatives in previous decisions that predated the establishment

³ EGI IRR, Exhibit I. STAFF.3

⁴ [EB-2020-0091](#), Decision and Order, July 22, 2021, Appendix A

of the IRP Framework⁵, the issues in those proceedings are different from the current application. In the current proceeding, Enbridge is seeking approval for the Project to accommodate Metrolinx's Subway Extension and maintain existing service. This is a small project driven by Metrolinx that is also being fully funded by Metrolinx. OEB staff is of the view that there is no requirement for Enbridge Gas to consider IRP alternatives in this case.

Project Cost and Economics

The total estimated cost of the Project is \$5.4 million. In response to interrogatories, Enbridge Gas provided a breakdown of the Project costs for each of Phase 1 and Phase 2 separately, as shown in Table 1 below:⁶

Table 1

| Description | Phase 1 Total Costs | Phase 2 Total Costs |
|--|------------------------|------------------------|
| Material | \$ 7,031.05 | \$ 84,956.42 |
| Labour & Construction | \$ 1,489,710.81 | \$ 1,423,174.78 |
| Outside Services (Consulting, Professional Services) | \$ 60,970.09 | \$ 96,638.65 |
| Contingency | \$ 381,003.09 | \$ 386,696.67 |
| Sub-Total | \$ 1,938,715.04 | \$ 1,991,466.52 |
| Direct Overhead | \$ 421.86 | \$ 5,097.39 |
| Indirect Overhead | \$ 678,550.26 | \$ 697,013.28 |
| Interest During Construction | \$ 23,802.00 | \$ 24,478.00 |
| Total Project Cost | \$ 2,641,489.17 | \$ 2,718,055.19 |
| Less CIAC | \$ (2,641,489.17) | \$ (2,718,055.19) |
| Net Project Costs | \$ - | \$ - |

Enbridge Gas stated that Metrolinx will pay for the Project costs through a CIAC. Enbridge Gas and Metrolinx's Subway Extension contractor will enter into a Utility Work Agreement (Utility Agreement). Under this agreement, the Metrolinx contractor is to assume full cost responsibility and will reimburse Enbridge Gas for all its actual costs and expenses incurred in completing the Project even if the actual costs exceed the estimated total project costs of \$5.4 million.⁷

In response to interrogatories, Enbridge Gas stated that the Utility Agreement has not yet been executed and that Enbridge Gas and the Metrolinx contractor are currently working together to execute the Utility Agreement.⁸ In response to a question on how Enbridge Gas will ensure that ratepayers will not have to pay the Project costs if the Scarborough Subway Extension project is cancelled, Enbridge Gas provided the proposed forms of the Preparatory Activities Agreement (Preparatory Agreement) and

⁵ For example, EB-2012-0451(GTA Reinforcement Project), EB-2018-0097(Bathurst Reinforcement Project), EB-2020-0192 (London Lines Replacement Project)

⁶ EGI IRR, Exhibit I. STAFF.6, p.1

⁷ EGI IRR, Exhibit I. STAFF.4 b)

⁸ EGI IRR, Exhibit I. STAFF.4 a)

the Utility Agreement that it will enter into with Metrolinx. Enbridge Gas stated that sections 3.1 (a) of the Preparatory Agreement and section 1.4 (a) of the Utility Agreement set out the contractual terms to ensure cost recovery from Metrolinx regardless of any Metrolinx project deferral or cancellation.⁹

While OEB staff accepts that Enbridge Gas is in the process of executing the agreements with Metrolinx that provide for the payment by Metrolinx of the actual final Project construction costs, these agreements have not yet been executed and therefore no binding agreement currently exists between Enbridge Gas and Metrolinx.

OEB staff submits that Section 23 of the OEB Act permits the OEB, when making an order, to impose such conditions as it considers proper. OEB staff submits that the OEB should add the following condition:

Authorization for leave to construct is subject to Enbridge Gas Inc. notifying the OEB that it has executed the necessary agreements with Metrolinx that provide for the payment by Metrolinx of a contribution in aid of construction for the full amount of the project construction costs.

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 Environmental Report filed with the application. The Environmental Report also includes consultation input and mitigation measures to minimize impacts from the Project.

On July 4, 2022, Enbridge Gas circulated the Environmental Report to members of the Ontario Pipeline Coordinating Committee (OPCC), municipal officials, conservation authorities and potentially impacted Indigenous communities.

Enbridge Gas stated that a completed Stage 1 Archeological Assessment and a Cultural Heritage Screening will be submitted to Ministry of Citizenship and Multiculturalism for review in Spring 2023 and it expects to receive approval prior to the commencement of Project construction. The Technical Standards and Safety Authority

⁹ EGI IRR, Exhibit I.PP.9 c)

is presently reviewing the Project in respect of compliance with the Canadian Standards Authority standard CSA Z662.

Enbridge Gas stated it would prepare an Environmental Protection Plan (Environmental Plan) prior to construction of the Project. The Environmental Plan will incorporate the recommended mitigation measures identified in the Environmental Report and obtained through agency consultation for the environmental matters associated with the Project. Enbridge Gas stated that using the mitigation measures found within the Environmental Report, the Environmental Plan and other additional mitigation measures provided by regulatory agencies through the permitting and approval process, no significant environmental or cumulative effects are anticipated from construction of the proposed Project.

The application identified potential environmental/land permits and approvals from 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.¹⁰

OEB staff submits that Enbridge Gas has completed the Environmental Report in accordance with the OEB's *Environmental Guidelines for the Location, Construction and Operation of Hydrocarbon Pipelines and Facilities in Ontario, 7th Edition*. 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 Environmental Report and to complete the Environmental Plan 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 conditions of approval also require Enbridge Gas to obtain all necessary 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. In its application, Enbridge Gas stated that temporary working areas may be required along the route where the road allowance is too narrow or confined to facilitate construction. Enbridge Gas will also require permanent easements for the proposed Project construction.

Enbridge Gas filed forms of agreement for temporary working areas and

¹⁰ EGI IRR, Exhibit I. STAFF.10 and 11

permanent easements that it intends to provide to affected landowners. Enbridge Gas stated that these agreements are the same as those approved for use in Enbridge Gas's NPS 20 Waterfront Relocation Project.¹¹

In response to interrogatories, Enbridge Gas stated that there are no temporary land rights required for the construction of the proposed Project.¹² OEB staff submits that Enbridge Gas should clarify, in its reply submission, whether it is still seeking approval of the form of agreement for temporary working areas.

OEB staff submits that the OEB should approve the proposed forms of permanent easement and temporary working area agreements (assuming the latter is still required) as both were previously approved by the OEB.

Indigenous Consultation

In accordance with the OEB's Environmental Guidelines, on December 20, 2021, Enbridge Gas contacted the Ministry of Energy (ENERGY) in respect of the Crown's duty to consult related to the Project. ENERGY issued a letter, delegating the procedural aspects of the Crown's duty to consult for the Project to Enbridge Gas on February 18, 2022 (Delegation Letter). In the Delegation Letter, ENERGY identified ten Indigenous communities¹³ that Enbridge Gas should consult in relation to the Project:

- Alderville First Nation
- Beausoleil First Nation
- Chippewas of Georgina Island First Nation
- Chippewas of Rama First Nation
- Curve Lake First Nation
- Hiawatha First Nation
- Mississaugas of Scugog Island
- Mississaugas of the Credit First Nation
- Kawartha Nishnawbe
- Huron Wendat Nation

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

As part of its application, Enbridge Gas filed an Indigenous Consultation Report. In

¹¹ EB-2022-0003 OEB Decision and Order

¹² EGI IRR, Exhibit I. STAFF.10 a)

¹³ Evidence, Exhibit H, Tab 1, Schedule 1, Attachment 2, p.2,3

response to interrogatories, Enbridge Gas provided an update on its Indigenous consultation activities as of March 7, 2023.¹⁴

Curve Lake First Nation (Curve Lake) provided several comments on the Stage 1 AA Report. Enbridge Gas stated that it has responded to these comments and noted that Curve Lake is satisfied with Enbridge Gas's responses and the changes Enbridge Gas made to the Stage 1 AA Report. Curve Lake also provided comments on the Environmental Report. In its update on its Indigenous consultation activities, Enbridge Gas stated that it met with Curve Lake representatives on March 7, 2023, to discuss these responses and Curve Lake confirmed at that meeting that it is satisfied with Enbridge Gas's responses.¹⁵ Comments on the Environmental Report were also provided by Mississaugas of Scugog Island First Nation (Scugog Island). Enbridge Gas stated that it has provided a response to the comments and is not aware of any outstanding concerns and that it would continue to provide Project information to Scugog Island.¹⁶ Enbridge Gas also stated that it will continue to engage with these communities throughout the life of the Project to ensure potential impacts on Aboriginal or treaty rights are addressed, as appropriate.¹⁷

As of this date, Enbridge Gas has not received a letter of opinion from ENERGY regarding Indigenous consultation undertaken by Enbridge Gas for the Project. In response to interrogatories, Enbridge Gas stated that it expects to receive the letter of opinion before the OEB's decision is issued but does not have an update on the date by which the letter of opinion is expected.¹⁸

OEB staff submits that Enbridge Gas appears to have made efforts to engage with the potentially affected Indigenous groups identified by ENERGY and address the concerns raised. 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 ENERGY before approving the application. If the letter of opinion is not filed prior to the close of record, the OEB can consider placing the proceeding in abeyance until such time that the letter is filed. OEB staff expects that, assuming no further extended delays, this approach will not put the commencement date of the Project at risk. Enbridge Gas anticipates a decision on the application by May 2023, with

¹⁴ EGI IRR, Exhibit I. STAFF.13 b)

¹⁵ EGI IRR, Exhibit I. STAFF.13 c), d)

¹⁶ EGI IRR, Exhibit I. STAFF.13 g)

¹⁷ Evidence, Exhibit H, Tab 1, Schedule 1, p.4

¹⁸ EGI IRR, Exhibit I. STAFF.13 f)

construction scheduled to commence in September 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 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 applications¹⁹ should apply to the Project with a modification to Condition 7, which requires Enbridge Gas to confirm that the actual final project costs are fully funded by the CIAC paid to Enbridge Gas by Metrolinx. Enbridge Gas agreed with this suggestion.²⁰

As noted previously, the agreements between Enbridge Gas and Metrolinx that provide for the payment by Metrolinx of the Project construction costs have not yet been executed. Consequently, OEB staff submits that the OEB consider adding Condition 4 in Schedule A, which requires Enbridge Gas to notify the OEB that it has executed the necessary agreements.

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~

¹⁹ Natural Gas Facilities Handbook, Appendix D

²⁰ EGI IRR, Exhibit I. STAFF.14 a)

Schedule A

Conditions of Approval

EB-2022-0247

March 24, 2023

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

**Enbridge Gas Inc.
EB-2022-0247**

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-2022-0247 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. Authorization for leave to construct is subject to Enbridge Gas Inc. notifying the OEB that it has executed the necessary agreements with Metrolinx that provide for the payment by Metrolinx of a contribution in aid of construction for the full amount of the project construction costs.
5. 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.
6. 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.

7. Concurrent with the final monitoring report referred to in Condition 8(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 Metrolinx.

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.

8. 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
- 9. 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.