

IN THE MATTER OF the *Ontario Energy Board Act, 1998*,
S.O. 1998, c. 15, Schedule B; and in particular sections
90(1) and 97 thereof;

AND IN THE MATTER OF an application by Enbridge Gas
Inc. for an order granting leave to construct natural gas
pipelines in the City of Toronto.

ENBRIDGE GAS INC.

REPLY SUBMISSION

OEB File No. EB-2022-0247

April 6, 2023

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INTRODUCTION

1. Pursuant to Procedural Order No. 1 issued by the Ontario Energy Board (“OEB”) on February 14, 2023, these are the reply submissions of Enbridge Gas Inc. (“Enbridge Gas” or the “Company”) related to the construction of a natural gas distribution pipeline(s) in the City of Toronto needed to accommodate the construction of the Scarborough Subway Extension (“SSE”) transit project.¹ The SSE is a collaboration between the Province of Ontario, the City of Toronto, and Metrolinx.
2. The proposed SSE project will replace the aging Line 3 (currently, the Scarborough RT) and is a key transit expansion project helping to reduce travel times for commuters, to support economic and community growth along the transit line, and to improve access to jobs, schools, and other key destinations throughout the city. Metrolinx has requested that Enbridge Gas relocate certain of its existing natural gas assets in conflict with the SSE project in the vicinity of Kennedy Station. Together, the Company’s associated proposed pipeline(s) and ancillary facility relocations are referred to as the “Project”.
3. Specifically, Enbridge Gas is seeking orders of the OEB approving the forms of lands rights agreements proposed and granting leave to construct approximately 831 metres of natural gas distribution pipelines in the City of Toronto (“Application”) consisting of:

Phase 1

- 310 m of Nominal Pipe Size (“NPS”) 4 Polyethylene (“PE”) Intermediate Pressure (“IP”) gas main relocation along Lord Roberts

¹ <https://www.metrolinx.com/en/greaterregion/projects/scarborough-subway-extension.aspx>

Drive and along a permanent easement on a City of Toronto walkway.

- 120 m of NPS 2 PE IP service relocation at 2480 Eglinton Avenue East.
- 25 m of NPS 4 PE IP gas main relocation at 2499 Eglinton Avenue East.

Phase 2

- 30 m of NPS 8 Steel Coated (“SC”) High Pressure (“HP”) gas main relocation.
- 330 m of NPS 8 PE IP gas main relocation.
- 16 m of NPS 6 PE IP gas main relocation.

4. As stated in response to interrogatories, Phases 1 and 2 of the Project are physically interdependent and so cannot be considered in isolation:²

Given the explanations above and the response at Exhibit I.PP.2, the proposed Project must be completed in its entirety to ensure that the integrity of natural gas services to existing customers are maintained. Some customers’ access to natural gas will be impacted by both phases of the SSE project; Phase 1 must be completed in order to continue to provide service to all customers impacted by Phase 2 (which addresses the 50 customers identified as otherwise being near MSP) and vice versa.

5. Accordingly, and with the necessary approvals of the OEB, Enbridge Gas expects to commence construction in September 2023 for Phase 1 and in April 2025 for Phase 2 of the Project. The proposed Project facilities are expected to be placed into service in December 2023 and July 2025, respectively.
6. At this time, Enbridge Gas and Metrolinx have entered into Preparatory Activities Agreements and RFP Agreements (together, the “Agreements”) that

² Exhibit I.ED.2 b) & d); Exhibit I.PP.2

include provision for the payment of a contribution in aid of construction (“CIAC”) for the full cost of the Project construction, resulting in a net investment of \$0 from ratepayers. Metrolinx and the City of Toronto both expressed their support for the project.³

7. Submissions on the evidence in this proceeding were filed by OEB staff, Environmental Defence (“ED”), and Pollution Probe.
8. OEB staff expressed full support for the Project, subject to conditions of approval that are agreeable to Enbridge Gas:⁴

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.

9. ED’s and Pollution Probe’s submissions are focused upon issues that exceed the scope of the current proceeding and were previously decided by the OEB in its Integrated Resource Planning (“IRP”) Framework for Enbridge Gas (EB-2020-0091). ED and Pollution Probe ignore the nature of the proposed Project, the SSE project, the evidentiary record in the current proceeding, and the role of Enbridge Gas to its customers. OEB staff’s submissions clearly determined there is a need for the project, “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 service to its existing customers...OEB Staff submits there is a need for the Project”.⁵ In addition to project need the OEB also found the following:

³ Exhibit B, Tab 1, Schedule 1, Attachment 1 and Exhibit I.STAFF.10 Attachment 2

⁴ OEB staff Submission, March 24, 2023, p. 1

⁵ OEB staff Submission, March 24, 2023, pp. 2-3

- Enbridge Gas conducted a reasonable assessment of alternatives (including application of IRP Binary Screening Criteria);
- The proposed environmental assessment and Environmental Report (“ER”) were done in accordance with the OEB’s *Environmental Guidelines for the Location, Construction, and Operation of Hydrocarbon Pipelines and Facilities in Ontario, 7th Edition*, and the mitigation measures provided in the report are appropriate;
- The proposed forms of lands agreements should be approved as they have been previously approved by the OEB; and
- Enbridge Gas has consulted with the potentially affected Indigenous communities and has not impacted Aboriginal or treaty rights.

10. Through the balance of these submissions, Enbridge Gas highlights the submissions of OEB staff in support of the current Application and responds to the specific submissions and recommendations of OEB staff, ED and Pollution Probe. Where the Company has chosen not to respond to a particular issue raised by ED or Pollution Probe, this should not be construed as acceptance of the same.

PROJECT NEED

11. On the issue of Project need, Enbridge Gas established that the Project is driven by Metrolinx’s request to relocate various existing natural gas pipelines and an existing district regulator station which are in conflict with Metrolinx’s SSE project design and construction plans. Accordingly, as a regulated natural gas utility, Enbridge Gas is required to relocate its affected facilities in order to ensure it can safely and reliably deliver natural gas to existing customers. The Company has confirmed that the proposed Project works will not create any incremental capacity now or in the future.⁶

⁶ Exhibit I.STAFF.1

12. OEB staff agrees that there is a need for the Project,⁷ and no party has disputed the need for the Project.
13. In its submissions, Pollution probe speculates, absent any evidence on this record, that commercial customers impacted by the SSE project will be closed and demolished within a few years. To substantiate these claims, Pollution Probe includes photos of unoccupied commercial spaces with its submissions that it asserts have been impacted by the SSE project. Pollution Probe also submits that the proposed facilities will become stranded, abandoned and/or inadequate in the near future. All these Pollution Probe submissions are made without any cogent evidence on this record.
14. At this time, there have been no development plans brought to Enbridge Gas' attention by Metrolinx, the City of Toronto, or others to support Pollution Probe's claims. The Company has received no indication from any of the affected customers that they intend to discontinue existing natural gas services or wish to be disconnected from Enbridge Gas' network at this time.⁸ Enbridge Gas remains obligated to serve the firm demands of these customers and so, intends to reconnect their respective services. For these reasons, the OEB should assign no weight to Pollution Probe's claims in this regard as it provided no evidentiary basis to support its claims. Enbridge Gas submits that it cannot be in the public interest to leave existing customers without natural gas service.

PROJECT ALTERNATIVES

15. On the issue of Project alternatives, Enbridge Gas explained that it identified several facility alternatives capable of addressing the SSE project conflicts

⁷ OEB staff Submission, March 24, 2023, p. 3

⁸ Exhibit I.PP.7 part a)

within the timeframes required by Metrolinx. The Company evaluated the facility alternatives using a mix of quantitative and qualitative criteria including: cost, timing, safety and reliability, and environmental and socio-economic impacts. The evaluation led Enbridge Gas to draw the conclusion that the proposed Project is the optimal solution to meeting the identified system need as it:⁹

- Represents the lowest total project cost to resolve conflicts identified by Metrolinx's Subway Extension project.
- Meets Metrolinx's required December 2023 and July 2025 in-service dates for Phase I and Phase II respectively.
- Maintains existing network connections and reliability by continuing to provide the same level of service to existing gas customers throughout construction.
- Ensures Enbridge Gas can readily access its facilities/assets going forward, ensuring their safe operation and maintenance.
- Reflects the lowest overall risks relative to other alternatives assessed.
- Is expected to result in the lowest number and magnitude of environmental and socio-economic impacts relative to other alternatives assessed.

Importantly, no party to the proceeding raised any concerns regarding Enbridge Gas's proposed route or evaluation of facility alternatives.

16. Within Exhibit C and in response to interrogatories, Enbridge Gas explained that it applied the OEB-approved IRP Binary Screening Criteria and appropriately determined that the Project does not warrant further IRP assessment or evaluation based on the "Timing" criteria, as the need must be met in under three years, and the "Customer-Specific Builds" criteria, as Metrolinx will pay the full cost of the Project in the form of a CIAC.¹⁰

17. In its submissions, OEB staff agrees with Enbridge Gas' interpretation and application of the IRP Binary Screening Criteria as well as its conclusion that further assessment of IRP alternatives is not warranted.¹¹

⁹ Exhibit C, Tab 1, Schedule 1

¹⁰ Exhibit C, Tab 1, Schedule 1, p. 2 and Exhibit I.ED.4 part a).

¹¹ OEB staff Submission, March 24, 2023, p. 3

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.

18. In its submissions, ED claims that Enbridge Gas' application of the IRP Binary Screening Criteria was flawed, and that had the "Timing" criteria been correctly applied effective November 2019, then further IRP assessment would have been appropriate. ED also claims that Enbridge Gas has been obligated to complete IRP assessments since before the OEB even established the IRP Framework. ED goes on to state that given the Company's failure to properly apply the IRP Binary Screening Criteria (according to ED's interpretation of the IRP Framework), it is now too late to consider IRP alternatives. On this basis, ED asks that the OEB determine that Enbridge Gas did not apply the IRP Binary Screening Criteria properly in this instance.¹² Pollution Probe draws similar conclusions and makes a similar request of the OEB within its submissions.¹³

19. Throughout their submissions, ED and Pollution Probe have ignored the explanation set out by Enbridge Gas in response to interrogatories regarding the timing and nature of SSE project-related information provided by Metrolinx.¹⁴ The Company explained that while it was first made aware of the general location of potential SSE project works in 2019, Enbridge Gas was not provided sufficient detail to initiate work on preliminary asset relocation designs until 2020.¹⁵ Given the densely populated urban location of the SSE project and the complexity of Enbridge Gas's existing facilities within close proximity, any deviations in SSE project plans or location (from its preliminary plans) would require the Company to complete additional detailed hydraulic

¹² ED Submission, March 20, 2023, pp. 2-3

¹³ Pollution Probe Submission, March 24, 2023, p. 5

¹⁴ ED Submission, March 20, 2023, pp. 2; Pollution Probe Submission, March 24, 2023, pp. 5-6

¹⁵ Exhibit I.ED.3 part a)

modelling to ensure that it can maintain the reliability of its existing network and thus, could have vastly changed the design/nature of relocations of Enbridge Gas' distribution system facilities required and the customers impacted. Therefore, it would not have been reasonable or prudent for Enbridge Gas to commence work to assess any alternative, facility or non-facility (IRP), until SSE project plans were sufficiently detailed and certain. The nature of Metrolinx's project design and execution process is such that even now Enbridge Gas is regularly working with Metrolinx to resolve novel conflicts as they finalize the SSE project plan.¹⁶ Enbridge Gas advanced Project design and the current Application as efficiently as possible.

20. Regarding ED's claim that Enbridge Gas was obligated to complete IRP assessments before the OEB issued the IRP Framework in July 2021, Enbridge Gas agrees with the submissions of OEB staff:¹⁷

While Enbridge Gas has previously been directed to give further consideration to demand-side or IRP alternatives in previous decisions that predated the establishment of the IRP Framework, the issues in those proceedings are different from the current application.

OEB staff's submission is consistent with the OEB's IRP Framework Decision and Order which states, "Enbridge Gas is expected to begin integrating IRP into its existing planning processes, in a manner consistent with the IRP Framework, effective immediately."¹⁸

21. For the reasons set out above, the OEB should assign no weight to ED's and Pollution Probe's submissions regarding the Company's application of the IRP Framework's Binary Screening Criteria for "Timing".

¹⁶ As indicated in the Infrastructure Ontario media news article on November 30th, 2022, Metrolinx utilizes a Progressive Design-Build delivery model which does not provide time for Enbridge to complete IRP evaluations:

<https://www.infrastructureontario.ca/en/news-and-media/news/subway---scarborough-subway-extension/dev-co-selected-for-scarborough-subway-extension-stations-rail-and-systems-contract/>

¹⁷ OEB staff Submission, March 24, 2023, pp. 3-4

¹⁸ EB-2020-0091, Decision and Order, July 22, 2021, p. 3

22. While ED agrees that the Company is not required to conduct an IRP assessment where a project is a “Customer-Specific Build”, it submits that this criteria does not apply in this instance because Metrolinx is not a customer that requested incremental natural gas volumes.¹⁹ This is an incorrect interpretation of the intent of the IRP Framework’s Binary Screening Criteria. The IRP Framework does not constrain applicability of the “Customer-Specific Build” criteria in the manner suggested by ED (solely to projects designed to serve customers seeking incremental natural gas volumes). Metrolinx has made a clear request for Enbridge Gas to relocate its existing facilities and has chosen to pay a CIAC for the full construction cost of the Project.²⁰ Therefore, further IRP assessment is not warranted. In its submissions, OEB staff appears to agree with Enbridge Gas in this regard:²¹

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.

23. In its submissions, ED also claims that where the “Customer-Specific Build” criteria applies and customers are requesting a facility option underpinned by a CIAC or long-term contract the Company should discuss IRP options with customers and failed to do so in this instance. ED’s narrow interpretation of the IRP Framework is problematic for two reasons: Firstly, there would be limited value in discussing IRP with Metrolinx as such investments would not resolve the system need underpinning the Project (relocation to facilitate construction of the SSE project). Also, in the OEB’s IRP Framework decision Enbridge Gas committed to discussing IRP options with the project proponents. All existing customers affected by the Project have historically

¹⁹ ED Submission, March 20, 2023, p. 3

²⁰ Exhibit B, Tab 1, Schedule 1

²¹ OEB staff Submission, March 24, 2023, pp. 3-4

been provided broad-based communications including marketing materials regarding the Company's available DSM programming.

24. For the reasons set out above, the OEB should assign no weight to ED's submissions regarding the Company's application of the IRP Framework's Binary Screening Criteria for "Customer-Specific Builds".

25. ED makes much of the fact that Enbridge Gas declined to respond to interrogatories requesting customer-specific data to support ED's technical assessment of the feasibility of converting all affected customers' heating equipment to electric heat pumps.²² Presumably ED's comments in this regard are meant to support its request that the OEB find that Enbridge Gas did not properly apply the IRP Binary Screening Criteria.

26. As stated by Enbridge Gas in response to ED's requests for data,²³

Enbridge Gas respectfully declines to provide a table with customer-specific consumption data (annual (m³/yr) and peak hour (m³/d)) and/or street addresses for each of the 22 customers as the request for consumption information of the customers is not relevant nor is it material to determining if the relocation of the pipeline is in the public interest. As a regulated natural gas utility, Enbridge Gas is obligated to provide the distribution of its natural gas in a safe and reliable manner. One of the statutory objectives of the OEB is to ensure consumers are protected with regard to the price, quality and reliability of natural gas services. The fact that Metrolinx's Scarborough Subway Extension project (the "SSE" project) requires Enbridge Gas to relocate certain of its existing natural gas facilities does not detract from the Company's obligations to ensure continuous, uninterrupted firm services to its existing customers. Given the explanations above, the customer-specific information sought by ED exceeds the scope of the current proceeding and is not relevant to the OEB's determination regarding the proposed Project.

27. In addition to the reason set out above, the submission made by ED is irrelevant. Enbridge Gas was denied the ability to invest in electricity-based

²² ED Submission, March 20, 2023, p. 3; Exhibit I.ED.5

²³ Exhibit I.ED.1

alternatives within the IRP Framework, and so did not evaluate the cost of retrofitting buildings and/or replacing individual households' or commercial customers' appliances with electric heat pumps or any other electric appliances.²⁴ More importantly, Enbridge Gas respectfully submits that the OEB should find that the Company appropriately applied the IRP Binary Screening Criteria in relation to the proposed Project.

28. In its submissions, Pollution Probe calculates an inaccurate Project cost per customer of \$245,000 to support its claim that an IRP solution would be significantly more cost-effective.²⁵ There is no basis in evidence to support Pollution Probe's claim regarding the cost-effectiveness of IRP solutions. Enbridge Gas addressed the inaccuracy of calculating a cost breakdown per customer based solely on the 22 customers losing access to existing natural gas services absent the proposed Project. Specifically, the 22 "customers" referenced by Pollution Probe actually consist of condominium buildings with multiple units, a Co-operative homes building with multiple units, and commercial customers. In other words, the total number of households impacted by the Project is far greater than 22. Additionally, the existing natural gas network also serves approximately 9,200 customers downstream of the proposed district regulator station relocation. Therefore, simply dividing the total Project cost by 22 customers is not an accurate means of attributing costs to individual customers served by the existing or proposed natural gas system.²⁶ The OEB should assign no weight to Pollution Probe's inaccurate calculation or the associated claim that IRP alternatives would be more cost-effective.

²⁴ Exhibit I.ED.5 part b)

²⁵ Pollution Probe Submission, March 24, 2023, p. 5

²⁶ Exhibit I.PP.9; Exhibit I.ED.1 part a); Exhibit I.ED.6 part a)

PROJECT COST & ECONOMICS

29. On the issue of Project costs and economics, Enbridge Gas explained that the total cost of the Project is estimated to be \$5.4 million. \$4.6 million of Project costs are directly attributed to pipeline facilities (for which the Company is seeking an order of the OEB granting leave to construct), and \$0.79 million is attributed to ancillary facilities.²⁷ Each phase of the Project is estimated to cost approximately \$2.7 million.²⁸

30. In its pre-filed evidence and in response to interrogatories, Enbridge Gas provided the proposed forms of Preparatory Activities Agreement, RFP Agreement and Utility Work Agreement (the Agreements). The Preparatory Activities Agreement and RFP Agreement have been entered into with Metrolinx. The Utility Work Agreement between Enbridge Gas and Metrolinx's Contractor ("ProjectCo"), is still being negotiated. These Agreements include a provision for the payment by Metrolinx of a CIAC for the full amount of the Project construction costs.²⁹

31. In its submissions, OEB staff accepts that Enbridge Gas is in the process of executing the Agreements with Metrolinx and submits that that OEB should add the following condition of approval:³⁰

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.

Enbridge Gas agrees with and accepts OEB staff's proposed additional condition of approval.

²⁷ Exhibit E, Tab 1, Schedule 1, p. 1

²⁸ Exhibit I.STAFF.6

²⁹ Exhibit E, Tab 1, Schedule 1, p. 4 and Exhibit I.PP.9 plus Attachments

³⁰ OEB staff Submission, March 24, 2023, p. 5

32. Enbridge Gas submits that the evidence in this proceeding demonstrates that Project costs are reasonable and will be paid in full by Metrolinx, and that the Project is economically justified.

ENVIRONMENTAL IMPACTS

33. On the issue of environmental impacts, Enbridge Gas explained that it completed an environmental assessment (including route evaluation, environmental and socio-economic impact study and cumulative effects assessment, stakeholder consultation, and mitigation measures) and filed an Environmental Report (“ER”) as part of the current Application (in accordance with the OEB’s *Environmental Guidelines for the Location, Construction and Operation of Hydrocarbon Pipelines and Facilities in Ontario, 7th Edition* (the “Guidelines”). The ER was circulated to members of the Ontario Pipeline Coordinating Committee (“OPCC”) in July 2022. The Company also advised that it intends to prepare an Environmental Protection Plan (“EPP”) prior to the commencement of Project construction. By implementing the mitigation measures identified within the ER, EPP, or as otherwise identified by regulatory/permitting agencies, no significant environmental or cumulative effects are anticipated from Project construction. Enbridge Gas will obtain all necessary approvals, permits, licences, and certificates needed to construct, operate and maintain the Project.

34. In its submissions, OEB staff states that:³¹

...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

³¹ OEB staff Submission, March 24, 2023, p. 6

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.

35. In its submissions, Pollution Probe claims that the direct and indirect socio-economic impacts of the SSE project will be high (e.g., loss of business and economic hardship).³² To substantiate these claims, Pollution Probe includes photos of unoccupied commercial spaces that it asserts have been impacted by the SSE project within its written submissions. The photos of empty commercial business do not prove that the cause of the shutdown was due to transit projects and construction. The OEB should assign no weight to Pollution Probe's claims in this regard as it provided no evidentiary basis to support them (aside from the photos entered as evidence as part of its submissions), and because Pollution Probe's subjective opinions regarding the impacts of the SSE project have no direct relation to the relief requested by Enbridge Gas.

36. Pollution Probe also takes issue with Enbridge Gas' communications with customers potentially impacted by the Project, claiming that the Project open houses conducted were inadequate and that direct communication with customers when those impacts are concentrated to a small number of customers could have mitigated the need for the Project.³³ Not only is there no evidentiary basis to support Pollution Probe's claims in this regard, it completely ignores the broader Project impacts to the natural gas distribution network downstream of the district regulator station to be relocated, which serves approximately 9,200 customers (residential, multi-residential, and commercial).³⁴ As stated above, Enbridge Gas completed its environmental assessment activities, including stakeholder consultation, in accordance with

³² Pollution Probe Submission, March 24, 2023, pp. 6-7

³³ *Ibid*

³⁴ Exhibit I.ED.1 part a); Exhibit I.ED.2 part c); Exhibit I.PP.2; Exhibit I.PP.4 part b)

the OEB's Guidelines, and has received no indication from any of the affected customers that they intend to discontinue existing natural gas services. For these reasons, the OEB should assign no weight to Pollution Probe's submissions regarding consultation.

LANDOWNER MATTERS

37. On the issue of lands rights required for the Project, Enbridge Gas has explained that the Project will be located primarily in public road allowance with the exception of limited permanent easements and potential temporary working areas required. Accordingly, the Company is seeking approval of the forms of Easement Agreement and Temporary Land Use Agreement filed with its Application (both of which are the same as those previously approved for use by the OEB).³⁵

38. Importantly, no party to the proceeding raised any concerns regarding landowner matters. In its submissions, OEB staff stated that:³⁶

...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.

39. OEB staff also 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 since it stated in response to interrogatories that there are currently no temporary land rights required for the construction of the proposed Project.³⁷

40. While there are currently no temporary land rights required for the construction of the proposed Project, the Company is still actively working

³⁵ Exhibit G, Tab 1, Schedule 1, pp. 2-3

³⁶ OEB staff Submission, March 24, 2023, p. 7

³⁷ *Ibid*

with the City of Toronto and Metrolinx to determine if any temporary work areas will be required and will continue doing so throughout Project execution. For this reason, Enbridge Gas confirms that it is seeking approval of the form of Temporary Land Use Agreement filed with its Application.³⁸ Should the Company determine that temporary work areas are required, it will update the OEB by filing a Project Change Request containing all relevant information supporting the same prior to commencing construction activities on the affected lands.

INDIGENOUS CONSULTATION

41. On the issue of consultation with potentially affected Indigenous communities, Enbridge Gas explained that it was delegated the procedural aspects of consultation by the Ministry of Energy (“ENERGY”). In accordance with the OEB’s Guidelines, an Indigenous Consultation Report (“ICR”) outlining consultation activities Enbridge Gas has conducted has been prepared, provided to ENERGY and filed with the OEB as part of the current Application.³⁹ The Company is not aware of any outstanding concerns at this time and has committed to maintaining ongoing engagement with these Indigenous communities throughout the life of the Project to ensure potential impacts on Aboriginal or treaty rights are addressed, as appropriate.⁴⁰

42. In its submissions, OEB staff states that:⁴¹

Enbridge Gas appears to have made efforts to engage with the potentially affected Indigenous groups and to address the concerns raised. OEB staff also submits that no impacts to Aboriginal or treaty rights have been identified.

³⁸ Exhibit G, Tab 1, Schedule 1, Attachment 1

³⁹ Exhibit H, Tab 1, Schedule 1, Attachments 7 and 8; Exhibit I. STAFF.13

⁴⁰ Exhibit H, Tab 1, Schedule 1, p. 4

⁴¹ OEB staff Submission, March 24, 2023, p. 8

43. OEB staff submitted that the OEB should wait to receive the Sufficiency Letter from the ENERGY before approving the Application and in the case that the Sufficiency Letter is not received or filed prior to the close of record, that the OEB can consider placing the proceeding in abeyance until such time that the Sufficiency Letter is filed.⁴²

44. On April 6, 2023, Enbridge Gas received a Letter of Opinion from ENERGY notifying the Company that,⁴³

...ENERGY is of the opinion that the procedural aspects of consultation undertaken by Enbridge to-date for the purposes of the Ontario Energy Board's Leave to Construct for the Project are satisfactory.

ENERGY's Letter of Opinion is set out at Attachment 1 to this submission.

Enbridge Gas will also update its Application at Exhibit H, Tab 1, Schedule 1, Attachment 5, to insert ENERGY's Letter of Opinion.

CONDITIONS OF APPROVAL

45. In their submission, OEB staff supports the Company's Application subject to the proposed conditions of approval included in Schedule A of OEB staff's submissions.

46. Enbridge Gas hereby confirms that it accepts OEB staff's proposed conditions and will comply with the final conditions of approval ultimately established by the OEB.

CONCLUSION

47. Enbridge Gas has provided clear and compelling evidence to support that the Project is in the public interest. The accommodation of the SSE Project while also maintaining safe and reliable delivery of natural gas is clearly in the

⁴² *Ibid*

⁴³ Attachment 1

public interest. In considering the typical factors in support of a leave to construct application, the evidence submitted by Enbridge Gas has shown there is a clear need for the Project. The evidence also illustrates that the Project need and cost is supported by Agreements between Enbridge Gas and Metrolinx which includes a provision for the payment by Metrolinx of a CIAC for the full amount of the Project construction cost. Enbridge Gas determined that the Project is the best alternative to meet the identified need and this is supported by OEB staff. Furthermore, there were no material concerns raised by OEB staff and the intervenors with respect to land matters, environmental impacts and Indigenous consultation.

48. The OEB should conclude that the proposed Project is in the public interest and issue an order granting leave to construct the Project, subject to the conditions of approval proposed by OEB staff.

Ministry of Energy

Ministère de l'Énergie

Energy Networks and Indigenous Policy
Branch

Direction Générale des Réseaux Énergétiques
et des Politiques Autochtones



Indigenous Energy Policy

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April 6, 2023

VIA EMAIL

Adam Stiers
Manager, Regulatory Applications – Leave to Construct
Regulatory Affairs
Enbridge Gas Incorporated
50 Keil Drive North,
Chatham, ON N7M 5M1

Re: Letter of Opinion – Kennedy Relocation Project (Scarborough Subway Extension)

Dear Mr. Stiers,

The Ontario Ministry of Energy (ENERGY) has completed its review of the consultation undertaken by Enbridge Gas Inc. (Enbridge) with Indigenous communities for the Kennedy Relocation Project (the Project).

ENERGY has reviewed the information provided by Enbridge as well as materials filed with the Ontario Energy Board (OEB). ENERGY also engaged with Indigenous communities to understand any concerns about potential impacts to Aboriginal and treaty rights from the project as well as community feedback about satisfaction with Enbridge's response or proposed mitigation, where appropriate.

This letter is to notify you that, based on this review of materials and our outreach to Indigenous communities, ENERGY is of the opinion that the procedural aspects of consultation undertaken by Enbridge to-date for the purposes of the Ontario Energy Board's Leave to Construct for the Project are satisfactory.

It is expected that Enbridge will continue its consultation activities with the Indigenous communities throughout the life of the project, and that Enbridge will notify ENERGY should any rights-based concerns/issues arise.

If you have any questions about this letter or require any additional information, please contact me at 416-315-8641 or amy.gibson@ontario.ca.

Sincerely,

A handwritten signature in black ink, appearing to read "Amy Gibson". The signature is fluid and cursive, with a long horizontal stroke at the end.

Amy Gibson, Manager
Indigenous Energy Policy, Ontario Ministry of Energy

c: Ontario Energy Board
Ontario Pipeline Coordinating Committee