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DECISION AND ORDER

EB-2022-0248

ENBRIDGE GAS INC.

Application for Leave to Construct Mohawks of the Bay of Quinte and Shannonville Community Expansion Project

BEFORE: **Robert Dodds**
Presiding Commissioner

Michael Janigan
Commissioner

David Sword
Commissioner

September 21, 2023

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1 INTRODUCTION AND SUMMARY

On December 20, 2022, Enbridge Gas Inc. (Enbridge Gas) filed an application with the Ontario Energy Board (OEB) under section 90 of the *Ontario Energy Board Act, 1998*, S.O. 1998, c. 15, (Schedule B) (OEB Act), for an order granting leave to construct approximately 17.3 kilometres of natural gas pipeline and associated facilities in the Tyendinaga Mohawk Territory Reserve No. 38 (Tyendinaga Mohawk Territory) and the community of Shannonville in the Township of Tyendinaga, Hastings County.

The proposed natural gas pipeline facilities (the Project) consist of:

- approximately 2.8 kilometres of Nominal Pipe Size (NPS) 4-inch polyethylene (PE) distribution pipeline
- approximately 14.5 kilometres of NPS 2-inch PE distribution pipeline
- an upgrade to an existing station to accommodate additional customers attachments to the distribution system

According to Enbridge Gas, the Project is needed to supply natural gas to approximately 179 customers consisting of 151 customers in the community of the Mohawks of the Bay of Quinte First Nation and approximately 28 customers in the community of Shannonville in the Township of Tyendinaga. The Project was selected to be eligible to receive funding assistance from Phase 2 of the Ontario Government's Natural Gas Expansion Program (NGEP).¹

Enbridge Gas also applied under section 97 of the OEB Act to the OEB for approval of the form of land-use agreements it offers to landowners for the routing and construction of the Project.

In terms of other OEB approvals required for the Project, in addition to the leave to construct requested in the current proceeding, OEB staff notes that Enbridge Gas holds a 20-year Municipal Franchise Agreement with the Township of Tyendinaga, effective August 23, 2010² and a Certificate of Public Convenience and Necessity for the Township of Tyendinaga.³ In addition, Enbridge Gas has a permit issued under section

¹ Ontario Regulation 24/19: Expansion of Natural Gas Distribution Systems, under Ontario Energy Board Act, 1998, S.O. 1998, c. 15 Sched B, current June 8, 2021

² EB-2010-0183, Schedule C

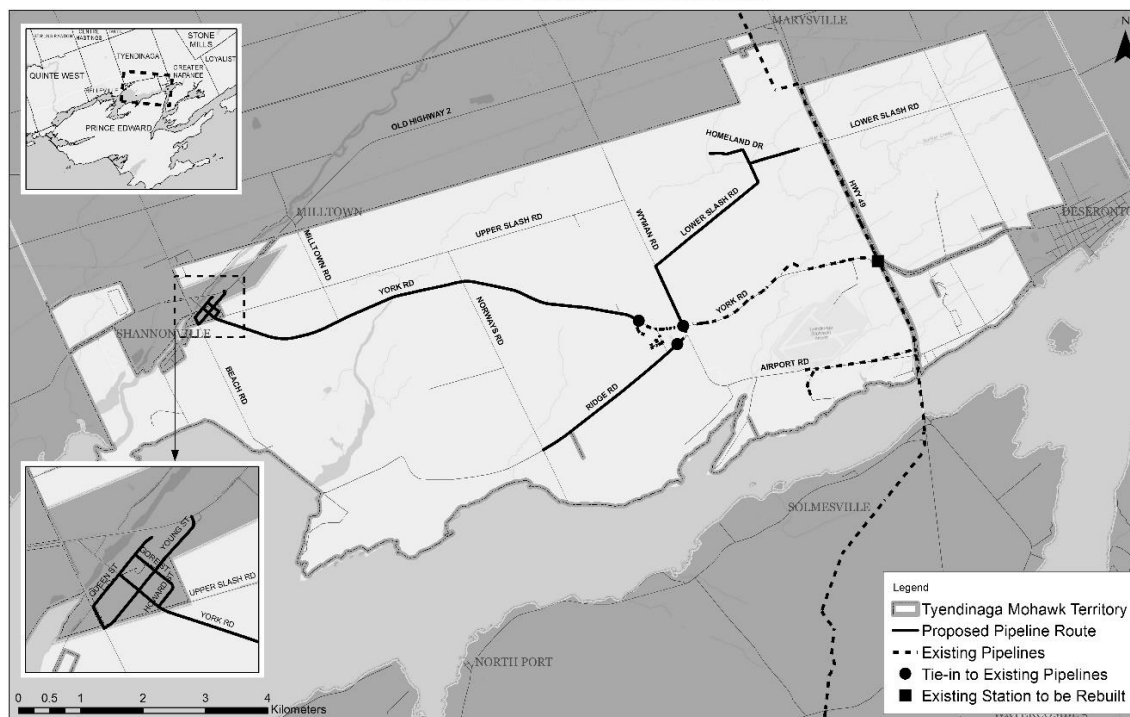
³ EB-2019-0255, Schedule 5E-6(a), 2020-11-30

28(2) of the *Indian Act* related to the location of the proposed facilities in the Tyendingaga Mohawk Territory.⁴

Enbridge Gas proposed to start construction in July 2023, with an in-service date of December 2023.

A general location of the Project is shown on the map below.

MOHAWKS OF THE BAY OF QUINTE & SHANNONVILLE
COMMUNITY EXPANSION PROJECT



The OEB approves Enbridge Gas’s leave to construct application, subject to the conditions of approval contained in Schedule A of this Decision.

The OEB also provides its findings with respect to the appropriate treatment of the Project during the Rate Stability Period (RSP) and at the time of the rebasing following the conclusion of the RSP.

The OEB also approves the forms of agreement for permanent easement and temporary land use proposed by Enbridge Gas.

⁴ EB-2019-0255, Schedule 5E-6(b), 2020-11-30

2 THE PROCESS

The OEB issued the Notice of Hearing (Notice) on February 9, 2023. Environmental Defence, Federation of Rental-housing Providers (FRPO), Mohawks of the Bay of Quinte First Nation and Pollution Probe applied for and were granted intervenor status.

On March 9, 2023, Environmental Defence filed a letter with the OEB proposing to file evidence in the proceeding and described the nature of the evidence and its expected cost.⁵ The proposed evidence was a comparison of the cost-effectiveness of high-efficiency electric cold climate air source heat pumps versus conversion to natural gas service.

On March 16, 2023, in Procedural Order No.1, the OEB set out a process for other parties to propose the filing of intervenor evidence, file submissions on the relevance of the proposed intervenor evidence and for written interrogatories. No other party proposed to file intervenor evidence.

Procedural Order No. 2, issued on March 28, 2023, granted the Mohawks of the Bay of Quinte's request for extension of filing submissions on the relevance of the proposed intervenor evidence from March 28, 2023 to April 4, 2023. OEB staff, Mohawks of the Bay of Quinte, Pollution Probe and Enbridge Gas filed submissions on the relevance of the evidence.

On April 11, 2023, OEB staff, Environmental Defence, FRPO, and Pollution Probe filed written interrogatories on Enbridge Gas's application and evidence. Enbridge Gas requested and was approved an extension to file interrogatory responses on May 2, 2023 (from April 21, 2023).

On April 17, 2023, the OEB issued a decision denying Environmental Defence's request to file evidence.

On April 25, 2023, Environmental Defence filed a motion to review the OEB's decision that denied Environmental Defence's request to file evidence. However, Environmental Defence asked that the OEB not process the motion until the conclusion of the

⁵ Environmental Defence's proposed evidence related to three applications for leave to construct currently before the OEB: Selwyn Pipeline Community Expansion Project, EB-2022-0156; Mohawks of the Bay of Quinte and Shannonville Community Expansion Project, EB-2022-0248; and Hidden Valley Community Expansion Project, EB-2022-0249.

discovery process, in the event that similar evidence would be obtained through discovery.

On April 28, 2023, Environmental Defence filed supplemental interrogatories in response to the OEB's decision to deny its request to file evidence. Enbridge Gas filed a letter stating that it should not be required to respond to the supplemental interrogatories until the OEB determined the need for further discovery.

Enbridge Gas filed responses to the original interrogatories on May 2, 2023, indicating that it would file an updated response to Environmental Defence's interrogatory I.ED.16 part (e) including attachments no later than May 31, 2023. The interrogatory I.ED.16 part (e) asked Enbridge Gas to provide assessments of relative cost-effectiveness of an average customer in the project area converting to an air-source cold climate heat pump versus natural gas.

On May 31, 2023, Enbridge Gas updated its response to I.ED.16 part (e).

On June 5, 2023, Pollution Probe filed supplemental interrogatories for the OEB's consideration. On June 7, 2023, Environmental Defence cited a number of issues it had identified with Enbridge Gas's update to I.ED.16 part (e) that it noted should be explored through supplemental interrogatories.

On June 13, 2023, Enbridge Gas submitted that there was no need for supplemental interrogatories and that it did not have additional information on the cost-effectiveness of high-efficiency electric cold climate air source heat pumps compared to natural gas furnaces for space heating beyond what it included in I.ED.16 part (e). On June 14, 2023, in response to Enbridge Gas, Environmental Defence restated its position on the need for further discovery.

On June 28, 2023, the OEB issued Procedural Order No. 4, which determined that supplemental interrogatories are not required. Instead, the OEB required that Enbridge Gas provide, in its argument-in-chief, responses to certain matters raised in Environmental Defence's correspondence. Procedural Order No. 4 also set the timeline for written submissions and for written reply submission by Enbridge Gas and also set out the following questions for parties to address in submissions⁶:

⁶ The OEB set out these questions in all three applications for leave to construct currently before the OEB: Selwyn Pipeline Community Expansion Project, EB-2022-0156; Mohawks of the Bay of Quinte and Shannonville Community Expansion Project, EB-2022-0248; and Hidden Valley Community Expansion Project, EB-2022-0249.

- In light of section 36.2 of the OEB Act and O. Reg 24/19, what factors must the OEB consider in determining the public interest pursuant to section 96(1)?
- What is the expected impact of take up of other forms of energy delivery to the customers that will be provided access to natural gas through the completion of the project?
- What is the appropriate treatment of the Project after the rate stability period has concluded? Please include treatment if a shortfall of expected Project revenue has occurred.

On June 30, 2023, Environmental Defence filed a letter that stated that the discovery process had concluded and asked that its motion be adjudicated.

On July 10, 2023, the OEB placed the proceeding in abeyance and suspended the dates for final argument, pending the OEB's direction with respect to the June 30, 2023 request by Environmental Defence that its motion be adjudicated.

On July 12, 2023, the OEB issued a letter that stated that the appropriate time to consider any motion is once the hearing panel has issued its final decisions with respect to the three community expansion projects.⁷ The OEB further stated that new information from these decisions would likely be relevant to any motion, and Environmental Defence could decide to revoke, amend, or file a new motion, and the OEB can determine at that time how it would consider any motion.⁸

On July 14, 2023, by way of Procedural Order No. 5 the OEB took the proceeding out of abeyance and revised the schedule for final argument.

On July 25, 2023, Enbridge Gas filed its argument-in-chief. OEB staff and intervenors filed written submissions by August 9, 2023. Enbridge Gas filed a written reply submission on August 23, 2023.⁹

⁷ Selwyn Pipeline Community Expansion Project, EB-2022-0156; Mohawks of the Bay of Quinte and Shannonville Community Expansion Project, EB-2022-0248; and Hidden Valley Community Expansion Project, EB-2022-0249

⁸ EB-2023-0190, OEB Letter, July 12, 2023, page 2

⁹ Environmental Defence, Pollution Probe and Enbridge Gas's submissions related to the Selwyn Pipeline Community Expansion Project, EB-2022-0156; the Mohawks of the Bay of Quinte and Shannonville Community Expansion Project, EB-2022-0248; and the Hidden Valley Community Expansion Project, EB-2022-0249. FRPO's submission only related to this proceeding and the Selwyn Pipeline Community Expansion Project. The Mohawks of the Bay of Quinte First Nation submission only related to this proceeding.

3 DECISION

The OEB's decision is structured to address the following issues:

1. Need for the Project
2. Proposed Facilities and Alternatives
3. Project Cost and Economics
4. Environmental Matters
5. Land Matters
6. Indigenous Consultation
7. Conditions of Approval

OEB's Question on the Public Interest

In Procedural Order No. 4, the OEB set out the following question that it requested be addressed in written submissions:

In light of section 36.2 of the OEB Act and O. Reg. 24/19 (Expansion of Natural Gas Distribution Systems Regulation)¹⁰, what factors must the OEB consider in determining the public interest pursuant to section 96(1)?

OEB staff submitted that the [OEB's Standard Issues List](#) includes the appropriate public interest factors to be considered pursuant to section 96(1) of the OEB Act for leave to construct applications (including for projects funded through the NGEF). OEB staff also noted that the standard issues list was applied by the OEB in its review of Enbridge Gas's leave to construct application for Haldimand Shores, which was also a NGEF project.¹¹

Environmental Defence noted that the Expansion of Natural Gas Distribution Systems Regulation does not require that the OEB apply a different public interest test than the standard test as set out in section 96 of the OEB Act. Environmental Defence stated that the section 96(1) test set out in the OEB Act "... prevails and is binding on the OEB."¹²

Pollution Probe noted that the OEB has flexibility in considering a broad range of public interest factors. Pollution Probe stated that the public interest test should include issues

¹⁰ Ontario Regulation 24/19: Expansion of Natural Gas Distribution Systems, under Ontario Energy Board Act, 1998, S.O. 1998, c. 15 Sched B, current June 8, 2021

¹¹ EB-2022-0088

¹² Environmental Defence, August 9, 2023, Written Submissions, page 5

related to stranded assets, probability of the customer addition and revenue forecast and likelihood that the natural gas customers leave the system for more cost-effective options. Pollution Probe commented that the scope of the public interest test “...must include all reasonable factors available at the time of assessment.”¹³

Mohawks of the Bay of Quinte First Nation noted that the potential impacts of the Project on Aboriginal rights require the Crown’s duty to consult be sufficiently discharged as part of the public interest. Mohawks of the Bay of Quinte First Nation submitted that the duty to consult is a special public interest which must be balanced with a general public interest. Mohawks of the Bay of Quinte First Nation reiterated their strong support for the Project and requested that the OEB in its consideration of public interest should follow the outcome of the duty to consult for the Project.¹⁴

Enbridge Gas’s view is that the NGEF funding for the Project does not remove the requirements to receive the approvals, including the public interest factors the OEB considers when reviewing section 90 leave to construct applications. In Enbridge Gas’s submission the selection of the Project for NGEF funding by the Minister of Energy further supports and adds to the public interest considerations under section 96(1) for the Project.¹⁵

Findings

The OEB approves the Leave to Construct application subject to the conditions set out in Schedule A of this Decision. In doing so, the OEB finds that the Project is in the public interest. The OEB’s considerations in its determination that this Project is in the public interest within the meaning of section 96(1) of the OEB Act involve assessments of Need for the Project, Proposed Facilities and Alternatives, the Project Cost and Economics, Environmental Matters, Land Matters, Indigenous Consultation and Conditions of Approval all of which are addressed in this Decision.

3.1 Need for the Project

In 2019, the Minister of Energy sought advice from the OEB in respect of projects that could be candidates to receive government funding under Phase 2 of the NGEF. The Project was one of 210 proposals for community expansion projects, including four economic development projects, submitted by natural gas utilities to the OEB for consideration in this regard, and included in the *OEB’s Report to the Minister of Energy*,

¹³ Pollution Probe Written Submission, August 9, 2023, pages 7-8

¹⁴ Mohawks of the Bay of Quinte Written Submission, August 9, 2023, page 4

¹⁵ Enbridge Gas Argument -in-Chief, July 25, 2023, page 23 and Reply Submission, August 23, 2023, page 4, paragraphs 5 and 6

*Northern Development and Mines and to the Associate Minister of Energy: Potential Projects to Expand Access to Natural Gas Distribution.*¹⁶

The Project is one of 28 projects across 43 communities selected by the Government to be eligible to receive funding as part of Phase 2 of the NGEF, as specified in the Expansion of Natural Gas Distribution System Regulation.¹⁷

The NGEF provides funding to Ontario natural gas distributors to support the expansion of natural gas to communities that are not currently connected to the natural gas system. NGEF funding acts in a manner similar to a contribution in aid of construction and is designed to bring projects that would otherwise be uneconomic to a Profitability Index (PI) of 1.0 (i.e., make them economic under the OEB's test under E.B.O. 188).

The Expansion of Natural Gas Distribution Systems Regulation sets out the funding mechanism¹⁸ and includes the projects selected to receive the Government funding as well as the amount of funding allocated to each project. Enbridge Gas noted that the Project supports the Government's efforts to help expand access to natural gas in Ontario that do not currently have access to the natural gas system.¹⁹

Enbridge Gas stated that the need for the Project is supported by its forecast of customers attachments until 2032. The table below shows forecasted attachments over ten years starting in 2023.

**Table 1: Forecasted Customer Attachments for the Project-
Application**

Customer Additions	2023	2024	2025	2026	2027	2028	2029	2030	2031	2032	Total Forecasted
Residential	45	40	15	11	8	10	9	10	9	9	166
Commercial/Institutional		5	4	2	1	1					13
Industrial											
Total	45	45	19	13	9	11	9	10	9	9	179

¹⁶ EB-2019-0255, OEB's Report to the Minister of Energy, Northern Development and Mines and the Associate Minister of Energy: Potential Projects to Expand Access to Natural Gas Distribution, December 10, 2020

¹⁷ Ontario Regulation 24/19 Expansion of Natural Gas Distribution Systems, Schedule 2

¹⁸ The Expansion of Natural Gas Distribution Systems Regulation sets the mechanism for sourcing the funding of the eligible expansion projects by requiring that rate-regulated natural gas distributors charge each of their customers \$1 per month.

¹⁹ Enbridge Gas argument-in-chief, EB-2022-0156, EB-2022-0248, EB-2022-0249, July 25, 2023, paragraphs 9 and 10, page 5

Enbridge Gas forecasted a total of 179 attachments. This forecast includes 151 customers in the community of Mohawks of the Bay of Quinte (138 residential and 13 commercial and industrial) and 28 residential customers in Shannonville in the next ten years. Enbridge Gas indicated that the forecasted attachment assumed a 65% capture rate by the end of 2032.

Enbridge Gas's forecast of customers attachments is based on the results of multiple methods to acquire information on the interest for natural gas service in the community: a questionnaire, an Expression of Interest (EOI) door to door survey, and a community outreach program.

Enbridge Gas distributed the questionnaire to determine the interest for converting to natural gas at the Fall Fair on September 9 and September 10, 2022. The questionnaire was also distributed door-to-door to residents and commercial businesses during the week of September 12, 2022.

In addition to the questionnaire, Enbridge Gas has conducted a door-to-door EOI survey between December 14 and 16, 2022. Enbridge Gas noted that EOI results are a precursor to completed attachment agreements. Enbridge Gas received, as of March 30, 2023, 103 EOI responses confirming interest in receiving natural gas services (12 from Shannonville and 91 on the Mohawks of the Bay of Quinte's reserve on the Tyendinaga Mohawk Territory, not including 24 Mohawks of the Bay of Quinte Band owned properties that are also expected to attach).²⁰ Enbridge Gas noted that "...this EOI outcome represents over 60% of the 10-year attachment forecast, exceeding the cumulative year 3 attachment forecast."²¹

To determine the level of interest in natural gas service, Enbridge Gas has also been conducting in-person public information sessions since October 2022.

On January 23, 2023, Enbridge Gas also started ongoing attachment outreach in the Project area and has committed to continue these efforts throughout Project execution.

Enbridge Gas noted that the need for the Project is strongly supported by the Mohawks of the Bay of Quinte Council in meetings with Enbridge Gas and in letters of support by the Mohawks of the Bay of Quinte Chief and the Band Council, which indicated the intent to attach and convert to natural gas all 24 Mohawks of the Bay of Quinte Band

²⁰ Enbridge Gas response to OEB staff interrogatory Exhibit I.STAFF.3 (d) page 3

²¹ Enbridge Gas argument-in-chief, EB-2022-0156, EB-2022-0248, EB-2022-0249, July 25, 2023, page 8, paragraph 16

owned properties.²² The Township of Tyendinaga also expressed the support for the Project in a letter dated May 3, 2022,²³ which states that the support was expressed in a Resolution of the Council on May 2, 2022.

The ten-year growth forecast for customer additions as filed in Enbridge Gas's project proposal for NGEF funding is at Table 2 below.²⁴

Table 2: Forecasted Customer Attachments for the Project- NGEF Proposal

Project Year	1	2	3	4	5	6	7	8	9	10	Total Forecasted
Residential	38	30	18	10	10	4	4	4	3	3	124
Commercial		2									2
Agricultural											
Industrial											1
Total	38	32	18	10	10	4	4	4	3	3	126

Environmental Defence and Pollution Probe sought information with respect to the cost effectiveness of conversion to electric heat pumps relative to conversion to natural gas service.

In response to an Environmental Defence interrogatory, Enbridge Gas filed a study prepared by Guidehouse Inc. (Guidehouse), which provides an assessment of the annual operating costs of high-efficiency electric cold climate air source heat pumps within four Ontario climates at three peak winter design loads. In the same response, Enbridge Gas also filed its own analysis of the customer lifetime cost-effectiveness of high-efficiency electric cold climate air source heat pump configurations compared to natural gas furnace configurations using low-end and high-end upfront cost assumptions.

Enbridge Gas noted that the results of the analysis highlight that conversion to a high-efficiency electric cold climate air source heat pump configuration could be more cost-effective for space heating for some homeowners when compared to a conversion to a natural gas furnace configuration, whereas for other homeowners the natural gas solution would be more cost-effective. The actual upfront cost incurred is a key factor in the overall cost effectiveness.

²² EB-2022-0248, Enbridge Gas Evidence, Exhibit H, Tab 1, Schedule 1, Attachment 6, page 98, Letter, September 15, 2022 by Chief T. Donald Maracle, and Exhibit B, Tab 1, Schedule 1, Attachment 5, page 1, Letter, October 22, 2022 by Chief T. Donald Maracle

²³ EB-2022-0248, Enbridge Gas Evidence, Exhibit B, Tab 1, Attachment 2

²⁴ EB-2019-0255, Enbridge Gas Community Expansion Project Proposal, Schedule 5E-2, Table 3.2

Enbridge Gas also provided a number of disclaimers with respect to its analysis noting that the analysis does not consider water heating components which, if customers chose all-electric configurations, would require additional considerations to be included in the analysis. Additionally, Enbridge Gas does not have information regarding high-efficiency electric cold climate air source heat pumps with respect to summer space cooling.²⁵

Environmental Defence provided a general critique of the quality of the heat pump cost analysis completed by Enbridge Gas and its consultant Guidehouse. Environmental Defence challenged the assumptions used in the assessments and models (e.g., monthly customer charges, extra line charge, increases in federal carbon charges, annual cooling costs, etc.).

Environmental Defence and Pollution Probe expressed their view that heat pumps could actually be a cheaper alternative to natural gas service, and that Enbridge Gas's customer forecast could therefore be overstated (which would adversely impact the economic feasibility of the Project).

Pollution Probe submitted that the evidence supporting the forecast of customer attachments is insufficient.²⁶ Pollution Probe submitted that the need for the Project was supported by "limited survey data" and that information on other energy options, Integrated Resource Planning (IRP) alternatives and Demand Side Management (DSM) programs should have been included in the surveys when determining the prospective need for the natural gas service to be provided by new capital investments in the pipelines and associated facilities.²⁷

OEB staff submitted that, based on the evidence on the record, Enbridge Gas has established the need for the Project. OEB staff submitted that the need for the Project is supported by the survey results. OEB staff observed that Enbridge Gas used multiple methods to establish the ten-year forecast of customer attachments and is committed to continue engaging in outreach activities to ensure forecasted customer attachments are realized. In OEB staff's view Enbridge Gas's market survey results suggest that there is sufficient interest in natural gas conversion, in the relevant communities, to allow Enbridge Gas to achieve its customer connection forecast.

In its reply submission, Enbridge Gas stated that the surveys it conducted to forecast the customer attachments are appropriate and "...a sound basis on which to establish

²⁵ EB-2022-0248, Enbridge Gas updated interrogatory responses, May 31, 2023, Exhibit I.ED.16 part (e) including attachments

²⁶ Pollution Probe, Written Submission, August 9, 2023, page 8

²⁷ Pollution Probe, Written Submission, August 9, 2023, page 14

the attachment forecasts”. Enbridge Gas noted that the surveys informed the respondents that the electric heat pumps and availability of government incentives.²⁸

Enbridge Gas disagreed with the assertion of Environmental Defence and Pollution Probe, as set out in their submissions, that the forecast of the attachments is not reliable because Enbridge Gas did not consider that the customers may switch to other forms of energy in the future. Enbridge Gas submitted that there are uncertainties and many variables “...at play as energy transition evolves.”²⁹

Findings

The OEB finds that Enbridge Gas has established the need for the Project.

The OEB accepts the letters of support for the Project filed on behalf of the target communities as providing one measure of the communities’ interest in receiving natural gas service. As well, Enbridge Gas’s outreach regarding the potential percentage take-up of natural gas service in the community including in the market surveys filed with its application provide additional support for a conclusion of need for the Project.

Also of importance to the assessment of project need is the genesis of this expansion project, as well as other projects that are being proposed is to enable natural gas service to unserved communities. These proposed projects obtain their potential viability because of the passage of *Access to Natural Gas Act 2018*, provisions of which are incorporated in section 36.2 of the OEB Act.

Traditional utility regulatory principles provide that costs should be allocated proportionately to customers that have caused the costs to occur. This is reflected in the OEB’s decision in the OEB’s Generic Proceeding on Community Expansion³⁰ and, more specifically in the rejection of a proposed approach that would result in existing customers subsidizing an uneconomic community expansion:

The other chief measure proposed to enable more expansions was a subsidy from existing customers. The OEB has determined that this is not appropriate. As noted above, the economic benefits of expansion to many communities are much greater than the costs. This approach would also distort the market to the detriment of existing energy services that compete with gas, such as propane, and new gas distributors who do not have an existing customer base. Under these circumstances, it would not be

²⁸ Enbridge Gas, Reply Submission, August 23, 2023, page 11, paragraph 24

²⁹ Enbridge Gas, Reply Submission, August 23, 2023, page 13, paragraph 29

³⁰ EB-2016-0004

appropriate to require existing customers to pay for a portion of any expansion. The communities that receive the benefit will be the ones paying the costs.³¹

The *Access to Natural Gas Act 2018* and O. Reg. 24/19 that was promulgated following its passage enabled an exception to the established regulatory principles as cited above. This exception advanced the goal of rate protection for customers in communities where the gas distributor has made a qualifying investment providing those customers with a rate reduction for natural gas service, which was designed to ensure that the revenues of the project would match the costs of the project (net of the grant) and thereby avoid any cross-subsidization from existing customers.

The gas distributor, in this case Enbridge Gas, would then be compensated for such rate reduction by way of a payment from the Independent Electricity System Operator (IESO) in the amounts set out in O. Reg. 24/19, and funded from a surcharge to all natural gas customer accounts in the amount of \$1 per month added to fixed monthly customer charge. The payment to the gas distributor operates in a similar manner to a contribution in aid of construction in specific project amounts administered by the IESO.

In addressing the question of need that is integral to a finding of the Project's advancement of the public interest, the OEB notes the importance assigned to the issue of the expansion of natural gas service to unserved communities that is demonstrated by the passage and promulgation of legislation that enables it to occur.

This importance is also shown in the necessity of the departure from the traditional principle against cost subsidization by utility customers that did not cause the costs to be incurred by the gas distributor. The OEB must conclude that the Ontario government has identified a public need and, provided that a project is shown to be economic within the financial parameters set out in the legislation, meets the requirements of the public interest criterion in section 96(1) of the OEB Act.

The OEB accepts Enbridge Gas's customer forecast and associated revenues and is satisfied that, with support from Natural Gas Expansion Program funding as well as the System Expansion Surcharge (SES), the project can achieve a PI of 1.0 and is economic.

³¹ EB-2016-0004, Decision with Reasons, November 17, 2016, page 4

3.2 Proposed Facilities and Alternatives

Regarding the facilities alternatives, Enbridge Gas noted that the Project has been selected for funding by the Government of Ontario as part of Phase 2 of the NGEF, to provide access to natural gas services in the community of the Mohawks of the Bay of Quinte First Nation and the community of Shannonville in the Township of Tyendinaga. Enbridge Gas stated that a description of the Project (including preliminary facility design and estimated Project costs) was submitted to the OEB and the Government of Ontario as part of Phase 2 of the NGEF. As such, Enbridge Gas did not assess other facility alternatives.

Regarding non-facility alternatives, Enbridge Gas applied the IRP Binary Screening Criteria and determined that the Project meets the definition of a community expansion project as defined in the IRP Framework.³² According to the IRP Framework, no IRP evaluation is required for a community expansion project.

OEB staff submitted that the Project is the best alternative to meet the stated need.

FRPO submitted that technical pipeline parameters for the Project as presented in the application do not meet the requirements of the OEB's Natural Gas Facilities Handbook (the Handbook).³³ Enbridge Gas responded that its application met the requirements of the Handbook and that the OEB determined that the application was complete at the onset of the proceeding.³⁴ FRPO proposed that the OEB should approve the Project with a pipeline size of NPS 2 instead of for NPS 4.³⁵ Enbridge Gas responded that this proposal is not acceptable and explained that the NPS 2 pipeline would not support the minimum allowable pressure for a 100% attachment rate of the Project.³⁶

Findings

Based on Enbridge Gas's evidence, the OEB finds that the Project is the best alternative to meet the need. This conclusion is additionally supported by several factors.

³² EB-2020-0091, Decision and Order, Enbridge Gas Inc. Integrated Resource Framework Proposal, July 22, 2021, Appendix A. and page 48. The IRP Framework states that, "If a facility project has been driven by government legislation or policy with related funding explicitly aimed at delivering natural gas into communities, then an IRP evaluation is not required."

³³ FRPO, Written Submission, August 9, 2023, page 2

³⁴ Enbridge Gas, Reply Submission, August 23, 2023, page 17, paragraph 41

³⁵ FRPO, Written Submission, August 9, 2023, page 2

³⁶ Enbridge Gas, Reply Submission, August 23, 2023, page 17, paragraph 42

The Project is enabled by the NGEP. The NGEP is directed to providing potential funding for the extension of natural gas service. The OEB's implementation of the NGEP has been responsive to the ambit of the program.

In Enbridge Gas's IRP Framework proceeding,³⁷ the OEB approved an IRP process for Enbridge Gas that required an evaluation and comparison of options to meet energy supply needs.

To meet the Ontario Government's NGEP objective of bringing service to unserved communities, the OEB provided that the consideration of such IRP options or alternatives was not required for NGEP approved projects that have been designated in O. Reg. 24/19. The OEB's decision in this proceeding is in accordance with its approved IRP process.

Finally, the OEB accepts Enbridge Gas's submission concerning the pipeline size.

3.3 Project Cost and Economics

The total estimated Project cost is approximately \$10.7 million. The total pipeline costs are approximately \$8.9 million. The total ancillary costs of approximately \$1.8 million comprise of station upgrades and services related costs. The contingency included in the estimated costs is set at 10%, which is, in Enbridge Gas's submission, consistent with the level of contingency set for other projects it proposed for NGEP funding.

The Project's current estimated costs are moderately higher than the projected costs that were presented to the OEB when it initially reviewed potential projects for NGEP funding.³⁸ The table below³⁹ shows a comparison between the current and previous Project costs estimates.

³⁷ EB-2020-0091

³⁸ EB-2019-0255

³⁹ Enbridge Gas response to the OEB staff interrogatories, May 2, 2023, Exhibit I. STAFF.3 (a) and (b)

Table 3: Estimated Project Costs (Application vs. NGEF Proposal)

Item No	Description	Table 1 Project Costs (\$CAD)			Project Proposal (EB-2019-0255) (\$CAD)		
		Pipeline	Ancillary	Total	Pipeline	Ancillary	Total
1.0	Material	123,571	30,100	153,671	148,386	5,631	154,017
2.0	Labour and Construction	6,646,356	1,578,430	8,224,786	5,813,995	930,251	6,744,246
3.0	Outside Services	1,161,990	17,300	1,179,290	646,195	9,530	655,726
4.0	Lands, Permits, Approvals and Consultations	21,403		21,403	58,233		58,233
5.0	Contingency	801,919	164,266	966,185	1,314,907	23,166	1,338,073
6.0	SUB TOTAL	8,755,239	1,790,097	10,545,335	7,981,715	968,579	8,950,294
7.0	Interest During Construction	88,329	4,943	93,272	80,415	4,098	84,513
8.0	Direct Overheads	65,862	11,025	144,895	113,400	40,471	153,871
9.0	Total Project Costs	8,909,430	1,806,065	10,715,494	8,175,530	1,013,147	9,188,678

The total estimated costs presented in this application are approximately \$1.5 million higher than the total costs of \$9.2 million in the original project proposal provided in the OEB's proceeding on Potential Projects for NGEF Funding. Enbridge Gas noted that the \$1.5 million cost increase is "...attributed primarily to the completion of the project design and schedule."⁴⁰ Enbridge Gas explained that the increase in the cost estimates is due to: (a) the identified need for additional environmental work and land acquisition due to larger station footprint; (b) increase in total potential customer attachments from 126 to 179; and (c) discovery of rocks along the pipeline route that will require additional construction costs.⁴¹

The NGEF funding provided for the Project is approximately \$8.1 million.⁴² The \$8.1 million of NGEF funding is treated similarly to a contribution in aid of construction. Therefore, the total capital cost of the Project, net of NGEF funding, is approximately \$2.6 million.⁴³

In addition to NGEF funding, Enbridge Gas intends to charge a SES of \$0.23 / m³ to the customers attaching to the Project for a term of 40 years to assist with the economic feasibility of the Project, which is consistent with Enbridge Gas's application for a harmonized SES (Harmonized SES Proceeding).⁴⁴

⁴⁰ EB-2022-0248, Enbridge Gas Evidence, Exhibit E, Tab 1, Schedule 1, paragraph 3, page 1

⁴¹ Enbridge Gas response to OEB staff interrogatories May 2, 2023, Exhibit I.STAFF.3 (a)

⁴² Ontario Regulation 24/19, Expansion of Natural Gas Distribution Systems, Schedule 2

⁴³ EB-2022-0248, Enbridge Gas Evidence, Exhibit E, Tab 1, Schedule 1 paragraph 9, page 3

⁴⁴ EB-2020-0094

According to Enbridge Gas, the Project is economically feasible, having a PI of 1.0. Enbridge Gas indicates that without the NGEF funding and SES, the PI for the Project is 0.22, (or 0.35 if an SES were applied).⁴⁵ The PI of 1.0 is based on the most up-to-date estimated capital costs and forecasted revenues and is inclusive of the NGEF funding and revenues associated with SES charges. The original PI of the Project as filed in the OEB's proceeding on Potential Projects for NGEF Funding was also 1.0 (inclusive of NGEF funding and SES revenues).⁴⁶

Enbridge Gas noted that the primary factors that result in an unchanged PI for the Project is that while the capital costs have increased these increased costs are offset by higher forecasted customer attachments, higher forecasted customer rates and lower forecasted property taxes.

Enbridge Gas stated that, consistent with the OEB's findings in the Harmonized SES proceeding,⁴⁷ after the Project is placed into service, Enbridge Gas will apply a ten-year RSP during which Enbridge Gas will bear the risk of the Project customer attachment and capital expenditure forecast. Enbridge Gas noted that in its 2024 rebasing application,⁴⁸ it has included the original forecasted customer additions and capital cost of the Project that underpinned the NGEF funding proposal.

In Procedural Order No. 4, the OEB set out the following question to be addressed in written submissions:

What is the appropriate treatment of the Project after the rate stability period has concluded? Please include treatment if a shortfall of expected Project revenue has occurred.

OEB staff submitted that Enbridge Gas should bear the risk of any revenue shortfall during the ten-year RSP associated with the customer attachment and capital cost forecasts as this approach is in accordance with the OEB's findings in the Harmonized SES proceeding.⁴⁹

OEB staff noted that, after the RSP, the OEB will have the opportunity to review the actual project costs and revenues and determine the appropriate amounts to use for ratemaking purposes. OEB staff submitted that all options will be available to the OEB

⁴⁵ EB-2022-0248, Enbridge Gas Evidence, Exhibit E, Tab 1, Schedule 1, Attachment 1: Mohawks of the Bay of Quinte, In-Service Date: December 1, 2023 Economic Feasibility Parameters and Results

⁴⁶ EB-2019-0255, Enbridge Gas Community Expansion Project Proposal, Schedule 5, filed in response to OEB staff interrogatories EB-2022-0248, Exhibit I.STAFF.3, Attachment 1, page 15 of 44

⁴⁷ EB-2020-0094, Decision and Order, November 5, 2020, pages 8-9

⁴⁸ EB-2022-0200

⁴⁹ EB-2020-0094, Decision and Order, November 5, 2020, page 9

in the rebasing following the conclusion of the RSP with respect to the appropriate rate treatment of potential capital cost overruns and/or lower than forecast customer attachments/volumes (and associated revenues). OEB staff submitted that Enbridge Gas is not guaranteed total cost recovery if actual capital costs and revenues result in an actual PI below 1.0.

OEB staff noted that Enbridge Gas's proposal to charge the SES to newly attached customers over a term of 40 years is in accordance with the OEB's findings in the Harmonized SES proceeding.⁵⁰ OEB staff also noted that specific approval of the SES charge is not required as was referenced by the OEB in its findings with respect to the Haldimand Shores community expansion leave to construct application.⁵¹

Enbridge Gas stated that at the time of rebasing, following the conclusion of the RSP, it will file the actual costs and revenues of the Project with the OEB for consideration of inclusion in rates.

Environmental Defence and Pollution Probe filed similar submissions. FRPO stated that it fully supported and adopted Environmental Defence submissions on the issues of project cost and economics.⁵²

These intervenors took the position that Enbridge Gas, should bear the financial risks both during the ten-year RSP and throughout the 40-year amortization period, not current or prospective customers, should the Project be approved.⁵³ Environmental Defence further argued that the standard prudence review at the time of rebasing following the RSP is not sufficient to prevent existing customers from bearing the cost risk. Environmental Defence submitted that it is essential that the OEB state today, up front, that Enbridge will bear the risk for any revenue shortfalls.⁵⁴

Alternatively, Environmental Defence and Pollution Probe submitted that the OEB could require Enbridge Gas to file revised evidence on the revenue forecast for the Project. Environmental Defence asked that the revised filings address the scenario that customers adopt heat pumps instead of natural gas including the scenario that attached natural gas customers later decide to switch to another energy source and leave the natural gas system.⁵⁵

⁵⁰ EB-2020-0094, Decision and Order, November 5, 2020

⁵¹ EB-2022-0088, Decision and Order, August 18, 2022, pages 9-10

⁵² FRPO, Written Submission, August 9, 2023, page 3

⁵³ Environmental Defence, August 9, 2023, Written Submissions, page 13; and Pollution Probe, August 9, 2023, Written Submissions, page 6

⁵⁴ Environmental Defence, August 9, 2023, Written Submissions, page 13

⁵⁵ Environmental Defence, August 9, 2023, Written Submissions, page 13; and Pollution Probe, August 9,

Environmental Defence and Pollution Probe also submitted that, if the application is approved, the OEB should direct Enbridge Gas to include in its marketing materials the costs comparison of switching to heat pumps versus natural gas including any annual operating cost comparisons in order to protect prospective customers.⁵⁶

Enbridge Gas did not agree with Environmental Defence and Pollution Probe that the standard prudence review of actual costs and revenues at the time of the rebasing following the RSP is not sufficient. Enbridge Gas maintained that the review of actual costs and revenues and determination of the appropriate recovery should be at the time of rebasing as the OEB ruled in the decision on the Haldimand Shores Community Expansion Project.⁵⁷

Enbridge Gas also disagreed with the arguments made by Environmental Defence and Pollution Probe that the OEB should direct Enbridge Gas to provide customers with information on the comparison of annual operating costs of heat pumps versus natural gas. Enbridge Gas explained that it does not normally provide consumers the information on non-natural gas energy solutions and that such information should be conveyed to consumers by providers of those forms of energy solutions including heat pumps.⁵⁸

Findings

Project Costs

The OEB finds that the updated total estimated cost of the Project is reasonable in light of the forecast revenues for the Project, and notes that the contingency budget is aligned with the contingency budget for other similar community expansion projects.

Economics

The OEB notes that the evidence and submissions in this proceeding have dealt extensively with the potential installation of electric heat pumps in terms of potential customer cost savings and their possible adoption by the communities to be served by Enbridge Gas. Such take-up might occur either before or after the extension of natural gas service to the communities. In turn, the effect of such take-up is addressed as a potential risk to project viability.

2023, Written Submissions, page 5

⁵⁶ Environmental Defence, August 9, 2023, Written Submissions, page 3; and Pollution Probe, August 9, 2023, Written Submissions, page 5

⁵⁷ Enbridge Gas, Reply Submission, August 23, 2023, pages 13-14, paragraph 30

⁵⁸ Enbridge Gas, Reply Submission, August 23, 2023, page 14, paragraph 31

The OEB has itself recognized the potential customer energy savings associated with the installation of such heat pumps and their favourable impact on lowering the consumption of natural gas. The OEB notes that its decision regarding Enbridge Gas's DSM program makes Enbridge Gas, in cooperation with the federal government's Greener Homes Initiative, the principal delivery agent for the incentivized installation of heat pumps.⁵⁹

The approval of the Leave to Construct requested in this application does not restrict customers in these communities from obtaining heat pumps either before or after an extension of natural gas service to these communities. Nor does it remove Enbridge Gas's DSM program responsibilities in these communities.

Enbridge Gas's evidence supporting the economic viability of the Project was largely the positive response to its outreach and solicitation provided by the market survey results. The extrapolation of such results to the financial metrics of the proposed expansion is a key factor in that requisite economic assessment.

The OEB agrees with Enbridge Gas that the decision of individual consumers to opt for natural gas service is based on "all relevant factors including financial and non-financial considerations relevant to their geographic location, heating need, housing and electrical standard."⁶⁰ In the result, notwithstanding the potential benefits that heat pumps may afford to customers in general, the OEB finds that the best evidence in this proceeding that addresses those factors for the Project is provided by the willingness of potential customers to obtain natural gas service demonstrated by the market surveys submitted.

The OEB also agrees with Enbridge Gas's submission that:

Policy changes, growing electricity costs to modernize and renew the grid and build out supply, technological change, and economic cycles could change the economic relationship between electric heat pumps and natural gas in the future.⁶¹

This uncertainty, however, may encompass a range of scenarios, both favourable and unfavourable, to the provision of natural gas and the robustness of its future use. The

⁵⁹ Decision and Order, EB-2021-0002, Enbridge Gas Inc. Application for Multi-Year Natural Gas Demand Side Management Plan (2022 to 2027), November 15, 2022, page 28

⁶⁰ Reply Submission Enbridge Gas, August 23, 2023, paragraph 23

⁶¹ Reply Submission Enbridge Gas August 23, 2023, paragraph 29

OEB, in approving Enbridge Gas's application for leave to construct, must ensure that the interests of all Enbridge Gas's customers are also protected.

One pillar of that protection is the existence of the ten-year RSP in which Enbridge Gas is responsible for any shortfall in revenues to meet its revenue requirement. This provides some insulation against possible under achievement of its customer sign-up estimates or projected natural gas consumption.

In the first rebasing following the expiration of the RSP, the OEB will review the actual project costs and revenues and determine what amount should be recognized in rates.

The subsidy or contribution to the expansion of service provided in O. Reg. 24/19 is specific and limited and does not abrogate the general principles of utility cost allocation going forward. As noted in the final submissions of OEB staff, all options will be available to the OEB in the rebasing following the conclusion of the RSP with respect to the appropriate rate treatment of potential capital cost overruns and/or lower than forecast customer attachments/volumes (and associated revenues). Enbridge Gas is not guaranteed total cost recovery if actual capital costs and revenues result in an actual PI below 1.0.

The OEB cannot bind a future panel determining that future application to be made by Enbridge Gas post-RSP. However, the OEB notes that if Enbridge Gas's estimate of customers likely to take up gas service is correct, existing natural gas customers will have contributed approximately \$45,000 per customer served by the Project to assist in the expansion of gas in these communities. There is a reasonable expectation that such customers will not be called upon to provide a further subsidy to compensate for post-RSP revenue shortfalls.

As previously stated, the OEB's Decision in this proceeding is in keeping with the existing legislation and the OEB's own policies and decisions for implementation. The OEB notes that the development of a future strategy to meet Ontario's energy needs is an ongoing process.⁶² The OEB will be responsive to the results of that process that may impact its role in the future development of facilities and their regulation.

⁶² In the context of policy considerations, the Electrification and Energy Transition Panel, led by David Collie, was established for the purpose of examining Ontario's energy needs and to help determine what energy options are available to address the province's needs. Specifically, the panel was charged with providing "essential advice and expertise on how to co-ordinate long-term energy planning, considering growing energy demand, emerging technologies, low-carbon fuel switching, sustainability and affordability. <https://www.ontario.ca/page/electrification-and-energy-transition-panel#section-0>

3.4 Environmental Matters

Enbridge Gas retained Dillon Consulting Ltd. (Dillon Consulting) to complete an Environmental Report: Mohawks of the Bay of Quinte and Shannonville Community Expansion Project (Environmental Report). The Environmental Report and the consultation process were conducted in accordance with the OEB's *Environmental Guidelines for Location, Construction and Operation of Hydrocarbon Pipelines and Facilities in Ontario* (OEB Environmental Guidelines). The Environmental Report assessed the existing bio-physical and socio-economic environment in the study area, the alternative routes, the preferred route, conducted public consultation, conducted impacts assessment and proposed mitigation measures to minimize the impacts.

Enbridge Gas sent the Environmental Report to the Mohawks of the Bay of Quinte First Nation on July 20, 2022, and to other potentially impacted Indigenous communities on August 15, 2022. On August 12, 2022, Enbridge Gas sent the Environmental Report for review to the Ontario Pipeline Coordinating Committee (OPCC) members.

The evidence includes correspondence and tracking of communication with the OPCC up to April 6, 2023. Enbridge Gas confirmed in response to interrogatories dated May 2, 2023 that there are no outstanding issues or concerns resulting from the OPCC review.⁶³

Pursuant to the *Ontario Heritage Act*, Enbridge Gas completed a Cultural Heritage Assessment Report (CHAR) for the Project. On April 11, 2023, the Ministry of Citizenship and Multiculturalism (MCM) confirmed that the CHAR is acceptable and that it had no concerns.⁶⁴

Enbridge Gas completed the Stage 1 Archaeological Assessment (AA) on July 20, 2022. The stage 2 AA draft report was also completed and submitted to Indigenous communities for review. Enbridge Gas received comments from the Hiawatha First Nation and the Mohawks of the Bay of Quinte First Nation on the historical context of the Stage 2 AA. Enbridge Gas incorporated the comments from the Hiawatha First Nation and stated that it will incorporate the comments from Mohawks of the Bay of Quinte First Nation into the Stage 2 AA Report. Enbridge Gas confirmed it would submit a combined Stage 1 AA Final Report and Stage 2 AA Final Report to the MCM for review and approval prior to the start of construction.⁶⁵

⁶³ Enbridge Gas response to OEB staff interrogatories I.STAFF.4 (a) Attachment 1 and (b) page 2

⁶⁴ Enbridge Gas response to OEB staff interrogatory I.STAFF.6

⁶⁵ Enbridge Gas response to OEB staff interrogatory I.STAFF.7

Enbridge Gas noted that the Project will be constructed in accordance with Enbridge Gas's Construction and Maintenance Manual and the recommendations in the Environmental Report.

Prior to construction, Enbridge Gas will develop an Environmental Protection Plan to specify for implementation mitigation measures identified in the Environmental Report and in the consultation with the OPCC and regulatory agencies. Enbridge Gas will communicate the Environmental Protection Plan to the construction contractor for implementation.⁶⁶

Enbridge Gas also provided the status and expected timing for receiving all permits and approvals.⁶⁷ Enbridge Gas stated that it did not anticipate any delays in processing the permits and approvals.

OEB staff submitted that Enbridge Gas has completed the Environmental Report in accordance with the OEB's Environmental Guidelines. OEB staff expressed no concerns with the environmental aspects of the Project, given that Enbridge Gas is committed to implementing the mitigation measures set out in the Environmental Report and to completing the Environmental Protection Plan prior to the start of construction. OEB staff noted that the Standard Conditions of Approval for leave to construct require Enbridge Gas to obtain all necessary approvals, permits, licences, and certificates needed to construct, operate and maintain the proposed Project and ensure that the environmental impacts of the Project are addressed, mitigated and monitored.⁶⁸

Pollution Probe raised concerns regarding methods of construction where bedrock is encountered along the pipeline route and noted potential risks related to well water quality and quantity.⁶⁹ Enbridge Gas responded that the appropriate construction methods will be used where bedrock is encountered and noted that a voluntary water well quantity and quality monitoring program was implemented for wells within 100 metres of the proposed pipeline.⁷⁰

Findings

The OEB finds that Enbridge Gas completed the Environmental Report in accordance with the OEB's Environmental Guidelines and committed to implement the mitigation measures set out in the Environmental Report and to complete the Environmental

⁶⁶ Enbridge Gas Evidence Exhibit F, Tab 1, Schedule 1, paragraphs 11 and 2, pages 3 and 5

⁶⁷ Enbridge Gas response to interrogatory I.STAFF.8 (a) Table 1: Status of Permits/Approvals

⁶⁸ OEB Staff Submission, August 9, 2023, page 18

⁶⁹ Pollution Probe, August 9, 2023, Written Submissions, page 16

⁷⁰ Enbridge Gas Reply Submission, August 23, 2023, pages 16-17, paragraphs 39-40

Protection Plan prior to the start of construction. As such, the OEB is satisfied with the environmental aspects of the Project.

The OEB also notes that the Standard Conditions of Approval for leave to construct require Enbridge Gas to obtain all necessary approvals, permits, licences, and certificates needed to construct, operate and maintain the proposed Project.

3.5 Land Matters

Enbridge Gas filed the forms of permanent and temporary agreements it will offer to any affected landowners. The forms of the agreements are the same forms the OEB approved for use in Enbridge Gas's Haldimand Shores Community Expansion Project.⁷¹

Regarding the station rebuild, Enbridge Gas identified a potential need for a permanent easement or land acquisition within Tyendinaga Mohawk Territory Reserve No. 38. The station rebuild will likely require an extension of the existing station footprint and additional land. The exact permanent land requirements will be determined prior to finalizing the station design. According to Enbridge Gas, no concerns about granting the permanent land rights for the station rebuild have been expressed in discussions with the Mohawks of the Bay of Quinte First Nation.⁷²

Enbridge Gas stated that no permanent land rights are anticipated to be required for the portion of the Project in Shannonville in the Township of Tyendinaga area.⁷³

Temporary working areas may be required along the proposed route where the road allowance is too narrow or confined to facilitate construction. These areas will be identified prior to construction and the agreements for temporary working rights will be negotiated where required and the approved form of temporary land use agreement will be offered to the affected landowners.

OEB staff submitted that the OEB should approve the proposed forms of temporary land use agreement as it was previously approved by the OEB.⁷⁴

⁷¹ EB-2022-0088, Exhibit F-1-1, Attachment 1 and Attachment 2

⁷² Enbridge Gas response to interrogatory I.STAFF.9(a)

⁷³ Enbridge Gas response to interrogatory I.STAFF.9(b)

⁷⁴ EB-2022-0088

Findings

The OEB approves the proposed forms of permanent easement and temporary land use agreements.

The OEB notes that while it is not expected that permanent easements will be required for the Project, the approved form of permanent easement agreement provides Enbridge Gas sufficient flexibility should a permanent easement later be required.

3.6 Indigenous Consultation

In accordance with the OEB's Environmental Guidelines, on February 16, 2022, Enbridge Gas contacted the Ministry of Energy in respect to the Crown's duty to consult related to the Project. The Ministry of Energy, by way of a letter, delegated the procedural aspects of the Crown's duty to consult for the Project to Enbridge Gas on April 2, 2022 (Delegation Letter). In the Delegation Letter, the Ministry of Energy identified the following Indigenous communities that Enbridge Gas should consult with respect to the Project:

- Mohawks of the Bay of Quinte First Nation
- 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
- Kawartha Nishnawbe
- Huron-Wendat Nation

Direct notice of this proceeding was provided to all of these Indigenous communities, as well as the Métis Nation of Ontario. The Mohawks of the Bay of Quinte First Nation applied for and was granted intervenor status in the proceeding.

In the Delegation letter, the Ministry of Energy noted its view that the consultation required is at the "low" end of the spectrum for the Project with the exception of the deeper level of consultation required with the Mohawks of the Bay of Quinte First Nation.⁷⁵

⁷⁵ Enbridge Gas Evidence (EB-2022-0246) Exhibit H, Tab 1, Schedule 1 and Attachment 2: Delegation Letter

As required by the Ministry of Energy's Indigenous consultation protocol and the OEB Environmental Guidelines, Enbridge Gas prepared the Indigenous Consultation Report (ICR) describing and documenting the Indigenous consultation it has been conducting. The ICR is part of Enbridge Gas's evidence in support of the Project. In response to interrogatories,⁷⁶ Enbridge Gas updated ICR the logs on Indigenous consultation activities between the date of filing the ICR and April 13, 2023. Enbridge Gas also summarized comments by the engaged Indigenous communities as well as Enbridge Gas's responses to these comments. The updates included records of communication between the Ministry of Energy and Enbridge Gas.

The Ministry of Energy provided Enbridge Gas with a Letter of Opinion regarding the sufficiency of consultation regarding the Project on April 25, 2023. In the Letter of Opinion the Ministry of Energy stated 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."⁷⁷

OEB staff submitted 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 observed that Enbridge Gas appears to be cooperating with the Indigenous communities during the consultation process and that it made certain commitments to the Indigenous communities related to the Project. OEB staff noted that the Project is also strongly supported by the Mohawks of the Bay of Quinte Council.

OEB staff also noted that the Ministry of Energy expressed its opinion that the procedural aspects of the consultation undertaken by Enbridge Gas to date for the Project were satisfactory.

The Mohawks of the Bay of Quinte First Nation submitted that the duty to consult had been discharged, and strongly encouraged the OEB to approve the Project.⁷⁸

Findings

The OEB is satisfied that Enbridge Gas followed the OEB's Environmental Guidelines with respect to Indigenous Consultation and finds that the duty to consult has been adequately discharged.

⁷⁶ Enbridge Gas response to OEB staff interrogatory Exhibit I.STAFF.10 (a) page 2 and attachment 1.

⁷⁷ Enbridge Gas response to interrogatory I.STAFF.10 Attachment 4: Letter of Opinion

⁷⁸ Mohawks of the Bay of Quinte final submission, page 8.

This finding is supported by the evidence on the record of the proceeding, as well as the Ministry of Energy's Letter of Opinion, dated April 25, 2023, stating that it is satisfied that Enbridge Gas's efforts to date are satisfactory to discharge the Crown's Duty to Consult with respect to the Project.

The OEB notes that the Project is strongly supported by the Mohawks of the Bay of Quinte Council on behalf of the Mohawks of the Bay of Quinte community.

The OEB expects that Enbridge Gas will continue its consultation activities with all affected Indigenous communities throughout the life of the Project.

3.7 Conditions of Approval

Section 23 of the OEB Act permits the OEB, when making an order, to impose such conditions as it considers appropriate. Enbridge Gas did not identify any additional or revised conditions to the OEB's Standard Conditions of Approval for leave to construct applications.⁷⁹

Environmental Defence submitted that the OEB's approval of the Mohawks of the Bay of Quinte project should be consistent with any direction the OEB may render for the Selwyn and Hidden Valley projects, regarding the risks of revenue shortfalls and a requirement that Enbridge Gas provide to all customers marketing materials with information on the operating costs of alternative heating options.⁸⁰

Enbridge Gas submitted that the Project be approved without any additional conditions or directions proposed by the intervenors.

Findings

The OEB approves the Project subject to Enbridge Gas's compliance with the Conditions of Approval attached as Schedule A to this Decision.

⁷⁹ The link to the OEB Standard Conditions for section 90 applications was provided in the notice of application together with the Standard Issues List for section 90 applications.

⁸⁰ Environmental Defence, Written Submissions, August 9, 2023, pages 13-14

4 ORDER

THE ONTARIO ENERGY BOARD ORDERS THAT:

1. Enbridge Gas Inc. is granted leave, pursuant to section 90(1) of the OEB Act, to construct the Project in the Tyendinaga Mohawk Territory Reserve No. 38 and the community of Shannonville in the Township of Tyendinaga, Hastings County as described in its application.
2. Pursuant to section 97 of the OEB Act, the OEB approves the form of Easement Agreement and Form of Temporary Land Use Agreement that Enbridge Gas Inc. has offered or will offer to each owner of land affected by the Project.
3. Leave to construct is subject to Enbridge Gas Inc. complying with the Conditions of Approval set out in Schedule A.
4. Parties in receipt of confidential information shall either return the subject information to the Registrar and communicate to Enbridge Gas Inc. that they have done so; or destroy and/or expunge the information and execute a Certificate of Destruction, following the end of this proceeding, in accordance with the OEB's *Practice Direction on Confidential Filings*. The Certificate must be filed with the Registrar and a copy sent to Enbridge Gas Inc.
5. Eligible intervenors shall file with the OEB and forward to Enbridge Gas Inc. their respective cost claims in accordance with the OEB's *Practice Direction on Cost Awards* on or before **October 6, 2023**.
6. Enbridge Gas Inc. shall file with the OEB and forward to intervenors any objections to the claimed costs of the intervenors on or before **October 16, 2023**.
7. If Enbridge Gas Inc. objects to any intervenor costs, those intervenors shall file with the OEB and forward to Enbridge Gas Inc. their responses, if any, to the objections to cost claims on or before **October 26, 2023**.
8. Enbridge Gas Inc. shall pay the OEB's costs incidental to this proceeding upon receipt of the OEB's invoice.

How to File Materials

Parties are responsible for ensuring that any documents they file with the OEB, such as applicant and intervenor evidence, interrogatories and responses to interrogatories or

any other type of document, **do not include personal information** (as that phrase is defined in the *Freedom of Information and Protection of Privacy Act*), unless filed in accordance with rule 9A of the OEB's [Rules of Practice and Procedure](#).

Please quote file number, **EB-2022-0248** for all materials filed and submit them in searchable/unrestricted PDF format with a digital signature through the [OEB's online filing portal](#).

- Filings should clearly state the sender's name, postal address, telephone number and e-mail address.
- Please use the document naming conventions and document submission standards outlined in the [Regulatory Electronic Submission System \(RESS\) Document Guidelines](#) found at the [File documents online page](#) on the OEB's website.
- Parties are encouraged to use RESS. Those who have not yet [set up an account](#), or require assistance using the online filing portal can contact registrar@oeb.ca for assistance.
- Cost claims are filed through the OEB's online filing portal. Please visit the [File documents online page](#) of the OEB's website for more information. All participants shall download a copy of their submitted cost claim and serve it on all required parties as per the [Practice Direction on Cost Awards](#).

All communications should be directed to the attention of the Registrar and be received by end of business, 4:45 p.m., on the required date.

Email: registrar@oeb.ca

Tel: 1-877-632-2727 (Toll free)

DATED at Toronto September 21, 2023

ONTARIO ENERGY BOARD

Nancy Marconi
Registrar

SCHEDULE A
DECISION AND ORDER
ENBRIDGE GAS INC.
EB-2022-0248
SEPTEMBER 21, 2023

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

**Enbridge Gas Inc.
EB-2022-0248**

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-2022-0248 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 8(b), Enbridge Gas Inc. shall file a Post Construction Financial Report, which shall provide 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. Enbridge Gas Inc. shall also file a copy of the Post Construction Financial Report in the proceeding where the actual capital costs of the project are proposed to be included in rate base or any proceeding where Enbridge Gas Inc. proposes to start collecting revenues associated with the Project, whichever is earlier.

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.