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BY EMAIL

March 18, 2024

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

Dear Ms. Marconi:

**Re: Ontario Energy Board (OEB) Staff Submission
Enbridge Gas Inc. (Enbridge Gas)
Lawrence Avenue East Station Relocation Project
OEB File Number: EB-2023-0260**

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

Yours truly,

Judith Fernandes
Senior Advisor, Natural Gas Applications

Encl.

cc: All parties in EB-2023-0260



ONTARIO ENERGY BOARD

OEB Staff Submission

Enbridge Gas Inc.

Lawrence Avenue East Station Relocation Project

EB-2023-0260

March 18, 2024

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Application Summary and Process

On November 7, 2023, Enbridge Gas filed an application seeking orders from the OEB:

- (a) Under section 90(1) of the *Ontario Energy Board Act, 1998* (OEB Act), for leave to construct approximately 345 metres of natural gas pipelines in the City of Toronto (the Project)
- (b) Under section 97 of the OEB Act, for approval of the forms of land-use agreements it offers to landowners affected by the routing or location of the Project.

Enbridge Gas stated that construction of the Project is planned to commence in August 2024 and is expected to be placed into service in September 2024.

The OEB issued a Notice of Hearing on December 1, 2023. Pollution Probe applied for and was granted intervenor status.

On January 26, 2024, the OEB issued Procedural Order No. 1, which set the timeline for the proceeding. In accordance with the procedural schedule, written interrogatories by OEB staff and Pollution Probe were filed by February 9, 2024. Enbridge Gas responded to the interrogatories on February 26, 2024. OEB staff and intervenor written submissions are due by March 18, 2024 and Enbridge Gas may file a written reply submission by April 1, 2024.

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 land-use agreements proposed by Enbridge Gas.

OEB Staff Submission

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

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

Project Need

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

Metrolinx requested that Enbridge Gas temporarily relocate certain existing natural gas pipeline assets that conflict with the Subway Extension project. Upon completion of the Subway Extension project in 2030, Metrolinx has requested that Enbridge Gas permanently relocate those natural gas pipeline assets back onto the municipal right-of-way. OEB staff notes that the current proceeding only addresses Enbridge Gas's request for approval of the temporary relocation, as the details and scope of work for the permanent relocation are unknown at this time and are dependent on Metrolinx finalizing the construction activities and schedule for the Subway Extension 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 services for its existing customers. In response to an interrogatory on whether the Project is intended to serve additional loads in this area either now or in the future, Enbridge Gas stated that while the primary scope of the Project is to maintain service to meet the current demands of the existing customers on the system, growth is forecasted in the area of the Project and the current system has the capacity to support the growth. The current forecasted growth includes 178 residential and 34 commercial customers to be served directly or indirectly by the new sections of the Project.¹

¹ EGI IRR, Exhibit I. STAFF.1

Based on the evidence filed by Enbridge Gas, OEB staff submits that there is a need for the Project as Metrolinx requires that Enbridge Gas temporarily relocate its pipeline assets to allow for the construction of the Subway Extension project.

Project Alternatives

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

- Is cost-effective compared to the alternatives considered
- Meets the required in-service date of September 2024
- Maintains existing network connections and reliability and enables Enbridge Gas to readily access its facilities to ensure safe operation and maintenance

Enbridge Gas applied the Binary Screening Criteria contained in the Integrated Resource Planning (IRP) Framework² and concluded that the need for the Project does not warrant further IRP consideration based on the timing criteria, as the need must be met in under three years and is driven by a customer-specific build, where Metrolinx will pay for the Project costs through a Contribution in Aid of Construction (CIAC).

Based on Enbridge Gas's evidence, OEB staff submits that the Project is the best alternative to meet the stated need. OEB staff also submits that Enbridge Gas appropriately applied the Binary Screening Criteria contained in the IRP Framework to determine that the Project does not warrant further IRP consideration. This is a small project driven by Metrolinx that is also being fully funded by Metrolinx. OEB staff is of the view that there is no requirement for Enbridge Gas to consider IRP alternatives in this case.

Project Cost and Economics

In its application, Enbridge Gas stated that the total cost of the Project is estimated to be \$3.35 million. Enbridge Gas stated that Metrolinx will reimburse Enbridge Gas through a CIAC for the Project costs. Enbridge Gas and Metrolinx's Subway Extension contractor (Metrolinx Contractor) have entered into a Utility Work Agreement (UWA). Under the UWA, the Metrolinx Contractor will assume full cost responsibility and will reimburse Enbridge Gas for all its actual costs and expenses incurred in completing the Project.

In response to OEB staff interrogatories, Enbridge Gas stated that the estimated total

² [EB-2020-0091](#), Decision and Order, July 22, 2021, Appendix A

cost for the Project has increased from \$3.35 million to \$3.55 million because of additional ancillary costs related to a service relay to the Scarborough General Hospital that was not identified to Enbridge Gas as a conflict by Metrolinx prior to the filing of the application. Enbridge Gas confirmed again that the CIAC will cover the actual final Project costs even if they exceed the estimated total Project costs.³

A breakdown of the Project costs is shown in Table 1:

Table 1
Estimated Project Costs (\$CAD)

<u>Item No.</u>	<u>Description</u>	<u>Pipeline Costs</u>	<u>Ancillary Costs</u>	<u>Total</u>
1	Material	48,972	1,070	50,042
2	Labour and Construction	1,719,120	116,330	1,835,450
3	Outside Services (Consulting, Professional Services)	195,800	0	195,800
4	Contingency	490,973	29,350	520,323
5	Sub-Total	2,454,865	146,750	2,601,615
6	Interest During Construction	29,285	1,749	31,034
7	Direct Overheads	2,938	64	3,002
8	Indirect Overheads	859,203	51,363	910,566
9	Total Project Costs	3,346,291	199,926	3,546,217
10	Less: CIAC	(3,346,291)	(199,926)	(3,546,217)
11	Net Project Costs	0	0	0

In its interrogatories, OEB staff suggested a modification to Condition 6 of the OEB's standard conditions of approval. The modified condition would require Enbridge Gas to confirm that the actual final Project costs are fully funded by the CIAC paid to Enbridge Gas by Metrolinx.⁴ In its interrogatory responses, Enbridge Gas agreed with this suggestion.

Environmental Impacts

Enbridge Gas retained Dillion Consulting Ltd. to undertake a route evaluation and environmental and socio-economic impact study, which included a cumulative effects assessment, to select the preferred route for the Project. The results of the study are

³ EGI IRR, Exhibit I. STAFF.4 a)

⁴ EGI IRR, Exhibit I. STAFF.12

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

Enbridge Gas stated that the Environmental Report was circulated to the Ontario Pipeline Coordinating Committee, municipalities, conservation authorities, and Indigenous communities and Enbridge Gas filed the comments received on the Environmental Report as part of its evidence.

Enbridge Gas stated that a Cultural Heritage Report: Existing Conditions and Preliminary Impact Assessment (CHRECPIA) was completed and submitted to the Ministry of Citizenship and Multiculturalism (MCM) on May 31, 2023, for review and that comments on the CHRECPIA were received from the MCM on June 30, 2023.

In response to interrogatories, Enbridge Gas stated that it updated the CHRECPIA to address the MCM's comments and re-submitted the CHRECPIA to the MCM for further review. Enbridge Gas stated that it expects to receive a response from the MCM following this additional review of the CHRECPIA prior to the commencement of construction.⁵

Enbridge Gas identified the potential permits/approvals that may be required for the Project in its application. In its interrogatory responses, Enbridge Gas stated that in addition to the permits/approvals listed in the application for the Project, Enbridge Gas will also be applying to Metrolinx for a Corridor Development Permit prior to the start of construction. Enbridge Gas advised that this permit is needed for any work within the Metrolinx Transit Corridor Lands, pursuant to the *Building Transit Faster Act, 2020*.

Enbridge Gas also provided an update on the status and expected timing of the other permits/agreements it requires for the Project stating that:

- The permanent easement agreements with Metrolinx are currently being negotiated
- The City of Toronto Cut Permit, the Road Occupancy Permit, and the Metrolinx Corridor Development Permit have not yet been applied for but that it expects to apply for these three permits immediately after receiving OEB approval of the application⁶

OEB staff submits that Enbridge Gas has completed the Environmental Report in accordance with the OEB's *Environmental Guidelines for the Location, Construction and*

⁵ EGI IRR, Exhibit I. STAFF.8

⁶ EGI IRR, Exhibit I. STAFF.10

Operation of Hydrocarbon Pipelines and Facilities in Ontario, 7th Edition (Environmental Guidelines). On March 28, 2023, the OEB released an updated 8th Edition of the Environmental Guidelines. Enbridge Gas stated that as the Project was initiated prior to March 28, 2023, the 7th Edition Guidelines were followed; however, components of the 8th Edition Guidelines were considered when drafting the Environmental Report and provided clarification of the aspects considered in response to interrogatories.⁷

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. OEB staff submits that Enbridge Gas's compliance with the conditions of approval outlined in Schedule A will ensure that impacts of pipeline construction are mitigated and monitored. OEB staff notes that the conditions of approval also require Enbridge Gas to obtain all necessary approvals, permits, licences, and certificates needed to construct, operate and maintain the Project.

Landowner Matters

The Project will be largely located in the public road allowance. In its application, Enbridge Gas stated that approximately 604 m² of permanent easements and 792 m² of temporary working areas will be required to facilitate construction.

Enbridge Gas filed the forms of temporary working area agreement and easement agreement that it intends to provide to affected landowners. Enbridge Gas stated that these agreements are the same as those approved for use in Enbridge Gas's Kennedy Station Relocation Project.⁸

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

Indigenous Consultation

In accordance with the Environmental Guidelines, on December 23, 2022, Enbridge Gas contacted the Ministry of Energy (MoE) in respect of the Crown's duty to consult related to the Project. The MoE issued a letter, delegating the procedural aspects of the Crown's duty to consult for the Project to Enbridge Gas on February 10, 2023

⁷ EGI IRR, Exhibit I. PP-12

⁸ EB-2022-0247, Decision and Order, May 9, 2023

(Delegation Letter). In the Delegation Letter, the MoE identified eight Indigenous communities⁹ that Enbridge Gas should consult in relation to the Project:

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

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

As part of its application, Enbridge Gas filed an Indigenous Consultation Report. In response to interrogatories, Enbridge Gas provided an update on its Indigenous consultation activities as of February 15, 2024.¹⁰

Enbridge Gas stated that it has provided its Indigenous Consultation Report for review by the MoE. The MoE will determine whether consultation undertaken by Enbridge Gas is satisfactory by providing a letter of opinion to Enbridge Gas.

As part of its interrogatory response, Enbridge Gas filed additional correspondence with the MoE regarding the letter of opinion. Enbridge Gas stated that the MoE has advised that it is in the process of following up with the Indigenous communities who it has not spoken with and expects to provide the letter of opinion by the completion of record in the current proceeding.

Enbridge Gas stated that it has not received comments identifying any Aboriginal or treaty rights that could be adversely impacted by the Project from the Indigenous communities. Enbridge Gas also stated that it will continue to engage with these communities throughout the life of the Project to ensure potential impacts on Aboriginal or treaty rights are addressed, as appropriate.¹¹

OEB staff submits that Enbridge Gas appears to have made efforts to engage with the potentially affected Indigenous groups identified by the MoE. OEB staff submits that no

⁹ Evidence, Exhibit H, Tab 1, Schedule 1, Attachment 2, p.2

¹⁰ EGI IRR, Exhibit I. STAFF.11 a)

¹¹ Evidence, Exhibit H, Tab 1, Schedule 1, p.3

impacts to Aboriginal or treaty rights have been identified.

If the OEB determines that it is appropriate to grant leave to construct the Project, OEB staff submits that the OEB should wait to receive the letter of opinion from the MoE before approving the application. If the letter of opinion is not filed by the close of record, the OEB can consider placing the proceeding in abeyance until such time that the letter is filed. OEB staff expects that, assuming no further extended delays, this approach will not put the commencement date of the Project at risk. Enbridge Gas anticipates a decision on the application by May 2024, with construction scheduled to commence in September 2024.

OEB staff notes that, to the extent that the letter of opinion may identify outstanding issues, the OEB could provide for additional procedural steps to address these issues.

Conditions of Approval

In its interrogatories, OEB staff suggested that the OEB's standard conditions of approval for leave to construct applications¹² should apply to the Project with a modification to Condition 6, which requires Enbridge Gas to confirm that the actual final project costs are fully funded by the CIAC paid to Enbridge Gas by Metrolinx.

Also, in its interrogatories, OEB staff suggested minor modifications to Conditions 2(b) (ii) and (iv), 7(a), and 7(b) to better reflect the intent of those conditions in response to a letter from Enbridge Gas regarding a recently approved project¹³ and requested Enbridge Gas to confirm if it agrees with these modifications.

Enbridge Gas stated that it agrees with the OEB staff's suggested modification to Condition 6 as well as the minor modifications to conditions 2(b) (ii) and (iv), 7(a), and 7(b).¹⁴

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

~All of which is respectfully submitted~

¹² Natural Gas Facilities Handbook, Appendix D

¹³ Enbridge Gas January 12, 2024 letter providing notification of planned in-service date - Mohawks of the Bay of Quinte Community Expansion Project (EB-2022-0248).

¹⁴ EGI IRR, Exhibit I. STAFF.12 a)

Schedule A

Conditions of Approval

EB-2023-0260

March 18, 2024

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

**Enbridge Gas Inc.
EB-2023-0260**

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-2023-0260 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 start date, at least 10 days prior to the date the facilities begin to 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 full project in-service date, no later than 10 days after all the facilities go into service
3. Enbridge Gas Inc. shall obtain all necessary approvals, permits, licences, certificates, agreements and rights required to construct, operate and maintain the Project.
4. Enbridge Gas Inc. shall implement all the recommendations of the Environmental Report filed in the proceeding, and all the recommendations and directives identified by the Ontario Pipeline Coordinating Committee review.
5. Enbridge Gas Inc. shall advise the OEB of any proposed change to OEB-approved construction or restoration procedures. Except in an emergency, Enbridge Gas Inc. shall not make any such change without prior notice to and written approval of the OEB. In the event of an emergency, the OEB shall be informed immediately after the fact.
6. Concurrent with the final monitoring report referred to in Condition 7(b), Enbridge Gas Inc. shall file a Post Construction Financial Report, that:

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

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

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 full project 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 full project 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.