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BY EMAIL

March 25, 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)
Bobcaygeon Community Expansion Project
OEB File Number: EB-2022-0111**

In accordance with OEB's Decision and Procedural Order No. 2, please find attached OEB staff's submission in the above proceeding. The attached document has been forwarded to Enbridge Gas Inc. and to all other registered parties to this proceeding.

Yours truly,

Judith Fernandes
Senior Advisor, Natural Gas Applications

Encl.

cc: All parties in EB-2022-0111



ONTARIO ENERGY BOARD

OEB Staff Submission

Enbridge Gas Inc.

Bobcaygeon Community Expansion Project

EB-2022-0111

March 25, 2024

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Application Summary

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 36 kilometres of natural gas pipeline in the City of Kawartha Lakes (including Bobcaygeon) and Township of Cavan-Monaghan.

The proposed natural gas pipelines (Project) consist of:

A Supply Lateral:

- 25 kilometres of Nominal Pipe Size (NPS) 6-inch extra high pressure steel distribution pipeline
- 2 kilometres of NPS 6-inch high pressure polyethylene distribution pipeline
- 1 kilometre of NPS 6-inch high pressure steel distribution pipeline

A Reinforcement:

- 8 kilometres of NPS 6-inch extra high pressure steel distribution pipeline

The Project will supply natural gas to approximately 3,700 new customers who currently do not have access to natural gas service. The Project was selected as eligible to receive funding from the Government of Ontario as part of Phase 2 of the Natural Gas Expansion Program (NGEP).

Enbridge Gas also applied to the OEB under section 97 of the OEB Act for approval of the form of land-use agreements it offers to landowners affected by the routing or location 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 has franchise agreements¹ and holds Certificate(s) of Public Convenience and Necessity² for the City of Kawartha Lakes (within which Bobcaygeon is located) and for the Township of Cavan-Monaghan³ which allows Enbridge Gas to construct, operate and add to the natural gas distribution system within all parts of the municipality.

Enbridge Gas advised that as a result of the Project's regulatory proceeding delay, construction of the Supply Lateral is now planned to commence in July 2024 and is expected to be able to begin connecting residences and businesses as early as January

¹ City of Kawartha Lakes - RP-2005-0024/EB-2005-0458 (expiring February 7, 2026); and Township of Cavan-Monaghan – RP-2004-0125/EB-2004-0199 (expiring September 7, 2024).

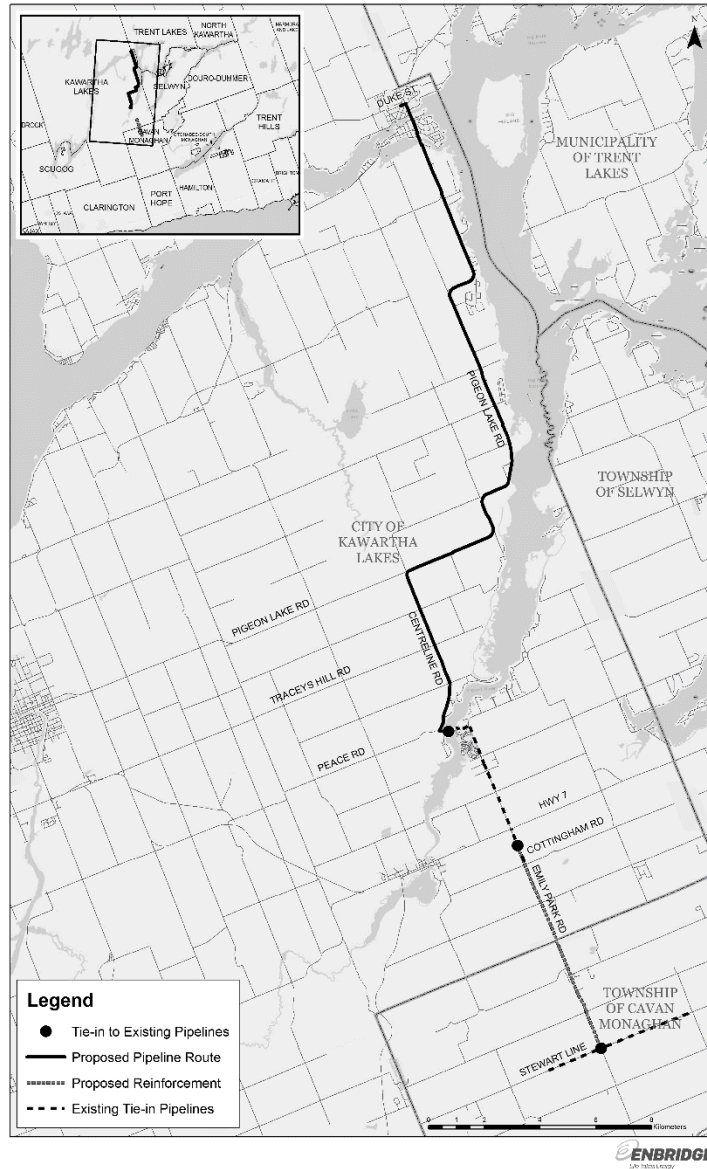
² City of Kawartha Lakes - EB-2017-0147 (dated March 1, 2018); and Township of Cavan-Monaghan – RP-2004-0125/EB-2004-0198 (dated July 16, 2004)

³ Formerly the Township of Cavan-Millbrook-North Monaghan until 2007.

2025 and continuing into the fall.⁴

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

Bobcaygeon Community Expansion Project



⁴ Argument-in-Chief, pp.5,6

The Proceeding

The OEB issued a Notice of Hearing on May 27, 2022, after Enbridge Gas filed its application on May 3, 2022. On July 5, 2022, Enbridge Gas filed a letter requesting an adjournment of the proceeding in order to update its market analysis and surveys for the customer attachment forecasts filed in support of the application.

On July 6, 2022, the OEB issued a letter placing the application in abeyance until Enbridge Gas filed its updated evidence with respect to the customer attachment forecast for the Project.

Enbridge Gas filed an updated application on June 14, 2023. The OEB issued an updated Notice of Hearing on July 5, 2023.

Environmental Defence, Federation of Rental-housing Providers of Ontario (FRPO) and Pollution Probe applied for intervenor status and cost eligibility and were approved as intervenors. In its letter of intervention, Environmental Defence stated that it wished to file evidence related to the cost effectiveness of heat pumps relative to natural gas (heat pump evidence). As part of their intervention requests, Environmental Defence and FRPO requested that the OEB provide for a technical conference.

In Procedural Order No. 1, issued August 14, 2023, the OEB stated that it would decide on Environmental Defence's request to file evidence, and make its determination on the request for a technical conference after the responses to interrogatories were filed. The OEB provided for the filing of interrogatories and responses, and for the filing of comments on the need for a technical conference.

OEB staff and intervenors filed interrogatories on September 6, 2023 and Enbridge Gas filed its interrogatory responses on September 20, 2023. OEB staff and intervenors filed comments on the need for a technical conference on September 22, 2023 and Enbridge Gas filed a response to these comments on September 26, 2023.

On September 27, 2023, Environmental Defence filed a Motion to Review⁵ the OEB's decisions (relating to the admissibility of intervenor evidence and to the merits of the applications) in the proceedings for the following Enbridge Gas community expansion projects: Selwyn; Mohawks of the Bay of Quinte and Shannonville; and Hidden Valley.⁶

On October 11, 2023, the OEB issued a letter placing this proceeding in abeyance

⁵ EB-2023-0313 Motion to Review and Vary OEB Decisions in EB-2022-0156/EB2022-0248/EB-2022-0249

⁶ EB-2022-0156 – Selwyn Community Expansion Project; EB-2022-0248 – Mohawks of the Bay of Quinte and Shannonville Community Expansion Project; EB-2022-0249 – Hidden Valley Community Expansion Project

pending the OEB's determination on the Motion to Review, stating that the matters cited in the Motion to Review raise issues that are relevant to this proceeding and that it would be prudent to provide directions on the next steps in this proceeding after the OEB has considered the Motion to Review.

On December 4, 2023, Environmental Defence withdrew the part of its motion relating to the Mohawks of the Bay of Quinte and Shannonville project and the OEB confirmed withdrawal of this portion of the motion.

The OEB issued a decision⁷ on December 13, 2023 denying the remainder of Environmental Defence's motion with respect to the other two community expansion projects noting that the OEB's orders approving the three projects remain in full force and effect.

On December 14, 2023, Environmental Defence filed a letter with respect to the Enbridge Gas community expansion applications being heard by the OEB at that time (Bobcaygeon, Sandford, Eganville, Neustadt) and the EPCOR Natural Gas Limited Partnership (EPCOR) Brockton application, which has now been withdrawn by EPCOR, proposing that:

- The OEB consolidate the hearing of these natural gas expansion projects given the overlap in the issues and evidence
- A joint technical conference for these projects be convened
- Environmental Defence be allowed to file evidence with respect to the Enbridge Gas natural gas expansion projects based on community surveys that it will conduct (survey evidence)

Enbridge Gas filed a response on December 21, 2023 stating that the OEB should reject Environmental Defence's proposals.

On December 28, 2023, the OEB issued a letter seeking clarification and further information from Environmental Defence, by January 11, 2024, on the evidence it is proposing.

Environmental Defence filed responses to the OEB's questions on January 11, 2024. Between January 11, 2024 and February 2, 2024, Environmental Defence and Enbridge Gas filed several letters regarding Environmental Defence's proposed evidence.

The OEB issued a Decision and Procedural Order No. 2 on February 20, 2024 denying the requests made by Environmental Defence and Pollution Probe for the filing of

⁷ EB-2023-0313 Decision on Motion to Review and Vary OEB Decisions in EB-2022-0156/EB2022-0248/EB-2022-0249

evidence and further discovery on the application. The OEB also took the application out of abeyance and set a schedule for final argument. On March 8, 2023, Enbridge Gas filed its Argument-in-Chief (AIC). Submissions by OEB staff and intervenors are due by March 25, 2024, and Enbridge Gas may file its reply submission by April 8, 2024.

On March 11, 2024, Environmental Defence filed a motion to review and vary the OEB's Decisions on Intervenor Evidence in the Enbridge Gas leave to construct community expansion applications.⁸ Environmental Defence is contesting the OEB's decisions to deny intervenors an opportunity to file evidence and allow further discovery in the above noted proceedings. In the cover letter to the March 11, 2024, motion to review and vary, Environmental Defence also advised that it intends to appeal these decisions to the Divisional Court under section 33 of the OEB Act.

OEB Staff Submission

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.

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 one of 210 proposals for community expansion projects, including four economic development projects, submitted to the OEB, and included in the OEB's

⁸ EB-2022-0111 (Bobcaygeon) dated February 20, 2024; and EB-2023-0200 (Sandford), EB-2023-0201 (Eganville), and EB-2023-0261 (Neustadt) dated February 29, 2024

*Report to the Minister of Energy, Northern Development and Mines and to the Associate Minister of Energy: Potential Projects to Expand Access to Natural Gas Distribution.*⁹

The Project is one of 28 projects across 43 communities selected as eligible to receive funding, as part of the Ontario Government's Phase 2 NGEF as specified in the Expansion of Natural Gas Distribution System Regulation.¹⁰

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 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 mechanism and includes the projects selected to receive the government funding as well as the amount of funding allocated to each project.¹¹ Enbridge Gas noted that the Project supports the Ontario government's efforts to help expand access to natural gas in Ontario that do not currently have access to the natural gas system.¹²

Enbridge Gas provided its 10-year forecast of customer attachments in support of the Project as shown in Table 1 below:

Table 1
Forecasted Customer Attachments for the Project- Updated Application

Bobcaygeon Customer Additions	Total Potential Customers	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7	Year 8	Year 9	Year 10	Total Forecasted
Conversions												
Residential Units (Singles)	1874	100	149	149	139	119	119	100	40	40	40	995
Residential Multi-Units (Semis, Towns, Apartments)	314	17	25	25	23	20	20	17	7	7	7	168
Commercial/Industrial Units	252	0	16	26	36	35	26	19	8	3	3	172
Total	2440	117	190	200	198	174	165	136	55	50	50	1335
New Construction												
Residential Units (Singles)	1807	0	90	181	361	361	271	271	145	90	37	1807
Residential Multi-Units (Semis, Towns, Apartments)	547	0	27	55	109	109	82	82	44	27	12	547
Total	2354	0	117	236	470	470	353	353	189	117	49	2354
Total												
Residential Total	4542	117	291	410	632	609	492	470	236	164	96	3517
Commercial/Industrial Total	252	0	16	26	36	35	26	19	8	3	3	172
Total	4794	117	307	436	668	644	518	489	244	167	99	3689
Total Cumulative		117	424	860	1528	2172	2690	3179	3423	3590	3689	

⁹ 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

¹⁰ Ontario Regulation 24/19 Expansion of Natural Gas Distribution Systems, Schedule 2

¹¹ 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.

¹² Enbridge Gas argument-in-chief, EB-2022-0156, EB-2022-0248, EB-2022-0249, July 25, 2023, paragraphs 9 and 10, p.5

As noted earlier, after Enbridge Gas filed its application on May 3, 2022, it requested an adjournment of the proceeding on July 5, 2022 stating that it needed to update its market analysis and surveys for the Project in order to provide an appropriate basis for the customer attachment forecasts filed in support of the application. The original customer attachment forecast, as filed in Enbridge Gas's project proposal for NGEF funding, anticipated approximately 4,000 customer attachments.¹³ Enbridge Gas filed an updated application on June 14, 2023 with a revised customer attachment forecast of approximately 3,700 customers.

Enbridge Gas asserted that its forecast of customer attachments is based on the results of multiple methods to acquire information on the interest for natural gas service in the community: surveys (which included door-to-door canvassing, letters, online follow-up and computer assisted telephone interviews), an Expressions of Interest (EOI) door to door survey, and a community outreach program.¹⁴

In its interrogatory responses, Enbridge Gas stated that its updated application was based on a survey of potential customers in 2022, the results of which yielded a 53% attachment rate for existing residential properties and small commercial properties. Enbridge Gas also indicated that at the end of the ten-year period, the overall assumed capture rate for the Project is approximately 77%.¹⁵ Enbridge Gas stated that it had also completed an EOI for the Project over an eight-week period (November 2022 to January 2023) through door to door canvassing, digital marketing and a community open house. Through this outreach campaign, 459 expressions of interest were collected and received by Enbridge Gas from residents within the Project area (437 residential and 22 commercial), indicating they are interested in converting to natural gas. While Enbridge Gas noted that this measure should only be interpreted as a snapshot in time given the short duration of this exercise, it stated that it has also received letters of support from 5 builders/developers within the Project area representing a total of 463 lots.

Enbridge Gas stated that its outreach activities included an in-person public information session within the Project area on December 1, 2022. Enbridge Gas further stated that it will continue to engage residents in the Project area to answer questions and concerns regarding the Project and to provide Project information until the Project is placed into service.

Enbridge Gas noted that the need for the Project is strongly supported by the community's municipal government through its request for natural gas for its constituents. The City of Kawartha Lakes has emphasized its support for the Project via

¹³ EB-2019-0255, Bobcaygeon Community Expansion Project Proposal, Schedule H2, Table 3.2

¹⁴ Application, Exhibit B, Tab 1, Schedule 1, Attachment 4, p.2

¹⁵ IRR, Exhibit I, STAFF.3. pp. 3,4

council resolution and expression of support dated July 10, 2017.¹⁶ In a letter dated December 14, 2021, the City of Kawartha Lakes indicated its written support for the Project and confirmed use of the Kawartha Lakes 2015 Draft Subdivision Plan to support Enbridge Gas's growth forecast.¹⁷

OEB Staff Submission

OEB staff submits that Enbridge Gas has established the need for the Project.

The Project is one of the community expansion projects selected by the Ontario Government as eligible to receive NGEF funding. OEB staff submits that availability of NGEF funding to enable the provision of natural gas service in unserved communities is an important consideration in the determination of the public interest. NGEF funding acts in a manner similar to a contribution in aid of construction and is designed to make projects economic, that would otherwise be uneconomic based on the OEB's test under E.B.O. 188 guidelines.

OEB staff observes that the OEB in its decisions¹⁸ on previous community expansion projects underscored the importance of the genesis of community expansion projects in its assessment of project need, specifically noting that these proposed projects obtain their potential viability because of the passage of *Access to Natural Gas Act 2018*.

The OEB's findings noted that while traditional utility regulatory principles provide that costs should be allocated proportionately to customers that have caused the costs to occur, 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. 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 (after the application of NGEF funding).

The OEB concluded that the Ontario government has identified a public need through its passage of the above noted legislation, and provided that a project is shown to be economic within the financial parameters set out in the legislation, it meets the requirements of the public interest criterion in section 96(1) of the OEB Act.

OEB staff also submits that Enbridge Gas has used multiple methods to establish the ten-year forecast of customer attachments and that Enbridge Gas has committed to

¹⁶ Exhibit B, Tab 1, Schedule 1, Attachment 2

¹⁷ Exhibit B, Tab 1, Schedule 1, Attachment 5

¹⁸ EB-2022-0248 Decision, pp. 12,13; EB-2022-0156 Decision, pp. 12,13; EB-2022-0249 Decision, pp. 12,13

continue engaging in outreach activities to ensure forecasted customer attachments are realized. OEB staff notes that the Project is strongly supported by the City of Kawartha Lakes.

While there has been some debate throughout the course of the proceeding as to whether conversion to heat pumps may be more cost effective than conversion to natural gas, Enbridge Gas's survey results suggest that there is sufficient interest in natural gas conversion, in the community, to allow Enbridge Gas to achieve its customer connection forecast. OEB staff submits that the need for the Project is supported by these survey results, in addition to passage of the legislation that created the NGEP. However, there is certainly a risk that over the ten-year customer attachment period, some of the customers that are forecast to attach may not actually do so.

In the section later in this submission on project costs and economics, OEB staff discusses its view that the 10-year Rate Stability Period (RSP) ensures that Enbridge Gas retains the risk of capital cost overruns and fewer customer attachments for the first ten years that the Project is in service. In addition, the requirement for Enbridge Gas to seek approval, in the rebasing application following the conclusion of the RSP, of the inclusion of the updated costs and revenues associated with the Project in rates allows the OEB the opportunity to undertake an additional review at that time. To the extent that the revenues or costs for the Project do not match the forecasts, the OEB can consider adjusting the costs and/or revenues associated with the Project for ratemaking purposes in a manner that continues to place those risks on Enbridge Gas.

Project Alternatives

Enbridge Gas submitted that it applied the Integrated Resource Planning (IRP) Binary Screening Criteria and determined that the Project meets the definition of a community expansion project as defined in the IRP Framework.¹⁹ As a result, Enbridge Gas submitted that:

...The IRP Framework Decision explains that "Given the goal of the Ontario Government's Access to Natural Gas legislation to extend gas service to designated communities, the OEB will not require Enbridge Gas to develop an IRP Plan or consider alternatives to the infrastructure facilities to meet this need." Consequently, per the IRP Binary Screening Criteria (iv), the

¹⁹ EB-2020-0091, Decision and Order, Enbridge Gas Inc. Integrated Resource Framework Proposal, July 22, 2021, Appendix A. and p. 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."

need underpinning the Project does not warrant further IRP consideration or assessment.²⁰

Enbridge Gas submitted that “[c]onsidering that the proposed Project was previously reviewed and approved by the Government of Ontario and the OEB for the purposes of granting funding under Phase 2 of the NGEP, Enbridge Gas did not assess other facility alternatives. However, the Company did assess routing alternatives.”²¹ That review included preliminary facility design and estimated Project costs.²²

OEB Staff Submission

OEB staff submits that as the Project is a NGEP-related community expansion project, no IRP evaluation is required. Therefore, OEB staff notes that Enbridge Gas is not required to consider alternatives to infrastructure facilities to meet the need. OEB staff also agrees with Enbridge Gas that the proposed route is appropriate.

Project Cost and Economics

On June 14, 2023, Enbridge Gas filed an updated application stating that the Project now consists of approximately 36 kilometres of natural gas pipeline, reduced from 41 kilometres. The total updated Project cost estimate is approximately \$115.2 million (\$44.9 million total pipeline costs and \$70.3 million total ancillary costs). The updated Project cost estimate includes a 10% contingency applied to all direct capital costs. Enbridge Gas stated that the contingency amount is consistent with the level of contingency set for other projects it proposed for the NGEP funding.

The total updated Project cost estimate is lower than the estimate provided in Enbridge Gas’s project proposal under Phase 2 of the NGEP by approximately \$0.3 million as shown in Table 2.

²⁰ Enbridge Gas Argument-in-Chief, p.9, at para. 19

²¹ Enbridge Gas Argument-in-Chief, p.9, at para. 20

²² Application, Exhibit C, Tab 1, Schedule 1, p.2

Table 2
Updated Project Cost Estimate vs. EB-2019-0255 Proposal

Item No.	Description	Table 1 Project Costs (\$CAD)				Project Proposal (EB-2019-0255) (\$CAD)			
		Supply Lateral	Reinforcement	Ancillary	Total	Supply Lateral	Reinforcement	Ancillary	Total
1.0	Material	2,651,460	786,930	6,295,528	9,733,918	1,656,666	1,414,063	2,892,857	5,963,586
2.0	Construction	23,779,538	6,797,487	50,319,632	80,896,657	30,725,099	21,027,887	50,290,090	102,043,076
3.0	Outside Services	4,674,007	1,386,799	6,666,123	12,726,929	2,849,464	1,113,409	3,158,857	7,121,729
4.0	Lands, Permits, Approvals and Consultations	235,604	109,714	470,118	815,436	163,504	6,321	0	169,825
5.0	Contingency	3,010,532	763,040	5,318,465	9,092,037	Included in all categories			
6.0	Sub-Total	34,351,141	9,843,970	69,069,866	113,264,977	35,394,733	23,561,680	56,341,804	115,298,217
7.0	Interest During Construction	853,126	395,170	683,906	1,932,202	46,726	13,350	156,521	216,598
8.0	Total Project Costs	35,204,267	10,239,140	69,753,772	115,197,180	35,441,459	23,575,030	56,498,326	115,514,815

In response to interrogatories²³, Enbridge Gas stated that the original NGEF Phase 2 project proposal was based on high-level desktop information available at the time. Upon receiving approval for NGEF funding for the Project, it set out to refine the Project scope and associated cost estimate by conducting site-specific investigations including site visits, field surveys, environmental studies, and consultation efforts with permitting agencies. Enbridge Gas further explained that as the Project design was being finalized, it was determined that some of the reinforcement pipeline that formed part of the original Project scope was no longer required. Additionally, in 2022 Enbridge Gas updated the market research underpinning the attachment forecast for the Project, which resulted in a decrease in the residential attachment rate from 74% to 53%. As a result of the reduced load requirements for the Project (due to the reduction in total forecasted attachments), the length of the reinforcement pipeline required for the Project was reduced from approximately 13 kilometres to approximately 8 kilometres. Collectively, these updates resulted in a reduction in Project costs of approximately \$13.3 million and are the primary driver behind the reduction in the overall project construction costs.

Enbridge Gas also stated that it has experienced significant unforeseen increases in the costs of steel pipe and regulator station materials since the original NGEF funding application was put forward resulting in an increase of approximately \$3.8 million in overall material costs. Following the approval of the NGEF funding application and the completion of the Environmental Report (ER) for the Project, Enbridge Gas completed numerous additional environmental and engineering studies. Enbridge Gas stated that the need for certain environmental and engineering studies is typically identified during completion of the ER, and as such, costs related to these studies were not known at the

²³ IRR, Exhibit I.STAFF.5, p.4

time of the original NGEF funding application. These additional studies and mitigation efforts resulted in an increase of approximately \$5.6 million in overall Outside Service costs.²⁴

The NGEF funding provided for the Project is approximately \$68 million.²⁵ The 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 \$47.2 million. In addition to NGEF funding, Enbridge Gas intends to charge a System Expansion Surcharge (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).²⁶

According to Enbridge Gas, the Project is economically feasible, having a Profitability Index (PI) of 1.0. Enbridge Gas indicated that without the NGEF funding and SES, the PI for the Project is 0.26, and with the inclusion of the SES the PI is 0.46.²⁷ 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).²⁸

Enbridge Gas stated that, consistent with the OEB's findings in the Harmonized SES proceeding,²⁹ 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. In response to interrogatories, Enbridge Gas stated that it intends to seek inclusion of the originally forecast Project costs in rate base in Enbridge Gas's next rebasing application (following the 2024 rebasing) assuming the Project is in-service by that date. Enbridge Gas stated that at the time of the 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.

²⁴ IRR, Exhibit I.STAFF.5, p.4

²⁵ Ontario Regulation 24/19, Expansion of Natural Gas Distribution Systems, Schedule 2

²⁶ EB-2020-0094

²⁷ Exhibit E, Tab 1, Schedule 1, Attachment 1

²⁸ EB-2019-0255, Enbridge Gas Community Expansion Project Proposal, Schedule H2, Table 7.1

²⁹ EB-2020-0094, Decision and Order, November 5, 2020, pp. 8,9

OEB Staff Submission

OEB staff submits that the updated total estimated cost of the Project is reasonable. OEB staff also notes that the contingency budget is aligned with the contingency budgets for other similar community expansion projects.³⁰

OEB staff submits that the Project, with the inclusion of NGEF funding and revenues associated with SES charges, is forecast to be economically feasible with a projected PI of 1.0.

OEB staff notes 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.³¹ Additionally, the OEB's decision on Enbridge Gas's 2024 rebasing application recognized NGEF projects as distinct from other expansion projects, acknowledging that the applicability of the 40-year revenue horizon to NGEF projects was appropriate.³²

OEB staff also notes that specific approval of the SES charge is not required as was confirmed by the OEB in its findings with respect to the Haldimand Shores leave to construct application.³³

OEB staff notes that in the Harmonized SES proceeding, the OEB stated the following:

The OEB finds that inclusion of the forecasted capital costs in rate base at the next rebasing before the end of the RSP is consistent with the Generic Decision's requirement for a Community Expansion Project and would achieve the desired goal that Enbridge Gas bear the risk of any capital cost overrun during the RSP. The OEB also finds that the treatment of actual capital costs at the time of rebasing following the rate stabilization period is appropriately the jurisdiction of the panel reviewing the rate rebasing case.³⁴

The OEB further noted:

The OEB confirms the requirement to continue to report on the capital costs, customer attachments and PI of SES projects that require a LTC at the first rebasing following the end of the ten-year RSP... This information will be

³⁰ EB-2022-0156, Selwyn; EB-2022-0248, Mohawks of the Bay of Quinte and Shannonville; EB-2022-0249, Hidden Valley

³¹ EB-2020-0094, Decision and Order, November 5, 2020

³² OEB-2022-0200, Decision and Order, December 21, 2023, pp.30,31

³³ EB-2022-0088, Decision and Order, August 18, 2022, pp.9,10

³⁴ EB-2020-0094, Decision and Order, November 5, 2020, p.9

vital to the panel deciding on the inclusion of actual costs in rate base after the RSP.³⁵

OEB staff submits 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.³⁶ As the original capital cost of the Project is higher than the current net capital cost, OEB staff is of the view that it may not be appropriate to include the original capital cost of the Project that underpinned the NGEP funding proposal in its rebasing application for the year that the Project is forecast to go into service, and instead, use the updated capital cost. OEB staff reserves the right to argue which capital cost forecast (i.e., original or current) should be included, in the next rebasing proceeding. OEB staff believes that the next rebasing proceeding is the appropriate place to make such an argument.

The RSP ensures that Enbridge Gas bears the risk of revenue shortfalls during the first ten years that the Project is in service. OEB staff notes that, after the RSP, the OEB will have the opportunity to review the actual project costs and revenues and determine what amount should be recognized in rates.

OEB staff submits that the allocation of risk, between ratepayers and Enbridge Gas, beyond the term of the RSP for the Project has not been determined at this time. Enbridge Gas is relying on its forecast of capital costs and customer attachments to underpin the need for the Project. As noted previously, OEB staff agrees that the customer attachment forecast supports the need for the Project. However, the risk remains that the customer attachments will not materialize as forecasted.

OEB staff submits that 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). OEB staff submits 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 notes that, as was stated in decisions on previous community expansion applications, the OEB cannot bind a future panel that will be responsible for determining the appropriate treatment of revenue shortfalls in Enbridge Gas's post-RSP rebasing application. However, the OEB has advised in previous NGEP-related decisions that

³⁵ EB-2020-0094, Decision and Order, November 5, 2020, p.10

³⁶ EB-2020-0094, Decision and Order, November 5, 2020

there is a reasonable expectation that existing customers will not be called upon to provide a further subsidy to compensate for post-RSP revenue shortfalls.³⁷

Environmental Impacts

Enbridge Gas retained Stantec Consulting Ltd. to undertake a route evaluation and environmental and socio-economic impact study, which included a cumulative effects assessment, to select the preferred route for the Project. The results of the study are documented in the ER filed with the application. The ER also includes consultation input and mitigation measures to minimize impacts from the Project.

Enbridge Gas stated that the ER was circulated to the Ontario Pipeline Coordinating Committee, municipalities, conservation authorities, and Indigenous communities and Enbridge Gas filed the comments received on the ER as part of its evidence.³⁸

Enbridge Gas stated it would prepare an Environmental Protection Plan (EPP) prior to construction of the Project. The EPP will incorporate the recommended mitigation measures identified in the ER and received in the consultation from agencies for the environmental issues associated with the Project.

Enbridge Gas stated that using the mitigation measures and monitoring and contingency plans found within the ER, EPP and additional mitigation measures provided by regulatory agencies through the permitting and approval process, construction of this Project will have negligible impacts on the environment.³⁹

Enbridge Gas stated that it has completed a Stage 2 Archaeological Assessment (AA) which was submitted to the Ministry of Citizenship and Multiculturalism (MCM) on August 14, 2023 and expected to receive acceptance of this report into the Ontario Public Register of Archaeological Reports by October 2023. Enbridge Gas also anticipated completing the remainder of the Stage 2 AA for the Project by the end of 2023 and will submit the remaining reports to the MCM.⁴⁰

The application identified potential environmental/land permits and approvals from federal, provincial and municipal agencies that Enbridge Gas requires to construct the Project. In response to interrogatories, Enbridge Gas provided an update on the status and expected timing of the permits/approvals it requires for the Project.⁴¹

³⁷ EB-2022-0156, Final Decision, pp. 20-21; EB-2022-0248, Final Decision, p. 21; EB-2022-0249, Final Decision, p. 20

³⁸ Application, Exhibit F, Tab 1, Schedule 1, p.4 and Attachments 3,4,5

³⁹ Application, Exhibit F, Tab 1, Schedule 1, p.6

⁴⁰ IRR, Exhibit I. STAFF.8

⁴¹ IRR, Exhibit I. STAFF.9

OEB Staff Submission

OEB staff submits that Enbridge Gas has completed the ER in accordance with the OEB's *Environmental Guidelines for the Location, Construction and Operation of Hydrocarbon Pipelines and Facilities in Ontario 7th Edition* (Environmental Guidelines).⁴²

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 ER and to complete the EPP prior to the start of construction.

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

Landowner Matters

In its application, Enbridge Gas stated that the Project is planned to be within the existing municipal Right-of-Way (RoW) with the potential for temporary working areas outside of the municipal RoW. Temporary working areas may be required along the preferred route where the road allowance is too narrow or confined to facilitate construction.

In responses to OEB staff interrogatories, Enbridge Gas stated that it has identified and executed agreements for six required temporary workspace locations for the Project and noted that no permanent easement is required.⁴³

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 Haldimand Shores Community Expansion Project.⁴⁴

OEB Staff Submission

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

⁴² The OEB released the 8th Edition of the Guidelines in March 2023 after the initiation, consultation and finalization of the Project and associated ER.

⁴³ IRR, Exhibit I. STAFF.10. p.1

⁴⁴ EB-2022-0088, Decision and Order, August 18, 2022

by the OEB.

Indigenous Consultation

In accordance with the Environmental Guidelines, on June 22, 2021, 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 September 3, 2021 (Delegation Letter). In the Delegation Letter, the MoE identified nine Indigenous communities⁴⁵ that Enbridge Gas should consult in relation to the Project:

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

On June 12, 2023, Enbridge Gas provided a Project Update Letter to the MoE that described the changes made to the Project scope since the original leave to construct application was filed with the OEB on May 2, 2022.

Direct notice of the application was provided by Enbridge Gas to all of the above-noted 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 August 8, 2023.⁴⁶

Enbridge Gas filed with the OEB the comments that it has received from Curve Lake First Nation (CLFN), Chippewas of Rama First Nation, and Mississaugas of Scugog Island First Nation regarding environmental matters and associated mitigation related to the Project. CLFN specifically referenced asserted Michi Saagig water rights. In response to interrogatories, Enbridge Gas provided evidence of its written responses to

⁴⁵ Evidence, Exhibit H, Tab 1, Schedule 1, Attachment 2, p.2

⁴⁶ IRR, Exhibit I. STAFF.11, Attachments 1,2

these comments, explaining how impacts would be limited, with the Project being largely located within a municipal right of way as well as the planned implementation of various other mitigation measures. Enbridge Gas also stated that it will continue to address any concerns from these Indigenous communities.⁴⁷

Enbridge Gas stated that it has provided its Indigenous Consultation Report to the MoE for review. 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, dated September 12, 2023, regarding the letter of opinion. This correspondence stated that the MoE is continuing its sufficiency assessment and is monitoring relevant materials submitted to the OEB and that while the timing of the letter of opinion will likely be closer to the completion of the record in the current proceeding, the MOE does not anticipate any delays.

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.⁴⁸

OEB Staff Submission

OEB staff submits that Enbridge Gas appears to have made efforts to engage with the potentially affected Indigenous groups identified by the MoE.

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 the record, the OEB may consider placing the proceeding in abeyance until such time that the letter is filed.

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.

⁴⁷ IRR, Exhibit I. STAFF.11, p.3

⁴⁸ Evidence, Exhibit H, Tab 1, Schedule 1, p.4

Conditions of Approval

The OEB has established standard conditions of approval that are typically imposed in leave to construct approvals.⁴⁹ Enbridge Gas stated that it has reviewed these standard conditions and has not identified any additional or revised conditions that it wishes to propose for the Project.

OEB Staff Submission

In response to a letter filed by Enbridge Gas regarding a recently approved project⁵⁰, OEB staff is proposing minor modifications (underlined) to Conditions 2(b)(ii) and (iv), 7(a), and 7(b) to better reflect the intent of those conditions. OEB staff requests Enbridge Gas to confirm in its reply submission if it agrees with these modifications.

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~

⁴⁹ Natural Gas Facilities Handbook, Appendix D

⁵⁰ 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).

Schedule A

Conditions of Approval

EB-2022-0111

March 25, 2024

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

**Enbridge Gas Inc.
EB-2022-0111**

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-2022-0111 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 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 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 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 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.