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BY EMAIL

April 10, 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)
Eganville Community Expansion Project
OEB File Number: EB-2023-0201**

In accordance with the 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,

Catherine Nguyen
Advisor, Natural Gas Applications

Encl.

cc: All parties in EB-2023-0201



ONTARIO ENERGY BOARD

OEB Staff Submission

Enbridge Gas Inc.

Eganville Community Expansion Project

EB-2023-0201

April 10, 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 22 kilometres of natural gas pipeline and associated facilities in the Townships of Admaston/Bromley, North Algona Wilberforce and Bonnechere Valley (including Eganville).

The proposed natural gas pipelines (Project) consist of:

Phase 1:

- 11 kilometres of Nominal Pipe Size (NPS) 8-inch polyethylene (PE) distribution pipeline
- 50 metres of a combination of NPS 6-inch and NPS 8-inch steel distribution pipeline

Phase 2:

- 11 kilometres of NPS 8-inch PE distribution pipeline

The Project will supply natural gas to approximately 723 new forecasted 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.

Enbridge Gas is also seeking approval of new municipal franchise agreements with, and certificates of public convenience and necessity (certificates) for, the Townships of North Algona Wilberforce and Bonnechere Valley. In terms of other OEB approvals required for the Project, OEB staff notes that Enbridge Gas has a franchise agreement¹ and holds a certificate² for the Township of Admaston/Bromley 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 it plans to commence construction in August 2024 and place Phase 1 of the Project in service in December 2024 and Phase 2 of the Project in

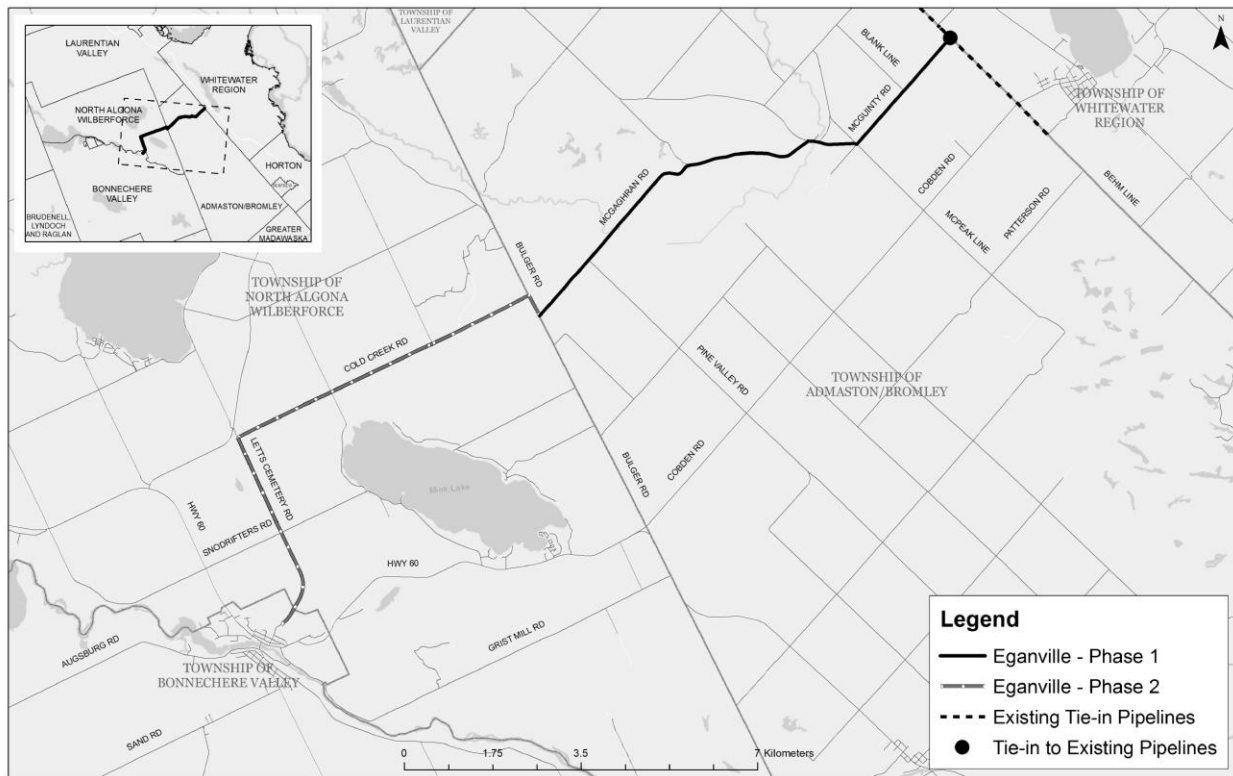
¹ EB-2018-0238 (expiring December 20, 2038)

² EB-2018-0238 (dated September 13, 2018)

service in June 2025.³

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

Eganville Community Expansion Project



³ Exhibit D, Tab 1, Schedule 1, p. 8

The Proceeding

The OEB issued a Notice of Hearing on October 16, 2023, after Enbridge Gas filed its application on September 21, 2023.

Environmental Defence and Pollution Probe applied for intervenor status and cost eligibility.

In its request for intervenor status, Environmental Defence stated that it wished to file evidence related to the cost effectiveness of heat pumps relative to natural gas (heat pump evidence). Environmental Defence also stated that it may request that the OEB provide for a technical conference after the receipt of interrogatory responses.

In Procedural Order No. 1, issued November 22, 2023, the OEB granted Environmental Defence and Pollution Probe intervenor status. Environmental Defence and Pollution Probe were also granted cost eligibility.

In Procedural Order No. 1, the OEB also stated that it would decide on Environmental Defence's request to file evidence at a later date 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 by December 8, 2023 and Enbridge Gas filed its interrogatory responses on January 12, 2024. OEB staff and intervenors filed comments on the need for a technical conference by January 18, 2024 and Enbridge Gas filed a response to these comments on January 22, 2024.

On September 27, 2023, Environmental Defence filed a Motion to Review⁴ 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.⁵

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.

⁴ EB-2023-0313 Motion to Review and Vary OEB Decisions in EB-2022-0156/EB-2022-0248/EB-2022-0249

⁵ 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

The OEB issued a decision⁶ 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 29, 2024 denying the requests made by Environmental Defence and Pollution Probe for the filing of evidence and further discovery on the application. The OEB also set a schedule for final argument. On March 27, 2024, Enbridge Gas filed its Argument-in-Chief. Submissions by OEB staff and intervenors are due by April 10, 2024, and Enbridge Gas may file its reply submission by April 24, 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

⁶ EB-2023-0313 Decision on Motion to Review and Vary OEB Decisions in EB-2022-0156/EB-2022-0248/EB-2022-0249

expansion applications.⁷ 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.

Request for Leave to Construct

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

As discussed in the final section of the submission, OEB staff also supports the approval of new franchise agreements with, and certificates for, the Townships of North Algona Wilberforce and Bonnechere Valley.

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 *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*.⁸

⁷ 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

⁸ 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

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 NGEP, as specified in the Expansion of Natural Gas Distribution System Regulation.⁹

The NGEP 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. NGEP 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.¹⁰ 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.¹¹

Enbridge Gas provided its ten-year forecast of customer attachments in support of the Project as shown in Table 1, below.

Table 1
Forecasted Customer Attachments for the Project

Project Year	1	2	3	4	5	6	7	8	9	10	Total
Residential Units (Singles)	56	140	111	56	56	28	28	28	28	28	559
Residential Multi-Units (Semis, Towns, Apartments)	0	22	19	20	19	5	3	3	3	3	97
Commercial/ Industrial Units	7	16	14	14	7	3	2	2	2	0	67
Total	63	178	144	90	82	36	33	33	33	31	723

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 letters, online follow-up and computer assisted telephone interviews) and in-person surveys of potential commercial/industrial customers.¹²

⁹ Ontario Regulation 24/19 Expansion of Natural Gas Distribution Systems, Schedule 2

¹⁰ 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.

¹¹ Enbridge Gas argument-in-chief, March 27, 2024, paragraph 9, p.7

¹² Application, Exhibit B, Tab 1, Schedule 1, Attachment 6 and paragraph 11

In its interrogatory responses, Enbridge Gas stated that at the end of the ten-year period, the overall assumed capture rate for the Project is approximately 81%.¹³ Enbridge Gas also stated that in 2024, and throughout the Project lifecycle, it would begin customer outreach activities which will include customer information sessions, digital and social marketing campaigns, and one-on-one conversations at the request of residents.¹⁴

Enbridge Gas noted that the need for the Project is directly supported by the community's municipal government through its request for natural gas for its constituents. The Township of Bonnechere Valley first indicated its support in a letter dated July 17, 2020.¹⁵ Each of the Townships of Admaston/Bromley, Bonnechere Valley and North Algona Wilberforce have since emphasized their support for the Project through letters dated August 4, 2023¹⁶, August 8, 2023¹⁷ and September 2, 2023¹⁸, respectively.

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 its E.B.O. 188 guidelines.

OEB staff observes that in its decisions¹⁹ on previous community expansion projects, the OEB 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

¹³ Exhibit I.STAFF-5 (d)

¹⁴ Exhibit I.STAFF-5 (f)

¹⁵ Exhibit B, Tab 1, Schedule 1, Attachment 2

¹⁶ Exhibit B, Tab 1, Schedule 1, Attachment 3

¹⁷ Exhibit B, Tab 1, Schedule 1, Attachment 4

¹⁸ Exhibit B, Tab 1, Schedule 1, Attachment 5

¹⁹ EB-2022-0248 Decision, pp. 12,13; EB-2022-0156 Decision, pp. 12,13; EB-2022-0249 Decision, pp. 12,13

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 continue engaging in outreach activities to ensure forecasted customer attachments are realized. OEB staff notes that the Project is supported by the Townships of Admaston/Bromley, Bonnechere Valley and North Algona Wilberforce.

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 communities, 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 NGEF. 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 ten-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.²⁰ 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 need underpinning the Project does not warrant further IRP consideration or assessment.²¹

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.”²² That review included preliminary facility design and estimated Project costs.²³

OEB Staff Submission

OEB staff submits that as the Project is an 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

The total Project cost estimate is approximately \$35.5 million (\$12.7 million total pipeline costs and \$22.8 million total ancillary costs). The 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 Project cost estimate is lower than the estimate provided in Enbridge Gas’s project proposal under Phase 2 of the NGEP by approximately \$1.2 million as shown in Table 2²⁴.

²⁰ 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.”

²¹ Enbridge Gas Argument-in-Chief, pp.9-10, at para. 18

²² Enbridge Gas Argument-in-Chief, p.10, at para. 19

²³ Application, Exhibit C, Tab 1, Schedule 1, p.2

²⁴ Exhibit I.STAFF-7 (a)

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)			
		Pipeline Costs – Phase 1	Pipeline Costs – Phase 2	Ancillary	Total	Pipeline Costs – Phase 1	Pipeline Costs – Phase 2	Ancillary	Total
1.0	Material	457,414	473,021	755,777	1,686,212	195,266	159,763	1,450,924	1,805,954
2.0	Labour and Construction	4,265,244	3,645,643	15,913,154	23,824,042	1,957,699	1,601,754	22,338,532	25,897,985
3.0	Outside Services	1,264,728	798,785	3,401,641	5,465,153	187,420	153,344	2,070,921	2,411,685
4.0	Lands, Permits, Approvals and Consultations	48,349	3,684	99,013	151,046	11,124	9,102	122,919	143,145
5.0	Direct Overheads	135,238	84,712	266,934	486,885	32,898	26,917	363,515	423,330
6.0	Contingency	596,684	470,303	1,826,673	2,893,661	447,010	365,736	4,939,297	5,752,043
7.0	Sub-Total	6,767,657	5,476,149	22,263,193	34,506,998	2,831,418	2,316,615	31,286,108	36,434,141
8.0	Interest During Construction	281,943	182,412	538,269	1,002,624	25,117	20,550	277,536	323,204
		-	-	-	-	-	-	-	-
9.0	Total Project Costs	7,049,600	5,658,561	22,801,462	35,509,622	2,856,535	2,337,165	31,563,642	36,757,345

In response to interrogatories²⁵, 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 explained that the sources of significant variances include: (a) the reduction of a steel pipe at the supply lateral tie from 1 km to 50 m; (b) the refinement of the route to exhibit less rock; and (c) reduced contingency amount due to the maturity of project planning.

Enbridge Gas further stated that despite the overall decrease in project costs, inspection costs were estimated higher to accommodate several years of prework activities originally assumed to be completed by internal employees, which were actually completed by external contractors.

The NGEF funding provided for the Project is approximately \$26.2 million.²⁶ 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 \$9.3 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

²⁵ Ibid.

²⁶ Ontario Regulation 24/19, Expansion of Natural Gas Distribution Systems, Schedule 2

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).²⁷

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 0.21, and with the inclusion of the SES the PI is 0.37.²⁸ 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).²⁹

Enbridge Gas stated that, consistent with the OEB's findings in the Harmonized SES proceeding,³⁰ 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 confirmed that the appropriate net capital to be included in rate base will be addressed in its next rebasing application (following the 2024 rebasing).³¹ 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.

OEB Staff Submission

OEB staff submits that the 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.³²

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.³³ Additionally, the OEB's decision on Enbridge Gas's 2024 rebasing application recognized NGEF projects as distinct from other expansion

²⁷ EB-2020-0094

²⁸ Exhibit E, Tab 1, Schedule 1, Attachment 1

²⁹ EB-2019-0255, Enbridge Gas Community Expansion Project Proposal, Schedule 6A, Table 7.1

³⁰ EB-2020-0094, Decision and Order, November 5, 2020, pp. 8,9

³¹ Exhibit I.STAFF-7 (b)

³² EB-2022-0156, Selwyn; EB-2022-0248, Mohawks of the Bay of Quinte and Shannonville; EB-2022-0249, Hidden Valley

³³ EB-2020-0094, Decision and Order, November 5, 2020

projects, acknowledging that the applicability of the 40-year revenue horizon to NGEP projects was appropriate.³⁴

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.³⁵

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.³⁶

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 vital to the panel deciding on the inclusion of actual costs in rate base after the RSP.³⁷

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.³⁸ As the original forecasted 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, but instead, Enbridge Gas should 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 as was agreed to by Enbridge Gas in its interrogatory responses.³⁹

³⁴ OEB-2022-0200, Decision and Order, December 21, 2023, pp.30,31

³⁵ EB-2022-0088, Decision and Order, August 18, 2022, pp.9,10

³⁶ EB-2020-0094, Decision and Order, November 5, 2020, p.9

³⁷ EB-2020-0094, Decision and Order, November 5, 2020, p.10

³⁸ EB-2020-0094, Decision and Order, November 5, 2020

³⁹ Exhibit I.STAFF-7 (b)

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 NGEF-related decisions that 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.⁴⁰

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 Environmental Report (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.⁴¹

Enbridge Gas stated that it would prepare an Environmental Protection Plan (EPP) prior to construction of the Project. The EPP will incorporate the recommended mitigation

⁴⁰ EB-2022-0156, Final Decision, pp. 20-21; EB-2022-0248, Final Decision, p. 21; EB-2022-0249, Final Decision, p. 20

⁴¹ Application, Exhibit F, Tab 1, Schedule 1, Attachments 2 and 3

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.⁴²

Enbridge Gas stated that it anticipated submitting a report for Stage 2 Archaeological Assessment (AA) work completed in 2023 to the Ministry of Citizenship and Multiculturalism (MCM) in March 2024 and the remaining Stage 2 AA work is expected to be submitted to the MCM by early summer 2024.⁴³ Enbridge Gas also stated that the Cultural Heritage Report was anticipated to be submitted to the MCM in February 2024.⁴⁴

The application also identified potential environmental/land permits and approvals from federal, provincial and municipal agencies that Enbridge Gas requires to construct the Project.

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).⁴⁵

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

The Project will be largely located in the public road allowance. Enbridge Gas stated that temporary working areas may be required along the preferred route where the road

⁴² Application, Exhibit F, Tab 1, Schedule 1, p.4, paragraph 12

⁴³ Exhibit I.STAFF-9 (b)

⁴⁴ Exhibit I.STAFF-9 (a)

⁴⁵ The OEB released the 8th Edition of the Guidelines in March 2023 after the initiation, consultation and finalization of the Project and associated ER.

allowance is too narrow or confined to facilitate construction. Enbridge Gas stated that there are specific segments of the proposed route on McGaghran Road in the Township of Admaston/Bromley that are owned by the Township and other segments are a “forced road”, which were deeded to private landowners and partially maintained by the Township as a public highway. Enbridge Gas stated it will work with the Township and private landowners to determine if a municipal permit or permanent easement will be required on these segments.

In response to interrogatories, Enbridge Gas stated that permanent easements are not currently expected for the pipeline facility but that there is potential for a permanent easement or land acquisition at the station location, however, exact requirements have not been finalized.⁴⁶ Enbridge Gas also stated that to date, no concerns have been raised by landowners.

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 the temporary land use agreement is the same as that approved for use in Enbridge Gas’s Haldimand Shores Community Expansion Project⁴⁷ and the easement agreement is the same as that approved for use in Enbridge Gas’s Kennedy Station Relocation Project⁴⁸.

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 by the OEB.

Indigenous Consultation

In accordance with the Environmental Guidelines, 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 April 13, 2022 (Delegation Letter). In the Delegation Letter, the MoE identified nine Indigenous communities⁴⁹ that Enbridge Gas should consult in relation to the Project:

- Algonquins of Pikwàkanagàn
- Algonquins of Ontario
- Alderville First Nation

⁴⁶ Exhibit I.STAFF-11 (a)

⁴⁷ EB-2022-0088, Decision and Order, August 18, 2022

⁴⁸ EB-2022-0247, Decision and Order, May 9, 2023

⁴⁹ Exhibit H, Tab 1, Schedule 1, Attachment 2

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

Direct notice of the application was provided by Enbridge Gas to all 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 December 13, 2023.⁵⁰

Enbridge Gas received comments on the Project from Algonquins of Ontario, Algonquins of Pikwàkanagàn, Curve Lake First Nation and Hiawatha First Nation regarding concerns around inclusion of cultural knowing and being, route selection, wetlands and watercourse crossings and mitigation measures.⁵¹ Enbridge Gas provided responses to the comments and recommendations it received.⁵²

Enbridge Gas also stated that it will continue to engage with each of the nine communities throughout the life of the Project.⁵³

On April 8, 2024, Enbridge Gas filed the MoE's letter of opinion with the OEB. In that letter, the MoE expressed its opinion that the procedural aspects of the consultation undertaken by Enbridge Gas to date for the Project were satisfactory.

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.

OEB staff notes that the MoE expressed its opinion that the procedural aspects of the consultation undertaken by Enbridge Gas to date for the Project were satisfactory.

⁵⁰ Exhibit I. STAFF-13 (a)

⁵¹ Exhibit I. STAFF-13 (d)

⁵² Ibid.

⁵³ Ibid.

Conditions of Approval

The OEB has established standard conditions of approval that are typically imposed in leave to construct approvals.⁵⁴ 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

By letter dated April 3, 2024, the OEB advised that it has made minor modifications to the standard conditions of approval for leave to construct applications. More specifically, minor modifications (underlined> were made 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.

Request for Municipal Franchise Agreements and Certificates of Public Convenience of Necessity

Enbridge Gas is seeking approval of new franchise agreements with, and new certificates for, the Townships of North Algona Wilberforce and Bonnechere Valley, which would allow Enbridge Gas to construct, operate and add to the natural gas distribution system within all parts of these municipalities.

Enbridge Gas currently has a franchise agreement (expiring December 20, 2038) with, and a certificate (dated September 13, 2018) for, the Township of Admaston/Bromley.

In response to interrogatories, Enbridge Gas stated that having certificates covering the entire Townships of Bonnechere Valley and North Algona Wilberforce would provide clarity and certainty with respect to service areas and avoid unnecessary delay in responding to requests for natural gas service.⁵⁵

Enbridge Gas stated that it has franchise agreements with, and certificates for, the municipalities immediately adjacent to the Townships of Bonnechere Valley and North Algona Wilberforce and that there are no other natural gas distributors in the area.

⁵⁴ Natural Gas Facilities Handbook, Appendix D

⁵⁵ Exhibit I.STAFF-2 (c)

OEB Staff Submission

OEB staff submits that the OEB should approve Enbridge Gas's requests for new franchise agreements with, and certificates for, the Townships of North Algona Wilberforce and Bonnechere Valley.

OEB staff also notes that granting these new certificates do not affect the certificate rights of any other natural gas distributor.

~All of which is respectfully submitted~

Schedule A

Conditions of Approval

EB-2023-0201

April 10, 2024

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

**Enbridge Gas Inc.
EB-2023-0201**

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-2023-0201 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.