



Ontario
Energy
Board

Commission
de l'énergie
de l'Ontario

DECISION AND ORDER

EB-2019-0188

ENBRIDGE GAS INC.

Application for leave to construct natural gas pipelines and associated facilities to serve the Northshore and Peninsula Roads area in the City of North Bay

BEFORE: **Susan Frank**
 Presiding Member

Lynne Anderson
Member

May 7, 2020

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1 INTRODUCTION AND SUMMARY

In May 2018, Union Gas Limited (Union Gas) filed a combined leave to construct (LTC) application for expansion into three communities: Chippewas of the Thames First Nation, Saugeen First Nation, and North Bay (Northshore and Peninsula Roads)¹. Union Gas was awarded funding to construct facilities in each of the three communities under the former Natural Gas Grant Program (NGGP). The OEB placed the application in abeyance in November 2018 after the NGGP was cancelled.

In January 2019, Union Gas and Enbridge Gas Distribution Inc. (EGD) amalgamated to become Enbridge Gas Inc. (Enbridge Gas).

In March 2019, Enbridge Gas was awarded funding to construct facilities in each of the three previously named communities under the new *Access to Natural Gas Act, 2018* program.

On July 31, 2019, Enbridge Gas withdrew the combined leave to construct application in favour of filing separate applications for each of the projects.

On August 1, 2019, the OEB approved a system expansion surcharge (SES) for the Chippewas of the Thames First Nation portion of the formerly combined project². The OEB subsequently granted leave to construct and approved an SES for the Saugeen First Nation portion on February 6, 2020³.

On January 14, 2020, Enbridge Gas filed an application for the North Bay (Northshore and Peninsula Roads) portion (Application) of the previously combined project. Enbridge Gas is seeking an LTC under section 90 of the *Ontario Energy Board Act, 1998* (OEB Act) to construct approximately 27 km of pipelines of NPS 1.25-inch to NPS 4-inch (NPS 1.25-4) and rebuild a pressure regulating station to serve the community of North Bay (Northshore and Peninsula Roads) (Project). The Project is located in the City of North Bay, along the North shoreline of Trout Lake, between the take off point on Enbridge Gas's existing distribution system and the Northshore and Peninsula Roads area.

Enbridge Gas is also applying under Section 97 of the Act for an order approving the form of agreement offered to owners of land affected by the route or location of the

¹ EB-2018-0142

² EB-2019-0139

³ EB-2019-0187

proposed facilities in the Project. Enbridge Gas needs to obtain permanent easements as well as temporary land use rights.

Enbridge Gas is also seeking section 36 approval to extend to this Project the same SES that was previously approved by the OEB in Union Gas' 2015 Community Expansion Project (2015 Project).⁴ This would result in Enbridge Gas applying a \$0.23/m³ surcharge for 40 years to its existing approved rates for all customers that will be served by the proposed Project.

Enbridge Gas is proposing a ten-year rate stability period. During this period, Enbridge Gas will bear the risk of variances from actual capital costs or its customer attachment forecast. Enbridge Gas submitted that this approach is consistent with the OEB's Decision in the Generic Proceeding on Community Expansion (Generic Decision)⁵. Following the ten-year rate stability period, Enbridge Gas expects to bring forward to be included in rate base any cost overruns at the next rebasing rate proceeding. Enbridge Gas also expects that any revenue shortfalls or surpluses associated with this Project will be eligible for recovery or reduction in base rates at the end of the rate stability period. Enbridge Gas clarified that it is at risk for potential revenue shortfalls during the ten-year rate stability period and will not seek recovery for any overages or shortfalls related to this period.

The estimated capital cost of the Project is approximately \$10.1 million. The Project has been awarded up to \$8.7 million of "rate protection", for a net investment by Enbridge Gas of \$1.4 million. The results of a discounted cash flow analysis on Enbridge Gas's net investment show that the Project has a Profitability Index (PI) of 1.0.

Construction of the Project is scheduled to begin in May 2020 with an in-service date of November 2020. Enbridge Gas requests a decision from the OEB by May 2020.

A map of the Proposed Project is attached as Schedule A to this Decision and Order.

The OEB examined all aspects of Enbridge Gas's LTC application and is satisfied that the Project is in the public interest. Leave to construct the Project is granted subject to the conditions of approval attached as Schedule B to this Decision and Order (Conditions of Approval). The OEB also approves the requested SES and the proposed forms of easement agreement.

⁴ EB-2015-0179

⁵ EB-2016-0004

2 THE PROCESS

Enbridge Gas filed the Application on January 14, 2020. The OEB issued a completeness letter on January 27, 2020, and a Notice of Hearing on February 4, 2020. The intervention period ended on February 26, 2020.

Procedural Order No. 1 was issued on March 2, 2020. Environmental Defence and Pollution Probe were granted intervenor status and are eligible to apply for cost awards. The Procedural Order provided for interrogatories and submissions on the Application. OEB staff, Environmental Defence and Pollution Probe filed written interrogatories by March 12, 2020. Enbridge Gas filed interrogatory responses on March 27, 2020.

Enbridge Gas filed its argument-in-chief on April 6, 2020. OEB staff and Pollution Probe filed written submissions with the OEB on April 16, 2020, and Enbridge Gas filed its reply submission on April 27, 2020.

3 LEAVE TO CONSTRUCT

Enbridge Gas seeks an order granting leave to construct a natural gas pipeline under section 90 of the OEB Act. Section 96 of the OEB Act provides that the OEB shall make an order granting leave to construct if the OEB finds that “the construction, expansion or reinforcement of the proposed work is in the public interest”. When determining whether a project is in the public interest, the OEB typically examines the need for the project; the alternatives, costs and economics; the environmental impacts; impacts on landowners; and Indigenous consultation.

3.1 Need for the Project

Enbridge Gas states that residents and business owners in the northeast quadrant of the City of North Bay, specifically the Northshore and Peninsula Roads areas, have requested natural gas service from Enbridge Gas. Potential natural gas customers of the Project currently rely on propane, electricity, fuel oil and wood to meet their energy needs. Compared to these fuels, natural gas can be a less expensive energy source.

The Project area has a population of approximately 1,140. There are currently ultimate potential attachments of 341 existing residential dwellings, 50 existing seasonal dwellings and three commercial establishments in the Project area which could potentially be served with natural gas (for a total of 394 potential customers).

Enbridge Gas completed a door-to-door questionnaire to assess the market potential of the Project area. Of the 394 potential residential and commercial properties in the Project area, 193 completed the door-to-door questionnaire. The results suggest that 37% of those surveyed are interested in obtaining natural gas service. Enbridge Gas is forecasting that a total of 134 customers (126 residential, three small commercial, and five seasonal customers) will be attached by year ten of the Project. The ten-year attachment forecast is 34% of the ultimate potential attachments.

The OEB also received letters of comment from two residents on Shorewood Road (within the Project area), requesting that the OEB direct Enbridge Gas to do a further expansion to also provide natural gas service to their area.

OEB staff submitted that the proposed Project is needed, as it has the potential to increase energy options and reduce energy costs for local consumers, and may help to improve the local economy of the Northshore and Peninsula Roads area.

Findings

The OEB is satisfied that Enbridge Gas has properly assessed the market potential for natural gas service in the community of North Bay (Northshore and Peninsula Roads) and that the Project is needed.

The OEB notes that providing northern Ontario communities with access to less expensive and reliable sources of energy is consistent with the government of Ontario's energy and economic development policies. The Project will allow Enbridge Gas to serve multiple customers who would otherwise not be served economically. The Project is also supported by the City of North Bay.

3.2 Proposed Facilities, Alternatives and Costs

The proposed Project facilities would consist of approximately 27 kilometres of polyethylene distribution pipelines (6.8 km of NPS 1.25, 12.6 km of NPS 2, and 7 km of NPS 4) to service the area. The proposed pipeline will connect to Enbridge Gas's existing distribution system on Trout Lake Road and go east within the road allowances to serve the Northshore and Peninsula Roads area. The Project also requires the construction of a new regulating station at the corner of Anita Avenue and Trout Lake Road.

Two alternative routings for the proposed pipelines were considered, both of which Enbridge Gas stated would cost more than the proposed route. The proposed route was selected as the most cost-effective route that offers the most customer connections, and is located adjacent to existing roads, which greatly minimizes environmental impacts.

Enbridge Gas filed a letter from the Technical Standards and Safety Authority (TSSA) dated July 11, 2018, that confirms that the "technical information of the project ... [is] in compliance to the requirements of applicable standard CSA Z662-15 and of Oil and Gas Code Adoption Document, FS-238-18."

The total estimated ten-year capital cost for the Project is approximately \$10.1 million (this amount includes the cost of upsizing the pipeline to accommodate the ultimate potential of 394 customer attachments along the Project route instead of the ten-year customer attachment forecast of 134 customers). This amount includes the pipeline and station costs of \$8.1 million, and the cost of service lines of \$2.0 million for the first ten years of the Project.

Demand Side Management

Pollution Probe noted that the proposed ten-year attachment rate for the Project is very low, and submitted that the inclusion of targeted Demand Side Management (DSM) program materials in all information and outreach to the community could have significantly increased community engagement and attachment rates. Pollution Probe suggested that DSM information be shared with the community earlier in the process, and submitted that a dedicated and specific effort for this community would yield higher than average DSM results.

Enbridge Gas reiterated in its reply that it plans to hold additional public information sessions in 2020, at which time informational materials explaining existing DSM programming available to Enbridge Gas customers would be made available to attendees.

Sizing of the Pipe

OEB staff submitted that the Project appeared to be overbuilt relative to the ten-year attachment forecast. Enbridge Gas clarified in its interrogatory response that the \$10.1 million proposed Project was designed to serve the ultimate potential number of attachments in the Project area, rather than the ten-year forecast attachment. Enbridge Gas also stated that the ten-year forecast attachment could be served by a minimum design which would cost \$9.5 million, or \$600,000 less than the cost of the proposed Project. The minimum design would replace approximately 3.5 km of NPS 4 with NPS 2.

Both Pollution Probe and OEB staff submitted that Enbridge Gas did not provide sufficient justification for the upsize.

OEB staff submitted that ratepayers could be at risk for the additional \$600,000 cost if the load incremental to the ten-year forecast does not materialize. However, OEB staff also acknowledged that there were potential benefits to building the proposed Project as opposed to the minimum design. OEB staff submitted three options in response to the overdesign of the project, and recommended the second option. The three options are:

- 1) Approve the Project as proposed.
- 2) Approve the Project but allow Enbridge Gas to include the full cost of the Project into rate base only when the attachments from this Project exceed the ten-year customer attachment forecast.
- 3) Approve the Project based on the cost of the minimum design, with the SES term shortened accordingly.

Pollution Probe submitted that if the costs of the minimum design were approved, ratepayers could benefit from the reduced cost of the oversize in the form of a reduction of \$600,000 to the SES amount collected, either by reducing the rate or the term of the SES.

Enbridge Gas's reply confirmed that the Project's ten-year attachment forecast could be served by the minimum design. However, Enbridge Gas submitted that if the Project was installed using the minimum design, there would be very limited capacity for any customer additions beyond the existing ten-year forecast of 134 customers. Enbridge Gas also confirmed that should demands in the Shorewood Road area materialize as expected, these demands could not be supported by the minimum design.

Enbridge Gas submitted that although there is an incremental \$600,000 cost of the proposed design compared to the minimum design, it had considered the proposed design to be a prudent expense for four reasons. First, construction in the Project area is very challenging and Enbridge Gas expects it would become even more challenging over time with any growth or change in regulatory requirements, and construction costs would inevitably be higher in the future. Enbridge Gas stated that based on the cost information already provided in evidence, it anticipates that any future reinforcement would cost no less than \$250,000 per kilometer to construct. Second, the intangible cost of re-disturbing environmentally sensitive areas and creating additional inconvenience to the public needs to be carefully considered and weighed against a modest 6% increase in costs over the minimum design. Third, Enbridge Gas expects that once natural gas service is available, there is a higher likelihood that residents will consider taking natural gas services than indicated in initial surveys, as seen in the recent Fenelon Falls project, and other community expansion projects. Fourth, Enbridge Gas submitted that the scope of the Project was essentially determined by the provincial government when it was accepted as part of the Natural Gas Grant Program and re-affirmed pursuant to O. Reg. 24/19, and that if the minimum design were installed, only the minimum number of customers would benefit. Enbridge Gas submitted that any customers beyond the minimum would be subject to much higher contribution amounts and would be discouraged from ever taking gas services in the future, and that this would be contrary to the provincial government's objective to expand natural gas service into remote communities.

Cost Comparison

OEB staff noted that the proposed Project is about four times higher than that of the Prince Township project, which is the most similar in terms of pipe size and length of pipe according to Enbridge Gas's response to staff interrogatories for comparable

projects. OEB staff submitted that Enbridge Gas provided little evidence to explain why the cost per kilometre of this particular Project is much higher compared to other projects, other than to note that no two projects are identical, and that this Project has construction challenges related to the geography and requires tree removal, fee simple land purchase, and the acquisition of private easements.

Enbridge Gas' reply stated that the cost estimate for the Project was developed on the assumption that horizontal directional drilling would be the primary method of installation, given the limited workspace areas, the presence of rock, and a number of existing culverts and waterways. Enbridge Gas stated that due to such challenging ground conditions, it expects that the Project may only see installation progress of some 200 metres per day. Enbridge Gas noted that additional resources are required for rock breaking and tree removal; rock removal also requires additional backfill and restoration. Enbridge Gas stated that the Project also includes fabrication and installation of a new station and the abandonment of an existing station, unlike other expansion projects. Enbridge Gas questioned the ability to make meaningful cost comparisons of projects, even of those with similar pipe length, diameter and pressure, citing the Project area's construction challenges. Enbridge Gas submitted that Prince Township had flatter terrain, increased workspace area and far less rock.

Costs For Approval

Pollution Probe submitted that it was unclear as to whether Enbridge Gas intends to exclude a portion of the \$10.1 million from its request, or if all the project infrastructure and costs to 2030 are included in the application. Pollution Probe submitted that it was important to ensure clarity on how these expenditures would be treated from an OEB approval, customer billing and regulatory accounting perspective (e.g. revenues/costs included in the feasibility, revenues/costs included in the SES, in-service date(s), amounts and timing for rate base, etc.), and how OEB Conditions of Approval would be treated should the OEB approve the project.

Enbridge Gas clarified in its reply that it anticipates the natural gas main and station capital costs to be expended in year one of the Project, which is the portion of the Project for which LTC is required, and for which a post-construction report will be filed. Enbridge Gas stated that the capital costs for customer-specific facilities were included for the purposes of determining Project feasibility as is the case of other community expansion applications. Enbridge Gas reiterated that it would seek to include the forecast capital costs expended for the Project in rate base as part of its next rebasing application.

Upstream Reinforcement Costs

Environmental Defence submitted that Enbridge Gas did not address the question of upstream projects that may be required to meet the demand growth forecasted by this Project. Environmental Defence quoted Enbridge's evidence in its application for the 2021 Dawn Parkway Expansion Project⁶ (Dawn Parkway Project), which states that the Dawn Parkway Project is needed to meet demand growth in the Union rate zone, which, Environmental Defence submitted, includes North Bay. And if so, Environmental Defence submitted that the Dawn Parkway Project would, in effect, be required for this Project. Environmental Defence stated that although this Project is small, failing to address upstream reinforcement costs would set a bad precedent, and that at the very least, Enbridge Gas should be required to consider and include such costs more rigorously going forward.

Findings

The OEB approves the proposed Project costing of \$10.1 million. The proposed route is also accepted by the OEB.

The proposed Project was, according to Enbridge Gas, sized to meet the forecast ultimate potential of 394 customer attachments along the Project route instead of the ten-year customer attachment forecast of 134 customers. The minimum design would cost \$9.5 million, or \$600,000 less than the cost of the proposed Project. OEB staff questioned the proposal to build beyond the minimum design requirements. Enbridge Gas in its reply described the proposal Project as the prudent option rather than having the potential need to increase the capability in the area at a later date. Enbridge Gas noted that construction in the area is very challenging and costly; there are intangible costs of re-disturbing environmentally sensitive areas, and experience with other expansion projects have found that the forecast has been met early on the project life. The OEB finds Enbridge Gas's design approach reasonable given the nature of the construction area.

OEB staff further submitted that Enbridge Gas only be allowed to include the incremental \$600,000 into rate base after the number of attachments exceeds the 134 customers in the ten year forecast. The OEB concludes that the added complexity of OEB staff's proposed condition is not required. In addition to the benefits of the larger project described by Enbridge Gas, the impact on Enbridge Gas's rate base of the

⁶ EB-2019-0159

incremental \$600,000 would be immaterial but the administration to monitor the number of connections could be complex and significant.

Finally, OEB staff noted that the total cost of the proposed Project is about four times higher than that of the Prince Township project. Enbridge Gas replied that the geology and topography of the Project area creates considerable constructability challenges and high costs. The Prince Township project had flatter terrain, increased workspace area and far less rock. The North Bay Project also includes a Station. While the OEB encourages the use of cost comparisons, as illustrated in this case, other projects are not always appropriate comparators.

Environmental Defense expressed concern that Enbridge Gas has failed to address upstream reinforcement costs. The OEB agrees that upstream costs need to be included in the project costing. However, in this case there is no evidence that the Project has an impact on upstream costs, which is not surprising given the size of the Project.

Pollution Probe suggested that customers would be more likely to connect if Enbridge Gas shared DSM materials with the targeted communities. New gas customers typically are informed about DSM opportunities and the OEB expects that will also apply to the North Bay customers.

3.3 Project Economics

The \$10.1 million Project was awarded government funding up to \$8.7 million through the amendments to the OEB Act under the *Access to Natural Gas Act*, and through Ontario Regulation 24/19. This results in a ten-year net capital investment by Enbridge Gas of approximately \$1.4 million for the proposed design.

Enbridge Gas completed a discounted cash flow (DCF) analysis of the Project. When using the ten-year customer attachment forecast, the results show that the project has a net present value of \$12,000 and a PI of 1.0 when using the proposed design. The DCF analysis was based on the following assumptions:

- a) An SES of \$0.23/m³ for 40 years
- b) \$8.7 million in rate protection, treated as a contribution in aid of construction (CIAC) in 2020
- c) Incremental Tax Equivalent of \$16,446 per year for a period of ten years

Rate Stability Period

Enbridge Gas proposed to implement a ten-year rate stability period during which it will assume the risks associated with potential revenue shortfalls. Enbridge Gas submitted that this proposal is consistent with the Generic Decision and a number of subsequent community expansion projects. Enbridge Gas stated that it expects to provide a revised DCF calculation and PI based on actual project costs and revenues after the ten-year rate stability period for the purposes of recovering any revenue requirement shortfall on a go forward basis. Enbridge Gas also stated its expectation that it would bring forward any cost overruns to be included in rate base at the next rate application following the ten-year rate stability period.

OEB staff supported Enbridge Gas's proposal for a ten-year rate stability period. However, OEB staff submitted that there are no circumstances under which Enbridge Gas should be permitted to recover any revenue shortfalls which occur during years one to ten, as this would be contrary to both policy guidance on community expansions and would constitute impermissible retroactive rate making (assuming the matter was considered in a rates case after year ten).

Environmental Defence noted that the Project is expensive, with a cost of approximately \$75,000 per new customer as per the ten-year attachment forecast, and that \$65,000 of that is being paid for through a subsidy from existing customers (i.e. through the \$8.7M provided through the *Access to Natural Gas Act*). Given the costs of the Project, Environmental Defence submitted that it was essential that existing customers be fully protected from the risk of further financial liability. Environmental Defence noted that the Project involves substantial financial risks, and submitted that without mechanisms to protect against financial losses resulting from fewer attachments than forecast, the risk is unfairly borne by existing customers. Environmental Defence requested that the OEB confirm in its Decision or conditions of approval that revenue shortfalls arising in the first ten years cannot be recovered by Enbridge Gas from customers at the end of the initial rate stability period. Environmental Defence submitted that allowing for a delayed recovery of the shortfalls arising in years one to ten at a later time is inconsistent with the Generic Decision.

Enbridge Gas reiterated in its reply that it is at risk for potential revenue shortfalls during the ten-year rate stability period, and that it would not seek recovery for any overages or shortfalls related to this period.

Post-Rate Stability Period

Enbridge Gas also stated that if revenues are higher than forecast in years 11 to 40, it would not be reimbursing these funds by way of reducing the SES term, but that “once the increased profitability of this project is captured in the base upon which rates are set, this surplus would serve to reduce rates for all customers”.

OEB staff submitted that, after the rate stability period, the OEB would have the legal ability to include capital cost overruns incurred during the rate stability period into rate base, and/or to adjust the revenues from the Project to reflect actual customer numbers. However, there should be no expectation that any revenue shortfall or cost overruns would be recoverable in rates at the end of the rate stability period. If these circumstances were to arise, this would need to be adjudicated in the next rate application following the ten-year rate stability period.

Environmental Defence also requested that the OEB confirm in its Decision or conditions that revenue shortfalls arising in years 11 to 40 should not be recovered through cross-subsidies. Environmental Defence referred to the OEB’s determination in the 2015 Project, which stated that at the time Enbridge Gas seeks to recover the shortfalls arising after year ten. Environmental Defence submitted that base rates for all customers should be protected throughout the life of the Project by the rule against cross-subsidies. Environmental Defence submitted that the rate stability period is meant to protect potential new customers, and that while Enbridge Gas could seek to increase rates for new customers to recover revenue shortfalls, these customers would be subsequently protected by market-based pressure to keep rates down so as not to discourage further attachments, as well as the need for OEB rate approval.

Enbridge Gas reiterated in its reply that it would provide a revised DCF calculation based on actual capital costs and customer attachments in the next rebasing application that follows the rate stability period, and stated that it would seek to include the Project in the base upon which rates are set at that time. Enbridge Gas stated that it expects that the OEB will determine the appropriate revenue recovery methodology at that time, as well as the appropriate treatment of any capital cost overruns for the post-rate stability period. Enbridge Gas submitted that it would be premature to determine rate treatment now for whatever circumstances that may exist more than ten years into the future, when the broader impacts of community expansion and other projects will be better understood.

Findings

The rate stabilization needs to be separated into two periods. For the first ten years, Enbridge Gas has emphasized in its reply argument that “Enbridge Gas is at risk for

potential revenue shortfalls during the 10-year Rate Stability Period and will not seek recovery for any overages or shortfalls related to this Period". The OEB notes that this treatment is consistent with previous expansion projects. Enbridge Gas is required to seek no recovery of any shortfall that might occur in the first ten years.

Enbridge Gas stated that after the ten-year rate stability period it expects to provide a revised DCF calculation and PI based on actual project costs and revenues to be included in rate base at the next rebasing rate application. The OEB will consider any questions about the treatment of any surplus or shortfall for the 11-40 period at the time of rebasing.

3.4 Environmental Matters

An Environment Protection Plan (EPP) for the Project was prepared by Enbridge Gas's Environmental Planning Department. Enbridge Gas states that the EPP was prepared to meet the intent of the OEB's *Environmental Guidelines for Location, Construction and Operation of Hydrocarbon Pipelines and Facilities in Ontario (7th Edition, 2016)* (Environmental Guidelines).

The results of the EPP indicate that the environmental and socio-economic effects associated with construction of the Project are generally short-term in nature and minimal. No significant cumulative effects are anticipated as long as the mitigation measures listed in the EPP are followed. Enbridge Gas stated that its standard construction procedures, combined with the appropriate supplemental mitigations recommended in the EPP will be employed to address environmental and public concerns.

Enbridge Gas circulated a copy of the EPP to the Ontario Pipeline Coordinating Committee (OPCC) in April 2018. A summary of comments received by Enbridge Gas prior to filing the Application and the corresponding responses to the OPCC were provided in evidence. Enbridge Gas stated that there had been no communications with the OPCC since the Application was filed with the OEB and there are no outstanding OPCC concerns.

On April 14, 2020, as an update to one of its interrogatory responses, Enbridge Gas filed a letter from the Ministry of the Environment, Conservation and Parks (MECP), an OPCC member, dated April 7, 2020 regarding Enbridge Gas's Hydrogeological Study and Spill Response Plan for the Project. Enbridge Gas responded to MECP's concerns regarding potential impacts to water quality and quantity in water wells in the area by

stating that Stantec would deliver well monitoring notification letters to all residences within 100 metres of the proposed pipeline by April 2020, and that it would store chemicals and fuels appropriately in impermeable areas.

An Archaeological Assessment and Cultural Heritage Study were completed for the Proposed Project. The Archaeological Assessment Report was submitted to the Ministry of Tourism, Culture and Sport (MTCS) on February 8, 2019 and received approval by the MTCS on July 18, 2019. The Cultural Heritage Study was sent to MTCS on April 2, 2019 and was accepted by MTCS on May 7, 2019.

Pollution Probe submitted that the Project's EPP did not appear to conform with the OEB's filing requirements outlined in the OEB's Environmental Guidelines for assessing environmental and socio-economic impacts. Pollution Probe submitted that the EPP and Stantec's Natural Heritage Study Report do not address impacts and detailed mitigation plans for rock excavation and blasting. Pollution Probe also expressed a concern regarding outstanding responses from permitting agencies and members of the OPCC. To address these issues, Pollution Probe recommended the following edits to two of the draft conditions of approval proposed by OEB staff:

3. Enbridge Gas shall implement all the recommendations of the Environmental Report filed in the proceeding, all mitigation recommendations made by Stantec in their reports and all the recommendations and directives identified by the Ontario Pipeline Coordinating Committee review (including all permitting authorities)
6. For the duration of construction Enbridge shall ensure that a qualified independent Environmental Inspector is assigned to the project. Enbridge shall [sic] Both during and after construction, Enbridge Gas shall monitor the impacts of construction, and shall file with the OEB one paper copy and one electronic (searchable PDF) version of each of the following reports:

Enbridge Gas's reply noted that there are no outstanding OPCC-related concerns. Enbridge Gas also noted that the Environmental Guidelines are not statutory regulations or a rule or code under the OEB's authority, but that they were guidelines to be considered when preparing an LTC application for submission to the OEB, and as such were left to the proponent to assess the level of detail and requirements necessary based on the complexity of the project. Enbridge Gas stated that with the majority of the pipeline for the Project located in a disturbed portion of road allowance, this significantly reduced potential environmental impacts. However, Enbridge Gas agreed that not all impacts have been eliminated and stated that it had established appropriate mitigation

and protective measures. Enbridge Gas also committed to continue to work with agencies to develop final mitigation measures where necessary.

Findings

The OEB finds that Enbridge Gas has satisfied the OEB Environmental Guidelines requirements.

Construction is planned within the previously disturbed road allowance, which significantly reduces the potential environmental impacts. Enbridge Gas noted that the OPCC has no outstanding concerns; the Archaeological Assessment report and Cultural Heritage Study were approved by MTCS, and the MECP recommendations to address potential impacts to water quality and quantity in water wells in the area are being implemented by Enbridge Gas. In its reply submission, Enbridge Gas agreed “not all impacts have been eliminated and has established appropriate mitigation and protective measures.” Enbridge Gas also committed to work with agencies to develop final mitigation measures.

Pollution Probe raised environmental concerns and proposed some additional condition wording to address their concerns. The OEB accepts Enbridge Gas’s submission that with effective implementation of the recommended mitigation measures, no significant adverse residual environmental impacts are likely. The OEB finds that the current conditions are sufficient to require environmental compliance with environmental recommendations and directives.

3.5 Land Matters

The majority of the Project will be located within road allowances. Approximately 9 km of the proposed facilities are within forced roads. These segments vary in length and location along Northshore and Peninsula roads. These road allowances are considered to be forced roads because they cross private property and have been maintained by the municipality as a public highway for many years. Enbridge Gas provided confirmation of this fact through a statement filed by a local Ontario Land Surveyor and the City of North Bay’s By-Law No. 2002-133, passed on December 16, 2002. Enbridge Gas stated that it is aware of only one landowner dispute (not a legal claim) related to the forced road on that property relating to drainage and understands that the landowner does not oppose the Project.

In the areas where the Proposed Facilities will not be constructed on road allowances, permanent easements and temporary land use rights will be obtained from the directly affected landowners. Enbridge Gas sought approval for the form of these agreements under section 97 of the OEB Act. Enbridge Gas does not anticipate any issues obtaining the necessary easements.

Enbridge Gas confirmed that the forms of agreement it has requested approval for are the same as those previously approved by the OEB in the Sarnia Reinforcement Project⁷, the Kingsville Transmission Reinforcement Project⁸, the Stratford Reinforcement Project⁹ and the Chatham-Kent Rural Project¹⁰.

The new regulating station will be located on a fee simple area Enbridge Gas proposes to purchase prior to construction. Based on preliminary discussions with the directly affected landowner, Enbridge Gas does not anticipate any issues obtaining the necessary land rights required for the station.

Findings

The Project will be located mostly within road allowances. The OEB approves the forms of land agreements that have been or will be offered to owners of land affected by the route or location of the Project under Section 97 of the OEB Act.

3.6 Indigenous Consultation

The Ministry of Energy, Northern Development and Mines (MENDM) delegated to Enbridge Gas the procedural aspects of the Crown's Duty to Consult. In a letter dated June 11, 2019, the MENDM indicated that Enbridge Gas's consultation activities with respect to the Project are satisfactory to date. No Indigenous groups intervened in the proceeding.

Findings

The OEB finds that Enbridge Gas followed the OEB Environmental Guidelines with respect to Indigenous consultation. As part of these requirements, Enbridge Gas contacted MENDM with respect to the Crown's duty to consult on the Project. While the

⁷ EB-2019-0218

⁸ EB-2018-0013

⁹ EB-2018-0306

¹⁰ EB-2018-0188

OEB is not bound to accept the determination of MENDM, the OEB finds MENDM's letter of June 11, 2019 to be adequate evidence that Enbridge Gas's efforts to date are satisfactory to discharge the Crown's duty to consult with respect to the Project.

The OEB finds that Enbridge Gas's efforts to date, together with its ongoing plans, are sufficient for the OEB to conclude that Enbridge Gas has satisfied the duty to consult for the purposes of this approval of the leave to construct. The OEB expects that Enbridge Gas will continue its consultation activities with affected Indigenous communities throughout the life of the Project.

4 SYSTEM EXPANSION SURCHARGE

The ability for a utility to apply to the OEB for approval of a SES arose from the Generic Decision. The OEB has since approved the use of a SES for Union Gas Limited's 2015 Project, and the same SES was approved for Union Gas Limited's Chippewas of the Thames First Nation Project and the Saugeen First Nation Project.

The estimated capital cost of the proposed Project is approximately \$10.1 million. Enbridge Gas provided evidence that the proposed Project does not achieve a PI of 1.0 based solely on the use of its existing OEB approved rates and when the \$8.7 million *Access to Natural Gas Act* funding is accounted for, and therefore requires an SES of \$0.23/m³ for a full 40-year term to be economically feasible.

Enbridge Gas stated that it had proposed and expected that the basis of the OEB's approval of the SES for this Project would be the same as that previously approved by the OEB in the 2015 Project. As such, Enbridge Gas is not proposing to periodically update the Project's PI and if applicable, reduce the duration of the SES, which Enbridge Gas is required to do for the EGD rate zone community expansion projects.

OEB staff also prepared draft conditions for the SES in their interrogatories to Enbridge Gas, in accordance with the Generic Decision and the 2015 Project, for comment by Enbridge Gas. Enbridge Gas stated that it did not believe the added conditions are required in the context of the leave to construct, and that it had proposed and expected that the basis of the OEB's approval of its SES would be the same as that previously approved by the OEB in the 2015 Project. In its submission, OEB staff stated that it had no objections to the OEB not adding OEB staff's previously proposed conditions for the SES as formal conditions to the order, as long as the SES is approved on the same basis as that of the OEB's approval in the 2015 Project. However, OEB staff submitted that Enbridge Gas should be directed to re-calculate the Project PI periodically and reduce the term of the SES if the PI exceeds 1.0. Otherwise, OEB staff argued that Enbridge Gas's Union rate zone community expansion customers would be unnecessarily disadvantaged relative to its EGD rate zone community expansion customers.

Pollution Probe recommended that the OEB apply the SES mechanism recently approved in the Saugeen First Nation Project, as this would cap the total SES revenue, project costs and indicate that any project overages are not recoverable from ratepayers unless otherwise approved by the OEB. Pollution Probe also did not support the collection of an SES amount in excess of the amount needed to bring the project to a PI of 1.0.

Enbridge Gas reiterated in its reply that it was seeking to extend to the Project the same SES that was approved in previously approved SES projects located in Union Gas rate zones, and is not proposing to periodically update the Project's PI and potentially reduce the term of the SES. Enbridge Gas noted that OEB staff had previously supported the SES as proposed in the Saugeen First Nation project. Enbridge Gas stated that when it applies to harmonize the treatment of SES in its rate zones, it will seek to apply a single approach to projects on a go-forward basis.

Findings

Enbridge Gas has requested approval for an SES proposal that would result in Enbridge Gas applying a \$0.23/m³ surcharge for 40 years to its existing approved rates for all customers in the Project area. This SES is required to achieve a PI of 1.0. The Generic Decision and subsequent expansion decisions¹¹ required projects to have a PI of 1.0 and allowed an SES to be applied to achieve the required PI. The OEB approves an SES of \$0.23/m³ for a term of 40 years.

While OEB staff and other intervenors did not challenge the requested SES amount or term, they expressed concern about the approach to future changes in PI. OEB staff noted that in the EGD rate zone, when the PI is recalculated, Enbridge Gas would reduce the term of the SES if the PI exceeds 1.0. By contrast in the Union rate zones, if the PI exceeds 1.0 when the PI is recalculated based on actual costs and connections, Enbridge Gas would not reduce the term of the SES. The increased profitability of the project would be captured in the base upon which rates are set, reducing rates for all customers. Enbridge Gas indicated that the different treatments would be maintained until rate harmonization occurs. The OEB typically prefers a common approach to the treatment of PI; however, it accepts that it is appropriate to wait for the next rebasing proceeding to determine which approach should be uniformly applied. A comprehensive examination of the alternatives and impact on customers can be undertaken at that time.

The OEB does not accept the added conditions proposed by OEB staff for the SES.

¹¹ 2015 Community Expansion Project (EB-2015-0179); Fenelon Falls Project (EB-2017-0147); Chippewas of the Thames First Nation Project (EB-2019-0139); Saugeen First Nation Project (EB-2019-0187)

5 CONDITIONS OF APPROVAL

OEB staff asked Enbridge Gas to comment on a proposed set of conditions of approval for leave to construct. Enbridge Gas did not object to the proposed conditions.

As indicated in the Environmental Matters section, Pollution Probe recommended two changes to OEB staff's proposed conditions of approval for leave to construct. One was to ensure that Enbridge Gas would implement all mitigation recommendations from Stantec's report, the OPCC review, and all permitting agencies. The other was for Enbridge Gas to ensure that a qualified independent Environmental Inspector would be assigned to the Project.

Pollution Probe also raised a concern regarding the expiry of the LTC approval (typically within 12 months of the approval being granted), as well as to how Enbridge Gas would be able to provide a post-construction report within 15 months of the in-service date, if the Project is proposed to continue for a period of at least ten years. Pollution Probe submitted that it would be impractical to assess the environmental and socioeconomic impacts due to the project and complete a post-construction report a decade after the project commences.

Enbridge Gas clarified in its reply that it anticipates the natural gas main and station capital costs to be expended in year one of the Project, which is the portion of the Project for which LTC is required, and for which a post-construction report will be filed.

Findings

The conditions proposed by OEB staff are standard conditions that the OEB has adopted as part of most leave to construct approvals. The OEB concludes that these conditions are also appropriate for the Project. In addition, the OEB includes a condition that Enbridge Gas shall obtain all necessary approvals, permits, licences, certificates, agreements and rights required to construct, operate and maintain the Project. The OEB is also lifting the minimum 10-day notice period prior to construction. Construction can commence at any time after the leave to construct has been granted and required conditions have been met.

The conditions require construction to commence within 12 months from the date of this Decision an Order, and Enbridge Gas has not expressed any concern with that timeline. The OEB agrees that the post-construction report must be filed within 15 months of the completion of the natural gas main line and station.

The approved Conditions of Approval are attached as Schedule B to this Decision and Order.

6 ORDER

THE ONTARIO ENERGY BOARD ORDERS THAT:

1. Pursuant to section 90 of the OEB Act, Enbridge Gas Inc. is granted leave to construct approximately 27 kilometres of pipeline to serve the Project area of Northshore and Peninsula Roads, in the City of North Bay, as described in its application.
2. Leave to construct is subject to Enbridge Gas Inc. complying with the Conditions of Approval set out in Schedule B.
3. Pursuant to section 97 of the OEB Act, the OEB approves the forms of easement agreement that Enbridge Gas Inc. has offered or will offer to each owner of land affected by the approved pipeline route for the Project.
4. Pursuant to section 36 of the OEB Act, the OEB approves a System Expansion Surcharge of \$0.23 per m³ for 40 years in the Northshore and Peninsula Roads area in the City of North Bay.
5. Environmental Defence and Pollution Probe shall file with the OEB and forward to Enbridge Gas Inc. their cost claims in accordance with the OEB's *Practice Direction on Cost Awards* on or before **May 21, 2020**.
6. Enbridge Gas Inc. shall file with the OEB and forward to intervenors any objections to the claimed costs of the intervenors on or before **June 4, 2020**.
7. If Enbridge Gas Inc. objects to the intervenor costs, intervenors shall file with the OEB and forward to Enbridge Gas Inc. its response, if any, to the objections to cost claims on or before **June 18, 2020**.
8. Enbridge Gas Inc. shall pay the OEB's costs incidental to this proceeding upon receipt of the OEB's invoice.

All materials filed with the OEB must quote the file number, **EB-2019-0188**, be made in a searchable/unrestricted PDF format and sent electronically through the OEB's web portal at <https://pes.ontarioenergyboard.ca/eservice>. Filings must clearly state the sender's name, postal address and telephone number, fax number and email address. Parties must use the document naming conventions and document submission standards outlined in the RESS Document Guideline found at

<https://www.oeb.ca/industry>. If the web portal is not available parties may email their documents to boardsec@oeb.ca.

NOTE: The OEB is temporarily waiving the paper copy filing requirement until further notice. All communications should be directed to the attention of the Board Secretary and be received no later than 4:45 p.m. on the required date.

DATED at Toronto May 7, 2020

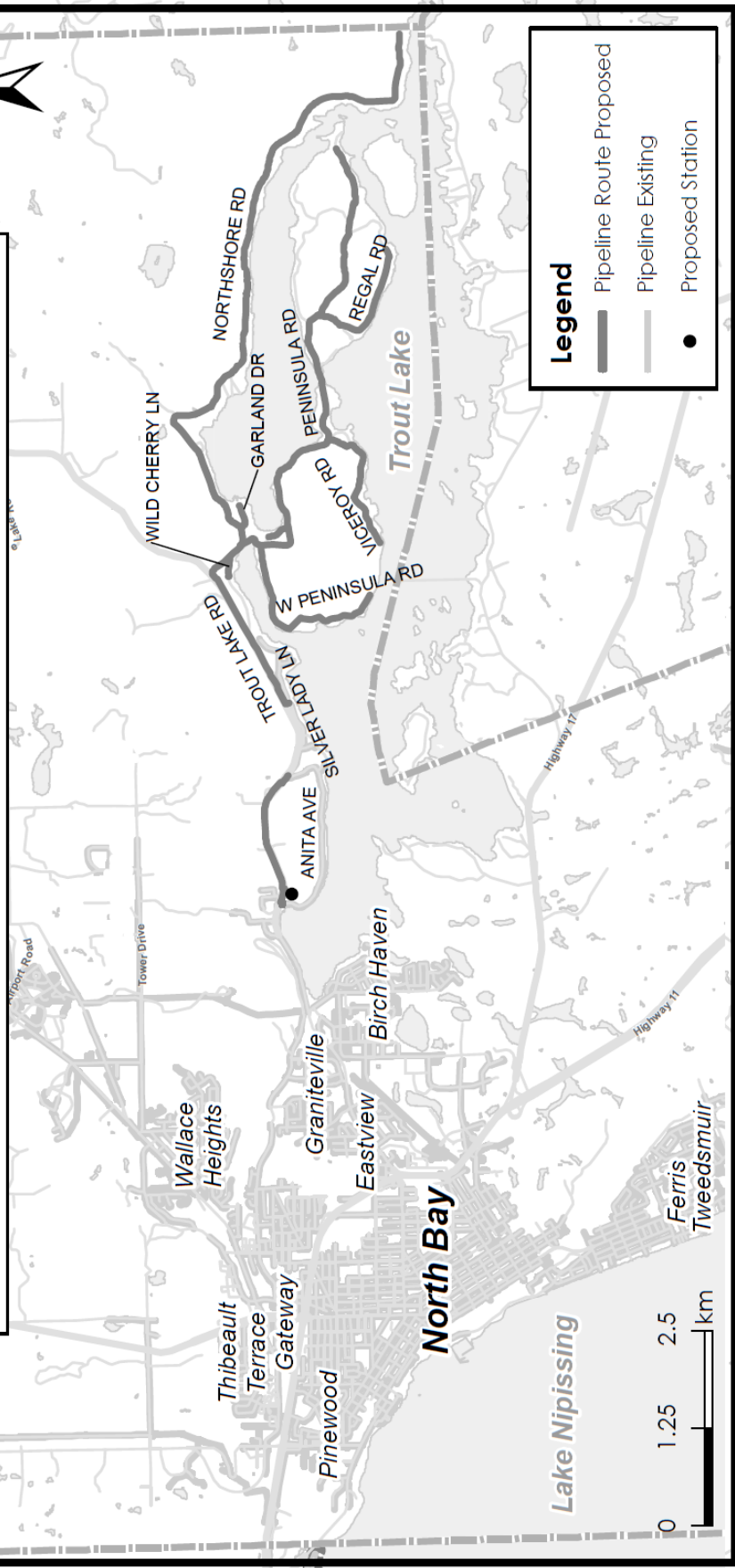
ONTARIO ENERGY BOARD

Original Signed By

Christine E. Long
Registrar and Board Secretary

SCHEDULE A
DECISION AND ORDER
ENBRIDGE GAS INC.
EB-2019-0188
MAY 7, 2020

Enbridge Gas Inc. - North Bay - Northshore & Peninsula Roads Pipeline Expansion



Legend

- Pipeline Route Proposed
- Pipeline Existing
- Proposed Station



SCHEDULE B
DECISION AND ORDER
ENBRIDGE GAS INC.
EB-2019-0188
MAY 7, 2020

SCHEDULE B – CONDITIONS OF APPROVAL

Application under Section 90 of the OEB Act

Enbridge Gas Inc.

EB-2019-0188

1. Enbridge Gas Inc. (Enbridge Gas) shall construct the Project as described in the application and restore the land in accordance with the OEB's Decision and Order in EB-2019-0188 and these Conditions of Approval.
2. Enbridge Gas shall obtain all necessary approvals, permits, licences, certificates, agreements and rights required to construct, operate and maintain the Project.
3. (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 shall give the OEB notice in writing of the following:
 - i. The commencement of construction, prior to the date construction commences
 - ii. The planned in-service date, at least ten days prior to the date the facilities go into service
 - iii. The date on which construction was completed, no later than 10 days following the completion of construction
 - iv. The in-service date, no later than 10 days after the facilities go into service
4. Enbridge Gas 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 shall advise the OEB of any proposed change in the project, including but not limited to changes in: OEB-approved construction or restoration procedures, the proposed route, construction schedule and cost, the necessary environmental assessments and approvals, and all other approvals, permits, licences, certificates and rights required to construct the proposed facilities. Except in an emergency, Enbridge Gas 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. Enbridge Gas shall file, in the proceeding where the actual capital costs of the project are proposed to be included in rate base, a Post Construction Financial Report, which shall indicate the actual capital costs of the project and shall provide

an explanation for any significant variances from the cost estimates filed in this proceeding.

7. Both during and after construction, Enbridge Gas shall monitor the impacts of construction, and shall file with the OEB one paper copy and one electronic (searchable PDF) version of each of the following reports:
 - (a) A post construction report, within three months of the in-service date, which shall:
 - i. Provide a certification, by a senior executive of the company, of Enbridge Gas'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, including the date/time the complaint was received, a description of the complaint, any actions taken to address the complaint, the rationale for taking such actions
 - v. Provide a certification, by a senior executive of the company, that the company has obtained all other approvals, permits, licenses, and certificates required to construct, operate and maintain the proposed project
 - (b) A final monitoring report, no later than fifteen months after the in-service date, or, where the deadline falls between December 1 and May 31, the following June 1, which shall:
 - i. Provide a certification, by a senior executive of the company, of Enbridge Gas's adherence to Condition 3
 - 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, 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 shall designate one of its employees as project manager who will be responsible for the fulfillment of these conditions, and shall provide the employee's

name and contact information to the OEB and to all the appropriate landowners, and shall clearly post the project manager's contact information in a prominent place at the construction site.

The OEB's designated representative for the purposes of these Conditions of Approval shall be the OEB's Manager of Natural Gas Applications (or the Manager of any OEB successor department that oversees leave to construct applications).