



# Ontario Energy Board Commission de l'énergie de l'Ontario

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## DECISION AND ORDER

EB-2017-0261

## ENBRIDGE GAS DISTRIBUTION INC.

Scugog Island Community Expansion Project

**BEFORE:**           **Susan Frank**  
                          Presiding Member

**Michael Janigan**  
Member

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May 31, 2018

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# 1 INTRODUCTION

On December 15, 2017, Enbridge Gas Distribution Inc. (Enbridge) applied to the Ontario Energy Board (OEB) under sections 36, 90, and 97 of the *Ontario Energy Board Act, 1998* (OEB Act) for approvals that would allow Enbridge to provide first-time natural gas service to the community of Scugog Island, in the Town of Scugog, in the Regional Municipality of Durham (Project).

Specifically, Enbridge is seeking the following orders:

- a) Under section 90 of the OEB Act, leave to construct approximately seven km of NPS 4 extra-high pressure steel natural gas pipeline to serve the community of Scugog Island, in the Township of Scugog, in the Regional Municipality of Durham.
- b) Under section 97 of the OEB Act, approval of the proposed form of easement agreements.
- c) Under section 36 of the OEB Act, approval to charge a System Expansion Surcharge (SES) of \$0.23 per cubic metre (m<sup>3</sup>) of natural gas for the term of 40 years to all new customers taking distribution service from the facilities in the community of Scugog Island.

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

Enbridge proposes to initiate construction of the Project in the spring of 2019 and intends to begin providing gas distribution service to meet the winter 2019 / 2020 heating season.

For the reasons set out below, the OEB finds that the construction of the Project is in the public interest. The OEB grants Enbridge leave to construct the Project, subject to the Conditions of Approval attached as Schedule B to this Decision and Order (Conditions of Approval). The OEB also approves the form of easement agreement. The OEB finds that that specific approval of the SES is not required given the generic approval the OEB granted in the Decision and Order in the Fenelon Falls proceeding.<sup>1</sup>

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<sup>1</sup> EB-2017-0147

## 2 PROCESS

By way of a letter dated June 29, 2017, Enbridge informed the OEB of its intent to file a leave to construct application for a pipeline to serve the community of Scugog Island.

On November 2, 2017, the OEB issued a letter seeking expressions of interest from other parties planning to serve Scugog Island; no qualifying expressions of interest were received.

A Notice of Hearing (Notice) was issued on January 26, 2018. Enbridge served and published the Notice as directed. No one requested intervenor status.

The OEB proceeded by way of a written hearing. In accordance with the procedural order issued on March 21, 2018, the interrogatory phase was completed on April 4, 2018. OEB staff filed a written submission on May 2, 2018 in support of Enbridge's application. In its submission, OEB staff recommended a revision to the standard Conditions of Approval. Enbridge filed its reply submission on May 16, 2018 confirming its acceptance of the Conditions of Approval proposed by OEB staff.

### 3 LEAVE TO CONSTRUCT

This application seeks an order for 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 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 project cost and economics, the environmental impacts, Indigenous consultation, and impacts on landowners.

#### 3.1 NEED FOR THE PROJECT

The need for the Project is supported by market research that involved residential customer surveys and other communications with residential and commercial customers. The project will enable Enbridge to provide first time natural gas service to approximately 968 existing residential premises and 19 existing commercial establishments in the community of Scugog Island, as well as making gas available for proposed residential, commercial and industrial developments. The project is consistent with the Ontario Government’s goal to expand natural gas infrastructure to more communities in rural and northern Ontario and the OEB’s decision with reasons in the generic community expansion proceeding.<sup>2</sup>

#### Findings

The OEB finds that the Project is needed to supply gas to the community of Scugog Island.

#### 3.2 PROJECT COST AND ECONOMICS

Enbridge calculated that after accounting for government funding, SES revenues, and municipal tax savings over a 10 year period, the \$16.6 million Project is forecast to achieve a PI of 1.04. Enbridge has received approximately \$6.3 million in funding for the Project from the Ontario Ministry of Infrastructure’s Natural Gas Grant Program.

In accordance with the OEB’s decision with reasons in the generic community expansion proceeding<sup>3</sup> and its decision and order in the Fenelon Falls community

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<sup>2</sup> EB-2016-0004

<sup>3</sup> EB-2016-0004

expansion proceeding<sup>4</sup>, Enbridge proposes to apply a SES in the form of a rate rider in the amount of \$0.23 per m<sup>3</sup> to customers of the Project for a term of up to 40 years.

Subsequent to Enbridge's Scugog Island project application, the OEB, in its Decision and Order in Enbridge's Fenelon Falls community expansion proceeding, stated that the OEB, "approves the \$0.23 per m<sup>3</sup> Surcharge for all new customers of its [Enbridge's] future Community Expansion Projects."<sup>5</sup>

## Findings

The OEB finds that that specific approval of the SES is not required given the generic approval the OEB granted in the Decision and Order in the Fenelon Falls proceeding on March 1, 2018.<sup>6</sup>

The OEB finds that economic feasibility of the Project achieves the minimum PI of 1.0, which meets the requirements of the OEB's guidelines for assessing and reporting on natural gas system expansion in Ontario.<sup>7</sup>

### 3.3 ENVIRONMENTAL ASSESSMENT

Enbridge followed the OEB's environmental guidelines<sup>8</sup> to assess the potential environmental impact of the Project. The environmental assessment, including alternative routing and proposed mitigation measures, was documented in an Environmental and Socio-Economic Impact Assessment Report (ER) completed by Stantec Consulting Ltd. (Stantec) on behalf of Enbridge.

A revised Stage 1 Archaeological Assessment (AA) was submitted to the Ministry of Tourism, Culture and Sport (MTCS) on October 6, 2017. The MTCS provided clearance for the revised Stage 1 AA on November 7, 2017. However, portions of the project have been recommended for a Stage 2 AA which Enbridge will complete in 2018. The results and report of the Stage 2 AA will be submitted to the MTCS for review once it is completed.

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<sup>4</sup> EB-2017-0147

<sup>5</sup> Ibid. Decision and Order, page 15.

<sup>6</sup> EB-2017-0147

<sup>7</sup> E.B.O. 188

<sup>8</sup> *Environmental Guidelines for the Location, Construction and Operation of Hydrocarbon Pipelines in Ontario*, 7th Edition, 2016

In July 2017, Enbridge held two public information sessions in the study area to consult potentially affected parties. The engagement informed the stakeholders about the Project and sought comments so that concerns and issues could be addressed and resolved. No outstanding issues or concerns were raised during the review of the ER.

Two potential pipeline routes were identified. The preferred pipeline route (PPR) commences just west of the intersection of Highway 57 and Highway 7A in Blackstock, travels west along Highway 7A, and terminates at the intersection of Highway 7A and Island Road in Port Perry (Township of Scugog). The PPR is located within the municipal road allowance. The length of the PPR is approximately 7 kilometers.

The alternative route (AR) requires two sections of pipeline: a reinforcement pipeline and a new pipeline. The reinforcement section begins at the intersection of Lakeridge Road and Scugog Line 14, travels east along Scugog Line 14 and terminates at the intersection of Marsh Hill Road and Scugog Line 14 in Sunderland, Ontario (Township of Brock). The new section of pipeline begins at the intersection of Highway 7 & 12 and Scugog Line 6 and travels east along Scugog Line 6, which turns into Highway 7A, and terminates at the intersection of Highway 7A and Island Road in Port Perry (Township of Scugog). The AR is located within the municipal road allowance. The length of the AR is approximately 9 kilometers. The alternative route was rejected due to its longer length, greater impact on the public, more challenging construction, and higher construction costs.<sup>9</sup>

## Findings

The OEB finds that Enbridge will adequately address the environmental issues by implementing the mitigation recommendations identified in the ER and the recommendations made in the OPCC review, as well as by adhering to the Conditions of Approval for this Decision and Order relating to mitigation and construction monitoring and reporting (addressed in section 3.5 of this Decision and Order).

Given that the Stage 2 AA has yet to be completed and filed with the MTCS, the OEB requires that the results of the Stage 2 Archaeological Assessment and MTCS's clearance be provided to the OEB once available.

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<sup>9</sup> EB-2018-0261. Enbridge's response to OEB staff interrogatory 3.

The OEB has no concerns with the route selection methodology and criteria that resulted in the proposed routing.

### 3.4 INDIGENOUS CONSULTATION

In a letter dated May 24, 2017, Enbridge contacted the Ministry of Energy (MOE) with respect to the Crown's duty to consult. Enbridge received a letter from the MOE dated June 28, 2017, indicating that the procedural aspects of the duty to consult were delegated to Enbridge.

Notice of this Application was provided to five potentially impacted First Nations and the Métis Nation of Ontario. None intervened in the proceeding.

Enbridge prepared an Indigenous Consultation Report (ICR) and filed the ICR with the MOE. Enbridge appears to have addressed the questions and concerns expressed by four out of five Indigenous communities potentially impacted by the Project. A meeting with the fifth community has yet to be arranged. The MOE confirmed it would not issue a letter of sufficiency until a meeting has taken place with the fifth community.<sup>10</sup>

### Findings

The OEB notes that considerable effort has been undertaken to satisfy the procedural aspects of the Crown's duty to consult. However, to date the MOE has not confirmed that it believes Enbridge's consultation activities are complete. Although the OEB is the decision maker with respect to the adequacy of consultation, it is not prepared to make that decision until it receives the MOE's views. Therefore, the OEB finds that the duty to consult has not yet been met for the purposes of this application. The OEB's approval of this application will therefore be conditional on the OEB receiving the MOE's letter of sufficiency, and any additional process the OEB finds necessary after reviewing that letter. If the letter of sufficiency is not filed within 18 months of the date on this Decision and Order, then leave to construct shall expire.

### 3.5 CONDITIONS OF APPROVAL

The OEB staff submission noted that item 5 of the standard conditions of approval for the granting of leave to construct requires the submission of a post-construction financial report at the time of the applicant's next rebasing. The OEB staff submission also noted the proposal to defer rebasing for 10 years upon approval to amalgamate

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<sup>10</sup> EB-2018-0261. Enbridge's response to OEB staff interrogatory 10.



Enbridge and Union.<sup>11</sup> OEB staff suggested that the post-construction financial report be filed at the same time as the final environmental monitoring report. Enbridge agreed with OEB staff's suggestion.

Subsequent to submissions from OEB staff and Enbridge<sup>12</sup>, the OEB issued a Decision and Order for Union's Oxford Reinforcement Project in which this same issue was addressed<sup>13</sup>. The OEB required that Union file its post construction financial report both,

- a) Concurrent with the final environmental monitoring report, and
- b) In the proceeding where the actual capital costs of the project are proposed to be included in rate base or any proceeding where Union proposes to start collecting revenues associated with the project - whichever is earlier.

## Findings

The OEB requires Enbridge to file its post-construction financial report according to the same condition that was approved in Union's Oxford Reinforcement Project. The approved Conditions of Approval are attached as Schedule B to this Decision and Order.

The OEB finds that Enbridge's compliance with the Conditions of Approval will ensure that the requirements of other approvals, permits, licences, and certificates are fully addressed.

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<sup>11</sup> EB-2017-3036 / -0307.

<sup>12</sup> EB-2018-0261. OEB staff submissions filed May 2, 2018, and Enbridge reply submission filed May 16, 2018.

<sup>13</sup> EB-2018-0003. Decision and Order issued May 17, 2018.

## 4 LAND MATTERS

The proposed Project originates near the community of Blackstock just west of the intersection of Highway 57 and Highway 7A and ends near the intersection of Highway 7A and Island Road in Port Perry. The entire proposed preferred route is located within public road allowance. Enbridge will be required to obtain road occupancy permits from the Ministry of Transportation.

Enbridge has held discussions with the municipality and public meetings with its residents. To date, Enbridge has not received any objections to the project.

Section 97 of the OEB Act requires Enbridge to satisfy the OEB that it has offered or will offer to each owner of land affected by the pipeline route an agreement in a form approved by the OEB. As the entire proposed preferred route is located within public road allowance, there are no permanent land use requirements. To date, Enbridge has not identified any specific requirements for temporary land use. However, temporary working areas may be required along the route where the road allowance is too narrow or confined to facilitate construction. Enbridge has committed that agreements for temporary working rights will be negotiated where required.

The form of Working Area Agreement that Enbridge would offer affected landowners was previously approved by the OEB in the proceeding for the Innes Road Project.<sup>14</sup>

### Findings

The OEB approves the proposed form of easement agreement filed by Enbridge. The OEB notes that this form of easement agreement is the same as a form that the OEB has approved in a prior Enbridge proceeding.

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<sup>14</sup> EB-2012-0438

## 5 ORDER

### THE ONTARIO ENERGY BOARD ORDERS THAT:

1. Enbridge Gas Distribution Inc. is granted leave, pursuant to subsection 90(1) of the OEB Act, to construct approximately seven km of nominal pipe size 4” extra-high pressure steel natural gas pipeline to serve the community of Scugog Island in the Township of Scugog in the Regional Municipality of Durham, as described in its application in this proceeding.
2. The OEB approves the proposed form of easement agreement that Enbridge has offered or will offer to each owner of land affected by the approved pipeline route for the Scugog Project.
3. Enbridge is to monitor and report on the Profitability Index (PI) to determine when the SES charge is no longer required to reach a PI of 1.
4. Leave to construct is subject to Enbridge Gas Distribution Inc.:
  - a) Filing with the OEB the results and the MTCS’s clearance of the Stage 2 Archaeological Assessment once available,
  - b) Filing a letter of sufficiency from the MOE regarding Enbridge’s duty to consult activities, and
  - c) Complying with the Conditions of Approval set forth in Schedule B.
5. Enbridge Gas Distribution Inc. shall pay the OEB’s costs incidental to this proceeding upon receipt of the OEB’s invoice.

**DATED** at Toronto May 31, 2018

**ONTARIO ENERGY BOARD**

*Original Signed By*

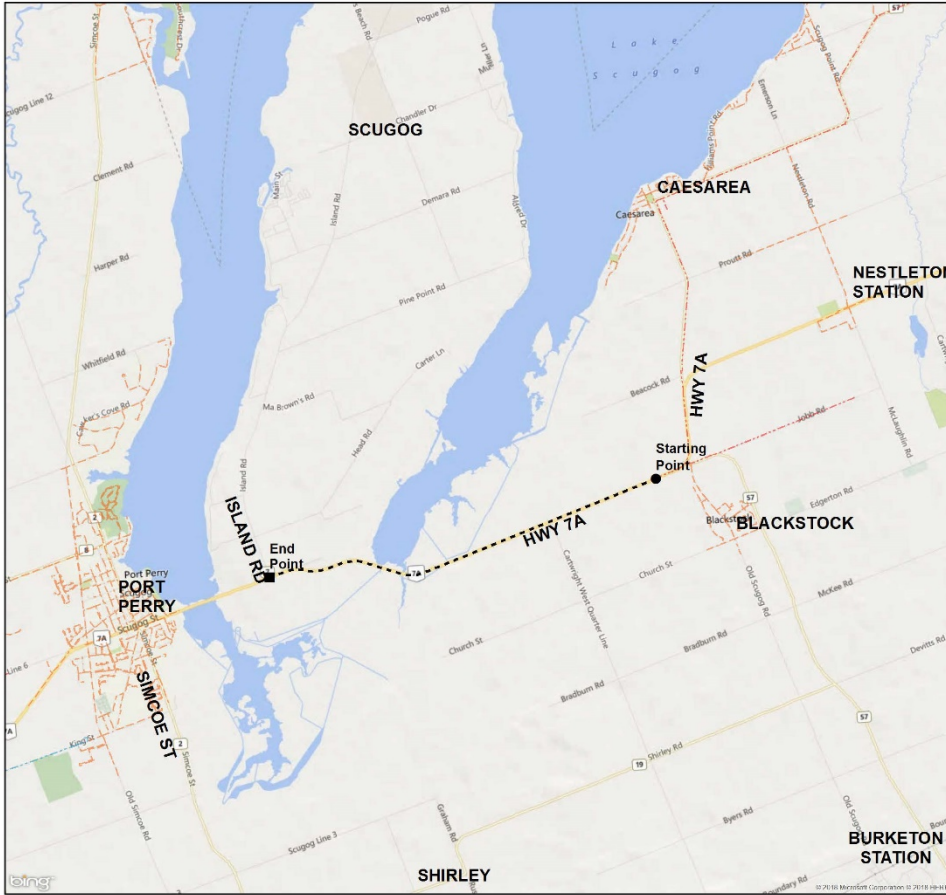
Kirsten Walli  
Board Secretary

**SCHEDULE A – MAP**

**Enbridge Gas Distribution Inc.**

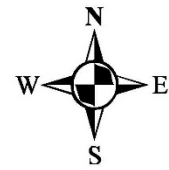
**EB-2017-0261**

# Proposed Pipeline to Serve Scugog Island



## Legend

- Starting Point
- End Point
- Scugog Island Proposed Pipeline



0 0.5 1 2 3 Kilometers

### Disclaimer:

The map is provided with no warranty express or implied and is subject to change at any time. Any person using the Map shall do so at its own risk and the Map is not intended in any way as a tool to locate underground infrastructure for the purposes of excavation.

**SCHEDULE B**

**CONDITIONS OF APPROVAL**

**Enbridge Gas Distribution Inc.**

**EB-2017-0261**

**Leave to Construct Conditions of Approval**  
**Application under Section 90 of the OEB Act**  
**Enbridge Gas Distribution Inc.**  
**EB-2017-0261**

1. Enbridge Gas Distribution Inc. (Enbridge) shall construct the facilities and restore the land in accordance with the OEB's Decision and Order in EB-2017-0261 and these Conditions of Approval.
2. (a) Authorization for leave to construct shall terminate 18 months after the decision is issued, unless construction has commenced prior to that date.  
  
(b) Enbridge shall give the OEB notice in writing:
  - i. of the commencement of construction, at least ten days prior to the date construction commences;
  - ii. of the planned in-service date, at least ten days prior to the date the facilities go into service;
  - iii. of the date on which construction was completed, no later than 10 days following the completion of construction; and
  - iv. of the in-service date, no later than 10 days after the facilities go into service.
3. Enbridge 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.
4. Enbridge shall advise the OEB of any proposed change to OEB-approved construction or restoration procedures. Except in an emergency, Enbridge 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.
5. Concurrent with the final monitoring report referred to in Condition 6(b), Enbridge shall file 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. Enbridge 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 proposes to start collecting revenues associated with the project, whichever is earlier.

6. Both during and after construction, Enbridge 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'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, 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; and
    - v. provide a certification, by a senior executive of the company, that the company has obtained all other approvals, permits, licences, 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'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; and
    - v. include a log of all complaints received by Enbridge, 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.