



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

DECISION AND ORDER

EB-2018-0108

ENBRIDGE GAS DISTRIBUTION INC.

Don River 30" Pipeline Project

BEFORE: **Emad Elsayed**
 Presiding Member

Michael Janigan
 Member

November 29, 2018

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1 INTRODUCTION

Enbridge Gas Distribution Inc. (Enbridge) applied to the Ontario Energy Board (OEB) under sections 90 and 97 of the *Ontario Energy Board Act, 1998* (OEB Act) for approvals that would allow Enbridge to replace a segment of its Don Valley pipeline that crosses the Don River (Project) by way of an infrastructure bridge constructed in 1929 and owned by Enbridge (Bridge).

Specifically, Enbridge is seeking the following orders:

- a) Under section 90 of the OEB Act, leave to construct 350 metres of NPS 30 extra-high pressure natural gas pipeline
- b) Under section 97 of the OEB Act, approval of the proposed forms of easement agreement

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

Enbridge intends to commence construction in 2019.

The OEB examined all aspects of this leave to construct application and is satisfied that it 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 proposed forms of easement agreement.

2 PROCESS

Enbridge filed its original application on July 18, 2018 and an update on August 14, 2018. A Notice of Hearing (Notice) was issued on August 21, 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 October 1, 2018, the interrogatory phase was completed on October 22, 2018. OEB staff filed a written submission on November 1, 2018 in support of Enbridge's application. Enbridge filed its reply submission on November 12, 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 nature of the proposed facilities, environmental matters, Indigenous consultation, the project economics, and conditions of approval.

3.1 NEED FOR THE PROJECT

Enbridge established the need for the Project based on four engineering studies intended to determine the structural condition of the Bridge and its ability to withstand hydraulic loads and flood events. The studies demonstrate that structural changes in the Bridge since it was constructed could become further compromised by future flood events. If the Bridge is compromised, it could impair the safe operation of the Don Valley Pipeline which supplies natural gas to a large population of non-interruptible residential, commercial, and industrial customers, as well as natural gas fired power plants in downtown Toronto.

Findings

The OEB finds that Enbridge demonstrated that failure to address the risk associated with potential damage to the 89-year-old bridge and existing pipeline could have a significant adverse impact on the gas supply to a large number of residential, commercial and industrial customers. The OEB finds that this project is needed to ensure the safe operation and reliability of the Don Valley Pipeline.

3.2 PROPOSED FACILITIES AND ALTERNATIVES

Enbridge is proposing to construct approximately 350 metres of NPS 30 inch extra-high pressure steel pipe that will be primarily located on previously disturbed municipal right-of-way. As more fully described below, Enbridge proposes to locate the pipeline underneath the Don River from Bayview Avenue to Sunlight Park Road.

Enbridge provided the design specifications of the Project to the Technical Standards and Safety Authority (TSSA). The TSSA has not expressed concern with the safety or design of the proposed facilities. OEB staff had no concerns with the proposed facilities.

Enbridge considered three alternatives to the Project: rehabilitating the Bridge, rebuilding the Bridge, and an alternative trenchless installation method. OEB staff noted that Enbridge's evidence on these alternatives was provided in response to an interrogatory. OEB staff submitted that, as part of its future applications, Enbridge should be directed to provide more detailed information on the alternatives it has considered.

Findings

The OEB finds that Enbridge assessed reasonable alternatives to the Project and the preferred alternative of relocating the pipeline is acceptable.

As suggested by OEB staff, for future project applications, Enbridge should provide in its application sufficient evidence on project alternatives such that the OEB can determine whether viable alternatives to the proposed Project have been assessed.

3.3 ENVIRONMENTAL MATTERS

Enbridge retained Stantec Consulting Ltd. (Stantec) to complete an environmental assessment and to propose a route for the pipeline. Enbridge followed the OEB's Environmental Guidelines¹ 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 on behalf of Enbridge. Stantec does not anticipate any permanent or adverse environmental impacts from the construction and operation of the Project, provided the mitigation measures recommended in the ER are followed.

The Project commences at the NPS 30-inch pipeline on the west side of the Don River, approximately 25 metres north of the Bridge. The route crosses the Don River and the Don Valley Parkway (DVP) via a trenchless crossing to the DVP interchange for Eastern Avenue on the east side of the Don River. From there, the route travels southward and terminates at Sunlight Park Road where it connects to the existing NPS 30 inch pipeline. The length of the Project is approximately 320 metres.

Stantec identified three alternative routes for the Project. The main reasons for selecting the final preferred route over the other two related to considerations of overall pipeline

¹ *Environmental Guidelines for the Location, Construction and Operation of Hydrocarbon Pipelines in Ontario*, 7th Edition, 2016 (Environmental Guidelines)

length, proximity to sensitive landforms, and potential conflicts with other existing infrastructure.

Enbridge finalized a Stage 1 archaeological assessment on April 4, 2018, and submitted it to the Ministry of Tourism, Culture and Sport (MTCS). Enbridge received a clearance letter from MTCS regarding the archaeological assessment on October 24, 2018, and filed it as part of its reply submission in this proceeding.

Findings

The OEB finds that Enbridge selected a preferred route for the proposed Project based on an adequate assessment of several potential routes. The OEB accepts Stantec's assessment that it does not anticipate any long-term impacts from the construction and / or operation of the proposed Project. The OEB finds that Enbridge will adequately address the environmental issues by implementing the mitigation recommendations identified in the ER and by adhering to the Conditions of Approval relating to mitigation, construction monitoring and reporting.

The OEB is satisfied with the October 24, 2018 clearance letter from MTCS regarding the archaeological assessment.

3.4 INDIGENOUS CONSULTATION

In accordance with the OEB's Environmental Guidelines, Enbridge contacted the Ministry of Energy (MOE)² with respect to the Crown's duty to consult on October 10, 2017. The MOE delegated the procedural aspects of the Crown's Duty to Consult for the Project to Enbridge. On September 10, 2018, the MOE notified Enbridge that its consultations were satisfactory for the purposes of its application to the OEB for leave to construct the Project.

Findings

The OEB is satisfied that the Crown's duty to consult has been adequately discharged up to this stage of the Project. The OEB expects Enbridge to continue to consult proactively with affected First Nations and Métis communities, as appropriate, throughout the construction phase of the Project to address any concerns that may arise.

² Subsequent to Enbridge filing its application, the MOE became the Ministry of Energy, Northern Development and Mines.

3.5 PROJECT ECONOMICS

Enbridge did not conduct an economic feasibility analysis using the discounted cash flow method, which is normally required for pipeline distribution system expansion projects.³ Enbridge stated that the Project is a replacement project driven by an integrity issue and consequently there are no revenues associated with the Project. The costs associated with removal and abandonment of the existing pipeline will be charged to the cost of retirements. OEB staff submitted that the rationale for not conducting an economic analysis is acceptable and notes that the OEB has accepted the rationale in previous applications for leave to construct replacement projects⁴.

OEB staff noted that there is a 30% contingency applied to the Project cost sub-total and asked Enbridge to explain the need for a 30% contingency. Enbridge responded that it followed its established guidelines for a project at this stage of scope development and risk profile. OEB staff noted that the contingency is higher than the 25% associated with Enbridge's Liberty Village project.⁵ In that proceeding, the OEB found there was "insufficient evidence to support the assumed 25% contingency level."⁶

OEB staff noted that the OEB could grant Enbridge leave to construct approval for the Project, but allow for a full prudence review of the Project costs, including the costs of the proposed installation method, in the proceeding in which Enbridge proposes to include the capital costs of the Project in rate base. This would differ from the OEB's traditional approach for projects that receive Leave to Construct approval, where any further prudence review is typically focused on cost over-runs. This is a similar condition to that established by the OEB in Enbridge's Liberty Village project.

Findings

The OEB finds that the rationale provided by Enbridge for not conducting an economic feasibility analysis for this Project is acceptable. The OEB finds that Enbridge has not provided adequate support for the use of a 30% (\$5.9 million) contingency in the Project's cost estimate. The OEB directs Enbridge to provide a detailed review of the final costs of the Project as described in Condition 5 of the Conditions of Approval.

³ *Ontario Energy Board Guidelines for Assessing and Reporting on Natural System Expansion in Ontario* set out in the OEB's EBO 188 "Report to the Board" dated January 30, 1998 (EBO 188).

⁴ EB-2017-0118, Decision and Order, June 23, 2017, page 6

⁵ EB-2018-0096.

⁶ EB-2018-0096, Decision and Order, September 27, 2018, pages 5-6.

3.6 CONDITIONS OF APPROVAL

OEB staff proposed the conditions of approval typically attached to leave to construct decisions. Enbridge reviewed the draft conditions of approval and indicated that it had no concerns or comments.

Findings

As indicated earlier in this Decision and Order, under section 3.5 (Project Economics), the OEB is imposing additional reporting requirements which are incorporated in Condition 5 of the Conditions of Approval.

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.

4 LAND MATTERS

The proposed route for the Project is primarily located on a previously disturbed municipal right-of-way. The balance of the route is located on municipal lands, and easements will be required from the City of Toronto, the Toronto and Region Conservation Authority (TRCA) and one private landowner. The City of Toronto has advised Enbridge that it requires the approval of the TRCA before it will grant permanent and temporary easements to Enbridge; negotiations with the TRCA and the one private landowner are on-going.

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. To date, Enbridge has not identified any specific requirements for temporary land use.

Enbridge has filed three forms of land use agreement for approval by the OEB for use in the Project as required. The forms of easement were previously approved by the OEB, most recently on Enbridge's Liberty Village project, and have not been modified since that proceeding.⁷ OEB staff submitted that the OEB should approve these forms of agreement.

Findings

The OEB finds that land matters associated with this Project are being adequately addressed and approves the three forms of land use agreement filed by Enbridge. The OEB's approval for leave to construct is subject to the necessary easements being acquired.

⁷ EB-2018-0096

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 350 metres of NPS 30 inch extra-high pressure steel pipe under the Don River, as described in its application.
2. The OEB approves the proposed forms of easement agreement that Enbridge has offered or will offer to each owner of land affected by the approved pipeline route for the Project.
3. Leave to construct is subject to Enbridge Gas Distribution Inc. complying with the Conditions of Approval set forth in Schedule B.
4. Enbridge Gas Distribution Inc. shall pay the OEB's costs incidental to this proceeding upon receipt of the OEB's invoice.

DATED at Toronto November 29, 2018

ONTARIO ENERGY BOARD

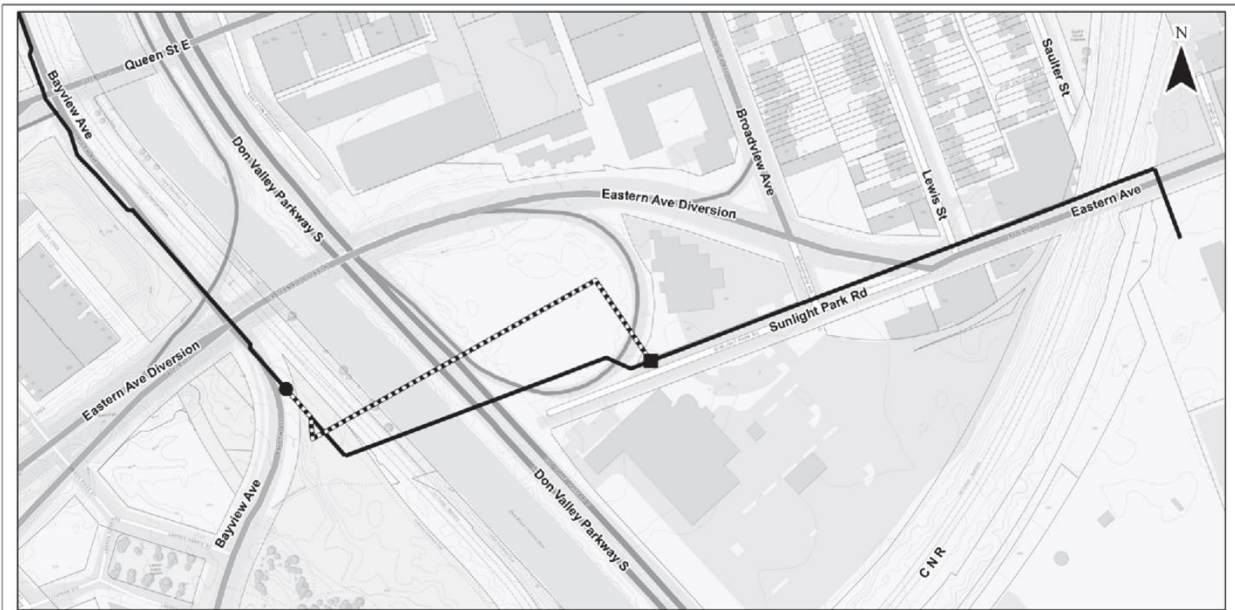
Original Signed By

Kirsten Walli
Board Secretary

SCHEDULE A
DECISION AND ORDER
ENBRIDGE GAS DISTRIBUTION INC.
EB-2018-0108
NOVEMBER 29, 2018

SCHEDULE A – MAP

Don River NPS 30



Legend

- Starting Point
- Termination Point
- Preferred Route
- Existing NPS 30 Pipeline

SCHEDULE B
DECISION AND ORDER
ENBRIDGE GAS DISTRIBUTION INC.
EB-2018-0108
NOVEMBER 29, 2018

SCHEDULE B – CONDITIONS OF APPROVAL

Application under Section 90 of the OEB Act

Enbridge Gas Distribution Inc.

EB-2018-0108

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-2018-0108 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 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 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.