



Ontario
Energy
Board

Commission
de l'énergie
de l'Ontario

DECISION AND ORDER

EB-2020-0136

ENBRIDGE GAS INC.

Application for leave to construct natural gas pipelines and associated facilities in the City of Toronto

BEFORE: **Cathy Spoel**
 Presiding Commissioner

Robert Dodds
 Commissioner

Pankaj Sardana
 Commissioner

December 17, 2020

TABLE OF CONTENTS

| | | |
|-----|---------------------------------------------------------------------|----|
| 1 | INTRODUCTION AND SUMMARY..... | 1 |
| 2 | THE PROCESS | 2 |
| 3 | LEAVE TO CONSTRUCT..... | 3 |
| 3.1 | NEED FOR THE PROJECT, PROPOSED FACILITIES AND ALTERNATIVES | 3 |
| 3.2 | PROJECT COST, ECONOMICS AND SCHEDULE..... | 7 |
| 3.3 | ENVIRONMENTAL AND LAND MATTERS | 9 |
| 3.4 | INDIGENOUS CONSULTATION | 11 |
| 3.5 | CONDITIONS OF APPROVAL..... | 12 |
| 4 | ORDER | 15 |
| | SCHEDULE A – MAP OF THE PROJECT | |
| | SCHEDULE B – CONDITIONS OF APPROVAL | |

1 INTRODUCTION AND SUMMARY

This is the Decision of the Ontario Energy Board (OEB) regarding an application filed by Enbridge Gas Inc. (Enbridge Gas) on July 31, 2020.

Enbridge Gas applied under section 90(1) of the *Ontario Energy Board Act, 1998* (OEB Act) for approval to construct a natural gas pipeline and ancillary facilities replacing approximately 4.5 kilometers (km) of the Cherry to Bathurst segment (C2B segment) of the Kipling Oshawa Loop (KOL) along Lake Shore Boulevard in the City of Toronto (Project). Enbridge Gas also applied under section 97 of the Act for approval of the form of agreement it will offer to landowners to use their land for routing or construction of the proposed pipeline.

Enbridge Gas stated that the Project is needed to address pipeline integrity concerns that it has identified in order to ensure the safety and reliability of the KOL pipeline. Construction of the Project is scheduled to begin in June 2021 and is expected to be in-service in August 2022.

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

The OEB examined all aspects of Enbridge Gas's leave to construct 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 proposed form of agreement that Enbridge Gas will offer to affected landowners.

2 THE PROCESS

Enbridge Gas filed its leave to construct application on July 31, 2020.

The OEB issued a Notice of Hearing on August 21, 2020. Energy Probe Research Foundation (Energy Probe), Environmental Defence, Federation of Rental-housing Providers of Ontario (FRPO), Metrolinx, Pollution Probe and the City of Toronto applied for, and were granted, intervenor status. Energy Probe, Environmental Defence, FRPO and Pollution Probe were granted cost award eligibility.

On September 21, 2020, the OEB issued Procedural Order No. 1, indicating that it was proceeding by way of a written hearing and making provision for interrogatories and interrogatory responses. Interrogatories were filed by OEB staff and intervenors on October 1, 2020. On October 8, 2020, the OEB issued Procedural Order No. 2, which granted Enbridge Gas's request for an extension to the deadline to file interrogatory responses. Enbridge Gas filed its responses to interrogatories on October 21, 2020.

The OEB issued Procedural Order No. 3 on October 27, 2020, setting out a schedule for the filing of written submissions. Enbridge Gas filed its argument-in-chief on November 2, 2020. OEB staff and intervenors filed submissions on November 9, 2020 followed by a reply submission from Enbridge Gas on November 17, 2020. The OEB determined that the application and interrogatory process provided sufficient evidence to consider the issues in the proceeding, and that an oral hearing was not necessary.

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 considers the need for the project, the nature of the proposed facilities and any alternatives, project cost and economics, environmental matters, Indigenous consultation, land matters, and conditions of approval.

3.1 Need for the Project, Proposed Facilities and Alternatives

Enbridge Gas proposed to replace a 4.3 km segment of NPS 20 high pressure steel natural gas main on Lake Shore Boulevard from Cherry Street to Remembrance Drive (west of Bathurst Street) and a 230 m section on Parliament Street from Mill Street to Lake Shore Boulevard (together, the C2B segment) in the City of Toronto. The C2B segment is part of the larger Kipling-Oshawa Loop (KOL).

Built in 1954, the C2B segment provides natural gas service to residents, businesses and industry in the downtown area of the City of Toronto, which has the highest density of customers within the Enbridge Gas franchise area and is the largest economic centre in Canada. Enbridge Gas stated that the C2B segment is the backbone of the KOL and is important not only to the customers directly served but also to other parts of the City of Toronto, as it forms a critical segment of a high pressure pipeline loop which connects multiple feeder stations.

Enbridge Gas submitted that the Project is needed given integrity and reliability concerns with the existing pipeline, which were identified through a review of records, asset health review investigations and assessments, inline inspections and other reviews. Inline inspections from 2016 and 2018 demonstrated that the 1.9 km inspected segment of the 4.5 km pipeline had numerous anomalies (i.e., corrosion and dents) that will likely require remediation or replacement. Extrapolating from the number of integrity digs undertaken on the inspected segment, Enbridge Gas estimated that absent replacement, 171 integrity digs would have to be conducted on the C2B segment in the next 40 years – approximately one integrity dig per 26 metres of pipeline.

In addition, Enbridge Gas stated that the C2B segment exhibits several characteristics of vintage steel mains built prior to 1970 such as reduced depth of cover, lack of cathodic protection, field applied coatings and compression couplings that provide an

indication of degradation of the pipeline. Enbridge Gas argued that these features show that the C2B segment is reaching the end of its safe and reliable service life and that a repair approach is not sustainable or cost effective.

Enbridge Gas stated that it had examined three project alternatives: (i) repair versus replacement, (ii) reducing the pipeline size and (iii) Project routing.

Enbridge Gas stated that the total cost of the repair option would be substantially higher than the replacement option and more disruptive from a socio-economic and environmental perspective. Enbridge Gas also stated that it did not believe that the repair option is an appropriate approach or a reasonable maintenance activity for this vital pipeline.

Enbridge Gas also argued that a like-for-like replacement was required as a smaller diameter pipeline would not be sufficient in the event of system disruptions in the future, that any project cost savings from switching to a smaller pipeline would be quite modest at 5% to 10%, and that a smaller pipeline would make it more difficult to implement straightforward inline inspections on the KOL. Enbridge Gas also submitted that developments in the area support Enbridge Gas's view that there will be ongoing and potentially increasing demand to be served by the C2B segment, even with demand reductions from existing customers.

Enbridge Gas stated that the Project route was chosen based on public consultation, environmental and socio-economic concerns, and technical and constructability requirements. The replacement pipeline, if approved, will be sited in existing, previously disturbed municipal rights of way, which will greatly reduce potential adverse effects to the surrounding environment.

OEB staff submitted that based on the evidence filed by Enbridge Gas, there is a need for the Project and identified no issues or concerns with Enbridge Gas's proposed facilities. OEB staff supported the replacement of the C2B segment with NPS 20 as well as the proposed route.

FRPO supported Enbridge Gas's conclusion that replacement of the NPS 20 is superior to repairing on an ad-hoc basis but submitted that further diligence is required. FRPO submitted that it would be prudent to invest less than 2% of the expected cost of replacement to do an inline inspection on the uninspected portion of the pipeline segment to establish whether replacement of the entire 4.5 km of pipeline is actually necessary and at what level of priority. FRPO argued that Enbridge Gas had not provided evidence that the replacement is urgent, and submitted that the replacement of

the C2B segment should be phased and completed in conjunction with the City of Toronto to avoid potential conflicts and to minimize impact on traffic.

Environmental Defence submitted that the Project is not urgent and that the existing pipeline can be maintained with localized integrity digs consistent with current practices. Environmental Defence requested that Enbridge Gas be directed to defer the project for at least a year to allow Enbridge Gas to develop a holistic proposal with respect to the entire 48 kilometres of pipeline with similar integrity concerns. Environmental Defence stated that a deferral period would allow time to better address considerations related to declining natural gas use, local impacts on traffic and public lands, and regulatory benefits, including the ability to test Enbridge Gas's application against the integrated resource planning (IRP) framework that will be finalized in 2021. Environmental Defence submitted that when examined holistically, the most cost-effective approach may involve a smaller and less expensive pipe coupled with targeted Demand Side Management (DSM) programs.

Energy Probe submitted that the Project should be delayed until after rebasing and after the IRP decision is issued, stating that more analysis is needed to confirm that NPS 20 is the optimum size for replacement pipe, that substantial savings could be realized due to lower indirect overheads if the Project takes place after rebasing, and that the upcoming IRP decision could put in place rules that may result in a lower diameter replacement pipe with associated savings. Energy Probe submitted that if the OEB were to decide to approve the Project, it should only approve the 4.3 km of NPS 20 and not the 230 m lateral which does not require leave to construct approval. Energy Probe submitted that Enbridge Gas followed the appropriate process in selecting the Preferred Route for the Project, and that the Preferred Route selected by Enbridge Gas is the best route for the project.

Pollution Probe was also concerned about oversizing, citing future reductions in natural gas use. Pollution Probe submitted that a more thorough assessment is needed to support a like-for-like replacement, arguing that a smaller pipeline would decrease ratepayer costs, project impacts and improve project feasibility.

Enbridge Gas disagreed that there is no urgency to the Project and noted that there was no dispute among any of the parties that the C2B segment should be replaced. Enbridge Gas submitted that delaying the Project may end up being less safe and more expensive, that re-routing would be required if future infrastructure or development occupies any of the planned Project route, and that integrity digs could have more impact on the area than a single coordinated replacement project. In response to FRPO's submission that the Project could be phased to avoid conflicts with City of Toronto projects, Enbridge Gas advised that it would be technically challenging to

coordinate multiple tie-ins to existing sections of the C2B pipeline, that it would be unduly expensive and could result in difficulties in hydrostatic and tie-in weld testing.

Enbridge Gas submitted that no party had set out any reason to conclude that the western portion of the C2B segment that had not been the subject of inline investigation is different from the eastern portion of the pipeline, that it would be expensive and difficult to complete inline investigations on the remaining 2.6 km of the C2B segment, and that it would delay the Project. Enbridge Gas also submitted that delaying until rebasing does not guarantee that overheads would be lower, and that Enbridge Gas would have to take actions to safely maintain the existing pipeline, the costs of which would be added to the replacement costs.

Enbridge Gas argued that it did not believe that it would be reasonable to wait for the IRP framework process to be completed prior to obtaining approval for the Project as it could delay the Project for several years. Enbridge Gas also disagreed that the existing pipeline is oversized to serve current demand, arguing that an immense reduction of demand would be required to justify reducing the pipeline size from NPS 20 to NPS 16, and that the cost savings from downsizing would be relatively minor (up to \$13 million). Enbridge Gas also submitted that it would not be reasonable to expect that Enbridge Gas could spend less than \$20 million on targeted DSM to achieve an 18% demand reduction from customers served by the C2B segment. Enbridge Gas also stated that it does not have a current plan to replace the entire 48 kilometre NPS 20 section of the KOL, and that it would not be reasonable or appropriate to require Enbridge Gas to undertake IRP planning on a single project to do so.

Enbridge Gas also submitted that emissions reductions and natural gas conservation goals by the City of Toronto and the Government of Ontario will only be achieved through significant actions taken by government and industry, and that there is no current program, funding or direction around what these actions will be, when they will happen and what they will achieve. Given that, Enbridge Gas argued that it is not possible to reliably conclude that the demand to be served by the C2B segment of the KOL will decline, and that a reduced size replacement pipeline can be installed to continue to reliably serve its customers.

Enbridge Gas also disagreed with Energy Probe's submission that leave to construct should not include the 230 metre section on Parliament Street as it is too short to require leave to construct approval. Enbridge Gas submitted that the Parliament section is connected and related to the Project, and that it is appropriate to consider them as part of one project for the purpose of leave to construct approval, and that even if considered separately, the Parliament Street lateral would require leave to construct approval as it will cost more than \$2 million.

Findings

The OEB finds that Enbridge Gas has demonstrated the need for this Project. The OEB finds that it is prudent for Enbridge Gas to proceed with the Project at this time given the age and deteriorating condition of the existing pipeline; delay would be unlikely to reduce the cost and could lead to the need for additional repairs. The OEB agrees that the entire approximately 4.5 km project including the 230 metre lateral tie-in should be done at one time. The evidence supports this as the most efficient, safest and least disruptive approach.

The OEB agrees with Enbridge Gas that as this Project is a “like for like” replacement and is not designed to provide additional capacity, the IRP is not required prior to proceeding. The OEB also agrees that there is no evidence at this point that reducing the size of the pipe makes sense, particularly as Enbridge Gas has noted that the savings from a smaller pipeline would be relatively modest. The OEB was further assisted in this regard by Enbridge Gas’s analytical evidence under simulated loss-of-supply scenarios that showed unacceptable drops in gas pressure and the consequential adverse customer impacts with a smaller diameter pipeline.

3.2 Project Cost, Economics and Schedule

Enbridge Gas stated that the total estimated cost of the Project is \$133 million, which includes \$3.5 million for the material costs, \$71.8 million for labour costs, \$24.1 million in indirect overhead costs, and \$24.8 million in contingency costs.

Enbridge Gas stated that it plans to request incremental capital module (ICM) treatment of some or all of the Project costs within its 2022 Rates Application, subject to calculation of the ICM threshold for the EGD rate zone for 2022. OEB staff submitted that the estimated costs are reasonable given the pipeline length and location of the Project.

Several parties had concerns regarding costs related to contingency and indirect overheads. Energy Probe submitted that the OEB should reduce the costs of the Project by reducing the indirect overheads and contingency. Energy Probe submitted that Enbridge Gas had not provided a risk analysis that would explain why the contingency percentage should be 30% for the Project, that contingency for labour should be reduced to 20% and contingency for materials to 10%, and that at least 50% of contingency on Outside Services should be removed because many of these costs are historical costs with no uncertainty. Pollution Probe requested that the OEB require Enbridge Gas to file a detailed cost estimate that relates only to the Project as defined in the application and is not considered preliminary, including sufficient justification to

support such specific contingency, and in the absence of a more accurate contingency number, to reduce Project contingency to 19%. FRPO submitted that better estimates could be made and that inflated contingencies would not be needed if the scope of the replacement were to be coordinated with City of Toronto work. FRPO supported Energy Probe's submission recommending that the OEB reduce the Project's contingencies if the OEB does order Enbridge Gas to coordinate with the City of Toronto. Both Energy Probe and FRPO noted that incremental revenues may be recovered in the period prior to rebasing if the costs of the project are overstated by an excessive contingency estimate. Energy Probe also submitted that the indirect overhead costs allocated to the Project are not supported by an estimate of the actual costs of services provided to the Project by corporate departments.

Pollution Probe submitted that the OEB should defer its Decision on the Project until the OEB has approved or denied capital approval for the Project in Enbridge Gas's 2021 rates application. FRPO also submitted that the OEB should defer the appropriateness of including indirect overheads costs in ICM to the appropriate Enbridge Gas rates proceeding.

Enbridge Gas submitted that a 30% contingency is in the accepted range for projects constructed in an urban setting and that it is not appropriate in this case to apply different contingency percentages to different categories of cost. Enbridge Gas also submitted that the overhead costs allocated to the Project are actual costs, that abandonment or retirement costs will be charged to accumulated depreciation and not be part of the costs sought for recovery in an ICM request. Enbridge Gas also argued that given that there will be a review of actual Project costs at the time of rebasing, if the Project costs included in ICM funding were overstated then the OEB could direct that any over-collection of ICM revenues be refunded to ratepayers.

In response to FRPO's assertion regarding indirect overheads, Enbridge Gas argued that the same issue had been raised in its 2019 and 2020 rates cases, and that the OEB had determined that indirect overheads would be included in rate base and ICM funding during Enbridge Gas's deferred rebasing term. Enbridge Gas also argued that the issue raised by FRPO is not one that is necessary or appropriate for the panel hearing this application to determine.

Enbridge Gas also disagreed with Pollution Probe's request that the OEB defer its decision until the OEB approves or denies ICM funding for the Project, submitting that leave to construct approval is based on criteria relating to need, alternatives, cost, economics, environmental and landowner impacts, and indigenous consultation, and does not depend on whether or not approval for ICM is granted.

Findings

The OEB finds that the costs of the Project are reasonable, including the contingency. The OEB notes that the purpose of examining costs in a leave to construct application is not to include them in rate base but to determine whether they are the most cost-effective way of undertaking the work. The OEB is not actually approving the budget or the contingency in this application. The actual spending on the Project will be reviewed when Enbridge applies to add the costs of this project to rate base.

3.3 Environmental and Land Matters

The OEB's *Environmental Guidelines for the Location, Construction, and Operation of Hydrocarbon Pipelines and Facilities in Ontario, 7th Edition, 2016* (Guidelines) prescribe the environmental analysis and reporting that is required for applications under section 90(1) of the OEB Act.

Enbridge Gas retained Dillon Consulting Ltd. (Dillon) to undertake an environmental assessment of the proposed pipeline. Dillon prepared an Environmental Report in accordance with the Guidelines. According to the Environmental Report, with the implementation of proposed mitigation and protective measures, Dillon does not anticipate any significant adverse residual environmental or socio-economic impacts from the Project.¹

Enbridge Gas circulated a copy of the Environmental Report to the Ontario Pipeline Coordinating Committee (OPCC) on April 13, 2020. The summary of comments filed by Enbridge Gas as evidence shows no outstanding issues. Timmins Martelle Heritage Consultants Inc. completed a Stage 1 Archaeological Assessment for the Project. Enbridge Gas stated that it would provide the OEB with the acceptance letter from the Ministry of Heritage, Sport, Tourism and Culture Industries once Enbridge Gas receives the letter.

Enbridge Gas also stated that it will obtain all necessary permits, approvals and authorizations prior to commencing construction of the Project, and will have a qualified Environmental Inspector or suitable representative available to ensure that it complies with the Environmental Protection Plan for the project, any Conditions of Approval in the OEB's Decision, and commitments made to the public, landowners and agencies.

Enbridge Gas stated that all work is being designed within the road allowance and that it is not seeking any easements from the City of Toronto. Enbridge Gas stated that it may need temporary working areas along the pipeline route where road allowances are too

¹ Environmental Report, section 7.0

narrow or confined to facilitate construction, and has applied under section 97 of the OEB Act for an order approving the form of working area agreement offered to owners of land affected by the route or location of the proposed facilities. Enbridge Gas noted that the proposed agreement was previously approved by the OEB in the NPS 30 Don River Replacement Project proceeding².

OEB staff submitted that it has no concerns with the environmental aspects of the Project and that the OEB should approve the proposed Form of Temporary Land Use Agreement.

Environmental Defence expressed a concern that detailed plans of the Project and a map of the local impacts were not yet available. Pollution Probe submitted that it was unclear from the application whether Enbridge Gas would be able to secure all permits it requires to commence the Project, including those from the City of Toronto.

Enbridge Gas submitted that it would not commit the time and cost of detailed project planning until after the leave to construct approval has been granted, as it would run the risk of non-recovery and wasted effort. Enbridge Gas stated that it currently does not have any concerns with respect to obtaining any of the required land rights and/or permits for the Project and expects that all necessary land rights and permit approvals will be in place prior to the commencement of construction.

Findings

The OEB finds that Enbridge Gas has followed the OEB's Guidelines to assess the potential environmental impact of the Project and that Enbridge Gas is able to adequately address environmental issues by implementing the mitigation measures identified in the Environmental Report and by adhering to the conditions of approval for this Decision and Order.

The Environmental Report prepared by Dillon includes an assessment of the preferred pipeline route, describes the natural and socio-economic setting of the Project area, and assesses the residual impacts of the Project on various environmental and socio-economic components. The Environmental Report also recommends various mitigation measures to minimize impacts to the natural and socio-economic environment. The Environmental Report concludes that the location of the Project is environmentally acceptable, and that by following standard construction practices and adhering to the mitigation measures proposed in the Environmental Report construction of the Project will have negligible environmental or cumulative impacts.

² Exhibit I.Staff.6(b)

The OEB notes that Enbridge Gas is required to adhere to the conditions of approval for this Decision and Order, which includes implementing all of the recommendations in the Environmental Report. Enbridge Gas is also obligated to monitor the impacts of construction both during and after construction and report to the OEB.

The OEB also notes that the conditions of approval for this Decision and Order require Enbridge Gas to certify that the company obtained all approvals, permits, licences and certificates required to construct, operate and maintain the Project.

The OEB also approves the Form of Temporary Land Use Agreement filed by Enbridge Gas pursuant to section 97 of the OEB Act. The agreement is consistent with previously approved forms of agreement.

3.4 Indigenous Consultation

In accordance with the Guidelines, Enbridge Gas contacted the MENDM on October 17, 2019, with respect to the Crown's duty to consult, and provided the MENDM with a description of the Project.

The MENDM sent a letter to Enbridge Gas on December 19, 2019, delegating the procedural aspects of the Crown's duty to consult for the Project to Enbridge Gas. MENDM identified two communities that Enbridge Gas should consult: Alderville First Nation and Mississaugas of the Credit First Nation.

On July 31, 2020, Enbridge Gas provided the MENDM with its Indigenous Consultation Report for the Project and requested that the MENDM determine if the procedural aspects of the duty to consult had been sufficiently addressed.

As part of its application with the OEB, Enbridge Gas filed a summary of Enbridge Gas' Indigenous consultation activities for the Project.³ Enbridge Gas stated that there were no additional comments received from Indigenous groups regarding the Project since May 27, 2020. In its interrogatory response, Enbridge Gas filed a letter it had received from MENDM on October 14, 2020 notifying Enbridge Gas that it had completed its review of the Indigenous Consultation Report for the Project and had found that the procedural aspects of consultation undertaken by Enbridge Gas to date had been satisfactory. MENDM noted its expectation that Enbridge Gas will continue its consultation activities throughout the life of the Project.⁴

³ Application, Exhibit F, Tab 1, Schedule 1, Attachment 6

⁴ Exhibit I.Staff.5, Attachment 1

OEB staff submitted that it had no concerns with respect to Indigenous consultation, and noted that no Indigenous communities intervened or expressed any concerns in the proceeding.⁵

Findings

The OEB finds that Enbridge Gas followed the OEB's Guidelines and has made efforts to consult with the two Indigenous communities that were identified by the MENDM, as described in Enbridge Gas' Indigenous Consultation Summary. The Indigenous communities were given direct notice of this proceeding and did not intervene or otherwise raise concerns before the OEB, and the MENDM provided a letter on October 14, 2020 confirming that the procedural aspects of the duty to consult have been satisfactorily addressed by Enbridge Gas to date. Therefore, the OEB finds that the duty to consult has been satisfied sufficiently to allow for the approval of the Project.

3.5 Conditions of Approval

Section 23 of the OEB Act permits the OEB, when making an order, to impose conditions of approval as it considers appropriate.

As part of the interrogatory process, OEB staff proposed draft conditions of approval. Enbridge Gas had no objections to the conditions of approval proposed by OEB staff, except for the termination of the authorization for the leave to construct after 12 months, which Enbridge Gas asked to be changed to 18 months.

Enbridge Gas also requested that the OEB include an additional Condition of Approval: "Enbridge Gas shall obtain all necessary approvals, permits, licences, certificates, agreements and rights required to construct, operate and maintain the Project." OEB staff submitted that it had no objections to Enbridge Gas's requested revisions⁶. Pollution Probe⁷ and the City of Toronto⁸ both supported the additional Condition of Approval proposed by Enbridge Gas.

FRPO recommended that the time period to initiate the process be increased or potentially not limited to allow coordination with other municipal and/or utility construction.

⁵ OEB Staff Submissions, page 15

⁶ OEB Staff Submissions, p. 16

⁷ Pollution Probe Submissions, p. 12

⁸ City of Toronto Submissions, pp. 1-2

Energy Probe agreed with the Conditions of Approval proposed by OEB staff and submitted that the change proposed by Enbridge Gas in its argument-in-chief was not necessary.

Both the City of Toronto and Metrolinx were concerned that major aspects of the Project, such as the exact location and depth of the proposed pipeline had not been disclosed in this proceeding. The City of Toronto submitted that it had concerns about the Project in terms of infrastructure conflicts, construction impacts, and pipeline safety and emergencies, and proposed three sets of Conditions of Approval⁹ relating to the planning and execution of the Project, emergency management, and indemnities and financial assurances. Metrolinx submitted that it had extensive and costly upcoming infrastructure projects along Enbridge Gas's proposed route and requested two additional sets of Conditions of Approval related to the planning and execution of the project that Metrolinx stated would enable Enbridge Gas and Metrolinx to coordinate their respective projects.¹⁰

In its reply argument, Enbridge Gas submitted that it did not believe that the additional Conditions of Approval proposed by the City of Toronto and Metrolinx were appropriate or necessary. Enbridge Gas stated that the additional Conditions being requested were substantially similar to what was proposed by the City of Toronto in the Imperial Oil leave to construct application proceeding¹¹, and noted that in the Imperial Oil leave to construct decision, the OEB rejected most of the City of Toronto's proposed Conditions of Approval as being outside the OEB's mandate.

Enbridge Gas also submitted that there was no need for additional Conditions of Approval requiring Enbridge Gas to work with municipal stakeholders as its practice is to do so in the ordinary course, and that it had already committed in its interrogatory response to do most of the items in the City of Toronto's list of proposed additional Conditions of Approval. Enbridge Gas further submitted that the proposed Conditions of Approval related to insurance, financial assurances and indemnity were not needed or appropriate as it has coverage for construction projects and company operations, and that its financial standing is expected to be sufficient to satisfy costs and claims associated with the unlikely event of a pipeline emergency. Enbridge Gas also stated that conditions such as an indemnity would go beyond what the OEB has required for other leave to construct approvals.

⁹ City of Toronto Submissions, Appendix A. The City of Toronto proposed 14 additional Conditions in total, including Enbridge Gas's proposed addition.

¹⁰ Metrolinx Submissions, Appendix A

¹¹ EB-2019-0007

Enbridge Gas submitted that giving municipalities the opportunity to add long lists of largely generic Conditions of Approval to each leave to construct application would make the OEB processes more complicated than necessary, and would not contribute to regulatory efficiency or reduce regulatory burden. Enbridge Gas argued that there are rarely unresolvable issues or concerns between Enbridge Gas and municipalities and infrastructure companies following leave to construct approval, and that the approval of additional Conditions of Approval beyond the OEB's standard list of conditions would only be appropriate in situations where specific items need to be addressed in order to prevent future problems with the specific project.

Findings

The OEB agrees with Enbridge Gas that the conditions the City of Toronto and Metrolinx want imposed are unnecessary. The condition requiring Enbridge Gas to obtain the necessary approvals, permits, licences, certificates, agreements and rights required to construct, operate and maintain the Project should suffice. The OEB only imposes conditions that the OEB can enforce; conditions such as “working with the City” are unenforceable by the OEB.

The approved Conditions of Approval are attached as Schedule B to this Decision and Order. The OEB finds that Enbridge Gas's compliance with the Conditions of Approval will ensure that the requirements of other approvals, permits, licences, and certificates are fully addressed.

The OEB agrees with Enbridge Gas's request to amend condition 2(a) to provide that the OEB's authorization for leave to construct terminates after 18 months, rather than the typical 12 months, after the decision is issued. The OEB notes that the amended timeline request is consistent with a recent Decision and Order for an Enbridge Gas leave to construct project in downtown Toronto.¹²

¹² EB-2018-0108 Decision and Order

4 ORDER

IT IS ORDERED THAT:

1. Enbridge Gas Inc. is granted leave, pursuant to section 90(1) of the OEB Act, to construct approximately 4.3 kilometres of NPS 20 natural gas pipeline and ancillary facilities on Lake Shore Boulevard from Cherry Street to Remembrance Drive, and 230 metres of NPS 20 natural gas pipeline and ancillary facilities on Parliament Street from Mill Street to Lake Shore Boulevard, as described in its application.
2. Pursuant to section 97 of the OEB Act, the OEB approves the Form of Temporary Land Use Agreement that Enbridge Gas Inc. has offered or will offer to each owner of land affected by the Project.
3. Leave to construct is subject to Enbridge Gas Inc. complying with the conditions of approval set out in Schedule B.
4. Eligible intervenors 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 **January 7, 2021**.
5. Enbridge Gas Inc. shall file with the OEB and forward to intervenors any objections to the claimed costs of the intervenors on or before **January 21, 2021**.
6. 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 **February 4, 2021**.
7. 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-2020-0136**, and be submitted in a searchable/unrestricted PDF format with a digital signature through the OEB's web portal at <https://pes.ontarioenergyboard.ca/eservice>. Filings must clearly state the sender's name, postal address, telephone number, fax number and e-mail address. Parties must use the document naming conventions and document submission standards outlined in the [Regulatory Electronic Submission System \(RESS\) Document Guidelines](#) found at www.oeb.ca/industry. We encourage the use of RESS; however, parties who have not yet [set up an account](#), may email their documents to registrar@oeb.ca.

All communications should be directed to the attention of the Registrar at the address below and be received no later than 4:45 p.m. on the required date.

With respect to distribution lists for all electronic correspondence and materials related to this proceeding, parties must include the Case Manager, Azalyn Manzano at Azalyn.Manzano@oeb.ca and OEB Counsel, Michael Millar at Michael.Millar@oeb.ca.

Email: registrar@oeb.ca

Tel: 1-888-632-6273 (Toll free)

Fax: 416-440-7656

DATED at Toronto December 17, 2020

ONTARIO ENERGY BOARD

Original Signed By

Christine E. Long
Registrar

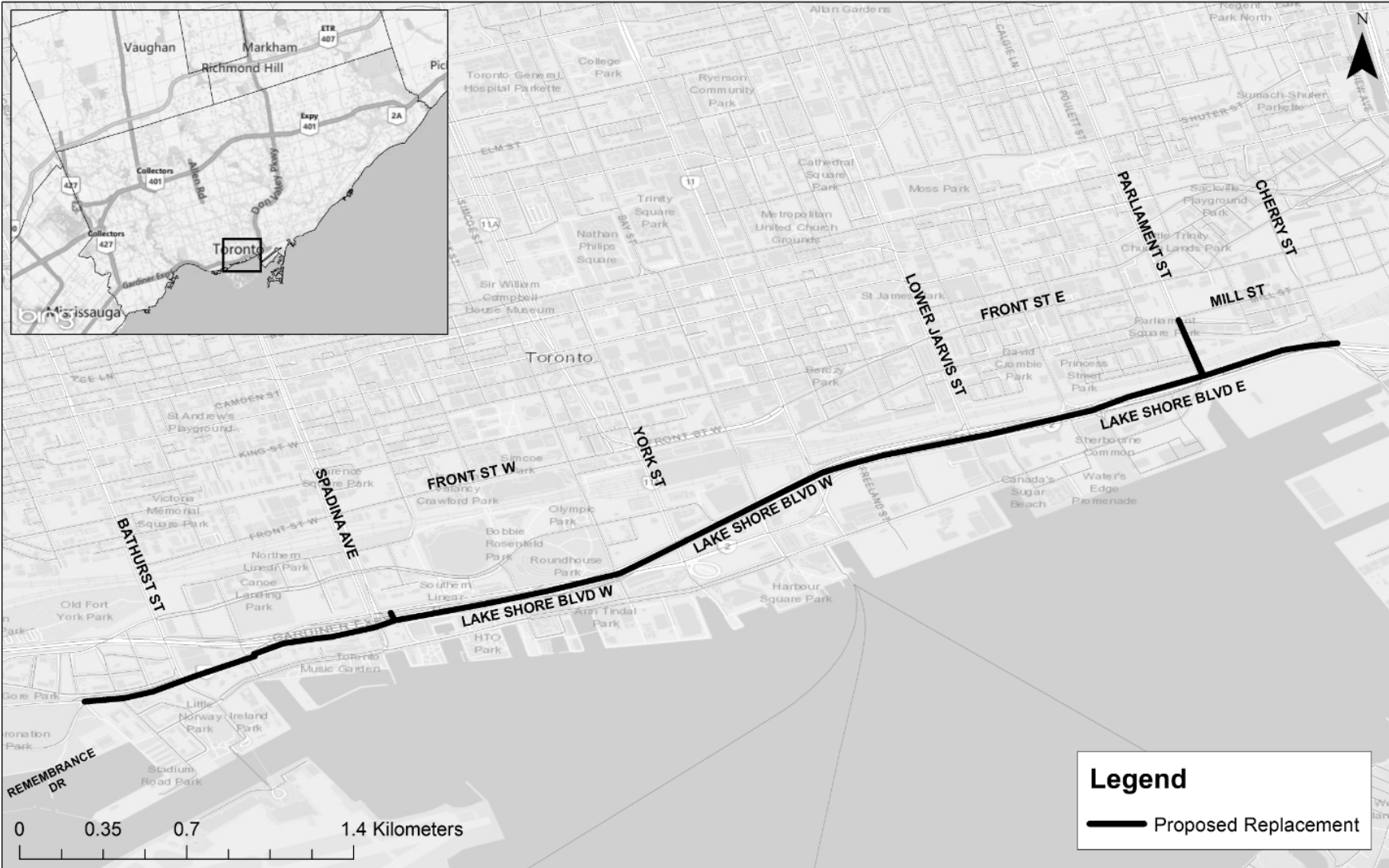
SCHEDULE A – MAP OF THE PROJECT

DECISION AND ORDER

ENBRIDGE GAS INC.

EB-2020-0136

DECEMBER 17, 2020



**SCHEDULE B – CONDITIONS OF APPROVAL
DECISION AND ORDER
ENBRIDGE GAS INC.
EB-2020-0136
DECEMBER 17, 2020**

CONDITIONS OF APPROVAL
Application under Section 90(1) of the OEB Act
Enbridge Gas Inc.
EB-2020-0136

1. Enbridge Gas Inc. (Enbridge Gas) shall construct the facilities and restore the land in accordance with the OEB's Decision and Order in EB-2020-0136 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 18 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, at least 10 days prior to the date construction commences
 - ii. The planned in-service date, at least 10 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 EB-2020-0136, 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.

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 an 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' 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, 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 certification, by a senior executive of the company, of Enbridge Gas' adherence to Condition 3
- ii. Describe the condition of any rehabilitated land
- iii. Describe the effectiveness of any such actions taken to prevent or mitigate any identified impacts of construction
- iv. Include the results of analyses and monitoring programs and any recommendations arising there from.

- 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, the rationale for taking such actions
8. Enbridge Gas shall designate one of its employees as project manager who will be the point of contact for these conditions, and shall provide the employee's name and contact information to the OEB and to all affected landowners, and shall clearly post the project manager's contact information in a prominent place at the construction site.