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**BY EMAIL**

September 23, 2022

Ms. Nancy Marconi  
Registrar  
Ontario Energy Board  
2300 Yonge Street, 27<sup>th</sup> Floor  
Toronto, ON M4P 1E4  
[Registrar@oeb.ca](mailto:Registrar@oeb.ca)

Dear Ms. Marconi:

**Re: Ontario Energy Board (OEB) Staff Submission  
Enbridge Gas Inc.  
Dawn to Corunna Replacement Project  
OEB File Number: EB-2022-0086**

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Please find attached OEB staff's submission in the above referenced proceeding, pursuant to Procedural Order No. 5.

Yours truly,

Ritchie Murray  
Applications, Natural Gas

Encl.

cc: All parties in EB-2022-0086



# **ONTARIO ENERGY BOARD**

## **OEB Staff Submission**

**Enbridge Gas Inc.**

**Dawn to Corunna Replacement Project**

**EB-2022-0086**

**September 23, 2022**

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## Application Summary

Enbridge Gas Inc. (Enbridge Gas) applied to the Ontario Energy Board (OEB) on March 21, 2022, under section 90(1) of the *Ontario Energy Board Act, 1998*, S.O. 1998, c. 15, (Schedule B) (OEB Act), for an order granting leave to construct (LTC):

- Approximately 20 kilometres of 36-inch diameter natural gas pipeline from its Dawn Operations Centre (DOC) in the Township of Dawn-Euphemia to its Corunna Compressor Station (CCS) in St. Clair Township, and
- Station work to tie-in the new pipeline at each of DOC and the CCS (Project).

Enbridge Gas operates storage and transmission assets that include approximately 320 PJ (199.4 PJ utility and 117.0 non-utility) of integrated underground natural gas storage at the Dawn Hub and throughout Ontario, as well as the Dawn Parkway System, which effectively connects the Dawn Hub to consuming markets in Ontario, Québec, the Maritimes and the U.S. Northeast.

The Dawn Hub is one of the largest natural gas market hubs in North America and consists of a combination of interconnecting natural gas pipelines and underground storage facilities. The Dawn Hub is a fully integrated storage system comprised of two main compression locations, the DOC and the CCS.

The CCS currently uses eleven reciprocating compressor units to transport natural gas to and from underground storage facilities via the DOC to transmission pipelines for eventual use in Enbridge Gas's downstream distribution networks. The compressor units follow the naming convention K701 through K711 based on their sequence of installation dating from 1964 to 1995 and are housed within three separate buildings. Compressors K701-K705 are located within compressor building 1, K706-K710 in compressor building 2, and K711 in compressor building 3.

Enbridge Gas states that it has identified the need to abandon and remove seven compressor units located at the CCS due to obsolescence, reliability, and safety concerns. The seven compressors are K701-K703 and K705-K708. Enbridge Gas says that the remaining compressors serve particular duty cycles and cannot be replaced at this time.

The purpose of the Project is to replace the equivalent capacity of the seven compressors at the CCS that Enbridge Gas proposes to retire and abandon. Enbridge Gas says that installing a new pipeline and using surplus compression capacity at the DOC to replace the equivalent capacity of the seven compressors will increase overall system reliability, resiliency, and efficiency.

The Project is located on land almost exclusively designated as agricultural.

Approximately 95.68 hectares of new permanent easements are required to meet necessary setbacks from an existing pipeline corridor for safety reasons and to facilitate integrity digs and maintenance work around the proposed pipeline. Where appropriate, Enbridge Gas has proposed to overlap the new easements with existing easements. Enbridge Gas will also require approximately 53.54 hectares of temporary land use for construction and topsoil storage purposes.

Enbridge Gas also applied under section 97 of the OEB Act for approval of the forms of easement agreement and temporary land use agreements it will offer to landowners for the routing and construction of the proposed pipeline.

Enbridge Gas is seeking a decision by the end of October 2022. Construction of the pipeline is expected to commence by July/August of 2023. The planned in-service date is November 1, 2023.

## The Proceeding

A Notice of Hearing was issued on April 12, 2022. The following parties applied for intervenors status:

- Canadian Association of Energy and Pipeline Landowner Associations and its subcommittee, the Dawn Corunna Landowner Committee (CAEPLA-DCLC)
- Canadian Manufacturers & Exporters (CME)
- Chippewas of Kettle and Stony Point First Nation and Southwind Corporate Development Inc. (CKSPFN)<sup>1</sup>
- Energy Probe Research Foundation (Energy Probe)
- Environmental Defence
- Federation of Rental-housing Providers of Ontario (FRPO)
- Ontario Federation of Agriculture (OFA)
- Pollution Probe
- School Energy Coalition (SEC)
- TransCanada PipeLines Limited (TCPL)

CAEPLA, CME, CKSPFN, Energy Probe, Environmental Defence, FRPO, OFA, Pollution Probe, SEC and TCPL were approved as intervenors. CAEPLA, CME, CKSPFN, Energy Probe, Environmental Defence, FRPO, Pollution Probe, and SEC were found to be eligible to apply for an award of costs.

On May 24, 2022, the OEB issued Procedural Order No. 1 which, among other things, set a deadline for the filing of interrogatories by OEB staff and intervenors and interrogatory responses by Enbridge Gas.

On July 12, 2022, the OEB issued Procedural Order No. 2 and Decision on Confidentiality, granting Enbridge Gas's request for confidential treatment for two of its interrogatory responses. The OEB also set the schedule for further steps in the proceeding.

By letter dated July 13, 2022, CAEPLA-DCLC requested that provision be made by the

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<sup>1</sup> On July 21, 2022, CKSPFN filed a letter stating that Caldwell First Nation had joined with CKSPFN for the purposes of this proceeding and that their participation would continue under the name of Three Fires Group Inc. (TFG).

OEB for intervenor evidence to be filed in this proceeding. CAEPLA-DCLC's letter indicated that it sought to file evidence regarding the environmental and socio-economic impacts of the proposed project and the appropriate mitigation measures to be implemented by Enbridge Gas.

On July 15, 2022, the OEB issued Procedural Order No. 3. The OEB requested that CAEPLA-DCLC provide the OEB with more detailed information on the intervenor evidence it wishes to file. The OEB also allowed other intervenors the opportunity to advise the OEB whether they are seeking to file intervenor evidence in this proceeding.

On July 20, 2022, CAEPLA-DCLC filed a letter with the OEB that provided information on the evidence it sought to file. No other intervenors expressed an interest in filing evidence. In its letter, CAEPLA-DCLC, among other things, reiterated its suggestion that its evidence be due on August 26, 2022, which is two weeks following the deadline for Enbridge Gas to file responses to undertakings from the technical conference.

On July 22, 2022, Enbridge Gas filed a response letter stating that it did not object to CAEPLA-DCLC filing evidence in this proceeding. However, Enbridge Gas expressed concern that CAEPLA-DCLC's proposed timing would create undue delay in the proceeding.

On July 26, 2022, the OEB issued a Decision on Intervenor Evidence and Procedural Order No. 4. The OEB approved the filing of evidence by CAEPLA-DCLC and set the due date for the evidence as August 12, 2022.

On August 23, 2022, the OEB issued a letter in response to Enbridge Gas's request that the OEB order a formal settlement negotiation between Enbridge Gas and CAEPLA-DCLC. The OEB decided that an order for formal settlement negotiations is not required. The OEB instructed Enbridge Gas and CAEPLA-DCLC to file a joint letter regarding the status of their negotiations.

Enbridge Gas filed its argument-in-chief on September 6, 2022.

On September 15, 2022, Enbridge Gas filed a joint letter (September 15 Joint Letter).

On September 19, 2022, the OEB issued Procedural Order No. 5 in which it found that the September 15 Joint Letter did not comply with the information reporting requirements established in its letter of August 23, 2022. The OEB ordered Enbridge Gas and CAEPLA-DCLC to file a compliant joint letter by September 20, 2022. Given that September 20, 2022 had previously been set as the due date for intervenor and OEB staff submissions, the due date for these submissions was extended to September 23, 2022.

On September 20, 2022, CAEPLA-DCLC filed the second joint letter (September 15

Joint Letter). The September 15 Joint Letter advises the OEB that settlement negotiations are ongoing, provides a summary table that lists the issues being negotiated, and indicates which issues have been settled. The September 15 Joint Letter emphasizes that the resolution of individual items listed in the summary table is provisional and subject to change depending on the course of further negotiations. Of the 42 issues being negotiated, 25 have been provisionally settled. Most of the issues are part of a Letter of Understanding (LOU) that the parties are negotiating. Only an indemnity clause issue is directly within the scope of this proceeding. The September 15 Joint Letter advises that the indemnity clause issue remains unresolved. OEB staff addresses the status of the LOU and the indemnity issue later in this submission.

Enbridge Gas's written reply submission is to be filed by October 4, 2022.



## OEB Staff Submission

OEB staff submits that the OEB should grant LTC for the Project as filed, and approve the proposed forms of landowner agreements.

Consistent with the OEB's Standard Issues List for natural gas LTC applications, OEB staff's submission is structured to address the following issues:

1. Need for the Project
2. Project Alternatives
3. Project Cost and Economics
4. Environmental Impacts
5. Landowner Agreements
6. Indigenous Consultation
7. Conditions of Approval

### Need for the Project

OEB staff submits that Enbridge Gas has established the need for a project to address obsolescence, reliability and safety issues with its compressors at the CCS.

Enbridge Gas's 2021-2025 Asset Management Plan (AMP) identified the need to address the risk of obsolescence and declining reliability of compressor equipment at the CCS, indicating that compressor units K701-K703, and the former metering facilities should be replaced due to declining operating reliability.<sup>2</sup>

As part of Enbridge Gas's 2022 Rates (Phase 2) proceeding, it filed an AMP Addendum which highlighted that, since the 2021-2025 AMP was completed, Enbridge Gas has also identified increasing reliability and obsolescence concerns with compressor units K705-K708 as well as employee safety concerns.<sup>3</sup>

### Obsolescence

OEB staff submits that Enbridge Gas has demonstrated that compressor obsolescence is an issue that needs to be addressed at the CCS.

The K701, K702 and K703 compressors are of the same make, model and vintage (1964). This particular model of compressor has been out of production for 40 years.

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<sup>2</sup> EB-2020-0181, Enbridge Gas Inc. Asset Management Plan 2021-2015, Exhibit C-2-1

<sup>3</sup> EB-2021-0148, Exhibit B-2-1

Many spares parts are no longer stocked in inventory by the original equipment manufacturer.

Similarly, the K705-K708 compressors are of the same make, model and vintage (1970-1974). Many spares are no longer stocked in inventory by the original equipment manufacturer. A failure of K705 in 2018 took eight months and \$4.25 million to address.<sup>4</sup>

### Reliability

OEB staff submits that Enbridge Gas has demonstrated that compressor reliability is an issue that needs to be addressed at the CCS.

Enbridge Gas filed a Reliability, Availability and Maintainability (RAM) Study by DNV Canada Ltd. (DNV). The RAM Study accounts the different potential failure modes and the expected time to repair, and through the Monte Carlo simulation<sup>5</sup> produces an expected shortfall as a result. The RAM Study concludes that the health and maintainability of the seven compressor units at the CCS are in decline. One reason for the decline is performance issues with custom-made components that are needed because the original equipment manufacturer components are no longer available.

Enbridge Gas stated that it is currently managing component availability via internally stocked critical spares, where deemed necessary and feasible. For a typical day's demand, extended outages for a single unit are managed by operational adjustments or planned equipment downtime to work around operating needs.<sup>6</sup>

Enbridge Gas stated that the results of the RAM Study support its conclusions that:<sup>7</sup>

1. If no action is taken, reliability and obsolescence issues will continue to escalate going forward further increasing reliability and safety risk
2. The consequences of experiencing a significant system failure and shortfall are unacceptable (both operationally and financially)
3. Ongoing reliance on shorter-term mitigants is not sustainable
4. A long-term solution is required

### Safety

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<sup>4</sup> Exhibit B-1-1, page 15

<sup>5</sup> A Monte Carlo Simulation is a mathematical technique that uses probability to estimate the possible outcomes of an uncertain event.

<sup>6</sup> Exhibit B-1-1, page 14

<sup>7</sup> Exhibit B-1-1, page 29, and Enbridge Gas's Argument in Chief

OEB staff accepts Enbridge Gas’s position that if no action is taken there may be safety risks to Enbridge Gas’s employees.

Enbridge Gas undertook a site-wide quantitative risk assessment (QRA) to determine the severity of the increasing safety risks at the CCS. Enbridge Gas has determined that the current configuration of compressor units (which includes multiple compressor units in close proximity within a single building), results in an excessive level of process safety risk.<sup>8</sup> Enbridge Gas says that the QRA applied industry best practices as recommended by Enbridge Gas’s consultant, DNV. The key inputs of the QRA are the amount of equipment on site, operating conditions, locations of buildings, and time spent on-site by various employees.

Following the completion of the QRA for the CCS, Enbridge Gas considered various short-term risk mitigants.<sup>9</sup> Enbridge Gas stated that while these short term mitigants can help manage the safety risks for a limited period of time, they are insufficient strategies in the long term.

#### Timing of the Project

As noted above, OEB staff submits that the OEB should grant LTC approval for the Project as filed. However, OEB staff submits that there are some questions regarding the need for an in-service date of November 1, 2023.

Enbridge Gas’s risk assessments examine the period from 2022 to 2026. The risks of not doing the Project have not been assessed beyond that timeframe.

OEB staff submits that a project that replaces the equivalent capacity of the seven compressors at the CCS can potentially be deferred until 2026 because:

1. Enbridge Gas has been and can continue to manage obsolescence, reliability, and employee safety risks – at least in the short term
2. The current configuration of compressor units is not out of compliance with any applicable legislation, or any code/standard adopted by an applicable regulatory authority<sup>10</sup>
3. The planned capital and OM&A costs over the next few years of status quo

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<sup>8</sup> In this context, process safety is a proactive form of risk assessment combined with engineering that focuses on preventing high-impact events at the CCS.

<sup>9</sup> Exhibit B-1-1, page 26

<sup>10</sup> Enbridge Gas’s interrogatory response I.STAFF.4

operation are moderate<sup>11</sup>

The potential risks of deferring the in-service date of a replacement project until 2026 include:

1. Material shortfalls in gas injection and withdrawal capacity
2. Significant unplanned maintenance costs (both capital and OM&A)
3. An incident that negatively affects people, property or the environment

Although OEB staff questions the timing of the Project, and notes that it could potentially be deferred to the future, OEB staff is of the view that the potential risks of deferment appear to be higher than the benefits. As such, OEB staff submits that the OEB should approve the proposed timing of the Project.

### **Project Alternatives**

OEB staff submits that, based on Enbridge Gas's evidence and responses to interrogatories about the alternatives to the Project, the Project is the best alternative to meet the stated need.

Enbridge Gas assessed various non-facility and facility related alternatives to maintain storage capacity and replace the attributes provided by the seven existing CCS compressor units proposed to be retired and abandoned.<sup>12</sup>

The non-facility alternatives considered include supply-side alternatives (e.g., contracting for market-based storage assets) and Enhanced Targeted Energy Efficiency (ETEE). Enbridge Gas stated that none of the non-facility alternatives, either alone or in combination with other facility and/or non-facility alternatives, are: (i) a suitable replacement for the Project, or (ii) reduce the proposed facilities needed to replace the storage capacity lost.

In addition to the Project, the facilities alternatives included:

1. Natural Gas Fired Compression
2. Electric Drive Motor Compression
3. Liquefied Natural Gas Storage

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<sup>11</sup> The OM&A cost of status quo operation is \$5.33 million / year (Exhibit C-1-1 Table 2). Enbridge Gas forecasts that retirement of the seven compressors would allow it to avoid planned maintenance capital expenditures estimated at more than \$16 million from 2023-2032 (Exhibit B-1-1 page 17). On average, that is approximately \$1.78 million per year.

<sup>12</sup> Exhibit C-1-1 and Enbridge Gas's Argument in Chief

4. Repair + Replace<sup>13</sup>

Enbridge Gas stated that the Project is the lowest net present value (NPV) alternative that provides a like-for-like capacity replacement and allows the consolidation of its compression fleet while increasing the overall reliability of the storage system. Table 1, below, provides a summary of the alternatives.

**Table 1: Summary of Alternatives<sup>14</sup>**

Alternative	Capacity (TJ/d)	Capital Cost (\$ Million) <sup>20</sup>	O&M Cost (\$ Million)	Unitized Cost (\$ Million/TJ/d)	NPV <sup>21</sup> (\$ Million)
<b>Non-Facility Alternatives</b>					
<b>Commercial Alternative + ETEE + Reduced Facilities</b>	680	235	3,936 – 3,967	6.13 – 6.18	N/A
<b>Facility Alternatives</b>					
<b>Natural Gas Fired Compression</b>	680	211	3.88/yr	0.31	(212)
<b>Electric Motor Drive Compression</b>	680	217	6.84/yr	0.32	(270)
<b>NPS 36 Pipeline</b>	680	206	2.99/yr	0.30	(200)
<b>LNG Storage</b>	680	541	2.62/yr	0.80	N/A
<b>Repair Alternative</b>					
<b>Repair + Replace</b>	680	160	5.33/yr	0.24	N/A

OEB staff also notes that Enbridge Gas evaluated the alternative scenario whereby the compression capacity at the CCS is not replaced. Enbridge Gas filed a study by ICF Resources, LLC (ICF) that concludes that there will be impacts to natural gas prices at the Dawn Hub. In part, this is because there is a forecast increase in the demand for both regulated and unregulated storage capacity. The cost impact on natural gas prices if the capacity of the seven compressors at Corunna Compression Station is not replaced is an estimated average increase in annual natural gas prices at Dawn of \$0.013 per GJ.<sup>15</sup>

Based on Enbridge Gas's July 2021 QRAM,<sup>16</sup> in which the Dawn price was \$ 3.284/GJ. OEB staff notes that \$0.013 per GJ represents an increase of about 0.40%.<sup>17</sup>

<sup>13</sup> Replaces the capacity of units K701-K703 with an NPS 20 pipeline that follows the same running line and requires the same station modifications as the Project. Units K705-K708 would remain in service.

<sup>14</sup> Exhibit C-1-1, Table 2: Relative Economics of Alternatives. Enbridge Gas, in its interrogatory responses, stated that the NPV for the Repair + Replace alternative is (\$208) million, which is slightly higher than the Project (Exhibit I.ED.9). However, Enbridge Gas notes in its Argument in Chief, and OEB staff agrees, that this alternative does not address the employee safety risk.

<sup>15</sup> Exhibit C-1-1 Attachment 2, page 13

<sup>16</sup> EB-2021-0153

<sup>17</sup> OEB staff chose Enbridge Gas's July 2021 QRAM for this assessment because it pre-dates the fairly recent increase in natural gas commodity costs associated with increased domestic and global demand for power generation and LNG exports.

## Project Cost and Economics

OEB staff submits that the costs of the Project are reasonable. OEB staff submits that the costs of the pipeline component of the Project are consistent with at least one comparator project, and that Enbridge Gas is taking an appropriate approach to cost control. OEB staff agrees with Enbridge Gas that a discounted cash flow (DCF) assessment for the Project is not required, and that an NPV assessment reveals the Project as the least cost alternative that meets the stated need of the Project.

### Capital Costs

The total estimated capital cost of the proposed pipeline and ancillary costs (e.g., removal of the existing compressors) is \$250.7 million, including indirect overheads and loadings.<sup>18</sup> This total includes 13.6% contingency applied to all direct capital costs. The cost estimate set out in Table 2 (see next page) is a Class 4 estimate according to Enbridge Gas's Cost Estimating and Management Standard.

**Table 2: Summary of Project Capital Costs<sup>19</sup>**

<u>Item #</u>	<u>Description</u>	<u>Pipeline Costs</u>	<u>Ancillary Costs</u>	<u>Total Costs</u>
1.0	Materials	\$11,800,354	\$36,643,592	\$48,443,946
2.0	Construction & Labour	\$51,310,846	\$28,993,020	\$80,303,866
3.0	External Permitting & Lands	\$15,322,222	\$0	\$15,322,222
4.0	Outside Services	\$19,230,385	\$15,702,325	\$34,932,710
5.0	Direct Overheads	\$1,295,000	\$0	\$1,295,000
6.0	Contingency	\$13,180,351	\$10,816,348	\$23,996,699
7.0	IDC	\$2,093,000	\$0	2,093,000
<b>8.0</b>	<b>Project Cost</b>	<b>\$114,232,158</b>	<b>\$92,155,285</b>	<b>\$206,387,443</b>
9.0	Indirect Overheads & Loadings	\$26,277,051	\$18,085,209	44,362,260
<b>10.0</b>	<b>Total Project Costs</b>	<b>\$140,509,209</b>	<b>\$110,240,494</b>	<b>\$250,749,703</b>

**NOTE:**

The total costs set out in Table 1 include abandonment of the existing seven CCS compressor units K701-K703 and K705-K708 amounting to \$14.5 million.

Enbridge Gas stated that within the DOC, the measurement facilities are no longer required and will be physically removed. The removal will involve demolition of the building, as well as removal of all measurement, associated equipment, piping and telemetry. The costs to remove the Tecumseh measurement facilities are included in the Project's ancillary costs.<sup>20</sup>

The Project would not necessitate any compressor upgrades at the DOC because there

<sup>18</sup> Enbridge Gas explained in its interrogatory response I.STAFF.12 that its Overhead Capitalization Policy applies loadings (or "burden rates") to direct company labour hours in order to allocate indirect human resource costs (including pension and benefit costs) directly to capital projects. Per Table 2, the project cost without indirect overheads and loadings is approximately \$206.4 million.

<sup>19</sup> Exhibit D-1-1, Table 1: Estimated Project Costs

<sup>20</sup> Enbridge Gas's interrogatory response I.STAFF.12

is surplus capacity at the DOC.<sup>21</sup> The Project is also not expected to materially increase the planned maintenance, capital expenditures, or unplanned maintenance costs at the DOC.<sup>22</sup>

Enbridge Gas stated that the pipeline cost is approximately \$6 million per km based on pipeline project costs of \$114.2 million (excluding indirect overheads and loadings) and a pipeline length of 19.2 km.<sup>23</sup> Enbridge Gas stated that this cost is comparable to similar diameter pipelines situated on agricultural lands.<sup>24</sup> However, Enbridge Gas did not provide details of any comparator projects (i.e., project names, OEB case numbers, lengths, diameters, costs). Enbridge Gas cautioned that project costs cannot be directly compared without considering all unique contributing factors at the time they are estimated or incurred.

OEB staff submits that a relatively comparable project was Union Gas's Panhandle Reinforcement, which was approved by the OEB on February 23, 2017.<sup>25</sup> The actual cost for that project was \$228.7 million for 40 km of NPS 36 or \$5.7 million/km.<sup>26</sup> This cost also excludes indirect overheads and loadings. Based on this comparison, OEB staff submits that the costs of the pipeline component of the Project appear to be reasonable.

### Capital Cost Control

Enbridge Gas's approach to controlling the cost of the Project include:<sup>27</sup>

- 1) Using project management principles for cost, schedule and scope change management
- 2) Reviewing monthly with the contractor the following performance indices:
  - a) Earned value management<sup>28</sup>
  - b) Schedule performance index<sup>29</sup>
  - c) Cost performance index<sup>30</sup>

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<sup>21</sup> Enbridge Gas's interrogatory response I.STAFF.1

<sup>22</sup> Enbridge Gas's interrogatory response I.STAFF.10 b)

<sup>23</sup> Enbridge Gas's interrogatory response I.EP.14

<sup>24</sup> Enbridge Gas's interrogatory response I.EP.14 and its Argument in Chief

<sup>25</sup> [EB-2016-0186](#)

<sup>26</sup> EB-2022-0157, Exhibit E, Tab 1, Schedule 1, p. 2.

<sup>27</sup> Enbridge Gas's interrogatory response I.STAFF.9 f)

<sup>28</sup> A measure of the amount of work actually performed on the Project beyond a basic review of cost and schedule reports.

<sup>29</sup> A measure of schedule efficiency

<sup>30</sup> A measure of cost efficiency

- 3) Using a unit price cost strategy for pipeline costs and a lump sum for the ancillary scope
- 4) Using Enbridge Gas construction resources to provide daily oversight with a focus on managing costs and construction quality

OEB staff submits that Enbridge Gas is taking an appropriate approach to cost control.

### Project Economics

Enbridge Gas did not complete a DCF assessment for the Project because it is a like-for-like replacement (i.e., it is intended to replace storage capacity lost by removing the existing seven compressors at CCS and will not create any incremental capacity or new revenues).<sup>31</sup> The NPV assessment shows the Proposed Project to be the least cost alternative (refer to Table 1: Summary of Alternatives, above).

OEB staff agrees that no DCF assessment for the Project is necessary as the Project is a like-for-like replacement that does not generate new revenue.

### Cost Allocation

Enbridge Gas stated that, in accordance with the OEB's determinations in the Natural Gas Electricity Interface Review<sup>32</sup>, the cost of the Project would be 100% allocated to its regulated storage business. Enbridge Gas noted that as the CCS compressor units were used to support Enbridge Gas Distribution Inc.'s utility business prior to the OEB's Natural Gas Electricity Interface Review, the CCS compressor units are part of Enbridge Gas's utility operations for rate-making purposes. However, Enbridge Gas stated that the issue of storage cost allocation associated with Project is not an issue for the current proceeding but will be an issue for its 2024 rebasing proceeding.<sup>33</sup>

OEB staff agrees that cost allocation is an issue for the 2024 rebasing proceeding. OEB staff expects that the overall allocation of storage costs to the regulated and unregulated storage businesses will be reviewed in the 2024 rebasing proceeding. Enbridge Gas appears to agree that even though this asset is expected to be placed in-service prior to the next rebasing, the issue of the appropriate allocation for the Project is subject to review at the time of rebasing.<sup>34</sup>

## **Environmental Impacts**

OEB staff submits that Enbridge Gas's Environmental Report (ER) meets the

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<sup>31</sup> Enbridge Gas's interrogatory response I.STAFF.9

<sup>32</sup> EB-2005-0551

<sup>33</sup> Enbridge Gas's interrogatory response I.SEC.18

<sup>34</sup> Ibid.



requirements of the OEB's *Environmental Guidelines for the Location, Construction and Operation of Hydrocarbon Pipelines and Facilities in Ontario*, 7<sup>th</sup> Edition, 2016 ([Environmental Guidelines](#)). OEB staff has no concerns with the environmental aspects of the Project, given that Enbridge Gas is committed to implementing the mitigation measures set out in the ER and to completing the Environmental Protection Plan (EPP) prior to the start of construction.

Stantec Consulting Ltd. (Stantec) was retained by Enbridge Gas to undertake a route evaluation and environmental and socio-economic impact study for the Project (Environmental Assessment or EA). As part of development of the EA, a consultation program was implemented to receive input from interested and potentially affected parties including Indigenous communities. Stantec used the results of the Environmental Assessment to prepare the ER.

The ER was submitted to Ontario Pipeline Coordinating Committee (OPCC) members on September 21, 2021. Copies of the ER were also sent to affected municipalities, conservation authorities, and five Indigenous communities identified by the Ministry of Energy. The application includes a log of comments received.<sup>35</sup> Several comments were received from OPCC members, the Aamjiwnaang First Nation, and the Walpole Island First Nation. OEB staff submits that none of the comments appear to suggest an opposition to the Project or raise any outstanding concerns from OPCC members.

Enbridge Gas noted that construction of the Project will be conducted in accordance with Enbridge Gas's Construction and Maintenance Manual and the recommendations in the ER. Prior to construction Enbridge Gas will develop an EPP to specify for implementation the mitigation measures recommended in the ER. The EPP will incorporate the mitigation measures identified in the ER and comments received in the consultation with the OPCC and regulatory agencies. The EPP will be communicated to the construction contractor prior to the commencement of construction of the Project.

The ER concludes that with the implementation of the recommendations in the ER, ongoing communication and consultation, and adherence to permit, regulatory and legislative requirements, potential adverse residual environmental and socio-economic impacts of the Project are not anticipated to be significant.

### Archeological Assessment

Enbridge Gas stated that a Stage 1 Archeological Assessment (AA) was completed by Stantec and submitted to the Ministry of Heritage, Sport, Tourism and Culture Industries (MHSTCI) for review on September 21, 2021 and entered onto the Ontario Public Register on September 22, 2021. Enbridge Gas states that a Stage 2 AA is required

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<sup>35</sup> Exhibit F-1-1, Attachments 3-4

based on the findings of the Stage 1 AA. The Stage 2 AA work has been initiated and is anticipated to be complete during the 2022 field season.<sup>36</sup>

OEB staff notes that the Standard Conditions of Approval for LTC require Enbridge Gas to obtain all necessary approvals, permits, licences, and certificates needed to construct, operate and maintain the proposed Project and ensure that the environmental impacts of the Project are addressed, mitigated and monitored. Therefore, OEB staff has no concerns that the Stage 2 AA work has not been completed at this time.

### Safety Assessment of Proposed Pipeline

Enbridge Gas also undertook a QRA to assess the cumulative risk of adding the proposed pipeline to the existing pipeline corridor between the Dawn and Corunna facilities.<sup>37</sup> The QRA considers the risk of accidents or emergency events which could be a result of various threats including corrosion and third-party damage and evaluates the cumulative impact of these outcomes to public Health and Safety in the surrounding population, including added conservatism to account for possible population growth near the corridor. This assessment concludes that the cumulative risk of all pipelines in the corridor, with the addition of the proposed pipeline, is at an acceptable level relative to industry best practices and risk acceptance levels recommended by the proposed CSA Z662-23 Annex B - 2023 draft standard.

### **Route Map and Form of Landowner Agreements**

OEB staff has no issues or concerns with the route map filed by Enbridge Gas pursuant to section 94 of the OEB Act.<sup>38</sup>

Section 97 of the OEB Act states: “In an application under section 90, 91 or 92, leave to construct shall not be granted until the applicant satisfies the Board this it has offered or will offer to each owner of land affected by the approved route or location an agreement in a form approved by the Board.” The term “land” is defined in the OEB Act to include “any interest in land”. “Agreement” is not defined; however in most leave to construct cases the agreements in question are various forms of easements, temporary land use agreements, and/or fee simple purchase agreements.

In the current proceeding Enbridge states that it requires approximately 42 hectares of new permanent easements, and approximately 53 hectares of temporary easements for construction and topsoil storage purposes. These easements follow the route of the proposed Project, and impact the lands of numerous landowners (many of whom are represented by CAEPLA-DCLC). Enbridge has submitted two forms of agreement for

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<sup>36</sup> Enbridge Gas’s interrogatory response I.STAFF.13

<sup>37</sup> Enbridge Gas’s interrogatory response I.SEC.10

<sup>38</sup> The map is filed in Exhibit A-2-1

approval under section 97: a (permanent) Pipeline Easement agreement, and a Temporary Land Use agreement. Both forms of agreement have been approved by the OEB in a previous proceeding.<sup>39</sup>

Both of the proposed forms of land use agreement include an indemnity clause, which provides that Enbridge assumes all liability and obligations for any loss, damage or injury to persons or property that would not have happened but for the easement or agreement, and indemnifies the landowner against any such losses, except to the extent that the losses are caused or contributed to by the negligence or willful misconduct of the landowner.<sup>40</sup> Indemnity clauses are common features of land use agreements.

Prior to 2021, many indemnity clauses in forms of agreement approved by the OEB used the term “gross negligence”, and not “negligence”. In 2021, as part of the Greenstone Pipeline Project, Enbridge filed forms of agreement that used “negligence” in place of “gross negligence”. Enbridge described the change as minor and of a housekeeping nature. The OEB approved the forms of agreement without specific comment on the change from “gross negligence” to “negligence”.<sup>41</sup>

OEB staff understands that CAEPLA-DCLC believes that “gross negligence” is preferable to “negligence”, and that it will argue that this is the term that should appear in the indemnity clauses.<sup>42</sup> According to the joint letter filed on September 20, 2022, CAEPLA-DCLC and Enbridge Gas have not yet resolved the matter of the indemnity clause, though negotiations continue (OEB staff is not itself involved in the negotiations). Enbridge Gas’s argument in chief does not specifically discuss the issue of the indemnity clauses, and states that negotiations with CAEPLA-DCLC regarding the agreements are ongoing. OEB staff has not yet seen the final argument of CAEPLA-DCLC (which is due the same day as OEB staff’s submission), so it is unaware at this point of exactly what arguments CAEPLA-DCLC will make with respect to “negligence” versus “gross negligence”.

It is important to note that under section 97 the OEB’s responsibility is to approve a form of agreement that has been or will be offered to landowners. The OEB’s approval is not required for the final agreement that is entered into between the applicant and landowners, and the final agreement may differ in material respects from the form of

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<sup>39</sup> OEB Decision and Order on Enbridge Gas’s Greenstone Pipeline Project proceeding, EB-2021-0205, issued March 17, 2022

<sup>40</sup> This is a summary of the complete terms of the indemnity clauses. The complete proposed clauses can be reviewed at Exhibit G, Tab 1, Schedule 1, Attachment 3, clause 5 (Pipeline Easement), and Exhibit G, Tab 1, Schedule 1, Attachment 4, clause 1(d) (Temporary Land Use Agreement).

<sup>41</sup> EB-2021-0205, Decision and Order, pp. 13-14

<sup>42</sup> CAEPLA-DCLC written evidence, pp. 5-6

agreement that is approved by the OEB.

The purpose of the OEB’s review is to ensure that the initial offering to landowners contains certain general provisions as a starting point for negotiations. Once the initial form of agreement is offered to the landowner, however, the parties are free to negotiate whatever terms they see fit. In a decision on an application by Hervey Inlet Wind LP, the OEB observed: “[i]n an application seeking approval under Section 97, the OEB reviews the form of agreement filed by the Applicant in order to satisfy itself that the form of agreement, which represents the initial offering to an affected landowner, is acceptable. Once the OEB is satisfied with the initial offering to an affected landowner, the parties are free to negotiate terms to meet their respective needs.”<sup>43</sup>

The OEB’s review of forms of land agreements is also discussed in the Natural Gas Facilities Handbook (Handbook), which notes: “[a]n applicant must provide this form of agreement to the landowner’s attention, and it is expected that this form of agreement will be the initial starting point for a negotiation between the applicant and the landowner.”<sup>44</sup>

The Handbook also provides a list of elements that should be included in most land use agreement offers. The Handbook notes that “[t]he elements below provide the initial starting point for a negotiation between a landowner and a [leave to construct] applicant. However, it is open to the landowner and applicant to develop the substantive content of these elements and any other mutually agreed items to be included in the agreement.” One of the elements that the Handbook identified is a provision related to “Liability: Indemnity and exculpation”, where the Handbook states “[t]he agreement should reflect the parties’ consideration of their potential liabilities with respect to their ownership or use of the property.”<sup>45</sup> No further direction is provided.

OEB staff notes that the OEB has approved in the past forms of landowner agreements that included indemnity clauses that used the term “negligence”, and also agreements that used the term “gross negligence”. Clearly this is an issue of some importance to the landowners represented in this proceeding, and they continue to negotiate with Enbridge Gas regarding the appropriate wording of the indemnity clause. However, the OEB’s role is not to micromanage these negotiations. OEB staff submits that the forms of agreement submitted by Enbridge Gas include an indemnity clause as required by the Handbook. The proposed forms of agreement use the term “negligence”, and the OEB has approved forms of agreement using that term in the past. OEB staff submits that the OEB should approve the proposed forms of agreement, on the understanding that this may not be the final wording of the agreements, and that the parties will

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<sup>43</sup> EB-2016-0310, Decision and Order, para. 31

<sup>44</sup> Natural Gas Facilities Handbook, p. 29

<sup>45</sup> Natural Gas Facilities Handbook, pp. 77-78

negotiate whatever terms to the agreements that they see fit. OEB staff would have made the same submission if the proposed form of agreement used the term “gross negligence”. Both parties are ably represented by counsel, and it is generally not the OEB’s role under section 97 to dictate the specific wording of specific clauses.

OEB staff understands that Enbridge Gas and CAEPLA-DCLC are also attempting to negotiate a letter of understanding (LOU) that would set out commitments made by Enbridge Gas to landowners regarding construction methodology, remediation of affected properties, and various compensation items. Enbridge Gas has not sought approval for the LOU under section 97, and it is unclear whether CAEPLA-DCLC believes that the LOU is a form of agreement that requires approval of the OEB. Although LOU’s have been included in settlement agreements that were approved by the OEB in the past,<sup>46</sup> OEB staff is unaware of any instances in which the OEB has specifically provided an approval under section 97 for an LOU as a form of agreement. To the extent that the form of the LOU does require approval under section 97, OEB staff submits that the OEB’s role would be to ensure that form of the LOU provides an appropriate starting point for negotiations, and not to dictate the final terms of the agreement.

### **Indigenous Consultation**

In accordance with the OEB’s Environmental Guidelines, on January 19, 2021, Enbridge Gas contacted the Ministry of Energy (MOE) in respect to the Crown’s duty to consult related to the Project. The MOE by way of a letter delegated the procedural aspects of the Crown’s duty to consult for the Project to Enbridge Gas on February 19, 2021 (Delegation Letter). In the Delegation Letter the MOE identified the following Indigenous communities that Enbridge Gas should consult with respect to the Project:

1. Aamjiwnaang (Sarnia) First Nation
2. Bkejwanong (Walpole Island) First Nation
3. Chippewas of Kettle and Stony Point First Nation
4. Chippewas of the Thames First Nation
5. Oneida of the Thames First Nation

Enbridge Gas stated that it engaged the five communities and "has not identified any opposition to the Project."<sup>47</sup> Enbridge Gas said it would continue to engage the five communities throughout the life of the Project to ensure any impacts on Aboriginal or

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<sup>46</sup> OEB Decision & Order on Union Gas Limited’s Panhandle Replacement Project, EB-2016-0186, issued February 23, 2017

<sup>47</sup> Exhibit B-1-1 page 4

treaty rights are addressed, as appropriate.

As required by the MOE's Indigenous consultation protocol and the OEB Environmental Guidelines, Enbridge Gas prepared the Indigenous Consultation Report (ICR) describing and documenting the Indigenous consultation it has been conducting. The ICR is part of Enbridge Gas's evidence in support of the Project. Enbridge Gas filed its ICR with the MOE on March 21, 2022. Enbridge Gas followed up with the MOE on May 30, 2022.<sup>48</sup> As of this date, Enbridge Gas has not yet filed a letter expressing the MOE's opinion on the adequacy of the Indigenous consultation for the Project (Letter of Opinion). OEB staff anticipates that Enbridge Gas will provide an update regarding the potential timing of receiving the Letter of Opinion in its reply submission.

Direct notice of this proceeding was provided to the five Indigenous communities listed above, as well as the Métis Nation of Ontario. On May 9, 2022, CKSPFN<sup>49</sup> filed a letter requesting intervenor status. In its letter, the CKSPFN stated that it has traditional territory and associated rights and interests that may be impacted by the outcomes of this proceeding. In part, its interest in this proceeding relates to whether the duty to consult and accommodate has been discharged.

CKSPFN filed its interrogatories to Enbridge Gas on June 10, 2022. Many of CKSPFN interrogatories related to the assessment of project alternatives and the cumulative effects of constructing a new pipeline in the vicinity of existing pipelines. In its interrogatory responses, Enbridge Gas stated that it has and will continue to provide information to and hold discussions with CKSPFN to discuss specific concerns regarding the project and the associated cumulative effects.<sup>50</sup> Enbridge Gas also noted that CKSPFN had the opportunity to comment on the Environmental Report, which includes the cumulative effects assessment. Finally, Enbridge Gas noted that communications with CKSPFN related to the Project can be found in the Indigenous Consultation Report filed with the Company's pre-filed evidence.<sup>51</sup>

OEB staff submits that Enbridge Gas appears to have made efforts to engage with affected Indigenous groups and OEB staff is not aware of any concerns that could materially affect the Project have been raised through its consultation to date. OEB staff observes that Enbridge Gas appears to be cooperating with the Indigenous communities during the consultation process and that it made certain commitments

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<sup>48</sup> Enbridge Gas's interrogatory response I.STAFF.16

<sup>49</sup> As noted previously, on July 21, 2022, CKSPFN filed a letter stating that Caldwell First Nation had joined with CKSPFN for the purposes of this proceeding and that their participation would continue under the name of Three Fires Group Inc. (TFG). OEB staff has maintained the name CKSPFN in this submission as the information referred to in this section of the submission was all filed prior to July 21, 2022.

<sup>50</sup> Enbridge Gas's interrogatory response I.CKSPFN.2 a) & m)

<sup>51</sup> Ibid. Also see Exhibit H-1-1 Attachment 6

to the Indigenous communities related to the Project. OEB staff is not aware of any potential adverse impacts of the Project to any Aboriginal or treaty rights.

If the OEB determines that it is appropriate to grant LTC for the Project, OEB staff submits that the OEB should wait to receive the Letter of Opinion from the MOE before providing its final approval to grant LTC for the Project. If the Letter of Opinion is not filed prior to record close, the OEB can place the proceeding in abeyance until such time that the letter is filed.<sup>52</sup> OEB staff notes that, assuming (a) no further extended delays and (b) a favourable Opinion Letter is filed by October 31, 2022, then this approach should not put the commencement date of the project at risk. Enbridge Gas stated that it requires a decision on this LTC application end of October 2022, with construction scheduled to commence in July/August of 2023. OEB staff notes that, to the extent that the Letter of Opinion may identify outstanding issues, the OEB could elect to make provision for additional procedural steps to address these issues.

### **Conditions of Approval**

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

If the OEB decides to approve the current application, then OEB staff submits that the approval should be subject to the OEB's [standard conditions of approval for LTC applications](#), which are attached as Schedule A to this submission.

In terms of any outstanding landowner and Indigenous issues, OEB staff notes that standard condition No. 3 requires the applicant to obtain all necessary approvals, permits, licences, certificates, agreements and rights required to construct, operate and maintain the Project.

~All of which is respectfully submitted~

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<sup>52</sup> See section 3.3 of the OEB's [Protocol for Adjusting Adjudicative Timelines](#)

**Schedule A**  
**Conditions of Approval**  
**EB-2022-0086**  
**September 20, 2022**



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

**Enbridge Gas Inc.  
EB-2022-0086**

**Conditions of Approval**

1. Enbridge Gas Inc. shall construct the facilities and restore the land in accordance with the OEB's Decision and Order in EB-2022-0086 and these Conditions of Approval.
2. (a) Authorization for leave to construct shall terminate 12 months after the decision is issued, unless construction has commenced prior to that date.  
  
(b) Enbridge Gas Inc. shall give the OEB notice in writing:
  - i. Of the commencement of construction, at least 10 days prior to the date construction commences
  - ii. Of the planned in-service date, at least 10 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
  - iv. Of the in-service date, no later than 10 days after the facilities go into service
3. Enbridge Gas Inc. shall obtain all necessary approvals, permits, licences, certificates, agreements and rights required to construct, operate and maintain the Project.
4. Enbridge Gas Inc. shall implement all the recommendations of the Environmental Report filed in the proceeding, and all the recommendations and directives identified by the Ontario Pipeline Coordinating Committee review.
5. Enbridge Gas Inc. shall advise the OEB of any proposed change to OEB-approved construction or restoration procedures. Except in an emergency, Enbridge Gas Inc. shall not make any such change without prior notice to and written approval of the OEB. In the event of an emergency, the OEB shall be informed immediately after the fact.
6. Concurrent with the final monitoring report referred to in Condition 8(b), Enbridge Gas Inc. shall file a Post Construction Financial Report, which shall provide a variance analysis of project cost, schedule and scope compared to the estimates

filed in this proceeding, including the extent to which the project contingency was utilized. Enbridge Gas Inc. shall also file a copy of the Post Construction Financial Report in the proceeding where the actual capital costs of the project are proposed to be included in rate base or any proceeding where Enbridge Gas Inc. proposes to start collecting revenues associated with the Project, whichever is earlier.

7. Both during and after construction, Enbridge Gas Inc. shall monitor the impacts of construction, and shall file with the OEB one electronic (searchable PDF) version of each of the following reports:

- a) A post construction report, within three months of the in-service date, which shall:
  - i. Provide a certification, by a senior executive of the company, of Enbridge Gas Inc. adherence to Condition 1
  - ii. Describe any impacts and outstanding concerns identified during construction
  - iii. Describe the actions taken or planned to be taken to prevent or mitigate any identified impacts of construction
  - iv. Include a log of all complaints received by Enbridge Gas Inc., including the date/time the complaint was received, a description of the complaint, any actions taken to address the complaint, the rationale for taking such actions
  - v. Provide a certification, by a senior executive of the company, that the company has obtained all other approvals, permits, licenses, and certificates required to construct, operate, and maintain the proposed project
- b) A final monitoring report, no later than fifteen months after the in-service date, or, where the deadline falls between December 1 and May 31, the following June 1, which shall:
  - i. Provide a certification, by a senior executive of the company, of Enbridge Gas Inc. 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 Inc., including the date/time the complaint was received; a description of the complaint; any actions taken to address the complaint; and the rationale for taking such actions
8. Enbridge Gas Inc. shall designate one of their employees as project manager who will be the point of contact for these conditions and shall provide the employee's name and contact information to the OEB and to all affected landowners, and shall clearly post the project manager's contact information in a prominent place at the construction site.