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DECISION AND ORDER

EB-2023-0261

ENBRIDGE GAS INC.

**Application for Leave to Construct Neustadt Community
Expansion Project**

BEFORE: Robert Dodds
Presiding Commissioner

Michael Janigan
Commissioner

David Sword
Commissioner

May 23, 2024



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1 INTRODUCTION AND SUMMARY

Enbridge Gas Inc. (Enbridge Gas) filed an application with the Ontario Energy Board (OEB) under section 90 of the *Ontario Energy Board Act, 1998*, S.O. 1998, c. 15, (Schedule B) (OEB Act), for an order granting leave to construct approximately 12 kilometres of natural gas pipeline in the Community of Neustadt within the Municipality of West Grey.

The proposed natural gas pipelines (Project) consist of approximately 4.8 kilometres of nominal pipe size (NPS) 2-inch polyethylene (PE) distribution pipeline and approximately 7.6 kilometres of NPS 6-inch PE distribution pipeline, consisting of approximately 6.7 km of supply lateral and 0.9 km of reinforcement pipeline.

The proposed pipeline would supply natural gas to approximately 230 forecasted customers in the community of Neustadt who currently do not have access to natural gas service. The Project was selected as eligible to receive funding from the Government of Ontario as part of Phase 2 of the Natural Gas Expansion Program (NGEP).

Enbridge Gas also applied to the OEB under section 97 of the OEB Act for approval of the form of land-use agreements it offers to landowners affected by the routing or location of the Project.

In terms of other OEB approvals required for the Project, in addition to the leave to construct requested in the current proceeding, OEB staff notes that Enbridge Gas has franchise agreements with the Municipality of West Grey¹ and Town of Hanover² and holds a Certificate of Public Convenience and Necessity for any project work within the Municipality of West Grey³ and Town of Hanover⁴ which allows Enbridge Gas to construct, operate and add to the natural gas distribution system within all parts of the municipality and town.

Enbridge Gas advised that it plans to commence construction in June 2024⁵ and expects to connect customers starting in December 2024.⁶

¹ Municipality of West Grey Franchise Agreement - EB-2007-0818 (expires February 4, 2028)

² Town of Hanover Franchise Agreement - EB-2007-0944 (expires March 17, 2028)

³ Municipality of West Grey CPCN – EB-2021-0269-H (dated February 17, 2022)

⁴ Town of Hanover CPCN – EBC 29 (dated May 1, 1963)

⁵ Argument-in-Chief, p.12

⁶ Exhibit A, Tab 2, Schedule 1, p. 2

The general location of the Project is shown on the map below:

Neustadt Community Expansion Project



The OEB approves Enbridge Gas’s leave to construct application, subject to the conditions of approval contained in Schedule A of this Decision.

The OEB also provides its findings with respect to the appropriate treatment of the Project during the Rate Stability Period (RSP) and at the time of the rebasing following the conclusion of the RSP.

The OEB also approves the forms of easement agreement and temporary working area agreement proposed by Enbridge Gas.

2 THE PROCESS

The OEB issued a Notice of Hearing on October 10, 2023, after Enbridge Gas filed its application on September 15, 2023.

Environmental Defence, and Pollution Probe applied for intervenor status and cost eligibility.

In its request for intervenor status, Environmental Defence stated that it wished to file evidence related to the cost effectiveness of heat pumps relative to natural gas (heat pump evidence). As part of its intervention request, Environmental Defence stated that it may request that the OEB provide for a technical conference following the receipt of interrogatory responses.

In Procedural Order No. 1, issued November 17, 2023, the OEB granted Environmental Defence and Pollution Probe intervenor status. Environmental Defence and Pollution Probe were also granted cost eligibility.

In Procedural Order No. 1, the OEB stated that it would decide on the request to file evidence at a later date and make its determination on the request for a technical conference after the responses to interrogatories were filed. The OEB provided for the filing of interrogatories and responses, and for the filing of comments on the need for a technical conference.

OEB staff and intervenors filed interrogatories by December 1, 2023. Enbridge Gas filed its interrogatory responses on December 15, 2023. OEB staff and intervenors filed comments on the need for a technical conference on January 10, 2024, and Enbridge Gas filed its response on January 17, 2024.

On September 27, 2023, Environmental Defence filed a Motion to Review⁷ the OEB's decisions (relating to the admissibility of intervenor evidence and to the merits of the applications) in the proceedings for the following Enbridge Gas community expansion projects: Selwyn; Mohawks of the Bay of Quinte and Shannonville; and Hidden Valley.⁸

⁷ EB-2023-0313 Motion to Review and Vary OEB Decisions in EB-2022-0156/EB-2022-0248/EB-2022-0249

⁸ EB-2022-0156 – Selwyn Community Expansion Project; EB-2022-0248 – Mohawks of the Bay of Quinte and Shannonville Community Expansion Project; EB-2022-0249 – Hidden Valley Community Expansion Project

On December 4, 2023, Environmental Defence withdrew the part of its motion relating to the Mohawks of the Bay of Quinte and Shannonville project and the OEB confirmed withdrawal of this portion of the motion.

The OEB issued a decision⁹ on December 13, 2023 denying the remainder of Environmental Defence's motion with respect to the other two community expansion projects noting that the OEB's orders approving the three projects remain in full force and effect.

On December 14, 2023, Environmental Defence filed a letter with respect to the Enbridge Gas community expansion applications being heard by the OEB at that time (Bobcaygeon, Sandford, Eganville, Neustadt) and the EPCOR Natural Gas Limited Partnership (EPCOR) Brockton application, which has now been withdrawn by EPCOR, proposing that:

- The OEB consolidate the hearing of these natural gas expansion projects given the overlap in the issues and evidence
- A joint technical conference for these projects be convened
- Environmental Defence be allowed to file evidence with respect to the Enbridge Gas natural gas expansion projects based on community surveys that it will conduct (survey evidence)

Enbridge Gas filed a response on December 21, 2023 stating that the OEB should reject Environmental Defence's proposals.

On December 28, 2023, the OEB issued a letter seeking clarification and further information from Environmental Defence, by January 11, 2024, on the evidence it is proposing.

Environmental Defence filed responses to the OEB's questions on January 11, 2024. Between January 11, 2024 and February 2, 2024, Environmental Defence and Enbridge Gas filed several letters regarding Environmental Defence's proposed evidence.

The OEB issued a Decision and Procedural Order No. 2 on February 29, 2024 denying the Environmental Defence and Pollution Probe requests for the filing of evidence and further discovery on the application. The OEB also set a schedule for final argument. On March 22, 2024, Enbridge Gas filed its Argument-in-Chief (AIC). Submissions by OEB staff and intervenors are due by April 5, 2024, and Enbridge Gas may file its reply submission by April 19, 2024.

⁹ EB-2023-0313 Decision on Motion to Review and Vary OEB Decisions in EB-2022-0156/EB-2022-0248/EB-2022-0249

On March 11, 2024, Environmental Defence filed a motion to review and vary the OEB's Decisions on Intervenor Evidence in the Enbridge Gas leave to construct community expansion applications.¹⁰ Environmental Defence is contesting the OEB's decisions to deny intervenors an opportunity to file evidence and allow further discovery in the above noted proceedings.

Enbridge Gas filed a letter on March 19, 2024, arguing that the OEB should dismiss Environmental Defence's motion without a hearing, and that if the motion is heard it should be dealt with before the OEB issues decisions on the Current Applications.

In a letter issued on April 11, 2024, the OEB noted that Environmental Defence's motion to review is based on an interlocutory decision by the hearing panel to deny the filing of evidence and is based on an alleged procedural error in advance of the hearing panel making its final decisions on the Current Applications. In the same letter, the OEB determined that the appropriate time to consider a motion to review is once the hearing panel has made its final decisions in the Current Applications, at which time the impact of the alleged error on the final decision can be assessed.

¹⁰ EB-2022-0111 (Bobcaygeon) dated February 20, 2024; and EB-2023-0200 (Sandford), EB-2023-0201 (Eganville), and EB-2023-0261 (Neustadt) dated February 29, 2024. These files have been referred to here as the "Current Applications".

3 DECISION

The OEB's decision is structured to address the following issues:

1. Need for the Project
2. Proposed Facilities and Alternatives
3. Project Cost and Economics
4. Environmental Matters
5. Land Matters
6. Indigenous Consultation
7. Conditions of Approval

3.1 Need for the Project

In 2019, the Minister of Energy sought advice from the OEB in respect of projects that could be candidates to receive government funding under Phase 2 of the NGEP. The Project was one of 210 proposals for community expansion projects, including four economic development projects, submitted by natural gas utilities to the OEB for consideration in this regard, and included in the *OEB's Report to the Minister of Energy, Northern Development and Mines and to the Associate Minister of Energy: Potential Projects to Expand Access to Natural Gas Distribution*.¹¹

The Project is one of 28 projects across 43 communities selected by the Government to be eligible to receive funding as part of Phase 2 of the NGEP, as specified in the Expansion of Natural Gas Distribution System Regulation.¹²

The NGEP provides funding to Ontario natural gas distributors to support the expansion of natural gas to communities that are not currently connected to the natural gas system. NGEP funding acts in a manner similar to a contribution in aid of construction and is designed to bring projects that would otherwise be uneconomic to a Profitability Index (PI) of 1.0 (i.e., make them economic under the OEB's test under E.B.O. 188).

The Expansion of Natural Gas Distribution Systems Regulation sets out the funding mechanism¹³ and includes the projects selected to receive the Government funding

¹¹ EB-2019-0255, *OEB's Report to the Minister of Energy, Northern Development and Mines and the Associate Minister of Energy: Potential Projects to Expand Access to Natural Gas Distribution*, December 10, 2020

¹² Ontario Regulation 24/19 – Expansion of Natural Gas Distribution Systems, Schedule 2

¹³ The Expansion of Natural Gas Distribution Systems Regulation sets the mechanism for sourcing the funding of the eligible expansion projects by requiring that rate-regulated natural gas distributors charge each of their customers \$1 per month.

as well as the amount of funding allocated to each project. Enbridge Gas noted that the Project supports the Government's efforts to help expand access to natural gas in Ontario to areas that do not currently have access to the natural gas system.¹⁴

Enbridge Gas stated that the need for the Project is supported by its 10-year forecast of customer attachments as shown in Table 1 below:

Table 1
Forecasted Customer Attachments for the Project

Neustadt Customer Additions	Total Potential Customers	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7	Year 8	Year 9	Year 10	Total Forecasted
Residential Units (Singles)	194	60	34	26	17	9	5	5	5	5	5	171
Residential Multi-units (Semis, Towns, Apartments)	34	11	8	6	4	1						30
Commercial/Industrial Units	39	1	13	7	4	1	1	1	1			29
Total	267	72	55	39	25	11	6	6	6	5	5	230

Enbridge Gas stated that its forecast of customer attachments is based on the results of multiple methods to acquire information on the interest for natural gas service in the community: surveys (which included door-to-door canvassing, letters, online follow-up and computer assisted telephone interviews), an Expressions of Interest (EOI) door to door survey, and a community outreach program.¹⁵

Enbridge Gas stated that its application was based on a survey of potential customers in 2022, the results of which yielded an 88% attachment rate for existing residential and small commercial properties. Enbridge Gas indicated that at the end of the ten-year period, the overall assumed capture rate for the Project is approximately 86%.¹⁶

Enbridge Gas noted that the need for the Project is supported by the community's municipal government through its request for natural gas for its constituents. The Municipality of West Grey has emphasized its support for the Project via an expression of support dated March 3, 2020.¹⁷ In a letter dated September 7, 2023, the Municipality of West Grey again indicated its support for the Project.¹⁸

¹⁴ Argument-in-Chief, p.2

¹⁵ Evidence, Exhibit B, Tab 1, Schedule 1, Attachment 3, p.2

¹⁶ IRR, Exhibit I, STAFF.3. pp. 2

¹⁷ Exhibit B, Tab 1, Schedule 1, Attachment 2

¹⁸ Exhibit B, Tab 1, Schedule 1, Attachment 2

Environmental Defence submitted that Enbridge Gas's survey results are biased and unreliable. Environmental Defence stated that the surveys failed to provide key information before asking customers whether they were likely to connect to the gas system (for example, not setting out, in detail, various government incentives to install electric heat pumps, not providing customers with an estimate of the savings from installing a heat pump versus a gas furnace). Environmental Defence argued that Enbridge Gas has failed to provide a reliable revenue forecast that prudently considers and accounts for the likely take-up rate for electric heat pumps as an alternative to gas.¹⁹

Environmental Defence also submitted that for previous community expansion projects, Enbridge Gas did not achieve its forecast number of customer connections in each year for the past four years (2020-2023). More specifically, Environmental Defence stated that actual connections in the past two years were 50% and 66% of the forecasted connections.²⁰

Pollution Probe submitted that Enbridge Gas's survey result was based on a passive survey that reflected poor, incomplete and biased consumer education and did not provide information on available on other energy options (e.g., OEB-approved demand side management (DSM) programs, IESO electricity conservation programs, etc.) and the incentives that support them. Pollution Probe argued that the percentage of customers choosing a different energy option than natural gas will increase once consumers decide to make an equipment change after educating themselves on the options available (and the related incentives offered).

Pollution Probe noted that Enbridge Gas identified that there is a total population of 267 customers in this community that could be considered for natural gas connections. A total of 128 surveys were completed from a list of 264 homeowners, representing a 48% response rate from those surveyed. Pollution Probe asserted that the survey results do not validate or support Enbridge Gas's forecast.²¹

OEB staff submitted that Enbridge Gas has established the need for the Project, noting that availability of NGEF funding to enable the provision of natural gas service in unserved communities is an important consideration in the determination of the public interest, as it is designed to make projects economic that would otherwise be uneconomic based on the OEB's test under the E.B.O. 188 guidelines. OEB staff noted

¹⁹ Environmental Defence submission, pp.6,9

²⁰ Environmental Defence submission, p. 6

²¹ Pollution Probe submission, p.11

that the OEB, in its decisions²² on previous community expansion projects, underscored the importance of the genesis of community expansion projects in its assessment of project need, specifically noting that these proposed projects obtain their potential viability because of the passage of *Access to Natural Gas Act, 2018*.

OEB staff also submitted that the need for the Project is supported by Enbridge Gas's survey results, although OEB staff noted that there is certainly a risk that over the ten-year customer attachment period, some of the customers that are forecast to attach may not actually do so.

Enbridge Gas argued that the submissions of Environmental Defence and Pollution Probe are premised on the incorrect notion that electric heat pumps are more cost effective than natural gas service in every and all customer circumstances both technically and financially and that any assertion to the contrary is an expression of bias and not fact. Enbridge Gas submitted that the OEB should reject the submissions of Environmental Defence and Pollution Probe since the premise on which they rely is ill-conceived and, if accepted, requires the OEB to adopt an abstract over-simplification of energy conversion that is neither representative of the actual energy choices or energy preferences customers expressed in response to Enbridge Gas's attachment surveys.²³

Enbridge Gas noted that Environmental Defence's submissions are a combination of arguments that relate to four distinct leave to construct applications.²⁴ Enbridge Gas submitted that any Environmental Defence argument made and justified based on evidence from the unrelated proceedings should be rejected by the OEB and given no weight. Enbridge Gas stated that this is particularly an issue in relation to Environmental Defence's assertions regarding Enbridge Gas's customer attachment survey.

In its reply submission, Enbridge Gas reiterated that it has provided an attachment forecast based on extensive consultation with the community and its representative municipal government. Enbridge Gas further stated that the survey results represent the energy interests expressed by actual residents and business-owners within the Project area, which intrinsically incorporates all factors including financial and non-financial considerations.²⁵

²² EB-2022-0248 Decision, pp. 12,13; EB-2022-0156 Decision, pp. 12,13; EB-2022-0249 Decision, pp. 12,13

²³ Reply submission, p. 2

²⁴ Bobcaygeon Community Expansion Project (EB-2022-0111), Sandford Community Expansion Project (EB-2023-0200), Eganville Community Expansion Project (EB-2023-0201), and Neustadt Community Expansion Project (EB-2023-0261)

²⁵ Reply Submission, p. 5

Environmental Defence filed a letter on April 20, 2024 clarifying that it did not ignore the OEB's decision to not consolidate Enbridge Gas's community expansion proceedings as Enbridge Gas has alleged but did so to avoid the time that would have been wasted by the OEB, and other parties, if it had submitted four separate submissions with almost identical content. Environmental Defence stated that, in its view, it was more efficient for the OEB to be able to review the unique aspects of the individual applications in the tables provided in its submission, which included the relevant data for all cases. Environmental Defence also stated that its arguments on the customer survey apply to all four proceedings, reiterating that none of the surveys provided key information to survey recipients that would be necessary to adequately forecast whether customers will likely convert to gas.²⁶

Findings

The OEB's findings on project need are similar to the findings made by the OEB in four previous Decisions on community expansion projects that are to be accomplished through the NGEPP program.²⁷ The OEB finds that Enbridge Gas has established the need for the Project.

The OEB acknowledges that support for the Project that has been expressed by the community's municipal government. As well, Enbridge Gas's forecast regarding the potential percentage take-up of natural gas service in the community, which was based on the market surveys filed with this application, has assisted the OEB with its findings. While no survey can provide an unassailable prediction of customer take up of natural gas, they provide some additional support for the OEB's conclusion regarding the need for the Project.

Of particular importance to the assessment of project need is the genesis of this community expansion project, as well as other community expansion projects that are being proposed to enable natural gas service to unserved communities. These proposed projects obtain their potential viability because of the passage of *Access to Natural Gas Act, 2018*, provisions of which are incorporated in section 36.2 of the OEB Act.

Traditional utility regulatory principles provide that costs should be allocated proportionately to customers that have caused the costs to occur. This is reflected in the OEB's decision in the Generic Proceeding on Community Expansion²⁸ and, more

²⁶ Environmental Defence letter, April 20, 2024

²⁷ EB-2022-0248 Decision, pp. 12,13; EB-2022-0156 Decision, pp. 12,13; EB-2022-0249 Decision, pp. 11-13; EB-2022-0111, pp. 12-14

²⁸ EB-2016-0004

specifically, in the rejection of a proposed approach that would result in existing customers subsidizing an uneconomic community expansion:

The chief measure proposed to enable more expansions was a subsidy from existing customers. The OEB has determined that this is not appropriate. As noted above, the economic benefits of expansion to many communities are much greater than the costs. This approach would also distort the market to the detriment of existing energy services that compete with gas, such as propane, and new gas distributors who do not have an existing customer base. Under these circumstances, it would not be appropriate to require existing customers to pay for a portion of any expansion. The communities that receive the benefit will be the ones paying the costs.²⁹

The Access to Natural Gas Act, 2018 and O. Reg. 24/19 that was promulgated following its passage enabled an exception to the established regulatory principles as cited above. This exception advanced the goal of rate protection for customers in communities where the gas distributor has made a qualifying investment providing those customers with a rate reduction for natural gas service, which was designed to ensure that the revenues of the project would match the costs of the project (net of the grant) and thereby avoid any cross-subsidization from existing customers.

The gas distributor, in this case Enbridge Gas, would then be compensated for such rate reduction by way of a payment from the Independent Electricity System Operator (IESO) in the amounts set out in O. Reg. 24/19, and funded from a surcharge to all natural gas customer accounts in the amount of \$1 per month added to the fixed monthly customer charge. The payment to the gas distributor operates in a similar manner to a contribution in aid of construction in specific project amounts administered by the IESO.

In addressing the question of need that is integral to a finding of the Project's advancement of the public interest, the OEB notes the importance assigned to the issue of the expansion of natural gas service to unserved communities that is demonstrated by the passage and promulgation of legislation³⁰ that enables it to occur.

This importance is shown in the necessity of the departure from the traditional principle against cost subsidization by utility customers that did not cause the costs to be incurred by the gas distributor. The OEB must conclude that the Ontario government

²⁹ EB-2016-0004, Decision with Reasons, November 17, 2016, page 4

³⁰ *Access to Natural Gas Act 2018* and O. Reg. 24/19

has identified a public need and, provided that a project is shown to be economic within the financial parameters set out in the legislation, meets the requirements of the public interest criterion in section 96(1) of the OEB Act.

The OEB accepts Enbridge Gas's customer forecast and associated revenues and is satisfied that, with support from Natural Gas Expansion Program funding as well as the System Expansion Surcharge (SES), the project can achieve a PI of 1.0 and is economic. However, even if the actual customer connections do not meet the forecast, then as discussed in greater detail in the Project Costs and Economics section below, the ten-year RSP places the responsibility on Enbridge Gas for any shortfall in revenues needed to meet its revenue requirement. This provides some insulation against possible under-achievement of its customer sign-up estimates or projected natural gas consumption. Beyond the ten-year RSP period, there is no guarantee that Enbridge Gas will be permitted to recover any post-RSP revenue shortfalls. Enbridge Gas is not guaranteed total cost recovery if actual capital costs and revenues result in an actual PI below 1.0. Accordingly, while the forecasts are relevant to the application, the OEB is satisfied that the Project has the support of the municipality to which service would be extended, and that protection is available to existing natural gas customers in the event that the connection forecast is not met.

3.2 Proposed Facilities and Alternatives

Enbridge Gas stated that the Project was selected for funding by the Government of Ontario as part of Phase 2 of the NGEP based on a description of the Project (including preliminary facility design and estimated Project costs) that was reviewed and approved by the Government of Ontario and the OEB. Accordingly, Enbridge Gas did not assess other facility alternatives. However, Enbridge Gas did assess routing alternatives.³¹

Regarding non-facility alternatives, Enbridge Gas applied the IRP Binary Screening Criteria and determined that the Project meets the definition of a community expansion project as defined in the IRP Framework; accordingly, no IRP evaluation is required for a community expansion project.³²

OEB staff submitted that as the Project is a NGEP-related community expansion project, no IRP evaluation is required, and Enbridge Gas is not required to consider

³¹ Evidence, Environmental Report, section 4.4

³² EB-2020-0091, Decision and Order, Enbridge Gas Inc. Integrated Resource Framework Proposal, July 22, 2021, Appendix A. and page 48. The IRP Framework states that, "If a facility project has been driven by government legislation or policy with related funding explicitly aimed at delivering natural gas into communities, then an IRP evaluation is not required."

alternatives to infrastructure facilities to meet the need. OEB staff also agreed with Enbridge Gas that the proposed route is appropriate.

Pollution Probe submitted that Enbridge Gas is able to serve customers in the community based on capacity already available in the upstream system.³³

Findings

Based on Enbridge Gas's evidence, the OEB finds that the Project as proposed is appropriate to meet the need established elsewhere in this Decision. This conclusion is supported by several factors.

The Project is enabled by the NGEP, a program that was established by legislation as discussed in the OEB's earlier findings in this Decision. The NGEP is directed to providing potential funding for the extension of natural gas service. The OEB's implementation of the NGEP has been responsive to the ambit of the program.

In Enbridge Gas's IRP Framework proceeding,³⁴ the OEB approved an IRP process for Enbridge Gas that required an evaluation and comparison of options to meet energy supply needs.

To meet the Ontario Government's NGEP objective of bringing service to unserved communities, the OEB provided that the consideration of such IRP options or alternatives was not required for NGEP approved projects that have been designated in O. Reg. 24/19. The OEB's decision in this proceeding is in accordance with its approved IRP process.

3.3 Project Cost and Economics

Enbridge Gas states that the Project consists of approximately 12 kilometres of natural gas pipeline. The Project cost estimate is approximately \$7.8 million (\$5.1 million total pipeline costs and \$2.7 million total ancillary costs).³⁵ The contingency included in the estimated costs is set at 10%, which is consistent with the level of contingency set for other projects it proposed for NGEP funding.

³³ Pollution Probe submission, p. 7.

³⁴ EB-2020-0091

³⁵ OEB staff noted that the updated Project cost estimate and the original cost estimate that underpinned the NGEP funding proposal are essentially the same (\$7,778,573 (updated) and \$7,769,155 (original)).

The NGEF funding provided for the Project is approximately \$5.1 million.³⁶ The NGEF funding is treated similarly to a contribution in aid of construction. Therefore, the total capital cost of the Project, net of NGEF funding, is approximately \$2.7 million. In addition to NGEF funding, Enbridge Gas intends to charge a System Expansion Surcharge (SES) of \$0.23/m³ to the customers attaching to the Project for a term of 40 years to assist with the economic feasibility of the Project, which is consistent with Enbridge Gas's application for a harmonized SES (Harmonized SES Proceeding).³⁷

According to Enbridge Gas, the Project is economically feasible, having a Profitability Index (PI) of 1.0. Enbridge Gas indicated that without the NGEF funding and SES, the PI for the Project is 0.20, and with the inclusion of the SES the PI is 0.44.³⁸ The PI of 1.0 is based on the most up-to-date estimated capital costs and forecasted revenues and is inclusive of the NGEF funding and revenues associated with SES charges. The original PI of the Project as filed in the OEB's proceeding on Potential Projects for NGEF Funding was also 1.0 (inclusive of NGEF funding and SES revenues).³⁹

Enbridge Gas stated that, consistent with the OEB's findings in the Harmonized SES proceeding,⁴⁰ after the Project is placed into service, Enbridge Gas will apply a 10-year RSP during which Enbridge Gas will bear the risk of the Project customer attachment and capital expenditure forecast. In response to interrogatories, Enbridge Gas stated that it intends to seek inclusion of the forecast Project costs in rate base in Enbridge Gas's next rebasing application (following the 2024 rebasing) assuming the Project is in-service by that date. Enbridge Gas stated that at the time of the rebasing, following the conclusion of the RSP, it will file the actual costs and revenues of the Project with the OEB for consideration of inclusion in rates.

Environmental Defence requested that the OEB not make findings accepting Enbridge Gas's evidence on the customer connection and revenue forecasts as adequate or reasonable, which could be used in the future by Enbridge Gas to seek to put revenue shortfalls on the existing customer base.⁴¹

Environmental Defence submitted that the 10-year RSP does not address the financial risks for existing customers arising from possible revenue shortfalls. In the first rebasing case following the conclusion of the RSP, Enbridge Gas will file the actual costs and revenues of the Project with the OEB for consideration of inclusion in rates in the

³⁶ Ontario Regulation 24/19, Expansion of Natural Gas Distribution Systems, Schedule 2

³⁷ EB-2020-0094

³⁸ Evidence, Exhibit E, Tab 1, Schedule 1, Attachment 1

³⁹ EB-2019-0255, Enbridge Gas Community Expansion Project Proposal, Schedule H2, Table 7.1

⁴⁰ EB-2020-0094, Decision and Order, November 5, 2020, pp. 8,9

⁴¹ Environmental Defence submission, p.15

rebasement application. Environmental Defence submitted that as Enbridge Gas will be seeking to recover any shortfalls in the revenue forecast that arise in the first 10 years at that stage, the 10-year RSP does not insulate existing customers from revenue shortfalls arising in the first 10 years but simply delays the time at which Enbridge Gas can seek to recover those costs from existing customers. Environmental Defence further submitted that as the bulk of the risk for these projects arises in the 30 years beyond the RSP, over 80% of the revenue needed for the project to break even is forecast to be collected after the end of the RSP.⁴²

Environmental Defence asserted that although the OEB will have an opportunity to disallow full recovery, it will be constrained by the legal principles of energy regulation that allow recovery of investments that were prudent at the time they were made, judged without hindsight. Environmental Defence stated that if the OEB grants leave to construct now under the normal regulatory construct and accepts Enbridge's evidence on the project economics, it will be difficult for a future OEB panel to disallow any costs in the future. Environmental Defence submitted that the only way to fully protect existing customers is to explicitly require that Enbridge Gas bear the revenue forecasting risk through a condition of approval.⁴³

Environmental Defence stated that under E.B.O. 188, Enbridge Gas must establish that the present value of the stream of revenue from new customers will totally offset the present value of the incremental costs arising from the project. This requires a reliable forecast of the revenue that will be generated from new customers attaching to the gas system. In the present case, the E.B.O. 188 analysis is conducted after subtracting the NGEPS subsidy from the capital costs. Environmental Defence submitted that the forecast connection rate is questionable as it is based on a flawed customer connection survey and because customers have a strong financial incentive to install electric heat pumps instead of switching to gas, even if customers do switch to methane gas initially.⁴⁴

Environmental Defence and Pollution Probe submitted that Enbridge Gas did not conduct analysis on the possibility that customers who select natural gas would subsequently leave the natural gas system before the end of the 40-year revenue horizon.⁴⁵ Environmental Defence asserted that failure to analyze and account for the possibility of subsequent disconnections undermines the reliability of Enbridge Gas's revenue forecast. Pollution Probe argued that providing more robust information on the

⁴² Environmental Defence submission, p.13

⁴³ Environmental Defence submission, p.14

⁴⁴ Environmental Defence submission, p.5, 6

⁴⁵ Environmental Defence submission, p.12, Pollution Probe submission, p.5

incentives and options available with respect to non-gas options would increase the reliability of the estimate for which customers will actually connect to natural gas to support a PI of 1.0.

Environmental Defence asserted that Enbridge Gas excluded normalized reinforcement costs which is not in accordance with E.B.O. 188, and that Enbridge Gas did not provide justification for having excluded them. Environmental Defence argued that excluding these costs makes the projects appear more cost-effective than they actually are. Environmental Defence submitted that Enbridge Gas's capital plan includes various distribution and transmission reinforcement projects upstream of these communities which will add incremental demand, and thus some of the costs of those upstream projects are attributable to this gas expansion.⁴⁶

Environmental Defence requested that the OEB take stronger measures to protect existing customers than it did in the recent decisions in the Selwyn, Hidden Valley, and Mohawks of the Bay of Quinte First Nation community expansion proceedings. Environmental Defence submitted that stronger measures are justified as the four community expansion projects (Bobcaygeon, Sandford, Eganville and Neustadt) are approximately 10 times larger than the Selwyn, Hidden Valley, and Mohawks of the Bay of Quinte First Nation projects in terms of capital costs. Environmental Defence noted that the OEB's decision on the review motion emphasized that they were "small projects" twice in its decision and argued that the OEB may not come to the same conclusion for the far larger projects at issue here.⁴⁷

Environmental Defence requested that the OEB decline to grant leave to construct because Enbridge Gas has not submitted adequate evidence in support of the project economics, such that existing customers are sufficiently protected from providing an even greater subsidy beyond that set by the NGEP program. Environmental Defence stated that alternatively, if the Project is approved, Enbridge Gas should be required to assume all of the revenue forecast risk for these projects as a condition of approval.⁴⁸

Pollution Probe made similar submissions to those of Environmental Defence, stating that the OEB should consider declining leave to construct on the basis that the evidence is insufficient to validate the economic assumptions and to confirm that the actual NGEP grant will result in a PI of 1.0. Pollution Probe also submitted that, in the alternative, the OEB could grant leave to construct and require Enbridge Gas to retain the risk should the PI be less than 1.0, if the Project costs exceed those placed in evidence and/or

⁴⁶ Environmental Defence submission, p.13

⁴⁷ Environmental Defence submission, p.16

⁴⁸ Environmental Defence submission, p.17

revenues are less than those indicated in evidence. Pollution Probe submitted that this should apply to the entire Project-related capital costs (the Supply Lateral, Reinforcement and Ancillary Facilities).⁴⁹

Pollution Probe also submitted that the OEB could grant leave to construct but not include approval of the system reinforcement portion of the Project at this time until Enbridge Gas can demonstrate that attachment of the proposed customers is occurring in alignment with its forecast. Pollution Probe claimed that Enbridge Gas is able to serve customers in the community based on capacity already available in the upstream system but that Enbridge Gas has indicated that the current excess capacity would not be sufficient to meet current system requirements, plus the full 40 year customer forecast from the Project (on a peak design day). Pollution Probe argued that if Enbridge Gas had conducted a broader system assessment, it would have identified opportunities to delay or avoid the reinforcement portion of the Project, noting that the analysis done by Enbridge Gas assumed status quo use of natural gas for the next 40 years without any impacts from DSM, fuel switching or the broader energy transition. Pollution Probe asserted that the approach used in designing this Project has a high potential for overbuilding capital facilities and resulting in stranded assets over the next 40 years.⁵⁰

OEB staff submitted that the Project, with the inclusion of NGEF funding and revenues associated with SES charges, is forecast to be economically feasible with a projected PI of 1.0. OEB staff noted that Enbridge Gas's proposal to charge the SES to newly attached customers over a term of 40 years is in accordance with the OEB's findings in the Harmonized SES proceeding.⁵¹ OEB staff also submitted that the OEB's decision on Enbridge Gas's 2024 rebasing application recognized NGEF projects as distinct from other expansion projects, acknowledging that the applicability of the 40-year revenue horizon to NGEF projects was appropriate.⁵²

OEB staff submitted that Enbridge Gas should bear the risk of any revenue shortfall during the 10-year RSP associated with the customer attachment and capital cost forecasts as this approach is in accordance with the OEB's findings in the Harmonized SES proceeding.⁵³ OEB staff noted that, after the RSP, the OEB will have the opportunity to review the actual project costs and revenues and determine what amount should be recognized in rates. OEB staff submitted that all options will be available to

⁴⁹ Pollution Probe submission, pp. 5, 6

⁵⁰ Pollution Probe submission, p.7

⁵¹ EB-2020-0094, Decision and Order, November 5, 2020

⁵² OEB-2022-0200, Decision and Order, December 21, 2023, pp.30,31

⁵³ EB-2020-0094, Decision and Order, November 5, 2020

the OEB in the rebasing following the conclusion of the RSP with respect to the appropriate rate treatment of potential capital cost overruns and/or lower than forecast customer attachments/volumes (and associated revenues). OEB staff argued that Enbridge Gas is not guaranteed total cost recovery if actual capital costs and revenues result in an actual PI below 1.0.

OEB staff submitted that Enbridge Gas has appropriately included the original capital cost of the Project that underpinned the NGEP funding proposal in its rebasing application.⁵⁴ The RSP ensures that Enbridge Gas bears the risk of revenue shortfalls during the first ten years that the Project is in service. OEB staff submitted that, after the RSP, the OEB will have the opportunity to review the actual project costs and revenues and determine what amount should be recognized in rates.

OEB staff noted that the allocation of risk, between ratepayers and Enbridge Gas, beyond the term of the RSP for the Project has not been determined at this time. OEB staff stated that Enbridge Gas is relying on its forecast of capital costs and customer attachments to underpin the need for the Project. OEB staff commented while the customer attachment forecast supports the need for the Project, there is a risk that the customer attachments will not materialize as forecasted.

Enbridge Gas responded to the submissions of Environmental Defence and Pollution Probe asserting that Enbridge Gas did not conduct analysis on the possibility that customers who select natural gas would subsequently leave the natural gas system before the end of the 40-year revenue horizon. Enbridge Gas submitted that Environmental Defence and Pollution Probe's views are narrowly focused on the absolute cost-effectiveness of electric heat pumps now and into the future which disregards the many variables and uncertainties that are at play as energy transition evolves. Enbridge Gas argued that policy changes, growing electricity costs to modernize and renew the grid and build out supply, technological change, and economic cycles could change the economic relationship between electric heat pumps and natural gas in the future.⁵⁵

In response to Environmental Defence's submissions on the exclusion of normalized reinforcement costs in determining the cost-effectiveness of the Project, Enbridge Gas stated that it had already indicated in interrogatory responses that normalized system reinforcement costs are not applicable to community expansion projects and that all reinforcement costs associated with the Project are directly applied to the Project in the discounted cashflow analysis. Enbridge Gas added that the costs of reinforcement

⁵⁴ EB-2022-0200, Exhibit JT6.3, Updated July 6, 2023

⁵⁵ Reply submission, p.13

required for community expansion projects are separate, and not included within calculations of normalized system reinforcement costs.⁵⁶

Findings

Project Costs

The OEB finds that the updated total estimated cost of the Project is reasonable and in accordance with the application of the regulatory framework established for the NGEP program. In particular, the capital requirements have been adjusted to accommodate new research and information obtained by Enbridge Gas since the original proposal in Phase 2 of the NGEP process. The provision of a 10% contingency embedded in estimated costs is consistent with that set for other NGEP projects. The OEB also accepts Enbridge Gas' submission that all Project reinforcement costs have been directly applied in the discounted cashflow analysis that has been submitted.

Economics

In addressing the issue of need, the OEB notes that the evidence inquiries and submissions in this proceeding have dealt extensively with the impact of the possible installation of electric heat pumps. This impact has centered upon potential cost savings associated with their adoption by the customers of the communities to be served by Enbridge Gas. Such take-up might occur either before or after the extension of the natural gas service to the communities. In turn, the effect of such take-up is addressed as a potential risk to project viability.

The OEB has itself recognized the potential customer energy savings associated with the installation of such heat pumps and their favourable impact on lowering the consumption of natural gas. The OEB notes that its Decision regarding Enbridge Gas's DSM program that made Enbridge Gas, in cooperation with the federal government's Greener Homes Initiative, the principal delivery agent for an incentivized installation of heat pumps.⁵⁷

The approval of the leave to construct requested in this application does not restrict customers in these communities from obtaining heat pumps either before or after an extension of natural gas service to these communities. Nor does it remove Enbridge Gas's DSM program responsibilities in these communities.

⁵⁶ Reply submission, p. 13 and IRR Exhibit I.ED.22 part c)

⁵⁷ Decision and Order, EB-2021-0002, Enbridge Gas Inc. Application for Multi-Year Natural Gas Demand Side Management Plan (2022 to 2027), November 15, 2022, page 28

Enbridge Gas's evidence supporting the economic viability of the Project is supported by a positive response to its outreach and solicitation provided by the market survey results. The extrapolation of such results to the financial metrics of the proposed expansion is a key factor in that requisite economic assessment.

OEB staff has noted the risk to the economic viability of the Project if the projected customer attachments do not occur. Environmental Defence and Pollution Probe drew attention to the possible effects of DSM, fuel switching or the broader energy transition over the 40-year revenue horizon.

The OEB agrees with Enbridge Gas's assertion that that the decisions of individual customers, now and in the future, to connect and maintain natural gas service must take into consideration more than the current cost effectiveness of electric heat pumps and factor in other variables and uncertainties associated with the evolution of any energy transition that transpires. At the same time, any survey is unlikely to capture all aspects of the likely take-up and continuance of natural gas service with complete accuracy in a changing environment of new energy efficient modes and programs, government policies and prices.

The policy determination that chosen communities should receive NGEF-based financial assistance for the provision of natural gas service is a government prerogative supported by legislation. It provides the foundation for the OEB's finding of the NGEF program fulfills a need that has been so deemed to be in the public interest. The existence of potential changes in the delivery of energy and its impact on natural gas systems is well known to Enbridge Gas who must be prepared to be competitive to maintain its viability with customers.

The OEB, in approving Enbridge Gas's application of leave to construct, must ensure that the interests of all Enbridge Gas's customers are also protected. One pillar of that protection is the existence of the ten-year RSP in which Enbridge Gas is responsible for any shortfall in revenues to meet its revenue requirement. This provides some insulation against possible under achievement of its customer sign-up estimates or projected natural gas consumption.

In the first rebasing following the expiration of the RSP, the OEB will review the actual project costs and revenues and determine what amount should be recognized in rates. The subsidy or contribution to the expansion of service provided in O. Reg. 24/19 is specific and limited and does not abrogate the general principles of utility cost allocation going forward. All options will be available to the OEB in the rebasing following the conclusion of the RSP with respect to the appropriate rate treatment of potential capital cost overruns and/or lower than forecast customer attachments/volumes (and

associated revenues). Enbridge Gas is not guaranteed total cost recovery if actual capital costs and revenues result in an actual PI below 1.0.

The OEB cannot bind a future panel determining that application to be made by Enbridge Gas post-RSP. However, the OEB notes that if Enbridge Gas's estimate of customers likely to take up natural gas service is correct, existing natural gas customers will have already contributed approximately \$22,300 per customer served by the Project to assist in the expansion of gas in this community. There is a clear and reasonable expectation that such customers will not be called upon to provide a further subsidy to compensate for post-RSP revenue shortfalls.

The OEB does not agree with Environmental Defence's proposition that any attribution of revenue shortfalls to the OEB after the expiration of the RSP will be constrained by the legal principles of energy regulation that allow recovery of investments that were prudent at the time they were made, judged without hindsight. The NGEP program addresses the provision of natural gas service to communities that would otherwise be uneconomic to serve. Any OEB finding of prudence for a NGEP project proposal and its accordance with the public interest is entirely dependent on the framework of the NGEP and its implementation as set out in the legislation and the OEB decisions. This includes the acceptance of customer attachment and continuance of service projections by Enbridge Gas. The OEB's future scrutiny of revenue shortfalls for the Project post-RSP will be informed by the OEB's expectations at the time of Project approval concerning the provision of further subsidies by all Enbridge Gas consumers.

3.4 Environmental Matters

Enbridge Gas retained Stantec Consulting Ltd. to complete an Environmental Report. The Environmental Report and the consultation process were conducted in accordance with the OEB's *Environmental Guidelines for the Location, Construction and Operation of Hydrocarbon Pipelines and Facilities in Ontario* (Environmental Guidelines). The Environmental Report assessed the existing bio-physical and socio-economic environment in the study area, the alternative routes, the preferred route, conducted public consultation, conducted impacts assessment and proposed mitigation measures to minimize the impacts.

Enbridge Gas stated that the Environmental Report was circulated to the Ontario Pipeline Coordinating Committee (OPCC), Indigenous communities, municipalities and conservation authorities and Enbridge Gas filed the comments received on the

Environmental Report as part of its evidence.⁵⁸

Enbridge Gas stated it would prepare an Environmental Protection Plan (EPP) prior to construction of the Project. The EPP will incorporate the recommended mitigation measures identified in the Environmental Report and received in the consultation from agencies for the environmental issues associated with the Project.

Enbridge Gas stated that using the mitigation measures and monitoring and contingency plans found within the Environmental Report, EPP and additional mitigation measures provided by regulatory agencies through the permitting and approval process, construction of this Project will have negligible impacts on the environment.⁵⁹

Enbridge Gas stated that it completed a Stage 1 Archaeological Assessment (AA) in May 2023 which was still being review by the Ministry of Citizenship and Multiculturalism (MCM) as of September 12, 2023. A Stage 2 AA will be completed based on the recommendations from the Stage 1 AA and will be submitted to the MCM for acceptance prior to construction.⁶⁰

OEB staff submitted that Enbridge Gas has completed the Environmental Report in accordance with the OEB's Environmental Guidelines (7th Edition).⁶¹ OEB staff expressed no concerns with the environmental aspects of the Project, based on Enbridge Gas's commitment to implement the mitigation measures set out in the Environmental Report and to complete the EPP prior to the start of construction. OEB staff submitted that Enbridge Gas's compliance with the conditions of approval outlined in Schedule A of its submission will ensure that impacts of pipeline construction are mitigated and monitored. OEB staff noted that the conditions of approval also require Enbridge Gas to obtain all necessary approvals, permits, licences, and certificates needed to construct, operate and maintain the Project.

Pollution Probe argued that Enbridge Gas would be at risk for cost overruns for mitigation costs addressing identified potential impacts and cost related to bedrock, blasting and water course crossings, as Enbridge Gas has not been able to provide any estimated mitigation costs related to these elements.⁶²

Enbridge Gas submitted that Pollution Probe's submissions should be rejected as these costs are incorporated into construction estimates based on the underlying

⁵⁸ Evidence, Exhibit F, Tab 1, Schedule 1, p.2 and Attachment2

⁵⁹ Evidence, Exhibit F, Tab 1, Schedule 1, p.4

⁶⁰ IRR, Exhibit I. STAFF.6

⁶¹ The OEB released the 8th Edition of the Guidelines in March 2023 after the initiation, consultation and finalization of the Project and associated Environmental Report.

⁶² Pollution Probe submission, p.19

assumptions.⁶³

Findings

The OEB finds that Enbridge Gas completed the Environmental Report in accordance with the OEB's Environmental Guidelines and has committed to implement the mitigation measures set out in the Environmental Report. Enbridge Gas will also complete the EPP prior to the start of construction. As such, the OEB is satisfied with the environmental aspects of the Project.

The OEB also notes that the standard conditions of approval for leave to construct require Enbridge Gas to obtain all necessary approvals, permits, licences, and certificates needed to construct, operate and maintain the proposed Project.

3.5 Land Matters

Enbridge Gas stated that the Project is planned to be within the existing municipal Right-of-Way with the potential for temporary working areas outside of the municipal Right-of-Way. Temporary working areas may be required along the preferred route where the road allowance is too narrow or confined to facilitate construction. Enbridge Gas stated that no permanent easement on private land is expected to be required as the proposed pipeline will be located entirely within the public road allowance.⁶⁴

Enbridge Gas filed the forms of temporary working area agreement and easement agreement that it intends to provide to affected landowners. Enbridge Gas stated that these agreements are the same as those approved for use in Enbridge Gas's Haldimand Shores Community Expansion Project.⁶⁵

OEB staff submitted that the OEB should approve the proposed forms of easement agreement and temporary working area agreement as both were previously approved by the OEB.

Findings

The OEB approves the proposed forms of permanent easement and temporary land use agreements.

⁶³ Reply submission, p. 14

⁶⁴ IRR, Exhibit I. ED.44. part a)

⁶⁵ EB-2022-0088, Decision and Order, August 18, 2022

The OEB notes that while it is not expected that permanent easements will be required for the Project, the approved form of permanent easement agreement provides Enbridge Gas sufficient flexibility should a permanent easement later be required.

3.6 Indigenous Consultation

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

- Saugeen First Nation
- Chippewas of Nawash Unceded First Nation
- Georgian Bay Historic Métis Community (Represented by the MNO Region 7)

Direct notice of the application was provided by Enbridge Gas to all the above-noted Indigenous communities, and none of them sought to intervene or otherwise participate directly in the hearing.

As part of its application, Enbridge Gas filed an 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. In response to interrogatories, Enbridge Gas provided an update on its Indigenous consultation activities as of December 19, 2023.⁶⁶

Enbridge Gas also stated that it will continue to engage with these communities throughout the life of the Project to ensure potential impacts on Aboriginal or treaty rights are addressed, as appropriate.⁶⁷

On April 17, 2024, Enbridge Gas filed with the OEB the Ministry of Energy's Letter of Opinion regarding the sufficiency of consultation regarding the Project.⁶⁸ In that letter, the Ministry of Energy expressed its opinion that the procedural aspects of the consultation undertaken by Enbridge Gas to date for the Project were satisfactory.

⁶⁶ Evidence Exhibit H, Tab 1, Schedule 1, Attachment 6, IRR, Exhibit I. STAFF.8, p.1,2

⁶⁷ Evidence, Exhibit H, Tab 1, Schedule 1, p.4

⁶⁸ Evidence, Exhibit H, Tab 1, Schedule 1, Attachment 4

OEB staff submitted that Enbridge Gas appears to have made efforts to engage with the potentially affected Indigenous groups identified by the Ministry of Energy.

Findings

The OEB is satisfied that Enbridge Gas followed the OEB's Environmental Guidelines with respect to Indigenous Consultation and finds that the duty to consult has been adequately discharged.

This finding is supported by the evidence on the record of the proceeding, as well as the Ministry of Energy's Letter of Opinion, dated April 16, 2024, stating that it is satisfied that Enbridge Gas's efforts to date are satisfactory to discharge the Crown's Duty to Consult with respect to the Project.

The OEB expects that Enbridge Gas will continue its consultation activities with all affected Indigenous communities throughout the life of the Project.

3.7 Conditions of Approval

The OEB has established standard conditions of approval that are typically imposed in leave to construct approvals.⁶⁹ Enbridge Gas stated that it has reviewed these standard conditions and has not identified any additional or revised conditions that it wishes to propose for the Project.

Environmental Defence and Pollution Probe requested that a new condition of approval be added that requires Enbridge Gas to assume all of the revenue forecast risk for the Project.⁷⁰

Environmental Defence and Pollution Probe also requested that the OEB direct Enbridge Gas to include accurate information on the annual operating costs of electric heat pumps versus natural gas in any marketing materials that discuss operating cost savings from natural gas. Environmental Defence and Pollution Probe submitted that this is necessary to protect the interests of new customers and to ensure that they are provided with the information they need to make informed decisions before spending

⁶⁹ Natural Gas Facilities Handbook, Appendix D

⁷⁰ Environmental Defence, p.17 and Pollution Probe submission, p. 15

considerable sums to connect to the gas system and convert their heating equipment to gas.⁷¹

In its submission, OEB staff proposed minor modifications to Conditions 2(b)(ii) and (iv), 7(a), and 7(b) to better reflect the intent of those conditions,⁷² making reference to a letter filed by Enbridge Gas regarding a recently approved project.⁷³ OEB staff requested Enbridge Gas to confirm in its reply submission if it agrees with these modifications.

Enbridge Gas submitted that the OEB should reject Environmental Defence's and Pollution Probe's submissions requesting that a condition of approval be added that requires Enbridge Gas to assume all the revenue forecast risk for the Project. Enbridge Gas argued that these submissions are premised on an incorrect understanding regarding the scope of a leave to construct application and a rebasing proceeding. Enbridge Gas noted that Environmental Defence acknowledged that the OEB already found that it cannot bind a future panel determining a future application to be made by Enbridge Gas post-RSP. Yet, Environmental Defence argued that this is insufficient because the future OEB panel will be constrained in terms of disallowing costs because they will be considered prudent investments at the time given the previous granting of the leave to construct approval. Enbridge Gas submitted that Environmental Defence ignores the OEB's additional rationale for why the OEB's approach is appropriate and Environmental Defence's is not. Enbridge Gas referenced the OEB's statements in the Motion Decision:

These were leave to construct applications, not rate applications. The scope of the two are different. While the original panel could have added conditions of approval or provided other directions on the post-RSP rate treatment, it chose not to do so. It did not make that choice on the basis of a misunderstanding of its jurisdiction; in fact, it specifically invited submissions on the rate treatment question. Rather, it exercised its discretion not to grant what Environmental Defence asked for.

Determining the rate treatment of any shortfalls in the next rebasing proceeding after the ten-year RSP will allow the OEB to consider the issue more broadly in the context of Enbridge Gas's entire franchise area with 3.8

⁷¹ Environmental Defence, p.16 and Pollution Probe, pp.16

⁷² OEB Staff submission, p.15

⁷³ Enbridge Gas January 12, 2024 letter providing notification of planned in-service date - Mohawks of the Bay of Quinte Community Expansion Project (EB-2022-0248).

million existing customers, not just the two communities with 217 forecast customers.

There are 28 projects that have been approved in Phase 2 of the NGEP. The OEB strives for procedural efficiency and regulatory consistency. It makes sense to consider questions about rate treatment for such projects on a consolidated basis in a rebasing hearing, rather than on a piecemeal basis in each leave to construct proceeding. In that rebasing hearing, all options will be open, as the original panel said.⁷⁴

Enbridge Gas submitted that the OEB should reject Environmental Defence and Pollution Probe's submissions that Enbridge Gas be directed to provide information on the annual operating cost of electric heat pumps relative to the operating cost of natural gas. Enbridge Gas argued that requiring it to provide consumers with information regarding the annual operating costs of non-natural gas solutions, in particular electric heat pumps, without consideration of those energy solutions' supply-side requirements and implications would not be appropriate or valuable. Enbridge Gas asserted that is a role best left to the providers of those non-natural gas energy solutions.⁷⁵

Enbridge Gas further submitted that the OEB has ordered Enbridge Gas through the rebasing proceeding to conduct a review of the information it provides to customers regarding energy cost comparisons⁷⁶ and it would be inappropriate to require Enbridge Gas to provide the information in advance of the conclusion of the review and the adjudication of the issue in Phase 2 of the rebasing proceeding.

With respect to OEB staff's proposed minor modifications to Conditions 2(b)(ii) and (iv), 7(a), and 7(b), Enbridge Gas agreed that the OEB should approve the Project subject to the modified conditions of approval as proposed by OEB staff. Enbridge Gas submitted that the Project be approved without any additional conditions or directions proposed by the intervenors.

On April 3, 2024, the OEB issued a letter notifying all natural gas distributors that it has made minor revisions to standard conditions of approval to address the timing of the commencement and conclusion of projects that involve multiple segments.⁷⁷ These

⁷⁴ EB-2023-0313, Decision and Order, pp. 18-19

⁷⁵ Reply submission, p. 16

⁷⁶ EB-2022-0200, Decision and Order, p. 140

⁷⁷ OEB letter, Minor Modifications to the Standard Conditions of Approval, Natural Gas Leave to Construct Application, dated April 3, 2024

revisions are the same minor modifications proposed by OEB staff in submissions filed in this proceeding.

Findings

The OEB requires and expects Enbridge Gas to provide fair and accurate information concerning its services to its current and potential customers. This includes any representations to customers concerning products and opportunities associated with competitors or the OEB-approved DSM programs.

This does not appear to be an issue that has been bereft of regulatory scrutiny. The OEB, in Phase 1 of Enbridge Gas's 2024 rebasing proceeding, ordered a review of the information that Enbridge Gas provides to customers regarding energy cost comparisons.⁷⁸ As well, a complaint of misleading advertising by Enbridge Gas concerning the provision of competitive energy services is currently being investigated by the federal Competition Bureau. The outcomes of those proceedings may affect Enbridge Gas's future practices in addressing alternative products and opportunities.

However, the OEB's insistence on the accuracy of representations and comparisons provided by Enbridge Gas differs from a mandating of the provision of information concerning competitive energy services in preference to its own offering. The OEB is not convinced that the marketplace requires such a mandate as part of the conditions of approval at this time.

The OEB approves the Project subject to Enbridge Gas's compliance with the updated standard conditions of approval attached as Schedule A to this Decision.

⁷⁸ EB-2022-0200, Decision and Order, p. 140

4 ORDER

THE ONTARIO ENERGY BOARD ORDERS THAT:

1. Enbridge Gas Inc. is granted leave, pursuant to section 90(1) of the OEB Act, to construct the Project in the Community of Neustadt, in the Municipality of West Grey, as described in its application.
2. Pursuant to section 97 of the OEB Act, the OEB approves the form of Easement Agreement and 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 A.
4. Parties in receipt of confidential information shall either return the subject information to the Registrar and communicate to Enbridge Gas Inc. that they have done so; or destroy and/or expunge the information and execute a Certificate of Destruction, following the end of this proceeding, in accordance with the OEB's *Practice Direction on Confidential Filings*. The Certificate must be filed with the Registrar and a copy sent to Enbridge Gas Inc.
5. Eligible intervenors shall file with the OEB and forward to Enbridge Gas Inc. their respective cost claims in accordance with the OEB's *Practice Direction on Cost Awards* on or before **May 30, 2024**.
6. Enbridge Gas Inc. shall file with the OEB and forward to intervenors any objections to the claimed costs of the intervenors on or before **June 6, 2024**.
7. If Enbridge Gas Inc. objects to any intervenor costs, those intervenors shall file with the OEB and forward to Enbridge Gas Inc. their responses, if any, to the objections to cost claims on or before **June 13, 2024**.
8. Enbridge Gas Inc. shall pay the OEB's costs of and incidental to this proceeding upon receipt of the OEB's invoice.

Parties are responsible for ensuring that any documents they file with the OEB, such as applicant and intervenor evidence, interrogatories and responses to interrogatories or any other type of document, **do not include personal information** (as that phrase is defined in the *Freedom of Information and Protection of Privacy Act*), unless filed in accordance with rule 9A of the OEB's [Rules of Practice and Procedure](#).

Please quote file number **EB-2023-0261** for all materials filed and submit them in searchable/unrestricted PDF format with a digital signature through the [OEB's online filing portal](#).

- Filings should clearly state the sender's name, postal address, telephone number and e-mail address.
- Please use the document naming conventions and document submission standards outlined in the [Regulatory Electronic Submission System \(RESS\) Document Guidelines](#) found at the [File documents online page](#) on the OEB's website.
- Parties are encouraged to use RESS. Those who have not yet [set up an account](#), or require assistance using the online filing portal can contact registrar@oeb.ca for assistance.
- Cost claims are filed through the OEB's online filing portal. Please visit the [File documents online page](#) of the OEB's website for more information. All participants shall download a copy of their submitted cost claim and serve it on all required parties as per the [Practice Direction on Cost Awards](#).

All communications should be directed to the attention of the Registrar at the address below and be received by end of business, 4:45 p.m., on the required date.

DATED at Toronto May 23, 2024

ONTARIO ENERGY BOARD

Nancy Marconi
Registrar

SCHEDULE A
DECISION AND ORDER
ENBRIDGE GAS INC.
EB-2023-0261
MAY 23, 2024

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

**Enbridge Gas Inc.
EB-2023-0261**

Standard 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-2023-0261 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 start date, at least 10 days prior to the date the facilities begin to 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 full project in-service date, no later than 10 days after all 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 7(b), Enbridge Gas 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 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 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 full project in-service date, which shall:

- i. provide a certification, by a senior executive of the company, of Enbridge Gas Inc.'s adherence to Condition 1
- ii. describe any impacts and outstanding concerns identified during construction
- iii. describe the actions taken or planned to be taken to prevent or mitigate any identified impacts of construction
- iv. include a log of all complaints received by Enbridge Gas 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 full project 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.'s adherence to Condition 4
- 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.