



DECISION AND ORDER

EB-2024-0250

ENBRIDGE GAS INC.

**Application for Order granting an exemption from
leave to construct natural gas pipelines in the
City of Toronto**

BEFORE: Fred Cass
Presiding Commissioner

Robert Dodds
Commissioner

Allison Duff
Commissioner

December 17, 2024

TABLE OF CONTENTS

1	OVERVIEW.....	1
2	CONTEXT AND PROCESS.....	2
2.1	CONTEXT.....	2
2.2	PROCESS.....	4
3	DECISION.....	5
3.1	DECISION ON HEARING.....	5
3.2	DECISION ON REQUEST FOR EXEMPTION.....	6
3.3	CONDITIONS OF APPROVAL.....	10
4	ORDER.....	11
	SCHEDULE A.....	12
	SCHEDULE B.....	14

1 OVERVIEW

On August 9, 2024, Enbridge Gas Inc. (Enbridge Gas) applied to the Ontario Energy Board under section 95(1) of the *Ontario Energy Board Act, 1998* (OEB Act), for an order granting an exemption from the requirement to obtain leave to construct approximately 1,600 meters of natural gas pipelines and related assets in the City of Toronto (the Project). On November 8, 2024, Enbridge Gas advised that Metrolinx no longer required the installation of 360 metres of pipeline¹, such that the Project now consists of the installation of approximately 1,255 meters of pipeline. Enbridge Gas also requested that the OEB grant the exemption without a hearing as permitted under section 21(4)(b) of the OEB Act where no person other than the applicant will be adversely affected in a material way by the outcome of the proceeding.

Enbridge Gas indicated that the Project is required to accommodate the construction of the Ontario Line Transit Project and that no person will be adversely affected in a material way by the outcome of this proceeding.

The general location of the Project is shown on the map in Schedule A to this Decision and Order.

For the reasons set out below, the OEB grants an order under section 95(1) of the OEB Act exempting Enbridge Gas from the requirement to obtain leave to construct for the Project and grants the exemption under section 21(4) of the OEB Act without a hearing, subject to the conditions attached as Schedule B to this Decision and Order.

¹ November 8, 2024 letter from Enbridge Gas – Application and Evidence Update

2 CONTEXT AND PROCESS

2.1 CONTEXT

The Project is required to accommodate the Ontario Line Transit Project (Transit Project), a priority transit project², which is being completed by Metrolinx in collaboration with the Province of Ontario, and the City of Toronto. Metrolinx has requested that Enbridge Gas relocate certain existing natural gas pipeline assets that are in conflict with the Transit Project. The application indicates that the Project aims to resolve all conflicts with Metrolinx's work and to ensure Enbridge Gas can maintain the provision of safe and reliable natural gas service for its existing customers.

DESCRIPTION OF PROJECT FACILITIES

The proposed relocation includes the construction of the following:

- The relocation of approximately 1000 m of Nominal Pipe Size (NPS) 12-inch Steel Coated (SC) Medium Pressure (MP), and approximately 70 m of NPS 6-inch SC MP, natural gas pipeline with the installation of approximately 1100 m of NPS 8-inch Polyethylene (PE) Intermediate Pressure (IP) natural gas pipeline along Overlea Boulevard from Millwood Road to Thorncliffe Park Drive in the City of Toronto
- The abandonment of approximately 150 m of NPS 4-inch SC MP natural gas pipeline along Thorncliffe Park Drive in the City of Toronto
- The relocation of approximately 110 m of NPS 4-inch SC MP natural gas pipeline with the installation of approximately 120 m of NPS 2-inch PE IP natural gas pipeline along Leaside Park Drive in the City of Toronto
- The installation of one Header Station along Leaside Park Drive in the City of Toronto
- The relocation of approximately 50 m of NPS 6-inch SC MP natural gas pipeline with the installation of approximately 35 m of NPS 6-inch PE IP along Thorncliffe Park Drive in the City of Toronto

² The definition of "priority transit project" in section 2 of the Building Transit Faster Act, 2020 includes "(a) the line known as the Ontario Line located in the City of Toronto".

- The installation of one District Station along Thorncliffe Park Drive, and the abandonment of one existing District Station along Millwood Road in the City of Toronto

COST

The total estimated Project cost is \$17.4 million which will be paid in full by Metrolinx through a Contribution in Aid of Construction. As a result, the Project will have no cost impact on existing ratepayers. Enbridge Gas and Metrolinx have executed an agreement setting out Metrolinx's commitment to pay Enbridge Gas for the relocation of Enbridge Gas assets required to facilitate the Transit Project.

ENVIRONMENTAL IMPACT

Enbridge Gas states that an Environmental Report (ER) was prepared in accordance with the OEB's Environmental Guidelines. A consultation process during the ER development included the Ontario Pipeline Coordinating Committee members, municipal officials, conservation authorities and Indigenous communities. The records of consultation are part of the ER. The ER states that no significant adverse effects from the construction and operation of the Project are expected with the implementation of the mitigation measures recommended in the ER.

LAND RIGHTS

The majority of the Project will be located within existing public road allowances. Enbridge Gas has stated that the permanent easements required for the Project are under the control of Metrolinx. Enbridge Gas will need to obtain road occupancy permits from the City of Toronto.

INDIGENOUS CONSULTATION

On February 10, 2023, the Ministry of Energy and Electrification³ (ENERGY) delegated the procedural aspects of the Crown's duty to consult to Enbridge Gas and identified one Indigenous community to be consulted - the Mississaugas of the Credit First Nation. Enbridge Gas filed its Indigenous Consultation Report with ENERGY on August 9, 2024. On November 8, 2024, Enbridge Gas filed ENERGY's Letter of Opinion that the procedural aspects of Indigenous consultation undertaken by Enbridge Gas for the Project are satisfactory.

³ The Ministry of Energy changed name to the Ministry of Energy and Electrification or ENERGY in June 2024. In this Decision and Order, both are referred to as the ENERGY.

2.2 PROCESS

A Notice of Application was issued on September 25, 2024. Environmental Defence and Pollution Probe applied for intervenor status.

When Environmental Defence filed its intervention request on September 27, 2024, it also filed questions for Enbridge Gas stating that if Enbridge Gas provided responses by October 4, 2024, it would be able to support the exemption application or provide any relevant submissions by October 11, 2024. In its intervention request, Pollution Probe indicated that it wishes to examine the cost of the Project.

Enbridge Gas submitted a letter on October 3, 2024, stating that it would not respond to Environmental Defence's questions, as it would be improper to do so prior to the OEB issuing its finding on whether a hearing is required and its determination regarding intervention requests and next procedural steps.

On October 15, 2024, Enbridge Gas filed a letter stating that, as no person will be adversely materially impacted by this proceeding and the Project has no ratepayer impact, adverse environmental impact or land issues, it is appropriate for the OEB to dispose of this application without a hearing in the circumstances of the proposed Project.

Enbridge Gas objected to the intervention requests of Environmental Defence and Pollution Probe in relation to issues that are not directly relevant to the determination of this exemption application, referencing the issue of Project cost raised by Pollution Probe and other matters raised by Environmental Defence in its questions.

Enbridge Gas also stated that, in the alternative, the application should proceed by way of written hearing, and it does not object to the intervention requests made by Environmental Defence or Pollution Probe as they relate to whether the Project qualifies for the requested "special circumstances" exemption pursuant to section 95(1) of the OEB Act.

On November 8, 2024, Enbridge Gas advised the OEB that Metrolinx no longer required the installation of 360 metres of pipeline.⁴ Enbridge Gas indicated that this scope change had no material impact on the application.

⁴ November 8, 2024 letter from Enbridge Gas – Application and Evidence Update

3 DECISION

3.1 DECISION ON HEARING

In the Application, Enbridge Gas requested that the OEB dispose of this proceeding without a hearing under section 21(4) of the OEB Act. For the reasons that follow, the OEB grants the request by Enbridge Gas that the proceeding be disposed of without a hearing.

The OEB Act explicitly provides for the OEB to proceed without a hearing in deciding whether to grant an exemption from the leave to construct requirements of subsection 90(1) of the Act.

More specifically, under subsection 95(1) of the OEB Act, the OEB may make an order exempting any person from the leave to construct requirements without a hearing. Further, under subsection 95(2) of the OEB Act, the OEB shall make an order exempting a person from the leave to construct requirements, with or without a hearing, if the circumstances prescribed by regulation have been met.

Further, Enbridge Gas relies on subsection 21(4) of the OEB Act in support of its request that the OEB dispose of this proceeding without a hearing. Subsection 21(4) of the OEB Act provides for the OEB to dispose of a proceeding without a hearing in either one of two circumstances.

First, the OEB may dispose of a proceeding without a hearing if no person has requested a hearing within a reasonable time set by the OEB after the OEB gives notice of the right to request a hearing.

Second, the OEB may dispose of a proceeding without a hearing if:

- (1) no person other than the applicant will be adversely affected in a material way by the outcome of the proceeding; and
- (2) the applicant has consented to disposing of a proceeding without a hearing.

Findings

The OEB grants the request to dispose of this proceeding without a hearing under section 21(4) of the OEB Act. In this case, the Applicant, Enbridge Gas has consented to the disposition of the proceeding without a hearing. Further, the OEB finds that no person other than the Applicant will be adversely affected in a material way by the outcome of the proceeding. In reaching the conclusion that no person will be adversely affected in a

material way of the outcome of the proceeding, the OEB has given particular consideration to the following:

- Enbridge Gas will be reimbursed by Metrolinx for 100% of actual Project costs and thus the Project will have no rate implications for the ratepayers of Enbridge Gas.
- The Project will be entirely located on road allowances, rights-of-way and easements under the control of either Metrolinx or the City of Toronto and there are no landowner issues relating to the Project.
- The ER indicates that, with the implementation of the recommended mitigation measures, no significant environmental or socio-economic impacts of the Project are anticipated.

The OEB issued a Notice of Application and received requests from Environmental Defence and Pollution Probe for intervenor status in response. As a result of this Decision and Order, the OEB finds that the requests for intervenor status are not relevant matters for the OEB's consideration in the absence of an OEB hearing. The requests are therefore denied.

3.2 DECISION ON REQUEST FOR EXEMPTION

Section 90(1) of the OEB Act, requires that any person planning to construct a hydrocarbon line first obtain an order of the OEB granting leave to construct such line. Enbridge Gas seeks an exemption from that requirement pursuant to section 95(1) of the OEB Act which reads:

95(1) The Board may, if in its opinion special circumstances of a particular case so require, make an order exempting any person from the requirements of subsection 90 (1) or 92 (1) without a hearing.

Enbridge Gas submitted that the Project should be exempt from the requirement to obtain leave to construct due to special circumstances, stating that:

- The need for the Project has been established by Metrolinx
- The Project will be located entirely within existing road allowances, rights-of-way, and private property easements under the control of Metrolinx or the City of Toronto.
- Metrolinx has an agreement to reimburse Enbridge Gas for 100% of the actual Project costs and there will be no cost impacts on existing ratepayers.

- No significant environmental or cumulative effects are anticipated from construction of the Project.
- An exemption supports the spirit and stated purpose of the *Building Transit Faster Act, 2020*, which is to expedite the delivery of transit projects of provincial significance by removing barriers and streamlining processes that may result in delays to the timely completion of these projects.

Enbridge Gas submitted that except for a small (70 m) section of pipe that is proposed to be upsized from 6-inch to 8-inch for constructability reasons, the Project would qualify for the priority transit exemption set out in Ontario Regulation 328/03. Section 3(3) of that regulation provides that leave under section 90(1) of the OEB Act is not required when a relocation is to facilitate a priority transit project in certain circumstances.

Findings

The OEB grants Enbridge Gas an exemption for the Project from the leave to construct requirements (Leave to Construct Exemption).

Subsection 95(1) of the OEB Act provides for the OEB to exercise a discretion to grant a Leave to Construct Exemption. This discretion may be exercised if, in the opinion of the OEB, special circumstances of a particular case so require.

Further, subsection 95(2) of the OEB Act provides that the OEB shall grant a Leave to Construct Exemption if the OEB is satisfied that circumstances prescribed by regulation have been met.

The Project in respect of which Enbridge Gas seeks a Leave to Construct Exemption involves the relocation of a natural gas distribution pipeline. Subsection 90(2) of the OEB Act provides that the leave to construct requirements apply to the relocation or reconstruction of a hydrocarbon line only if the conditions prescribed by regulations are met.

Subsection 3(2) of O Reg 328/03 prescribes the conditions under which leave to construct will be required for the relocation or reconstruction of a hydrocarbon line. There are two such conditions, namely:

- (1) If the diameter of the line is increased; or
- (2) If the acquisition of additional land or authority to use additional land is necessary.

The second of these two conditions does not apply if the OEB makes a determination under subsection 3(3) of O Reg 328/03 that leave to construct is not required for the relocation or reconstruction. However, the first of the two conditions set out in subsection 3(2) – namely, an increase in the diameter of the line – continues to apply even if the OEB makes a determination under subsection 3(3) of O Reg 328/03.

The grounds for making a determination under subsection 3(3) of O Reg 328/03 are as follows:

- (1) the relocation or reconstruction is to facilitate a “priority transit project”; and
- (2) any additional land that is required is under the control of the priority transit project proponent or the road authority;
- (3) the relocation or reconstruction is undertaken under an agreement with the priority transit project proponent or road authority that specifies that the cost is to be paid wholly or partly by the priority transit project component or the road authority; and
- (4) the OEB makes a determination that the Crown’s duty to consult (if it applies) has been adequately discharged.

In this case, the relocation or reconstruction is to facilitate a priority transit project, the Project will be entirely located on road allowances, rights-of-way and easements under the control of either Metrolinx, the priority transit project proponent, or the City of Toronto, the road authority, and the total Project cost will be paid wholly by Metrolinx.

As for the Crown’s duty to consult, the procedural aspects of Indigenous consultation were delegated to Enbridge Gas by ENERGY. Enbridge Gas has carried out, and continues to carry out, engagement with the identified Indigenous community. ENERGY completed a review of the consultation undertaken by Enbridge Gas, including engagement by ENERGY with the identified Indigenous community to understand, among other things, any concerns about potential impacts to aboriginal and treaty rights from the Project. ENERGY has provided its opinion, as of October 25, 2024, that the procedural aspects of consultation undertaken by Enbridge Gas to that date are satisfactory. As indicated by ENERGY, it is expected that Enbridge Gas will continue its consultation with the Indigenous community throughout the life of the Project.

For these reasons, based on the evidence in this proceeding and, in particular, the opinion provided by ENERGY, the OEB finds that the Crown’s duty to consult has, to date, been adequately discharged.

All of the grounds for a determination under subsection 3(3) of O Reg 328/03 have been satisfied in this case. Accordingly, the second of the two conditions set out in subsection 3(2) of the regulation – namely, the need for additional land or authority to use additional land – does not apply so as to trigger the leave to construct requirements for the proposed relocation.

The first of the two conditions set out in subsection 3(2) of O Reg 328/03 – namely, an increase in the diameter of the line - continues to apply, notwithstanding the OEB's determination made under subsection 3(3) of O Reg 328/03. Enbridge Gas proposes to increase the diameter of one 70 metre section of pipe from NPS 6-inch to NPS 8-inch.

Enbridge Gas has requested that, given the increase in diameter of the 70 metre section of pipe, the OEB exercise its discretion under subsection 95(1) of the OEB Act to grant a Leave to Construct Exemption. As indicated above, this discretion may be exercised when the OEB finds that the special circumstances of a particular case so require.

The OEB finds that the special circumstances of this case do require the exercise of the OEB's discretion to grant a Leave to Construct Exemption under subsection 95(1) of the OEB Act. The special circumstances which form the basis for this finding are as follows:

- The Project is required to accommodate the construction by Metrolinx of the Ontario Line Subway, a priority transit project, while enabling Enbridge Gas to continue to provide safe and reliable gas distribution service to existing customers.
- Enbridge Gas is planning to commence construction in January of 2025 in order to meet Metrolinx's timing of Ontario Line Subway construction and Metrolinx has indicated that, if critical schedule milestones are missed, the entire Ontario Subway Line project schedule will be jeopardized.
- As already stated, there are no landowner issues relating to the Project, the ER does not anticipate significant environmental or socio-economic impacts of the Project if recommended mitigation measures are implemented and the duty to consult has been adequately discharged to date.
- The Project has no rate impacts due to the agreement by Metrolinx to reimburse Enbridge Gas for 100% of actual Project costs.
- The increase in pipe size that could trigger a leave to construct requirement involves a relatively short section of pipe. The OEB finds the 70 metre section is not of such consequence as to transform the entire Project into one for which leave to construct approval is required. The OEB has considered the 70 metres in the

context of the 1,255⁵ metres of pipeline to facilitate a priority transit project otherwise exempted from the leave to construct requirement.

3.3 CONDITIONS OF APPROVAL

The OEB considered its standard conditions of approval for leave to construct applications. Enbridge Gas stated that it would adhere to the OEB's conditions, should the OEB grant the Leave to Construct Exemption and decide to impose one or more of the standard conditions (with appropriate modifications for an exemption order).⁶ The OEB finds that a subset of the standard conditions are necessary and will apply to the Project.

The approved Conditions of Approval are attached as Schedule B to this Decision and Order.

⁵ Application, Exhibit A/Tab 2/Sch 1/p.2 (1,255 metres (1,100+120+35))

⁶ Exhibit I-1-1.

4 ORDER

THE ONTARIO ENERGY BOARD ORDERS THAT:

1. Enbridge Gas Inc. is granted an exemption under section 95(1) of the OEB Act from the requirement to obtain leave to construct pursuant to section 90(1) of the OEB Act, for approximately 1,255 meters of natural gas pipelines and related assets in the City of Toronto. A map showing the location of the Project is attached as Schedule A to this Decision and Order. This exemption is subject to the Conditions of Approval attached as Schedule B to this Decision and Order.
2. Enbridge Gas Inc. shall pay the OEB's costs incidental to this proceeding upon receipt of the OEB's invoice.

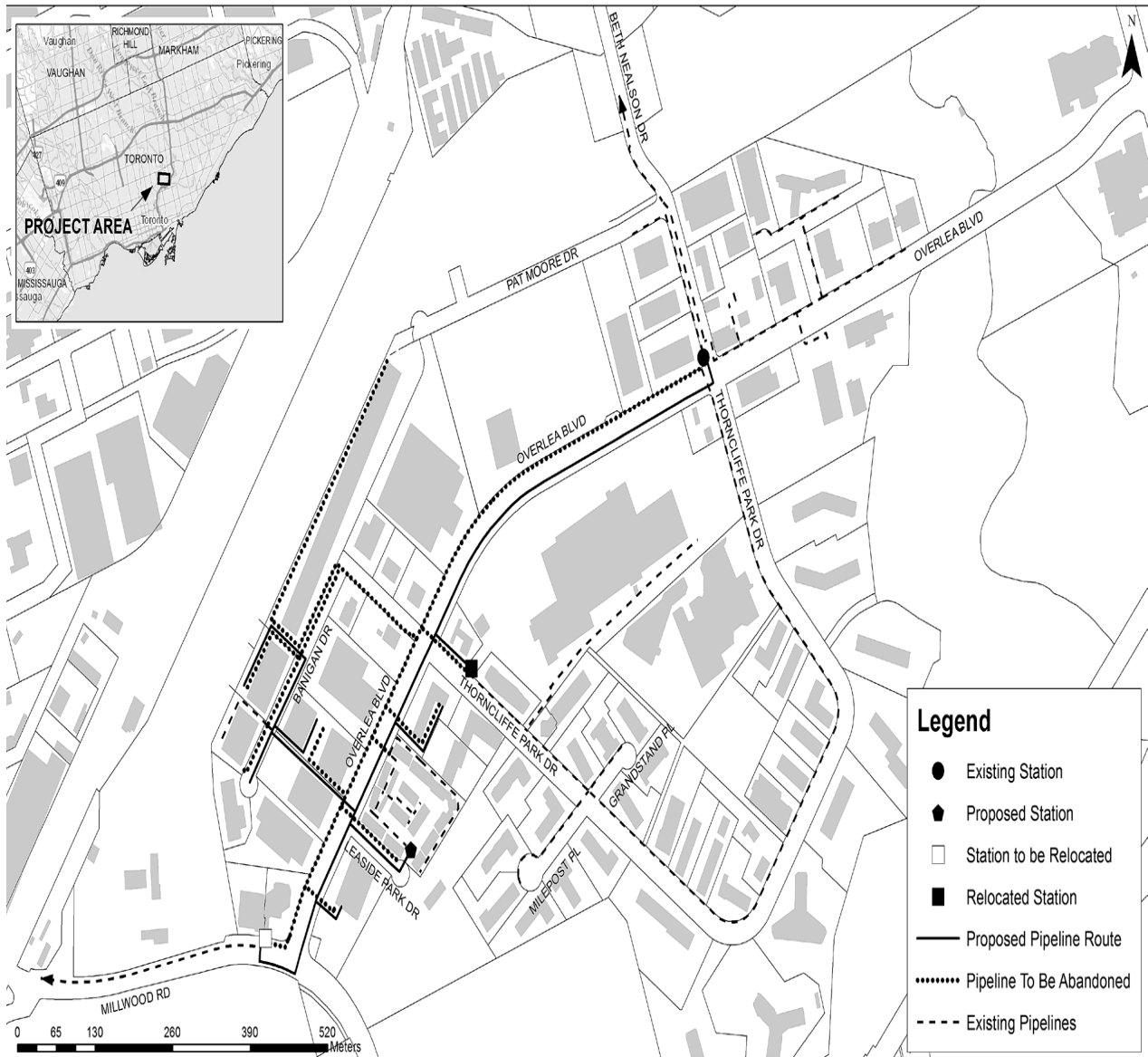
DATED at Toronto December 17, 2024

ONTARIO ENERGY BOARD

Nancy Marconi
Registrar

SCHEDULE A
DECISION AND ORDER
ENBRIDGE GAS INC.
EB-2024-0250
DECEMBER 17, 2024

Ontario Line (OL) - Overlea Relocation



SCHEDULE B
DECISION AND ORDER
ENBRIDGE GAS INC.
EB-2024-0250
DECEMBER 17, 2024

Application under Section 95(1) of the OEB Act
CONDITIONS OF EXEMPTION APPROVAL

1. Enbridge Gas Inc. shall construct the facilities and restore the land in accordance with its application and the evidence filed in EB-2024-0250 and approved in this Decision and Order and these Conditions of Approval.
2. Unless otherwise ordered by the OEB, exemption from the requirement to obtain leave to construct shall terminate 12 months from the date of this Decision and Order, unless construction has commenced prior to that date.
3. Enbridge Gas 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 full project in-service date, no later than 10 days after all the facilities go into service
4. Enbridge Gas Inc. shall obtain all necessary approvals, permits, licences, certificates, agreements and rights required to construct, operate and maintain the Project.
5. Enbridge Gas Inc. shall implement all the recommendations of the Environmental Report filed in the proceeding.