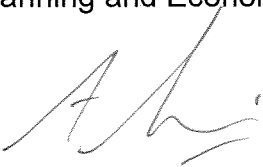


Hamilton

## INFORMATION UPDATE

<b>TO:</b>	Mayor and Members City Council
<b>COMMITTEE DATE:</b>	March 10, 2020
<b>SUBJECT/REPORT NO:</b>	Enbridge Gas Inc. Leave to Construct Application for the 2021 Dawn to Parkway Extension and Integrated Resource Planning Proposal (Wards 13 and 15)
<b>WARD(S) AFFECTED:</b>	Wards 13 and 15
<b>PREPARED BY:</b>	Guy Paparella (905) 546-2424 Ext. 5807 Alvin Chan (905) 546-2424 Ext. 2978
<b>SUBMITTED BY:</b>	Tony Sergi Senior Director, Growth Management Planning and Economic Development Department
<b>SIGNATURE:</b>	

Per Report PED20053, the City of Hamilton provided a submission to the Ontario Energy Board ("OEB") in response to Procedural Order #1 of the OEB, dated January 30, 2020, with respect to the leave to construct a 10.2 kilometres of 48-inch diameter natural gas pipeline and associated facilities in the City of Hamilton from the Kirkwall Valve Site to the Hamilton Valve Site.

### **OEB Procedural Order #2 – March 6, 2020:**

In response, the OEB has issued Procedural Order #2 dated March 6<sup>th</sup>, 2020 (see attached Appendix "A" to this Information Update). Staff note that the City of Hamilton's comments were received and acknowledged per Page 6 and 7 of this Order.

In addition, per Page 9 of this Order, the OEB has advised that:

"the upstream production and downstream consumption of natural gas associated with the use of the proposed pipeline may raise questions of compliance with overall national and provincial goals associated with domestic and international commitments to reduce Greenhouse Gas ("GHG") emissions. In addition, natural gas extraction methods have been the subject of an international debate as to their safety and environmental effects.

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OUR Vision: To be the best place to raise a child and age successfully.

OUR Mission: To provide high quality cost conscious public services that contribute to a healthy, safe and prosperous community, in a sustainable manner.

OUR Culture: Collective Ownership, Steadfast Integrity, Courageous Change, Sensational Service, Engaged Empowered Employees.

**SUBJECT: Enbridge Gas Inc. Leave to Construct Application for the 2021 Dawn to Parkway Extension and Integrated Resource Planning Proposal (Wards 13 and 15) - Page 2 of 3**

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However, the OEB must exercise its responsibilities within the limits of its statutory authority. The OEB has concluded that issues related to impacts associated with the extraction and production of natural gas to be delivered, as well as the effects of the consumption of that natural gas in the context of overall national and globally-focused environmental policies, are out of scope. As such, issues associated with those impacts will not be added to the Issues List.

In particular, parties in support of adding issues related to potential upstream or downstream impacts provided a variety of rationales, but most related in one way or another to environmental impacts, in particular, GHG emissions. As noted above, the OEB's approach to setting the issues list is governed by the nature of the application and the authority conferred on the OEB pursuant to the OEB Act.

The Application does not seek any approvals from the OEB with respect to the upstream extraction of natural gas nor the ultimate downstream use of natural gas, and indeed no regulatory approvals are required from the OEB for these matters. Consistent with its statutory mandate, the focus of the OEB's review will be on the proposed pipeline itself and its location (including any environmental impacts directly related to the construction of that pipeline)."

Based on the foregoing, greenhouse gas emissions and climate change are not within the purview of the OEB and are therefore not identified as issues per the Issues List shown on Schedule A of Appendix "A" to this Information Update.

**Action Items:**

Per Page 16 of the Order, Intervenor, including the City of Hamilton shall:

- file a letter with the OEB describing the nature of any proposed evidence to be filed by March 13, 2020; and,
- request any relevant information and documentation from Enbridge Gas Inc. that is in addition to the evidence already filed, by written interrogatories filed with the OEB and served on all parties by March 27, 2020.

In turn, Enbridge Gas Inc. shall file with the OEB complete written responses to all interrogatories and serve them on intervenors by April 20, 2020.

**SUBJECT: Enbridge Gas Inc. Leave to Construct Application for the 2021 Dawn to Parkway Extension and Integrated Resource Planning Proposal (Wards 13 and 15) - Page 3 of 3**

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Accordingly, due to the limited time for response and the meeting schedule for the General Issues Committee (GIC), staff have reviewed and updated the previous response to Procedural Order #1, for response to the direction given under Procedural Order #2.

As such, with respect to the requirement to describe the nature of our proposed evidence to be filed, the City of Hamilton will file a placeholder submission which complies with the OEB Procedural Order #2, in order to retain the option of full participation as an Intervenor.

In particular, staff have adjusted the interrogatories to comply with the OEB Procedural Order #2 and to identify the related issue, as required.

Lastly, with respect to issue number 10, the City of Hamilton will propose a placeholder to file evidence that would include appropriate conditions to ensure the proposed pipeline adequately protects the interests of the City of Hamilton, in the following broad categories:

- Cultural Heritage;
- Natural Heritage;
- Municipal Infrastructure;
- Emergency Response; and,
- Source Water Protection.

It should be noted that at the future March 25, 2020, GIC meeting, the actual suggested conditions and wording along with consideration as to whether to continue our intervention, given the limited scope of the hearing, are to be presented to Committee/Council for direction.

If you have any questions regarding the above, please contact Guy Paparella at ext. 5807 or Alvin Chan at ext. 2978.

**APPENDICES ATTACHED**

Appendix "A" – Ontario Energy Board Procedural Order #2 – March 6, 2020.

AC/GP/sd



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

**EB-2019-0159**

**Enbridge Gas Inc.**

**Application to construct natural gas pipeline and associated  
facilities in the City of Hamilton**

**PROCEDURAL ORDER NO. 2  
and  
DECISION ON ISSUES LIST**

**March 6, 2020**

## **INTRODUCTION**

On November 1, 2019 Enbridge Gas Inc. (Enbridge Gas) filed an application with the Ontario Energy Board (OEB) pursuant to section 90(1) and 97 of the *Ontario Energy Board Act 1998, S.O. 1998, c.15 (Schedule B)* (OEB Act) (Leave to Construct Application) which includes the following:

- Leave to construct approximately 10.2 kilometres of 48 inch diameter natural gas transmission pipeline and associated facilities from the Kirkwall Valve Site to the Hamilton Valve Site in the City of Hamilton (Project).
- Approval of the forms of easement agreements related to the construction of the proposed Project.

Enbridge Gas also included in the application an Integrated Resource Planning (IRP) Proposal and requested that the OEB determine it to be reasonable and appropriate.

The OEB issued a Notice of Application on January 6, 2020 (Notice). The Notice was published and served as directed by the OEB. In Procedural Order No. 1, issued on January 30, 2020, the OEB set the process for determining the scope of issues for the proceeding and determined that the IRP Proposal, as it relates to Enbridge Gas's future projects, will be reviewed separately at a date to be set by the OEB.

This Procedural Order No. 2 and Decision on Issues List (Procedural Order and Decision) includes decisions on intervenor and cost eligibility requests, a decision on the scope of the proceeding, and sets the schedule for the first phase of the discovery process by way of written interrogatories to Enbridge Gas.

The OEB will approve the Issues List in the same form as the draft Issues List and will not add any issues specifically related to any potential upstream or downstream impacts of the eventual use of the Project.

## INTERVENTION REQUESTS

The following parties applied for intervenor status:

- Association of Power Producers of Ontario (APPrO)
- Building Owners and Managers Association (BOMA)
- Canadian Manufacturers and Exporters (CME)
- City of Hamilton
- City of Kitchener
- Consumers Council of Canada (CCC)
- Energy Probe Research Foundation (Energy Probe)
- Environmental Defence (Environmental Defence)
- Federation of Rental-housing Providers of Ontario (FRPO)
- Green Energy Coalition (GEC)
- Industrial Gas Users Association (IGUA)
- London Property Management Association (LPMA)
- Pollution Probe (Pollution Probe)
- School Energy Coalition (SEC)
- Six Nations Natural Gas Company Limited (Six Nations NG)
- TransCanada PipeLines Limited (TCPL)
- Vulnerable Energy Consumers Coalition (VECC)

APPrO, BOMA, CME, CCC, Energy Probe, Environmental Defence, FRPO, GEC, IGUA, LPMA, Pollution Probe, SEC and VECC also applied for cost eligibility. No objection was received from Enbridge Gas Inc.

All parties listed above are approved as intervenors. The list of parties is attached as Schedule B to this Procedural Order. In addition, APPrO, BOMA, CME, CCC, Energy Probe, Environmental Defence, FRPO, GEC, IGUA, LPMA, Pollution Probe, SEC and VECC are eligible to apply for an award of costs under the OEB's Practice Direction on Cost Awards.

The OEB notes that the Low-Income Energy Network (LIEN) originally applied for intervenor status stating that its interest was in Enbridge Gas's IRP Proposal. In a letter dated February 11, 2020 LIEN confirmed that it was withdrawing its request for intervenor status in the Leave to Construct proceeding but that it intends to seek

intervenor status and cost eligibility in any future IRP Proposal proceeding.

Cost eligible intervenors should be aware that the OEB will not generally allow the recovery of costs for the attendance of more than one representative of any party, unless a compelling reason is provided when cost claims are filed.

Eligibility to apply for recovery of intervenor costs is not a guarantee of recovery of any costs claimed. Cost awards are made by way of OEB order at the end of a hearing.

## **DECISION ON SCOPE OF THE PROCEEDING**

The OEB received numerous letters of comment from individual citizens and citizen groups and organizations. Most of the comments voiced concerns regarding environmental impacts and were opposed to the construction of the proposed Project. Many also requested an oral hearing. The environmental concerns generally relate to two issues: (i) concerns with local site-specific impacts of the proposed pipeline on the ecologically sensitive wetlands and lands in the rural area within the boundaries of the City of Hamilton, and (ii) broader concerns related to Greenhouse Gas (GHG) emissions and climate change, related to both the upstream source of the natural gas that will be transported through the pipeline (some of which will be sourced from the Appalachian region of the United States of America (U.S.A.), where hydraulic fracturing is common), and the downstream emissions that will result when the natural gas is ultimately consumed.

Recognizing the significant interest in this proceeding and that some of the issues identified are not commonly raised by parties or considered by the OEB in leave to construct proceedings, the OEB set out a process to determine the scope of the issues it will hear in the proceeding. The OEB invited written submissions on the following:

- a. Whether the scope of the Leave to Construct proceeding should include these upstream and downstream impacts (Upstream/Downstream Issues):
  - i. impacts related to the methods of upstream natural gas extraction (such as hydraulic fracturing) for natural gas that will be transported through the pipeline
  - ii. impacts related to the ultimate downstream consumption of the natural gas transported through the pipeline.
- b. A draft Issues List

On February 10, 2020 APPrO, BOMA, CME, Environmental Defence, Energy Probe, FRPO, GEC, the City of Hamilton, IGUA, LPMA, Pollution Probe, SEC, OEB staff and Enbridge Gas filed submissions on the scope of the proceeding. Enbridge Gas filed a response to the submissions by other parties on February 20, 2020. On February 21, 2020 Environmental Defence and GEC provided their replies to Enbridge Gas's response. Many of the letters of comment received by the OEB also included submissions on the scope of the proceeding.

### **Upstream Extraction and Downstream Consumption Issues**

APPrO, BOMA, CME, Energy Probe, FRPO, IGUA, LPMA, OGVG, OEB staff and Enbridge Gas do not support the inclusion of upstream extraction and downstream consumption impacts in the scope of the proceeding.

The City of Hamilton, Environmental Defence, GEC, Pollution Probe and SEC support the inclusion of some Upstream/Downstream Issues in the scope of the proceeding.

#### **Parties that do not Support the inclusion of Upstream Extraction and Downstream Consumption Issues**

APPrO submitted that Upstream/Downstream Issues fall outside of the scope of review under section 90(1) of the OEB Act. APPrO's view is that the Upstream/Downstream Issues are not within the public interest mandate "...as informed by the Board's statutory objectives."

BOMA submitted that the upstream impacts of extraction of natural gas that will be transported by the proposed pipeline are not within the scope of OEB's jurisdiction under section 96 of the OEB Act. In BOMA's view the OEB's authority is limited to impacts of construction of the proposed natural gas pipeline. With regard to the impacts of downstream consumption of the natural gas transported by the proposed pipeline BOMA's position is that it is within the scope because the "promotion of energy conservation and efficiency" is one of the OEB's objectives. The need for the proposed Project is based on the projected increased demand for natural gas and how this increased demand will have an impact on carbon emissions in Ontario.

CME submitted that Upstream/Downstream Issues not be included in the scope of the Leave to Construct proceeding because these may be addressed more efficiently in policy proceedings, or by regulations at the provincial or federal level which would focus on the climate impacts of natural gas use.

Energy Probe does not support inclusion of Upstream/Downstream Issues in the scope of the Leave to Construct proceeding and stated that any impacts related to upstream or downstream markets are beyond OEB's jurisdiction.

FRPO does not support the inclusion of Upstream/Downstream Issues in the scope of the Leave to Construct proceeding and noted that it adopted the submission of the OEB staff.

IGUA opposed the inclusion of the Upstream/Downstream Issues in the scope of the proceeding. IGUA's position is that it is beyond the jurisdiction of the OEB to regulate North American natural gas supply or extraction impacts in other jurisdictions. In IGUA's view, impacts of downstream natural gas consumption such as climate change are also beyond the OEB's mandate. IGUA referred to the OEB's decision on a motion related to Greenfield Energy Centre and Union Gas Leave to Construct where the OEB determined that its mandate under section 90 does not cover facilities connected to the proposed pipeline:

In determining whether to grant leave to construct, the Board must determine whether the pipeline itself is in the public interest, not whether facilities connected to it will be in the public interest.<sup>1</sup>

LPMA does not support the inclusion of the Upstream/Downstream Issues in the scope of the Leave to Construct proceeding and submits that both upstream extraction impacts and downstream consumption impacts should be incorporated into the IRP review proceeding. However, in relation to the downstream consumption impacts, LPMA proposed that environmental impacts considerations in Stage 3 of the economic analysis of the Project in Enbridge Gas's evidence<sup>2</sup> should include a comparison of the benefit of potential increases in carbon emissions related to the Project relative to potential decreases in carbon emissions from displacement of heating oil, propane and electricity.

The OGVG opposes adding the Upstream/Downstream Issues to the scope of this proceeding. The OGVG noted that carbon emission is within jurisdiction of the Ontario Ministry of Environment, Conservation and Parks and not within the OEB jurisdiction. The OGVG explained that majority of greenhouse farmers capture carbon dioxide off their boiler stacks and feed it to the crop in the high growth phase of greenhouse production.

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<sup>1</sup> OEB *Decision on Motion*, November 7, 2005, RP-2005-0022/EB-2005-0441/0442/0443/0473, page 6

<sup>2</sup> Enbridge Gas Inc. Application EB-2019-0159, Evidence, Exhibit A, Tab 8 "Economic Feasibility Tests" pages 1-9



OEB staff does not support inclusion of Upstream/Downstream Issues in the scope of this proceeding. OEB staff argues that environmental impacts related to hydraulic fracturing or any method of upstream natural gas extraction are not within the regulatory authority of the OEB as they fall within the authority of environmental regulation in the U.S.A. The Project itself does not include natural gas production.<sup>3</sup>

Regarding the downstream use of the natural gas transported by the proposed pipeline, the OEB staff's position is that it is beyond the scope of section 90 proceeding. OEB staff argues that although the public interest test in accordance with the OEB statutory objectives includes consideration of conservation and energy efficiency in accordance with the policies of the Government of Ontario "...this is not a free-standing power, and must be applied by the OEB in the context of executing its statutory responsibilities under the Act." OEB staff notes that the OEB considers conservation and efficiency primarily through the consideration of non-build alternatives to the proposed Project such as conservation and demand side management (DSM).

### **Parties Supporting Inclusion of Upstream Extraction and Downstream Consumption Issues**

The City of Hamilton submits that the two Upstream/Downstream Issues should be added to the scope of the Leave to Construct proceeding. The City of Hamilton also requested that the OEB order Enbridge Gas to complete an ecological study and an independent peer review of Enbridge Gas's proposal, to be completed and funded by Enbridge Gas, prior to any decision to grant Leave to Construct. The City of Hamilton asked that the following issue be added to the Issues List:

Given the lifespan of the proposed pipeline being beyond 2050, and, as it falls fully within the municipal boundaries of the City of Hamilton, how does Enbridge Gas Inc.'s proposed Leave to Construct Application address the City of Hamilton's declared Climate Emergency and subsequent policies and goals?

The City of Hamilton also asked that the following be added to the Issues List:

Does the Project's environmental assessment adequately address issues related to Climate Change?

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<sup>3</sup> OEB staff referred to the OEB finding in EB-2012-0451, Decision and Order, January 30, 2014, pp. 23-24.

The City of Hamilton asked that the OEB hold an oral hearing in the City of Hamilton. As part of its submission the City of Hamilton included a number of questions for Enbridge Gas. These questions (interrogatories) relate to climate change issues and to natural heritage issues.

Environmental Defence takes the position that upstream extraction impacts, such as the impact of hydraulic fracturing and downstream consumption impacts are implicitly included into the draft Issues List. Environmental Defence argues that upstream extraction methods and carbon emission of gas usage downstream are relevant considerations for comparison of build and non-build alternatives to the proposed pipeline and as such are subsumed under issue #2 and issue # 3 in the draft Issues List. Environmental Defence also argues that consumption of the exported gas carried by the proposed pipeline is relevant for its economic impact on Ontario ratepayers, which should be a consideration under issue # 5. Environmental Defence supported its position by referring to the OEB's statements in the previous Dawn Parkway Expansion proceeding that energy efficiency and government policy are relevant:

In this way, the Board confirms that all of its statutory objectives, including that related to energy efficiency, energy conservation and government policy, are appropriate considerations in these proceedings.

The Board also confirms that considerations of energy efficiency and energy conservation are appropriately included in an examination of alternatives...<sup>4</sup>

GEC supports the inclusion of Upstream/Downstream Issues in the scope of this proceeding noting, among other things, that the OEB Environmental Guidelines for Hydrocarbon Pipelines (the Guidelines)<sup>5</sup> broadly define environmental impacts to include all components of the environment. GEC further supported this position by stating that: "...in regard to both of these issues GEC submits that there is a public interest in avoiding projects or activities in Ontario that will significantly increase GHG emissions in another jurisdiction where the other jurisdiction has not committed to a cap on its emissions consistent with internationally supported goals and policy choices subscribed to by Ontario and Canada (as is certainly the case for the U.S.A)." GEC suggested that the wording provided in the Procedural Order No. 1 be re-worded as follows:

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<sup>4</sup> EB-2013-0074/0043/0451, *Transcript, Issues/Process Day Volume*, April 30, 2013, p. 45, Ins. 6-13

<sup>5</sup> OEB's Environmental Guidelines for Location, Construction and Operation of Hydrocarbon Pipelines in Ontario [7<sup>th</sup> Edition, 2016]

- i. To what extent will the project increase GHG emissions in jurisdictions that have not committed to emission constraints commensurate with international goals that Canada has endorsed or with Ontario policy goals?
- ii. To what extent are there costs, risks or environmental impacts that affect Ontario due to the expected utilization of the proposed facilities to transport gas to customers outside Ontario?

GEC included in its filing correspondence from The Atmospheric Fund<sup>6</sup> in support of its position.

Pollution Probe supports the inclusion of Upstream/Downstream Issues into the review of Enbridge Gas's Leave to Construct application noting that these issues are already included in the scope of issues on need and alternatives in the draft Issues List.

SEC requests that the OEB include Upstream/Downstream Issues in the scope of the proceeding. The rationale given by SEC is that "...the economic impact of all upstream and downstream environmental risks is squarely in scope, and engages the Board's primary focus as an economic regulator." Further, SEC concluded "...that the economic impacts and risks arising out of those environmental impacts are clearly in scope, as they have been in the past. Considering those environmental impacts separately from the economic impacts and risks is not, in our view, necessary in this case, so SEC recommends that the Board not make any limiting statements on its jurisdiction to deal with those environmental impacts."

### **Enbridge Gas Inc. Submission on Upstream/Downstream Issues**

Enbridge Gas objects to including Upstream/Downstream Issues in the scope of the Leave to Construct proceeding. Enbridge Gas argues that the OEB has no statutory authority to consider them within a plain language interpretation of the OEB Act. Enbridge Gas stated that Pursuant to sections 90 and 96 of the OEB Act, the Board's jurisdiction in a leave to construct proceeding relates to the construction of the hydrocarbon line and its determination of public interest must also be interpreted and confined on that basis.

Enbridge Gas argues further that the OEB's consideration of public interest in section 96 of the OEB Act does not include the authority to consider upstream or downstream activities and emissions related to production or consumption of natural gas. Enbridge

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<sup>6</sup> The Atmospheric Fund is the regional climate agency for the Greater Toronto Hamilton Area

Gas stated that upstream and downstream environmental impacts and carbon emissions are regulated by other U.S.A, Canadian and Ontario authorities. Enbridge Gas argued that the TransMountain Expansion Project and the NEB's consideration of upstream emissions in its assessment (used as an example by some parties to support their argument) is not analogous to the Project as the NEB (which is now the Canadian Energy Regulator) had a different mandate than the OEB.

Enbridge Gas asked the OEB to require Parties to file some quantitative evidence on risks to support the proposed additional issues. Both Environmental Defence and GEC responded that this request is inappropriate at this introductory phase of the OEB proceeding. GEC argued that such evidence and detailed analysis would only be appropriate in a hearing on the issue, if it is found to be in scope, not as a basis for the OEB to make a determination on scope.

## **Findings on Upstream/Downstream Proposed Issues**

### **OEB Approach**

The OEB acknowledges that the upstream production and downstream consumption of natural gas associated with the use of the proposed pipeline may raise questions of compliance with overall national and provincial goals associated with domestic and international commitments to reduce GHG emissions. In addition, natural gas extraction methods have been the subject of an international debate as to their safety and environmental effects. However, the OEB must exercise its responsibilities within the limits of its statutory authority. The OEB has concluded that issues related to impacts associated with the extraction and production of natural gas to be delivered, as well as the effects of the consumption of that natural gas in the context of overall national and globally-focused environmental policies, are out of scope. As such, issues associated with those impacts will not be added to the Issues List. As set out elsewhere in this Procedural Order, the OEB has provided in this Issues List for an examination of the need for this proposed pipeline, including pipeline alternatives, an evaluation of financial risks, the specific environmental and safety effects of construction of the pipeline, and the costs proposed to be borne by Enbridge Gas's ratepayers.

### **The Task of the OEB**

Parties in support of adding issues related to potential upstream or downstream impacts provided a variety of rationales, but most related in one way or another to environmental impacts, in particular, GHG emissions. As noted above, the OEB's approach to setting the issues list is governed by the nature of the application and the authority conferred on the OEB pursuant to the OEB Act.

Section 96 of the OEB Act, which establishes the "public interest" test for natural gas leave to construct applications, confers broad powers on the OEB. However, those powers are not limitless. The public interest must be interpreted in the context of the enabling legislation of the statutory tribunal.<sup>7</sup> In this proceeding, such public interest powers take their meaning principally from section 90 (which creates the requirement for OEB approval to construct a natural gas pipeline), and by the OEB's objectives with respect to natural gas under section 2 of the OEB Act, which reads:

The Board, in carrying out its responsibilities under this or any other Act in relation to gas, shall be guided by the following objectives:

1. To facilitate competition in the sale of gas to users.
2. To protect the interests of consumers with respect to prices and the reliability and quality of gas service.
3. To facilitate rational expansion of transmission and distribution systems.
4. To facilitate rational development and safe operation of gas storage.
5. To promote energy conservation and energy efficiency in accordance with the policies of the Government of Ontario, including having regard to the consumer's economic circumstances.
  - 5.1 To facilitate the maintenance of a financially viable gas industry for the transmission, distribution and storage of gas.
6. To promote communication within the gas industry and the education of consumers.

The specific approval being sought in this proceeding is to construct a 10.2 kilometer section of natural gas pipeline. The OEB's task is to consider whether the construction of the pipeline is in the public interest. The Application does not seek any approvals from the OEB with respect to the upstream extraction of natural gas nor the ultimate downstream use of natural gas, and indeed no regulatory approvals are required from the OEB for these matters. Consistent with its statutory mandate, the focus of the OEB's review will be on the proposed pipeline itself and its location (including any environmental impacts directly related to the construction of that pipeline).

This approach is consistent with the OEB's previous findings where the OEB noted that

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<sup>7</sup> ATCO Gas & Pipelines Ltd v Alberta (Energy & Utilities Board), [2006] SCJ No 4, 2006 SCC 4,

section 96 "does not create jurisdiction but rather relates to how the Board's jurisdiction is to be exercised" and that "the phrase 'public interest' does not broaden the Board's jurisdiction to include an assessment of the environmental or economic impact of the use of the gas flowing through the pipeline".<sup>8</sup> In that decision, the OEB did not accept the proposition that the Guidelines encourage a review of the impacts of the end-use of the natural gas, noting: "[i]f the Board thought that cumulative impacts should involve the end-use of the energy, it would have said so in its Guidelines or would have provided guidance to address such complications and impracticalities that arise from that interpretation of cumulative impacts."<sup>9</sup>

With respect to upstream impacts related to the extraction of natural gas, the Application suggests that almost all the natural gas that will pass through the pipeline will be sourced from outside Ontario, either from Western Canada or from the United States. Although much of the natural gas is expected to be sourced from the Appalachian region of the U.S.A., the pipeline will be part of the larger Dawn-Parkway system. As such, the natural gas travelling through the pipeline could come from a variety of sources. Regardless of the origin of the natural gas being transported, the OEB has no authority over extraction practices outside Ontario. The jurisdictions from which the natural gas is ultimately sourced have exclusive regulatory jurisdiction over resource extraction and the environmental impacts of such extraction.

Although the OEB has no specific regulatory authority over the use of natural gas, its statutory objectives do include conservation. In particular, objective 5 set out in section 2 of the OEB Act states: "[t]o promote energy conservation and energy efficiency in accordance with the policies of the Government of Ontario, including having regard to the consumer's economic circumstances." However, the OEB's objectives are not free standing powers, and must be applied within the context of the particular sections of the OEB Act that are engaged. In this proceeding, these are the sections granting the OEB authority to approve an application for leave to construct a natural gas pipeline, namely sections 90 and 96 of the OEB Act.

The principal means by which the OEB considers Ontario's conservation and energy efficiency policies in compliance with the Guidelines which require adherence to local, provincial and federal regulations, policies and guidelines is through the consideration of the need and alternatives to the proposed project (issues # 1 and # 3 on the Issues List). One potential alternative to the Project could be a "no-build" option. Parties are free to seek to demonstrate that conservation or efficiency measures are a more cost effective solution to the need identified by Enbridge Gas and its proposal to build a new

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<sup>8</sup> RP-2005-0022, *Decision on Motion* (November 7, 2005), pp. 5-6.

<sup>9</sup> *Ibid.*, pp. 18-19.

segment of pipeline to meet that need. Although the OEB has moved Enbridge Gas's broader IRP proposal to a separate proceeding, that does not mean that the OEB will not consider whether conservation or efficiency are viable alternatives in this proceeding. The OEB will not, however, consider the impacts of GHG emissions from downstream consumption of delivered gas as a stand-alone issue in this proceeding.

## **Draft Issues List - Submissions and Findings**

The OEB approves the wording of issues in the draft Issues List without any changes. The approved Issues List is attached as Schedule A.

Most parties (including Enbridge Gas) had no objection to issues contained in the draft Issues List. No comments were received on the following issues:

- Alternatives – other pipelines (issue #2)
- Form of easement agreement (issue # 7)
- Pipeline design and technical requirements (issue #8)
- Indigenous consultation (issue # 9)
- Conditions of approval (issue # 10)

Some parties suggested amendments to the wording of the issues and/or proposed that issues be added to the Issues List. A summary of these submissions, proposed changes and OEB's findings on these proposals are provided below.

### **Submissions on Issue # 1- Need for the Project**

1. Is the proposed Project needed? Considerations may include but are not limited to natural gas demand, reliability of service, security, flexibility and diversity of natural gas supply, and operational risk as well as the OEB's statutory objectives.

GEC did not propose a re-wording of this issue but indicated its understanding of "natural gas demand" in this issue covers reasonableness of the need in the context of "...federal and provincial government policies on future gas utilization, including climate change related goals." Enbridge Gas disagreed arguing that climate change related goals in provincial and federal policies are outside the scope of the proceeding.

### **Findings on Issue # 1- Need for the Project**

While the impacts of gas consumption downstream are not within scope, the OEB agrees with GEC that the impact of government policy on future gas utilization is a

factor that may be relevant to the demand for natural gas and therefore the need for the Project.

### **Submissions on Issue # 3 - Alternatives- other than build**

- 3 What are the alternatives to the proposed Project that would not involve building a new pipeline? Are any of these alternatives preferable to the proposed Project?

Environmental Defence proposed that this issue be revised to read:

What are the alternatives to the proposed Project that would not involve building a new pipeline or would defer the decision into the future? Are any of these alternatives preferable to the proposed Project?

Enbridge Gas responded that predicting the impacts of climate change on demand for a project would be difficult but disagrees with the "wait-and-see" option recommended by Environmental Defence. Enbridge Gas stated that "...Enbridge Gas cannot simply ignore known information about current and forecast demand growth (considering reasonably understood risks) and arbitrarily defer investments that are required to meet that growth in a timely and reliable manner."

### **Findings on Issue # 3 - Alternatives- other than built**

Several Parties requested that the OEB confirm that DSM as an alternative to the Project will be within the scope of the proceeding. The OEB confirms that the Need for the Project (issue # 1) and Alternatives – other than build (issue # 3) will allow for the consideration of a DSM option.

The OEB finds that the amendment proposed by Environmental Defence is not required. Delay is an "other than build" alternative.

### **Submissions on Issue # 4 Economics**

- 4 Do the Project's economics meet the OEB's economic tests as outlined in the Filing Guidelines on the Economic Tests for Transmission Pipeline Applications, dated February 21, 2013?

SEC raised the issue of material risk that the Project may become a stranded asset and proposed that this risk, associated with the forecasts that support economic viability of the Project, should be in the scope of the proceeding. SEC also submitted that the OEB



should expand issue #4 to include economic viability generally and not limit the assessment of the economics to the OEB's current model for feasibility assessment.

#### **Findings on Issue # 4 – Economics**

Consideration of the risk that the Project will become a stranded asset due to uncertainty of the demand forecast is part of the assessment of need for the Project (issue # 1) and impact on ratepayers (issue # 5), as are any other risks of the demand forecast. Therefore, the OEB does not find it necessary to expand the OEB's existing model of economic feasibility assessment.

#### **Submissions on Issue # 5 - Costs and Rate Impacts**

- 5 Are the costs of the Project and rate impacts to customers reasonable and acceptable?

GEC proposed that this issue be revised to read:

Are the costs and risks of the Project and rate impacts to customers reasonable and acceptable?

GEC considers risks a critical consideration and as an example noted that in the "era of climate crisis" with a trend of reduced fossil fuel demand the OEB should consider that an investment in infrastructure with a 30 to 40 year payback increases the risk of stranded assets. SEC and Environmental Defence raised a similar concern.

#### **Findings on Issue # 5 - Costs and Rate Impacts**

As noted under Issue # 4, the OEB, finds that the risk of forecast demand not being realized is inherent to forecast modelling of any project and therefore included in the Need for the Project (issue #1) and in costs and rate impact (issue #5).

#### **Submissions on Issue # 6 - Project's Environmental Assessment**

- 6 Does the Project's environmental assessment meet the OEB Environmental Guidelines for Hydrocarbon Pipelines?

GEC proposed that issue # 6 be expanded to include assessment of environmental impacts of the Project in the context of government policy goals, other costs and benefits and in comparison with available alternatives.

Does the Project's environmental assessment meet the OEB Environmental Guidelines for Hydrocarbon Pipelines and are the expected environmental impacts acceptable in the context of government policy goals and given the other costs and benefits, and available alternatives?

GEC referred to the Guidelines noting that the environmental impacts are broadly defined to include impacts on all components of the environment. GEC referred to section 4.3.9 of the Guidelines which reads: "Air emissions and their environmental impacts should be compared to all local, provincial and federal regulations, *policies* and guidelines." (*emphasis added*)

#### **Findings on Issue # 6 - Project's Environmental Assessment**

GEC submitted that the environmental assessment scope should be expanded beyond adherence to the Guidelines to the context of "government policy goals". The OEB finds that no amendments are required to the wording of Environmental Assessment issue (issue # 6) as the Guidelines call for considerations of Project's adherence to all "...local, provincial and federal regulations, policies and guidelines" related to a project's environmental impacts. The OEB also notes that Project's alternatives are covered under issue # 2 and issue # 3.

#### **Proposed New Issues - Submissions and Findings**

Environmental Defence and Pollution Probe proposed new issues that should be added to the Issues List. Enbridge Gas disagreed with the proposals. The OEB does not accept addition of new issues as explained below.

#### **Environmental Defence - New Issues Proposals**

Environmental Defence pointed that in Enbridge Gas's evidence about 10% the Project's capacity will be used to export natural gas to the U.S.A. and proposed that the following issues be added or that the OEB confirm that these two issues are already included under other issue in the draft Issues List:

Are contracts to transmit more gas to the U.S.A. a valid need to justify the project?

Should Ontario gas ratepayers subsidize the transmission of gas to the U.S.A.?

In proposing these two additional questions, Environmental Defence argued that there are two kinds of potential financial subsidies that Ontario gas consumers may be

incurring in relation to the Project. First, it stated the portion of need for the Project is to supply for the U.S.A. export contracts, "...those contracts are being subsidized by Ontario gas consumers." Second, it noted that Ontario gas consumers may be exposed to financial risk if the U.S.A. utilities turn-back the demand or if the U.S.A. demand is lower than Enbridge Gas forecast and that bearing a financial risk is a form of financial subsidy.

Enbridge Gas argued that the Project is needed regardless of export contracts. In its reply submission Enbridge Gas also maintained that the risks to forecast demand related to the need and to the economics of the Project are not "...materially novel" and that Environmental Defence's argument about the risks of capacity turn-back from U.S.A. utilities is based on "...selective view of the evidence". Environmental Defence responded that the risks such as "turn-back" are real and referenced a number information sources to support its position.

Environmental Defence maintained that the Project has potential impacts beyond Ontario (i.e. supply from Western Canada via the TransCanada Mainline), and that for this reason the following issue should be added to the Issues List:

What jurisdiction does the Ontario Energy Board and/or the Canadian Energy Regulator (CER) have over the proposed project in light of the out-of-province impacts and aspects?

Enbridge Gas, in its reply submission, emphasized its position that the "...Board cannot regulate upstream or downstream activities indirectly when it cannot do so directly" as the OEB can only exercise this "...jurisdiction within the confines of its statutory mandate".

### **Findings - Environmental Defence New Issues Proposals**

The OEB does not agree with Environmental Defence's proposal to add two additional questions related to the Project need and ratepayers risk. The issues of Ontario ratepayers subsidizing the transmission of gas to the U.S.A. by bearing the financial risk due to potential turn-back of the U.S.A. demand for the Project capacity may be explored under issue #1 and issue # 5 which cover the Need for the Project and Project's impacts on ratepayers.

The OEB will also not add Environmental Defence's proposed issue relating to the jurisdiction of the OEB and the CER over the Projects out-of-province impacts. If these impacts may affect the principal concerns of the OEB in assessing the public interest

associated with the approval process - need, cost and environmental effect of the pipeline construction- they may be addressed under those issues. Otherwise, these issues are out of scope.

### **Pollution Probe - New Issues Proposals**

Pollution Probe proposed an additional issue:

Does the proposed project satisfy provincial policy including, but not limited to, the Provincial Policy Statement, Municipal Energy Planning and the Ontario Environmental Plan.

Pollution Probe argued that consideration of whether a project complies with various provincial policies is included in the OEB Guidelines and therefore should be added to the Issues List.

Enbridge Gas disagrees with this proposal stating that the Guidelines "...already provides for a consideration of compliance with applicable governmental policies and regulations, including, for example: the Provincial Policy Statement, other land use and planning policies..."

Pollution Probe recommended that the following issue be added as a second issue in the issue # 6:

Are the net environmental and socio-economic impacts related to the proposed pipeline acceptable?

Pollution Probe explained that, in its view, the net impacts of the Project are critical and compliance with the Guidelines is not sufficient.

Enbridge Gas responded that this proposal is not acceptable stating that the Guidelines already requires assessment of "...certain net impacts" that result from the pipeline project and that adding this issue would be duplicative of issue # 6. Enbridge Gas further argued that Pollution Probe's proposal to expand the environmental assessment beyond the Guidelines is outside of the scope of "public interest" under sections 90 and 96 of the OEB Act.

### **Findings - Pollution Probe New Issues Proposals**

The OEB finds that the addition of Pollution Probe's proposed issues is not necessary

as the Guidelines already include requirements for consideration of other provincial policies and regulatory requirements, net environmental impacts and assessment of socio-economic impacts of a project. These matters can be considered under issue # 6.

## **NEXT PROCEDURAL STEPS**

The OEB will hold an oral hearing for this application. There will also be a public presentation day scheduled for brief oral submissions from individuals that are not intervenors, or represented by intervening parties in this proceeding. The dates for the oral hearing and the public presentation day will be determined at a later date. The OEB will schedule next procedural steps starting with a written discovery process which will include dates for filing written questions (interrogatories) for Enbridge Gas by OEB staff and intervenors to Enbridge Gas and dates for Enbridge Gas's responses to these questions.

Intervenors who plan to file evidence must advise the OEB which issues on the Issues List the evidence will address.

It is necessary to make provision for the following matters related to this proceeding. The OEB may issue further procedural orders from time to time.

## **IT IS THEREFORE ORDERED THAT:**

1. The scope of the proceeding is specified by the Issues List approved by the OEB and attached in Schedule A to this Decision and Procedural Order.
2. Intervenors who intend to file any evidence in this proceeding shall file a letter with the OEB describing the nature of the proposed evidence by **March 13, 2020**.
3. OEB staff and intervenors shall request any relevant information and documentation from Enbridge Gas Inc. that is in addition to the evidence already filed, by written interrogatories filed with the OEB and served on all parties by **March 27, 2020**.
4. Enbridge Gas Inc. shall file with the OEB complete written responses to all interrogatories and serve them on intervenors by **April 20, 2020**.

Ontario Energy Board

EB-2019-0159  
Enbridge Gas Inc.

All materials filed with the OEB must quote the file number, **EB-2019-0159**, be made in a searchable/unrestricted PDF format and sent electronically through the OEB's web portal at <https://pes.ontarioenergyboard.ca/eservice>. Two paper copies must also be filed at the OEB's address provided below. Filings must clearly state the sender's name, postal address and telephone number, fax number and email address. Parties must use the document naming conventions and document submission standards outlined in the RESS Document Guideline found at <https://www.oeb.ca/industry>. If the web portal is not available parties may email their documents to the address below. Those who do not have computer access are required to file seven paper copies.

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

With respect to distribution lists for all electronic correspondence and materials related to this proceeding, parties must include the Case Manager, Zora Crnojacki at [Zora.Crnojacki@oeb.ca](mailto:Zora.Crnojacki@oeb.ca) and Board Counsel, Michael Millar at [Michael.Millar@oeb.ca](mailto:Michael.Millar@oeb.ca).

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**DATED** at Toronto, March 6, 2020

**ONTARIO ENERGY BOARD**

*Original signed by*

Christine E. Long  
Registrar and Board Secretary

**Schedule A**

**Enbridge Gas Inc.**

**EB-2019-0159**

**Issues List**

**Section 90 OEB Act,  
Leave to Construct Application**

**March 6, 2020**

**Enbridge Gas Inc.**  
**EB-2019-0159**  
**Issues List - Section 90 OEB Act**  
**Leave to Construct Application**

1. Is the proposed Project needed? Considerations may include but are not limited to natural gas demand, reliability of service, security, flexibility and diversity of natural gas supply, and operational risk as well as the OEB's statutory objectives.
2. What are the alternatives to the proposed Project that would also involve building a new pipeline? Are any of these alternatives preferable to the proposed Project?
3. What are the alternatives to the proposed Project that would not involve building a new pipeline? Are any of these alternatives preferable to the proposed Project?
4. Do the Project's economics meet the OEB's economic tests as outlined in the Filing Guidelines on the Economic Tests for Transmission Pipeline Applications, dated February 21, 2013?
5. Are the costs of the Project and rate impacts to customers reasonable and acceptable?
6. Does the Project's environmental assessment meet the OEB Environmental Guidelines for Hydrocarbon Pipelines?
7. Are the forms of landowner agreements filed pursuant to the application under section 97 of the OEB Act appropriate? Are there any outstanding landowner matters for the proposed Project's routing and construction? For greater clarity, landowners include parties from whom permits, crossing agreements and other approvals are required.
8. Is the proposed Project designed in accordance with current technical and safety requirements?
9. Has there been adequate consultation with affected Indigenous communities?
10. If the OEB approves the proposed Project, what conditions, if any, are appropriate?



**Schedule B**

**Enbridge Gas Inc.**

**Dawn Parkway System Expansion Project**

**EB-2019-0159**

**List of Intervenor**

**March 6, 2020**

Enbridge Gas Inc.  
EB-2019-0159

**APPLICANT & LIST OF INTERVENORS**

March 06, 2020

**APPLICANT**

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Enbridge Gas Inc.  
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**APPLICANT & LIST OF INTERVENORS**

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Enbridge Gas Inc.  
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Enbridge Gas Inc.  
EB-2019-0159

**APPLICANT & LIST OF INTERVENORS**

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Enbridge Gas Inc.  
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Enbridge Gas Inc.  
EB-2019-0159

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March 06, 2020

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Enbridge Gas Inc.  
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**Enbridge Gas Inc.**  
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Enbridge Gas Inc.  
EB-2019-0159

**APPLICANT & LIST OF INTERVENORS**

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Enbridge Gas Inc.  
EB-2019-0159

**APPLICANT & LIST OF INTERVENORS**

March 06, 2020

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