



EB-2009-0187

IN THE MATTER OF the *Ontario Energy Board Act, 1998*,
S.O. 1998, c. 15, (Schedule B);

AND IN THE MATTER OF an Application by Enbridge Gas
Distribution Inc. for an Order pursuant to Section 90(1) of
the *Ontario Energy Board Act, 1998*, granting leave to
construct a natural gas pipeline in the Region of York.

BEFORE: Gordon Kaiser
Vice Chair and Presiding Member

Paul Sommerville
Member

Ken Quesnelle
Member

DECISION AND ORDER

Enbridge Gas Distribution Inc. (“Enbridge”) filed an application with the Ontario Energy Board (the “Board”) on September 3, 2009, under section 90 of the *Ontario Energy Board Act, 1998*, S.O. 1998, c. 15, Schedule B, (the “Act”) for an order granting leave to construct approximately 16.7 kilometres of 406 millimetre (16 inch) diameter Extra High Pressure steel pipeline to deliver natural gas to the York Energy Centre LP, a proposed natural gas generating facility. The Board has assigned the application file number EB-2009-0187.

For the reasons set out below, the Board finds the construction of the proposed pipeline to be in the public interest and grants the leave to construct on the terms and conditions

(Conditions of Approval) set out in this Decision. The Board's Conditions of Approval are attached as Appendix A.

The Proposed Pipeline

The proposed pipeline route begins at Enbridge's Schomberg Gate Station located at 4955 Lloydtown-Aurora Road and proceeds east along the road allowance of Lloydtown-Aurora Road for approximately 5.5 kilometres to Jane Street. The pipeline then proceeds north along Jane Street for 3.0 kilometres to Highway 9. The pipeline follows Highway 9 eastwards for 4.2 kilometres to Dufferin Street. It then proceeds north along Dufferin Street for 3.6 kilometres and then proceeds east for approximately 0.4 kilometres to the proposed York Energy Centre, located at 18781 Dufferin Street. Construction is scheduled to start in the spring of 2010 with a planned commissioning during the second quarter of 2011 and in-service date in the last quarter of 2011.

A map showing the location of the proposed pipeline is attached as Appendix B.

The Proceeding

The Board issued a Notice of Application and Hearing dated September 22, 2009. The Board proceeded by way of a written hearing.

Intervenor status was granted to the York Region District School Board ("YRDSB") on behalf of Kettleby Public School, York Energy Centre LP ("YEC"), a customer supporting the pipeline approval and Hunter's Green Rate Payers Association, represented by Harten a Division of Harten Group ("Harten"). Harten was the only intervenor who requested and was granted cost award eligibility status and is the only intervenor who actively participated in the proceeding and opposed the approval of the application.

The Board granted Observer status to the Ontario Greenbelt Alliance and to the Global Environmental Action Group, both not-for-profit environmental organizations.

The Board also received letters of comment from Indian and Northern Affairs Canada ("INAC"), York Region Environmental Services Department ("York Region") and Save the Oak Ridges Moraine Coalition ("STORM").

On November 5, 2009 the Board issued Procedural Order No. 1 setting out a schedule for a written proceeding.

On November 27, 2009 the Board issued Procedural Order No.2 with an approved Issues List which set the scope of the proceeding.

Board Staff and Harten filed written interrogatories to Enbridge on December 11 and December 16, 2009 respectively and Enbridge responded on December 21, 2009. Harten filed intervenor evidence on January 8, 2010. Enbridge asked interrogatories on Harten's evidence on January 18, 2010 and Harten responded on January 25, 2010.

Enbridge filed its argument-in-chief on February 8, 2010. Board Staff and Harten filed their respective written submissions on February 12, 2010. Enbridge's reply argument was filed on February 22, 2010. This completed the record of the proceeding.

As part of its submissions, Harten claimed that there exists a conflict of interest among legal representatives of Enbridge in this proceeding. It asserts the conflict arises because members of the same law firm acted for the Ontario Power Authority ("OPA") in its generation procurement process, which resulted in YEC's agreement with the OPA.

Enbridge responded that, in its view, there is no conflict of interest. It argued that the fact that members from the same firm acted for different parties in the two processes does not result in a conflict of interest.

The Board agrees. The two processes referred to have very different elements and there is no inherent conflict. The OPA process was directed to the identification of an appropriate generation solution for York region. The Board's process, that is this proceeding, concerns itself with the leave to construct facilities by the local gas distribution to support the generation solution selected. These are very different regulatory processes, which are merely tangentially related.

The Public Interest Test

This is an application under section 90 of the Act seeking an order for leave to construct a natural gas pipeline. Section 96 of the Act provides that the Board shall make an Order granting leave if the Board finds that "the construction, expansion or reinforcement of the proposed work is in the public interest". When determining whether a project is in the public interest, the Board typically examines the need for the

project, the economics of the project, the impact on the ratepayers, environmental impact and the impact on land owners.

The Board set out the following four issues as defining the scope of the proceeding:

- Is there a need for the proposed pipeline?
- Are there any undue negative rate implications for Enbridge's rate payers caused by the construction and operation of the proposed pipeline?
- What are the environmental impacts associated with construction of the proposed pipeline and are they acceptable?
- Are there any outstanding landowner matters for the proposed pipeline routing and construction?

Each of these issues is addressed below.

The Need for the Project

The need for the proposed pipeline is based on the requirement to provide a dedicated gas supply to the YEC generating peaking facility. The YEC has a 20 year Gas Delivery Agreement ("GDA") with Enbridge which supports that need.

YEC has entered into a 20-year agreement with the Ontario Power Authority ("OPA") to generate and supply electricity to Ontario. This agreement was the result of an OPA-administered competitive procurement process as per a directive of the Ontario Ministry of Energy. YEC is an intervenor in this proceeding and as the customer receiving natural gas on the proposed pipeline. YEC supports the need for the project and the approval of the application.

Harten pointed that the Council of the Township of King opposes the location of the YEC within the municipality. Harten provided, in written submissions and as part of its written evidence, a history of the Township's opposition. Specifically, Harten noted that the Township passed an Interim Control By-Law #2010-05 per section 38 of the

Planning Act, R.S.O. 1990 (“Interim By-Law”)¹ which allows the Township to conduct a review of land use policies with respect to power generation facilities. Harten posited that the Township’s unwillingness to host the generating plant was relevant because the pipeline was “an integral component of the generator project” and therefore could not be treated separately when reviewing the leave to construct by the Board.

Enbridge replied that in its view the “...Board’s jurisdiction is limited to the pipeline” and that the generating plant location approvals are outside the scope of EB-2009-1087 proceeding.

The Board noted at the outset of this proceeding, in Procedural Order No. 1, that its jurisdiction in this case is restricted to the review of matters related to the construction and operation of Enbridge’s proposed pipelines. Matters related to the location, construction, operation or impacts of the generating station are not within the scope of the Board review.

Board Staff submitted that there are no outstanding issues related to the need for the pipeline.

The Board finds that Enbridge has adequately addressed the need for the pipeline.

Project Economics and Ratepayers Protection

The estimated capital cost of the pipeline is about \$ 39 million. An economic evaluation of the project was conducted using the Discounted Cash Flow methodology as set out in the “OEB Guidelines for Assessing and Reporting on Natural Gas System Expansion in Ontario” part of the “EBO 188 Report of the Board” dated January 1998. The Profitability Index (“PI”) of the project is 1.0 over a 20 year customer horizon. This PI is achieved with the inclusion of a Contribution in Aid of Construction (“CIAC”) to be paid by the YEC.

Enbridge’s evidence is that its ratepayers would be protected from financial risks occurring prior to pipeline construction, upon construction and during the operation of the YEC.

¹ The Interim By-Law allows the Township of King to conduct a review of land use policies with respect to power generation facilities (EB-2009-0187 “Harten Consulting-Final Submission” February 15, 2010, page 3, paragraph 5)

Harten outlined concerns with the economics of the project and that the "...ultimate cost of course is borne by ratepayers".² Enbridge responded that other Enbridge ratepayers were protected and would not be subsidizing the YEC with regard to capital cost recovery. Enbridge submitted that there would be no residual depreciation after the 20-year GDA had been completed and there would be no impact on ratepayers. In addition, Enbridge replied that Board approved Rate 125 parameters were such that the revenue from the YEC would be received even if no gas is used by the generating plant.

The YEC also provided financial assurance to Enbridge in the form of an irrevocable Letter of Credit. The economic feasibility of the project is achieved by establishing the CIAC to be paid by the YEC in an estimated amount of \$12.3 million, which amount will be adjusted after the actual cost of construction is determined.

Enbridge also provided evidence that the revenues from the YEC are in accordance with Board approved Enbridge's Extra Large Firm Distribution Service Rate 125 which is the rate in the GDA. This rate is independent of the volume of gas YEC would consume. It protects the ratepayers during the operation of the YEC, because the revenues are based on the billing Contract Demand specified in the GDA. The Contract Demand is a maximum volume contracted that a customer has a right to receive each day. Monthly revenue consists of Monthly Customer Charge (\$500.00), plus Demand Charge (fixed at 9.0093 cents per cubic metre of the Contract Demand per month), plus Direct Purchase Administration Charge (\$50), plus Forecast Unaccounted for Gas Percentage (0.3%).

Board Staff submitted that there are no outstanding issues relative to the ratepayers protection and economics as long as Enbridge adheres to the Conditions of Approval.

The Board finds Enbridge's position to be acceptable and concludes that there is no identified risk to Enbridge's ratepayers related to construction and operation of the proposed pipeline.

The financial protections established for the ratepayers are specified in the GDA. The Board has included in the Conditions of Approval a requirement for Board approval of alterations and amendments to the GDA as follows:

² EB-2009-0187 "Harten Consulting Evidence", January 4, 2010, page 10.

5.2 *Enbridge shall not, without prior approval of the Board, consent to any alteration or amendment to the Gas Delivery Agreement dated and executed on August 28, 2009 where such alteration or amendment has or may have any material impact on Enbridge's ratepayers.*

With respect to the Board's monitoring of any changes to the letter of credit related to the costs of construction and CIAC calculation, the Board has included the following as a condition of approval:

5.3 *Enbridge shall file with the Board, copies of changes to the York Energy Centre LP's irrevocable bank letter of credit and Contribution in Aid of Construction payments. This filing shall take place not later than 14 days after receipt of change or payment and shall be in place until the end of construction.*

The Board finds that the GDA contains all the necessary terms to protect Enbridge and its ratepayers from the financial harm should the pipeline construction be postponed or cancelled if the YEC is not built.

Environmental Assessment

The proposed route is located entirely within the road allowance. It is located in the area covered by "Oak Ridges Moraine Plan" and the "Greenbelt Plan". The routing and environmental assessment, including proposed mitigation for potential environmental impacts have been completed and filed as evidence in the Environmental Report ("ER"). The ER was prepared by Jacques Whitford Stantec Limited ("Stantec") an independent environmental consultant, retained by Enbridge. The ER and supporting evidence filed in the proceeding relating to the proposed pipeline have been produced in accordance with the "OEB Environmental Guidelines for Hydrocarbon Pipelines and Facilities in Ontario" (2003). The ER was reviewed by the Ontario Pipeline Coordinating Committee ("OPCC") and Enbridge confirmed that it would address any concerns raised in this review. This is addressed in Conditions of Approval-Condition 1.3.

The STORM, in a letter of comment dated October 15, 2009, stated that in their view the assessment of the different parts of the project, such as generating plant and the pipeline should be coordinated under an "umbrella assessment of the need for and potential impacts..." of the pipeline. STORM also noted that it participated in the generating plant selection process and that it continues to support the position of Concerned Citizens of King Township ("CCKT") in questioning the "...the need for the

project and the ability of the process to conform to both the Oak Ridges Moraine Conservation Plan and the Greenbelt Plan.”

INAC, in a letter of comment dated September 21, 2009, stated that it would not be reviewing the project but provided sources of information to assist the applicant with “... inviting interested First Nation communities to participate...” .

York Region, Water Resources Business Unit, in a letter of comment dated October 21, 2009 did not oppose the proposed project but noted that the pipeline must conform to the requirements of the Oak Ridges Moraine Conservation Plan (2001) and the York Regional Plan.

The Board finds that Enbridge has addressed the comments of INAC, STORM and York Region appropriately. The Board also notes that comments of STORM are not directly related to the pipeline approval proceeding but rather comments on the way provincial legislation deals with approvals of all aspects of the generating plant project.

Harten submitted that the Board should not grant its approval until all permits “from third party agencies” are obtained by Enbridge. In particular, Harten addressed the approvals and permits required from: the Lake Simcoe Conservation Authority (“LSCA”) and the Regional Municipality of York (“York Region”).

Harten maintained that environmental studies undertaken for the proposed pipeline project are inadequate. Harten submitted that the potential impacts and mitigation of the proposed pipeline on water resources, fisheries, and wildlife were not adequately addressed. Harten also argued that the application is deficient in that it does not meet many of the legal requirements related to environmental assessment and protection including the *Environmental Assessment Act*.

Enbridge replied that the environmental assessment under the *Environmental Assessment Act* is not applicable to the pipeline project. Enbridge maintains that the ER by Stantec is prepared in accordance with the “*OEB Environmental Guidelines for Hydrocarbon Pipelines and Facilities in Ontario*” (2003). Enbridge updated the pre-filed evidence to include a hydrogeologic assessment³. Enbridge submitted that it has

³ On January 29, 2010 Enbridge filed new evidence-“Hydrogeologic Investigation, Final Report” (Exhibit B, Tab 2, Schedule 5).

undertaken the environmental assessment, the archaeological assessment, hydrological assessment, and the hydrogeological assessment. Enbridge indicated that there has been no specific evidence that Enbridge has failed to meet any of the applicable requirements.

The Board is aware that other approvals will be required for Enbridge to construct the pipeline. The Board finds that Enbridge's compliance with the Conditions of Approval would ensure that issues around other permits, approvals and pipeline related environmental impacts and mitigation are fully addressed. The Board is satisfied that the environmental assessment followed the requirements of the Board's Environmental Guidelines. The Board finds that the location, mitigation and monitoring programs associated with the proposed pipeline by Enbridge are acceptable. The pipeline location, mitigation and restoration programs are consistent with the requirements of the Oak Ridges Moraine Conservation Plan (2001) and the York Regional Plan.

Regarding other approvals and permits, including applicable land use and environmental protection approvals for construction and operation of the proposed pipeline, the Board finds that condition 5.1, addresses the matter appropriately:

5.1 Enbridge shall obtain all other approvals, permits, licences, and certificates required to construct, operate and maintain the proposed project, shall provide a list thereof, and shall provide copies of all such written approvals, permits, licences, and certificates upon the Board's request.

The Board finds that the evidence supports the appropriate mitigation and restoration programs required to construct the pipeline. To ensure mitigation of impacts, restoration of land and protection of endangered species, land and water resources Board imposed monitoring and reporting requirements in the Conditions of Approval.

Land Issues

The proposed route is located in the road allowances. Enbridge needs permission from the Ministry of Transportation, the Region of York and the Township of King for the location of the pipeline. Enbridge stated that the approvals by the Region of York have to be acquired from the Engineer/Road Superintendent and that this process has been started and will be completed in time for construction. Also, Enbridge stated that an Encroachment Permit to cross Hwy 400 is required from the Ministry of Transportation

and that it also needs to meet the Township of King's requirements for project construction.

The Board's condition 5.1, that requires that all other approvals be obtained by Enbridge, includes the permits to locate the pipeline within municipal road allowances.

Enbridge submits that temporary easements may be required during the construction if the road allowance is not sufficient to complete construction. For these locations Enbridge stated it would obtain temporary easement agreements in the form approved by the Board.

YRDSB expressed a concern regarding the safe construction and access in the proximity of Kettleby Public School. These concerns were addressed by Enbridge in its submission. Enbridge stated that the pipeline would be located across the road from the Kettleby Public School and that traffic management during construction would be in accordance with the requirements of the Ministry of Transportation.

Harten submitted that the operational safety risk of the proposed pipeline is higher than for other pipelines operated by Enbridge. Harten proposed that a comprehensive disaster contingency plan "...should be prepared by Enbridge and Regulators and made available for public scrutiny and comment before any leave to construct is granted."⁴

Enbridge's evidence is that the proposed pipeline is designed in accordance with requirements of Ontario Regulation 210/01, Oil and Gas Pipeline Systems, under the *Technical Standards and Safety Act, 2008* and the CSA Z662-07 Oil and Gas Pipeline Systems standard. Enbridge also noted that the Technical Standards and Safety Authority ("TSSA") reviewed the pipeline design specification and did not raise any issues regarding the safe operation of the pipeline.

The Board finds that the proposed pipeline adheres to the regulatory requirements for safe operation. Also, the TSSA, as the agency overseeing the operation of the pipelines in Ontario, has the authority to implement all of the applicable standards and regulatory requirements.

⁴ EB-2009-0187 "Harten Consulting-Final Submission", February 15, 2010, page 7 paragraph 14.

Orders Granted

For the reasons set out above, the Board finds that the pipeline project being proposed by Enbridge in this proceeding is in the public interest and grants Enbridge leave to construct subject to the conditions set out in Appendix A.

THE BOARD ORDERS THAT:

1. Enbridge Gas Distribution Inc. is granted leave, pursuant to subsection 90 (1) of the Act, to construct approximately 16.7 kilometres of 406 millimetre (16 inch) diameter Extra High Pressure steel pipeline, subject to the conditions of approval set forth in Appendix A.
2. Enbridge Gas Distribution Inc. shall pay the Board's costs incidental to this proceeding upon receipt of the Board's invoice.

DATED at Toronto, April 5, 2010

ONTARIO ENERGY BOARD

Original signed by

Kirsten Walli
Board Secretary

APPENDIX "A"
TO BOARD DECISION AND ORDER
IN THE MATTER OF EB-2009-0187
DATED April 5, 2010
CONDITIONS OF APPROVAL

EB-2009-0187

Enbridge Gas Distribution Inc. Leave to Construct Application

Conditions of Approval

1 General Requirements

- 1.1 Enbridge Gas Distribution Inc. ("Enbridge") shall construct the facilities and restore the land in accordance with its application and the evidence filed in EB-2009-0187 except as modified by this Order and these Conditions of Approval.
- 1.2 Unless otherwise ordered by the Board, authorization for Leave to Construct shall terminate December 31, 2010, unless construction has commenced prior to that date.
- 1.3 Enbridge shall implement all the recommendations of the Environmental Report filed in the pre-filed evidence, and all the recommendations and directives identified by the Ontario Pipeline Coordinating Committee ("OPCC") review.
- 1.4 Enbridge shall advise the Board's designated representative of any proposed material change in construction or restoration procedures and, except in an emergency, Enbridge shall not make such change without prior approval of the Board or its designated representative. In the event of an emergency, the Board shall be informed immediately after the fact.

2 Project and Communications Requirements

- 2.1 The Board's designated representative for the purpose of these Conditions of Approval shall be the Manager, Natural Gas Applications.
- 2.2 Enbridge shall designate a person as project engineer and shall provide the name of the individual to the Board's designated representative. The project engineer will be responsible for the fulfillment of the Conditions of Approval on the construction site. Enbridge shall provide a copy of the Order and Conditions of Approval to the project engineer, within seven days of the Board's Order being issued.
- 2.3 Enbridge shall give the Board's designated representative and the Chair of the OPCC ten days written notice in advance of the commencement of the construction.

- 2.4 Enbridge shall furnish the Board's designated representative with all reasonable assistance for ascertaining whether the work is being or has been performed in accordance with the Board's Order.
- 2.5 Enbridge shall file with the Board's designated representative notice of the date on which the installed pipelines were tested, within one month after the final test date.
- 2.6 Enbridge shall furnish the Board's designated representative with five copies of written confirmation of the completion of construction. A copy of the confirmation shall be provided to the Chair of the OPCC.

3 Monitoring and Reporting Requirements

- 3.1 Both during and after construction, Enbridge shall monitor the impacts of construction, and shall file four copies of both an interim and a final monitoring report with the Board. The interim monitoring report shall be filed within six months of the in-service date, and the final monitoring report shall be filed within fifteen months of the in-service date. Enbridge shall attach a log of all complaints that have been received to the interim and final monitoring reports. The log shall record the times of all complaints received, the substance of each complaint, the actions taken in response, and the reasons underlying such actions.
- 3.2 The interim monitoring report shall confirm Enbridge's adherence to Condition 1.1 and shall include a description of the impacts noted during construction and the actions taken or to be taken to prevent or mitigate the long-term effects of the impacts of construction. This report shall describe any outstanding concerns identified during construction.
- 3.3 The final monitoring report shall describe the condition of any rehabilitated land and the effectiveness of any mitigation measures undertaken. The results of the monitoring programs and analysis shall be included and recommendations made as appropriate. Any deficiency in compliance with any of the Conditions of Approval shall be explained.

4 Easement Agreements

- 4.1 Enbridge shall offer the form of agreement approved by the Board to each landowner, as may be required, along the route of the proposed work.

5 Other Approvals and Agreements

- 5.1 Enbridge shall obtain all other approvals, permits, licences, and certificates required to construct, operate and maintain the proposed project, shall provide a

list thereof, and shall provide copies of all such written approvals, permits, licences, and certificates upon the Board's request.

- 5.2 Enbridge shall not, without prior approval of the Board, consent to any alteration or amendment to the Gas Delivery Agreement dated and executed on August 28, 2009 where such alteration or amendment has or may have any material impact on Enbridge's ratepayers.
- 5.3 Enbridge shall file with the Board, copies of changes to the York Energy Centre LP's irrevocable bank letter of credit and Contribution in Aid of Construction payments. This filing shall take place not later than 14 days after receipt of change or payment and shall be in place until the end of construction.

APPENDIX "B"
TO BOARD DECISION AND ORDER
IN THE MATTER OF EB-2009-0187
DATED April 5, 2010
MAP OF THE PIPELINE ROUTE

Enbridge Gas Distribution Inc.
York Energy Centre Pipeline Project

