



EB-2011-0270

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., under Section 95 of the *Ontario Energy Board Act, 1998*, requesting exemption from the requirements of section 90(1) for an Order granting leave to construct natural gas pipelines and ancillary facilities in the Regional Municipality of York.

BEFORE: Paul Sommerville
Presiding Member

DECISION AND ORDER

Background

Enbridge Gas Distribution Inc. (the "Applicant" or "Enbridge") filed an application with the Ontario Energy Board (the "Board"), dated August 26, 2011, under section 95 of the *Ontario Energy Board Act, 1998* (the "Act"), requesting an exemption from the need to obtain leave from the Board to construct a hydrocarbon pipeline under Section 90 of the Act. Enbridge is proposing to construct 1,200 meters of nominal pipe size ("NPS") 12 (12 inch diameter) natural gas pipeline along Ninth Line in the Regional Municipality of York (the "Application"). Enbridge also requested, under sub-section 21(4) of the Act, that the Board grant the requested exemption without the need for a hearing.

In its Application, Enbridge indicated that the Regional Municipality of York (the "Municipality") is upgrading the Ninth Line from two lanes to four lanes. The Municipality is proposing to begin construction on the upgrades in May 2012 and has requested that

all utilities complete relocation of their infrastructure prior to the Municipality beginning its construction.

The replacement project (the “Project”) consists of:

- a) The installation and tie-in of approximately 1,200 meters of NPS 12 extra high pressure (“XHP”) pipeline along the west side of Ninth Line; and
- b) The abandonment of approximately 1,200 meters of existing NPS 4 XHP pipeline along the west side of Ninth Line; and
- c) The abandonment of approximately 1,200 meters of existing NPS 8 XHP pipeline along the east side of Ninth Line.

Section 90(1) of the Act states the following:

No person shall construct a hydrocarbon line without first obtaining from the Board an order granting leave to construct the hydrocarbon line if,

- (a) the proposed hydrocarbon line is more than 20 kilometres in length;
- (b) the proposed hydrocarbon line is projected to cost more than the amount prescribed by the regulations¹;
- (c) any part of the proposed hydrocarbon line,
 - (i) uses pipe that has a nominal pipe size of 12 inches or more, and
 - (ii) has an operating pressure of 2,000 kilopascals (“kPa”) or more; or
- (d) criteria prescribed by the regulations are met. 2003, c. 3, s. 63 (1).

Enbridge’s proposed pipeline construction project uses pipe that has a nominal pipe size of 12 inches and operates at approximately 2758 kPa. Accordingly, leave to construct pursuant to section 90(1) of the Act would ordinarily be required for the proposed construction.

¹ Ontario Reg. 328/03 made under the Act states in section 3, “The amount for the projected cost of a proposed hydrocarbon line for the purposes of clause 90(1)(b) of the Act is \$2 million.”

However, section 95 of the Act provides that “the Board may, if in its opinion special circumstances of a particular case so require, exempt any person from the requirements of section 90 or 92 without a hearing”. Enbridge provided the following evidence to highlight its claim of special circumstances in this proceeding:

1. Enbridge is the franchisee in the cited area.
2. The pipeline will be installed within the future municipal right-of-way of the Municipality and Enbridge does not require new permanent land rights.
3. There are no private landowners impacted by the construction of the pipeline.
4. The Project is a replacement without the need for additional land rights but the Project does not fall within the “like for like” replacement exemption rules provided in sub-section 90(2) of the Act.
5. The cost of the Project is less than \$2 million, the amount prescribed in O.Reg 328/03, which provides the monetary threshold for the need to obtain Leave to Construct from the Board.
6. Enbridge and the Municipality have completed an environmental review for the Project.
7. The existing NPS 8 and NPS 4 pipelines are in physical conflict with the proposed road widening and can't remain in the current locations. Enbridge requires the pipelines to be replaced to continue providing gas supply to the Town of Whitchurch-Stouffville and Uxbridge.
8. A single NPS 12 pipeline is more cost effective and an environmentally superior replacement option than a “like-for-like” replacement.
9. The location and routing have been selected in conjunction with Municipality's consultant.
10. The economics of the Project will adhere to the terms of the existing Franchise Agreement between Enbridge and the Municipality.

11. The NPS 12 extra high pressure (“XHP”) pipeline is preferred by the Municipality.

The Board issued a letter on September 13, 2011. In that letter, the Board directed Enbridge to serve the Application, along with the letter, on all Parties listed in Exhibit A, Tab 2, Schedule 2 of the Application. The Board noted that it would consider any comments filed by these Parties with respect to Enbridge’s request up to and including September 23, 2011. No comments were received. Therefore, the Board has decided to proceed without a hearing.

The Board’s letter also requested that Enbridge describe the pipeline abandonment protocols that will be utilized in abandoning the two pipelines along the Ninth Line in the Municipality. A response to this request was received on September 22, 2011.

Board Findings

The Board accepts Enbridge’s evidence that the pipeline replacement project is necessary to allow for the Municipality’s Ninth Line upgrade project, that there are no long-term environmental impacts of the construction project and that there are no private landowners impacted by the pipeline construction project. Therefore, the Board finds that there are special circumstances that warrant exemption of the project from the requirements of section 90(1) of the Act.

Given the Board’s decision to grant Enbridge an exemption from Section 90 of the Act, it is not necessary for the Board to make any further findings in this proceeding. However, for ease of reference, the Board has set out Enbridge’s evidence as it relates to project need, design and construction, project costs and economics, environmental assessment and land issues in Appendix “B” attached to this Decision and Order.

THE BOARD ORDERS THAT:

The application by Enbridge Gas Distribution Inc. for an exemption from the requirements of section 90(1) of the Act, with respect to the construction of 1200 meters of NPS 12 extra high pressure pipeline along the west side of Ninth Line in the Regional Municipality of York is approved subject to the Conditions of Approval attached as Appendix A to this Decision and Order.

DATED at Toronto October 11, 2011

ONTARIO ENERGY BOARD

Original signed by

Kirsten Walli
Board Secretary

APPENDIX A
TO BOARD DECISION AND ORDER
BOARD FILE NO.: EB-2011-0270
DATED October 11, 2011
CONDITIONS OF APPROVAL

EB-2011-0270

Enbridge Gas Distribution Inc.

Ninth Line Replacement

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-2011-0270, 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, 2012, unless construction has commenced prior to then.
- 1.3 Enbridge shall implement all the recommendations of the Environmental Implementation Plan / Screening filed in the pre-filed evidence. Enbridge shall follow the Abandonment Plan (filed as part of the EBG-2011-0270 proceeding) for the abandonment of the two pipelines located on Ninth Line.
- 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 fulfilment 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 Ontario Pipeline Coordinating Committee ("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 file with the Board, prior to construction, any and all easement agreements related to the project.

5 Other Approvals and Agreements

5.1 Enbridge shall obtain all other applicable 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.

APPENDIX B
TO BOARD DECISION AND ORDER
BOARD FILE NO.: EB-2011-0270
DATED October 11 2011

Project Need

The Municipality is proposing to widen Ninth Line from two lanes to four lanes. Enbridge's existing NPS 8 and NPS 4 pipelines are in direct conflict with the Municipality's road widening project. The Municipality has requested that the pipelines be relocated prior to the commencement of the road widening.

The existing pipelines provide gas supply to Whitchurch-Stouffville and Uxbridge. Replacement of the NPS 8 and NPS 4 lines is necessary to continue to provide gas supply to the above cited areas. Abandonment of the existing pipelines, without replacement, is not an option.

Design and Construction

Enbridge is proposing to replace the NPS 4 and NPS 8 pipelines with a single NPS 12 XHP pipeline. The Municipality prefers Enbridge to install a single NPS 12 line because of the shorter construction schedule and lower costs associated with constructing a single line.

All the design specifications for the pipe replacement are in accordance with Ontario Reg. 210/01 under the *Technical Standards and Safety Act 2001, Oil and Gas Pipeline Systems*. Pipeline abandonment will be handled in accordance with the Pipeline Abandonment Plan filed in the EB-2011-0270 proceeding.

The construction is scheduled to begin in February, 2012 and be completed by the end of May, 2012. The construction schedule is contingent on the Municipality acquiring all the necessary land rights and the timelines for other utilities to complete their relocation projects.

Project Costs and Economics

Enbridge estimates the total cost for the Project to be approximately \$1,786,000. This includes \$195,000 for contingency costs. Enbridge noted that the project costs will be shared according to the terms in the Franchise Agreement between itself and the Municipality. The Franchise Agreement was filed with the Application.

Environmental Assessment

Enbridge submitted that construction will be conducted in accordance with the Enbridge Contract Specifications, the Enbridge Construction Manual, and the recommendations provided in the Environmental Screening Report titled, "Proposed Relocation for Ninth Line, Markham and Whitchurch-Stouffville".

Enbridge submitted that using the procedures outlined above, it is expected that the environmental impact arising from the Project will be negligible.

Enbridge stated that it will obtain all necessary environmental permits prior to construction.

Land Matters

Enbridge noted that the Municipality is acquiring the lands for the road expansion project. The proposed pipeline will be located within the future Right of Way held by the Municipality. The construction of the pipeline is schedule to occur after the Municipality acquires the necessary lands; therefore, Enbridge will not have any permanent easements.

Enbridge noted that it may require a temporary working easement from Transport Canada related to one section of the pipeline construction.