



CITY OF HAMILTON
PLANNING AND ECONOMIC DEVELOPMENT DEPARTMENT
Growth Management Division

TO:	Mayor and Members Committee of the Whole
COMMITTEE DATE:	April 29, 2020
SUBJECT/REPORT NO:	Enbridge Gas Inc. Leave to Construct Application for the 2021 Dawn to Parkway Extension and Integrated Resource Planning Proposal (PED20053(a)) (Wards 13 and 15)
WARD(S) AFFECTED:	Wards 13 and 15
PREPARED BY:	Guy Paparella (905) 546-2424 Ext. 5807 Alvin Chan (905) 546-2424 Ext. 2978
SUBMITTED BY: SIGNATURE:	Tony Sergi Senior Director, Growth Management Planning and Economic Development Department

RECOMMENDATION

- (a) That the General Manager of Planning and Economic Development be authorized and directed to maintain “Intervenor” status with the Ontario Energy Board for file EB-2019-0159 in respect of the Enbridge Gas Inc. Leave to Construct Application for the 2021 Dawn to Parkway Extension;
- (b) That it be confirmed that no outside consultants will be retained and therefore no evidence will be submitted in response to Procedural Order #4 of the Ontario Energy Board for file EB-2019-0159 in respect of the Enbridge Gas Inc. Leave to Construct Application for the 2021 Dawn to Parkway Extension;
- (c) That the General Manager of Planning and Economic Development be authorized and directed to file interrogatories and respond to any interrogatories in accordance with the deadlines of Procedural Order #4 of the Ontario Energy Board, for file EB-2019-0159 in respect of the Enbridge Gas Inc. Leave to Construct Application for the 2021 Dawn to Parkway Extension.

EXECUTIVE SUMMARY

Enbridge Gas Inc. (“Enbridge”) has applied to the Ontario Energy Board (“OEB”) to construct 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. The proposed project extends through Wards 13 and 15 of the City of Hamilton.

It is noted that recommendation (a) of the original report PED20053, presented at the February 7, 2020, General Issues Committee meeting was deferred to a future meeting. During this time, staff have had a chance to discuss the OEB process with the OEB Project Advisor for this file and now recommend that “Intervenor” status be maintained per recommendation (a) above.

Since our last Information Update dated March 10, 2020, the OEB has issued Procedural Order #3 on April 2, 2020, attached as Appendix “A” to Report PED20053(a), and Procedural Order #4 on April 7, 2020, attached as Appendix “B” to Report PED20053(a).

In review, Procedural Order #3 established OEB deadlines for submission of Evidence, subsequent deadlines for interrogatories of any submitted evidence, and a deadline for response to the subsequent interrogatories. Per the request of other Intervenor, Procedural Order #4 was issued to extend the deadlines related to the above matters.

In particular, Procedural Order #4 (Appendix “B” to Report PED20053(a)) identifies a deadline for submission of any evidence to the OEB by May 25, 2020.

Correspondingly, Items 2 and 3 of Procedural Order #4, established similarly short deadlines for the submission of interrogatories regarding any evidence submitted; and, for responding to any interrogatories filed to the City.

Given these timelines it is recommended that staff be authorized to review and submit as required and in accordance with the OEB procedure to ensure deadlines are met, as per recommendations (b) and (c). Additional rationale and analysis for this recommendation is provided below.

Alternatives for Consideration – See Page 7

FINANCIAL – STAFFING – LEGAL IMPLICATIONS

Financial: There are no financial implications of the staff recommendation. However, should Council decide to retain outside consultants, the respective costs have not been budgeted for.

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Staffing: The City's participation in the OEB hearing will be through existing City staff with respect to review and submissions; however, staff will not be actively participating at the OEB hearing.

Legal: The OEB has ordered a public oral hearing to consider Enbridge's Leave to Construct Application. As part of its review of this application, the OEB will assess Enbridge's compliance with the OEB's Environmental Guidelines for the Location, Construction and Operation of Hydrocarbon Pipelines and Facilities in Ontario.

Legal staff do not have the in-house expertise and experience with this Board, and any active participation at the OEB hearing beyond staff's recommendation would require retaining outside consultants which is not advised given the restrictive timelines imposed by the OEB.

HISTORICAL BACKGROUND

On November 1, 2019, Enbridge submitted the Leave to Construct Application related to the 2021 Dawn to Parkway Extension and Integrated Resource Planning Proposal to the OEB, the Province's energy regulator responsible for ensuring compliance with the Province's environmental guidelines for the location, construction and operation of hydrocarbon pipelines and facilities in Ontario.

The proposed project will be approximately 10.2 kilometres of Nominal Pipe Size ("NPS") 48 natural gas pipeline from an interconnect at the Kirkwall Valve Site to the Hamilton Valve Site through Wards 13 and 15 of the City of Hamilton. Subject to Provincial regulatory review and permits, Enbridge expects to be in service November 1, 2021.

In review, staff presented Report PED20053 at the February 7, 2020, General Issues Committee, whereby recommendation (a) was deferred to a future meeting. During this time, staff have reviewed and provided responses to Procedural Orders #1 and #2 of the OEB, as documented in the Information Update dated March 10, 2020.

Since then, the OEB has issued Procedural Order #3 on April 2, 2020 and Procedural Order #4 on April 7, 2020. Accordingly, staff provides the detailed review and analysis below, and the corresponding recommendations noted above.

POLICY IMPLICATIONS AND LEGISLATED REQUIREMENTS

OEB Decision-making Process:

The OEB is an independent, quasi-judicial tribunal that is regulated by the *Ontario Energy Board Act* (the “Act”). The primary objective of the OEB is to ensure the public interest is served and protected. Any individual or organization planning to construct certain hydrocarbon transmission facilities within Ontario must apply to the OEB for a Leave to Construct prior to construction, pursuant to section 90(1) of the Act.

The OEB’s approval for construction of pipelines is conditioned upon compliance with applicable regulatory requirements including design, operation, maintenance, safety, and integrity. The OEB will hold a public oral hearing to consider Enbridge’s Leave to Construct Application.

As part of its review of this application, the OEB will assess Enbridge’s compliance with the OEB’s Environmental Guidelines for the Location, Construction and Operation of Hydrocarbon Pipelines and Facilities in Ontario.

The OEB has established the Issues List for the proceeding under Procedural Orders #1 and #2; and, have now requested any new evidence be submitted in accordance with the Issues List. In turn, respective dates for interrogatories and responses are requested under Procedural Orders #3 and #4 of the OEB.

In particular, per Procedural Order #4 (Appendix “B” to Report PED20053(a)):

1. OEB staff and intervenors seeking to file evidence shall do so by submitting the evidence to the OEB and provide a copy to Enbridge Gas and Intervenors no later than May 25, 2020.

Of note, legal staff do not have expertise in these matters nor experience with this Board. Notwithstanding, this would not represent sufficient time to retain outside consultants to complete the necessary review for the submission of any evidence.

As such, per recommendation (b), staff request confirmation that outside consultants will not be retained and therefore no evidence is to be submitted to the OEB.

2. Any party seeking information and material on the evidence filed by OEB staff or an intervenor that is in addition to the evidence filed with the OEB, and that is relevant to this proceeding, shall do so by requesting written interrogatories to be filed with the OEB, and copy all parties by June 8, 2020.

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In accordance with recommendation (c), staff is seeking delegated authority to provide any new interrogatories, based on any evidence submitted to the OEB in response to this part of the Order by the OEB or other parties.

3. Any party that receives interrogatories on their respective evidence shall file with the OEB complete responses to the interrogatories by June 29, 2020.

In accordance with recommendation (c), staff is seeking delegated authority to respond to any interrogatories received.

This Report and the recommendations are therefore provided to address and respond to Procedural Order #4 of the OEB.

RELEVANT CONSULTATION

The following groups were previously consulted:

- Corporate Services – Legal and Risk Management Services Division;
- Healthy and Safe Communities - Public Health Services – Healthy Environments Division – Health Hazards Section;
- Healthy and Safe Communities – Hamilton Fire Department;
- Planning and Economic Development – Growth Management Division;
- Planning and Economic Development – Planning Division;
- Public Works – Engineering Services Division – Geomatics and Corridor Management Section; and,
- Public Works – Hamilton Water – Source Protection Planning Section.

As the OEB established the Issues List, some of the matters previously identified by staff are deemed to be beyond the scope of the hearing. Accordingly, staff have provided interrogatories in response to the existing evidence as filed with the OEB.

Dependent on the evidence submitted by OEB staff and any other Intervenor, the above staff will be re-engaged for review and comment, if required.

ANALYSIS AND RATIONALE FOR RECOMMENDATION

As noted above, recommendations (a) of Report PED20053(a) is to address the deferred original recommendation (a) of Report PED20053, that recommended that the City withdraw its “Intervenor” status with the OEB as it pertained to file EB-2019-0159 in respect of the Enbridge Gas Inc. Leave to Construct Application for the 2021 Dawn to Parkway Extension.

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Since this deferral, staff have had time to consult with the OEB Project Advisor for this project who confirmed that maintaining “Intervenor” status does not obligate the City to submit Evidence, as is currently requested under OEB Procedural Order #4 dated April 7, 2020 (see Appendix “B” to Report PED20053(a)). Accordingly, staff have revised their position and have therefore recommend that “Intervenor” status be maintained, per recommendation (a).

The remaining recommendations are based on the items in OEB Procedural Order #4; in particular, there are 3 items to the Order:

1. OEB staff and intervenors seeking to file evidence shall do so by submitting the evidence to the OEB and provide a copy to Enbridge Gas and Intervenor no later than May 25, 2020.

Upon review of the Issues List contained in Procedural Order #1 and #2, and as per recommendation (b), given in-house resources, staff have not identified any evidence to be submitted by the City.

Item 2 of Procedural Order #4 states that:

2. Any party seeking information and material on the evidence filed by OEB staff or an intervenor that is in addition to the evidence filed with the OEB, and that is relevant to this proceeding, shall do so by requesting written interrogatories to be filed with the OEB, and copy all parties by June 8, 2020.

It is anticipated that any and all new evidence filed either by OEB staff or other Intervenor will be available for review shortly after the May 25, 2020, deadline per Item 1 above, with approximately two weeks for staff to review and file any interrogatories in response per Item 2 of the Procedural Order.

Given the limited timeline, recommendation (c) would authorize staff to complete their review and submit any interrogatories directly to the OEB in accordance with the above June 8, 2020 deadline.

Item 3 of Procedural Order #4 states that:

3. Any party that receives interrogatories on their respective evidence shall file with the OEB complete responses to the interrogatories by June 29, 2020.

It is not anticipated that the City will have to respond to any interrogatories given the staff recommendation not to submit any evidence. However, should any interrogatories be directed to the City, staff would have limited time to respond to any interrogatories.

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Again, this represents a limited timeline and recommendation (c) would therefore authorize staff to reply to any interrogatories directly to the OEB in accordance with the above June 29, 2020 deadline.

Lastly, it should also be noted that the June 29, 2020 deadline would also represent the deadline for Enbridge, OEB staff or an Intervenor to respond to any interrogatories filed by the City on the evidence submitted under Item 2 of the Procedural Order.

ALTERNATIVES FOR CONSIDERATION

Council could direct staff to withdraw the City's "Intervenor" status with the OEB for file EB-2019-0159 in respect of the Enbridge Gas Inc. Leave to Construct Application for the 2021 Dawn to Parkway Extension.

Upon discussion with the OEB Project Advisor, this is no longer recommended as maintaining "Intervenor" status would allow the City to continue to receive and respond to any new evidence filed with the OEB, with no obligation for the City to retain outside expertise for submission of any evidence.

Council could also direct staff to retain outside consultants for the purpose of the OEB hearing or to ask that staff bring forth any interrogatories and / or responses prior to submission to the OEB. Staff are not recommending either due to time required to complete the submissions and the deadlines imposed by the OEB.

ALIGNMENT TO THE 2016 – 2025 STRATEGIC PLAN

Economic Prosperity and Growth

Hamilton has a prosperous and diverse local economy where people have opportunities to grow and develop.

Built Environment and Infrastructure

Hamilton is supported by state of the art infrastructure, transportation options, buildings and public spaces that create a dynamic City.

APPENDICES AND SCHEDULES ATTACHED

Appendix "A" – Ontario Energy Board Procedural Order #3 – April 2, 2020

Appendix "B" – Ontario Energy Board Procedural Order #4 – April 7, 2020

GP/AC/sd