

Enbridge Gas Feedback on Proposed Revision to Ontario Energy Board Act Leave to Construct Cost Threshold for Hydrocarbon Pipelines

—
ERO Number: 019-3041
April 29, 2021

About Enbridge Gas Inc.

Enbridge Gas is Canada's largest natural gas storage, transmission and distribution company based in Ontario, with more than 170 years of service to customers. The distribution business provides safe, affordable, reliable energy to about 3.8 million homes, businesses and industries and is leading the transition to a clean energy future through net-zero emissions targets and investments in innovative low-carbon energy solutions. The storage and transmission business offers a variety of storage and transportation services to customers at the Dawn Hub, the largest integrated underground storage facility in Canada and one of the largest in North America. Enbridge Gas is owned by Enbridge Inc., a Canadian-based leader in energy transportation and distribution. Learn more at enbridgegas.com.

Executive Summary

Enbridge Gas welcomes the Ontario Government's (Government) review of the Leave-to-Construct (LTC) financial threshold as a low-cost approach to reducing regulatory barriers. The proposal to increase the threshold in Ontario Regulation 328/03, Section 3 from \$2 million to \$10 million is necessary given the threshold was established over 25 years ago and should be modernized to provide regulatory efficiency. The proposed change does not preclude other provincial requirements from having to be met including land and environmental screenings, permits, consultations with municipalities and Indigenous consultation. Without the proposed change, customer connections, community expansion projects and pipeline relocations for provincial transit projects could be delayed by over 6-8 months. By comparison, in B.C., FortisBC (electricity) and FortisBC Energy (natural gas) are subject to thresholds of \$20 million and \$15 million, respectively, for Certificates of Public Convenience and Necessity (CPCN) required to construct or operate utility facilities.

An updated approach of raising the financial threshold to \$10 million along with a regular review of the threshold would enable proven operators with strong safety records like Enbridge Gas to connect customers, facilitate transit projects and deliver community expansion projects in a more cost-effective and timely manner. In addition to increasing the cost threshold, Enbridge Gas recommends that the province increase the corresponding pipe size LTC threshold from NPS 12 to NPS 16 and the operating pressure from 2,000 to 3,600 kilopascals (kPa). Adjusting these thresholds will further increase regulatory efficiency and increasing the financial threshold will help accelerate job creation and private sector investment, supporting Ontario's economic recovery. Increasing these thresholds would still allow for appropriate oversight while enabling regulatory efficiency by allowing the Ontario Energy Board (OEB) to focus its attention and resources on larger and more complex projects.

Increasing Leave to Construct Cost Threshold

Enbridge Gas is supportive of the Government's proposal to update the over 25-year-old LTC financial threshold to \$10 million and recommends a regular review of the threshold to update on a more consistent basis. Enbridge Gas also believes that the Government should increase the threshold for pipe size from NPS 12 to NPS 16 and increase the operating pressure from 2,000 kPa to 3,600 kPa to get more natural gas customers connected faster without compromising safety, consultation or the environment.

Pipe size and operating pressure

The Government should consider increasing the threshold of pipe size that is currently limited to NPS 12 and increasing the operating pressure that is currently limited to 2,000 kPa (set out in the *Ontario Energy Board Act*). Enbridge Gas recommends increasing the pipe size threshold to NPS 16 and increasing the operating pressure to 3,600 kPa. Enbridge Gas has many existing distribution pipelines that are NPS 12 and operate between 2,000 kPa and 3,600 kPa. The intent of increasing the diameter and operating pressure thresholds is to put a focus on the need for an LTC filing for large diameter transmission pipelines greater than NPS 12 and remove distribution pipelines from LTC consideration unless the cost threshold is exceeded. Based on Enbridge Gas current active assets, increasing the pipeline size and operating pressure thresholds would remove over 95% of our pipeline population from LTC consideration.

Exception clause 90(2)

Enbridge Gas is requesting confirmation that the exception clause 90(2) will remain. This clause allows an exception of a LTC if the relocation or reconstruction of a gas main does not change pipeline size and does not need additional land. Almost all Enbridge Gas relocation projects are exempt from a LTC because the relocation is size-for-size with no additional land required. If the relocation results in a change of pipe size or has additional land requirements then clause 90(1) is evaluated for the pipeline

length, prescribed OEB cost, and operating pressure. With transit projects soon to be coming to fruition, this could change in the future.

While currently Enbridge Gas Transit projects have avoided a relocation requiring a LTC this could change as additional provincial Transit projects come online, including the Priority Transit Projects and the Metrolinx GO projects. There will be more challenging Enbridge Gas relocation projects, some of which will require additional land triggering an evaluation of 90(1) and will exceed the current cost threshold resulting in a LTC under the current guidelines. Any Enbridge Gas Transit project that requires a LTC that is a result of the Priority Subway Projects, GO projects and other government projects will have an additional 6-8 months minimum duration added to the project timeline. The clause along with an increase in financial threshold will allow Enbridge Gas to continue supporting and quickly delivering relocation projects for provincial Transit projects.

Regulatory Efficiency to Support Priority Natural Gas and Transit Projects

We look forward to continuing to work with the Government and the OEB to ensure Ontario's regulatory environment supports timely investments and customer connections in time for Natural Gas Expansion Program Phase 2 project selection this year. To highlight the impact of this change, over 100 of Enbridge Gas' Phase 2 community expansion project proposals fall below the proposed \$10 million threshold, though not all will be picked for funding this change would allow communities chosen to be connected faster. Continuing with the current LTC thresholds could delay customer connections by over 6-8 months. Similar schedule delay impacts will be experienced throughout the priority transit projects occurring in Ontario which will also have corresponding cost implications. Increasing the LTC thresholds would enable needed regulatory efficiency for smaller community expansion, pipeline or system reliability and transit projects while allowing the OEB to focus its oversight and resources on larger and more complex projects.

Jurisdictional Comparison with British Columbia

By comparison, in B.C., CPCNs (rather than LTC) are required before the construction or operation of a public utility plant or system, or an extension is undertaken of either. Given the potentially time-consuming nature of the CPCN process, the British Columbia Utilities Commission (BCUC) established specific criteria which would require a utility to file a CPCN application only if a proposed capital project met certain requirements. The BCUC also developed CPCN Application Guidelines to provide general guidance regarding the BCUC's expectations of the information that should be included in CPCN applications while providing the flexibility for an application to reflect the specific circumstances of the applicant, the size and nature of the project, and the issues raised by the application. An applicant is expected to apply the Guidelines in a flexible and reasonable manner that reflects the spirit and intent of the Guidelines. FortisBC and FortisBC Energy currently have CPCN thresholds of \$20 million and \$15 million respectively which exempt the utilities from having to file for a CPCN if the project's cost is below the threshold value.

Impact on Permitting and Approvals

This administrative change of increasing the threshold will not impact, reduce or eliminate the ongoing requirement by all hydrocarbon pipeline developers and operators to comply and meet the many other permitting and reporting obligations that continue to be in place. As noted in the ERO posting, the proposed changes to the financial leave to construct threshold would not alter existing requirements for Enbridge Gas to seek authorizations from applicable Ontario ministries, authorities and municipalities to

support pipeline construction. Permits and approvals relating to technical, safety and environmental requirements would continue to apply. For example, environmental permits and approvals are all mandated by environmental acts and regulations (Environmental Protection Act, Conservation Authorities Act, Endangered Species Act, Ontario Water Resources Act, etc.) which continue to apply independent of the LTC process.

Enbridge Gas' Commitment to Ongoing Indigenous Consultation

Enbridge Gas recognizes the importance of reconciliation between Indigenous communities and broader society. Positive relationships with Indigenous Peoples, based on mutual respect and focused on achieving common goals, strengthens our projects and yields constructive outcomes for all Ontarians

Increasing the thresholds referred to above would not deter Enbridge Gas from its commitment to consult Indigenous groups impacted by Enbridge Gas' projects and operations. Enbridge Gas will continue to engage local and Indigenous communities potentially affected by our pipeline projects regardless of the financial threshold. In absence of a requirement to file an LTC application, there may still be triggers for Indigenous consultation from other Departments and Agencies (e.g. for Permits to Take Water, Archeology). Regardless of whether the duty to consult is triggered, Enbridge Gas will engage with Indigenous groups potentially affected by our projects and operations.

Enbridge's Indigenous Peoples Policy guides our approach to pursuing sustainable relationships with Indigenous Nations and groups in proximity to where Enbridge conducts business. To achieve sustainable relationships with Indigenous Nations and groups Enbridge governs itself by five principles that include:

- Recognizing legal and constitutional rights possessed by Indigenous peoples;
- Recognizing the importance of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) within the context of existing Canadian law;
- Engaging in forthright and sincere consultation with Indigenous Peoples about Enbridge's projects and operations through processes that seek to achieve early and meaningful engagement;
- Committing to working with Indigenous Peoples to achieve benefits for them resulting from Enbridge's projects and operations; and
- Fostering an understanding of the history and culture of Indigenous Peoples among Enbridge's employees and contractors.

In Enbridge's recent ESG announcement, Enbridge committed to continuing to evolve our Indigenous employment strategy in 2021, working towards achieving 3.5% representation within our workforce of Indigenous people by 2025 and requiring all employees and contractors to complete Indigenous cultural awareness training by 2022.

Enbridge Gas regularly engages with over 80 Indigenous groups in Ontario and is committed to fostering long-term meaningful relationships based on our Life Cycle approach to engagement. Life Cycle approach to engagement refers to engaging with potentially affected Indigenous groups from a project's infancy/project planning stage through to decommissioning/abandonment.

Through our commitment to relationship building with Indigenous groups in Ontario, Enbridge Gas has developed a deeper understanding of areas of interest raised by various Indigenous communities and we work to ensure we meaningfully engage with communities to avoid or mitigate any impacts our projects or operations may have on their rights and interests.

Conclusion

Enbridge Gas looks forward to continuing to work with government, industry partners and local communities to ensure Ontario's regulatory environment supports timely investments and customer connections in a manner that is cost effective and supports the Government's economic recovery efforts without compromising the environment, Indigenous consultation or safety. Expanding the scope of the LTC review by increasing the financial threshold to \$10M saves approximately 6-8 months of regulatory processing in implementing customer connections, community expansion projects and transit project with no detrimental impacts on safety, environmental permitting, and municipal and Indigenous consultation. Further, increasing the pipe size threshold to NPS 16 pipe and the operating pressure to 3600 kPa could reduce the duration of certain projects.

If you have any questions or require additional information please do not hesitate to contact Nicole Gruythuyzen, Senior Advisor Government Affairs (nicole.gruythuyzen@enbridge.com).