

Enbridge Feedback on the Proposed Amendments to Modernize LTC Approvals for Pipeline Relocation or Reconstruction Projects

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About Enbridge Gas Inc.

Enbridge Gas is Canada's largest natural gas storage, transmission and distribution company based in Ontario, with more than 175 years of service to customers. The distribution business provides safe, affordable, reliable energy to about 3.9 million homes, businesses and industries and is supporting the transition to a clean energy future through net-zero emissions targets and investments in innovative low-carbon energy solutions. With the recently announced acquisition of three gas utilities serving customers in five US states, Enbridge will own and operate the largest gas utility franchise in North America. 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.

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Introduction

Enbridge Gas Inc. (Enbridge) commends the Government of Ontario (Government) for proposing amendments to the *Ontario Energy Board Act, 1998 (OEBA)* aimed at authorizing regulations to streamline and modernize leave-to-construct (LTC) requirements for certain pipeline relocation or reconstruction projects. These amendments and associated regulatory proposal would go a long way in helping facilitate key Government commitments to build transit and housing faster. Enbridge also appreciates the opportunity to submit feedback on the proposal.

Executive Summary

Enbridge supports the proposed OEBA amendments and associated LTC exemption conditions. These changes will notably reduce regulatory burdens, streamline processes, and lower costs for pipeline relocation or reconstruction, benefiting Ontario ratepayers at a time affordability is a major concern.

The amendments will accelerate essential infrastructure projects aligned with government initiatives, particularly in transit, road construction, and affordable housing development. They are essential for expediting pipeline relocations related to priority transit and public infrastructure projects, ensuring timely completion despite project complexities.

These changes strike a balanced approach, addressing concerns around project timelines, costs, and regulatory requirements, while upholding Indigenous consultation processes and environmental standards.

While Enbridge is generally supportive, Enbridge recommends streamlining regulatory processes further by limiting the OEB exemption applications for transit or road authority-driven pipeline projects to cases where duty-to-consult is triggered. Additionally, clarity is sought on whether the land acquisition criteria will be within the same regulation. Finally, Enbridge proposes refining funding conditions for pipeline relocation/construction to reflect practical cost-sharing arrangements between transit and road authorities, aligning with municipal franchise agreements or the *Public Service Works on Highways Act* to facilitate streamlined infrastructure development. These recommendations aim to improve regulatory clarity and efficiency while supporting essential infrastructure projects.

Recommendations

- Reserve the OEB exemption process to cases where duty-to-consult is actually triggered. Where the duty-to-consult is triggered in relation to pipeline relocation or reconstruction, consider a streamlined OEB process with simplified filing requirements, focusing only on the issue of Indigenous consultation.
- Clarify if the relevant criteria for Land Re-purposing will be included in the same regulation (i.e., O. Reg. 328/03) and consider setting out all criteria in the same regulation.
- Consider adjusting the funding condition to reflect the fact that while pipeline works are expected to be 100% funded by the transit authority, a different cost apportionment would apply to share part (but not all) of the costs with road authorities pursuant to either municipal franchise agreements or the cost allocation stipulated by the *Public Service Works on Highways Act*.

Below is Enbridge's more specific feedback on the proposed regulations.

Proposed Amendments in Bill 185

Enbridge commends the Government for and is supportive of the proposed *OEBA* amendments and associated LTC exemption conditions to be prescribed by regulation, which would significantly reduce regulatory burdens, streamline process and timelines, and lower costs associated with pipeline relocation or reconstruction, particularly in relation to LTC applications, which would be passed down to ratepayers at a time affordability is of immense concern for Ontarians. These changes are crucial in supporting key Government initiatives aimed at accelerating the construction of transit, roads, and new affordable housing to bolster Ontario's growing economy and population.

Together with the LTC exemption application option being proposed in relation to Bill 165, the proposed amendments will facilitate the efficient and timely completion of essential infrastructure projects in Ontario, particularly those outlined in the *Building Transit Faster Act, 2020*, the *More Homes Built Faster Act, 2022*, and the *Access to Natural Gas Act, 2018*. These amendments are vital for accelerating housing and transit developments across the province.

To ensure timely and cost-efficient pipeline relocations or reconstruction for priority transit and public infrastructure projects, especially those deemed to be in the public interest (where pipeline capacity does not increase, land requirements are under control of the transit project or road authority, and cost of relocation or reconstruction is exclusively paid by the priority transit project or road authority project), these amendments are essential.

Given the complex and dynamic nature of many transit or road authority-driven projects, there are often multiple dependencies involved that are beyond the gas utility's control, thus creating significant challenges in meeting the requirements of the transit or road authority project especially where a LTC application is needed. Factors such as project timing adjustments, delays, and evolving design specifications can impact LTC schedules. In certain cases, the prospect of an LTC itself introduces substantial project risks.

Additionally, the proposed amendments represent a balanced approach to addressing concerns related to priority transit and road authority projects' timelines and costs and regulatory requirements, particularly with regard to Indigenous consultation and environmental review. Given that Indigenous consultation requirements will continue to apply (where applicable) and that all relevant permits and approvals to satisfy environmental, technical, and safety requirements are still required before relocation or reconstruction work can commence, the proposed amendments strike a necessary balance between regulatory efficiency and the preservation of consultation processes critical to project development and community engagement.

Benefits

In conjunction with the Government's plan to introduce a LTC exemption applicant option for pipeline projects between \$2 million and \$10 million, the proposed amendments offer significant benefits that will positively impact priority transit and road authority projects and various initiatives reliant on planned pipeline works and services, such as community natural gas expansions, housing developments, and customer connections. By reducing regulatory burdens and associated costs for the Ontario Energy Board (OEB), natural gas rate payers, and pipeline project proponents, while upholding standards of Indigenous consultation and environmental

review/approvals, these amendments pave the way for more efficient and cost-effective completion of critical infrastructure projects in Ontario.

The exemption to certain pipeline relocation or reconstruction projects will mitigate delays and cost overruns for pipeline projects, translating to tangible benefits for customers and initiatives awaiting service from these planned pipelines. Notably, based on OEB performance standards, the proposed changes could save between five to seven months in the regulatory process per priority transit project exempted from the LTC process, without impacting Indigenous consultation and environmental review. This reduction in regulatory timeline is especially impactful given the significant cost savings associated with preparing and processing an LTC application, which typically ranges from approximately \$50,000 to \$200,000—costs that are ultimately passed on to customers.

Overall, these amendments represent a crucial step towards expediting critical infrastructure development while ensuring transparency, compliance, and cost efficiency for all stakeholders involved.

Further Opportunity to Streamline the LTC Exemption Conditions

Potential OEB Process

The regulatory posting states “ENERGY is considering the following approach for inclusion in regulation: Pipeline proponents facilitating the priority transit and road authority projects noted above will be required to file an exemption application with the OEB seeking an order for an exemption from LTC for their project...”. Given the nature of pipeline projects driven by transit and road authorities, Enbridge submits that it is not necessary to require an OEB exemption application for every such project in order for the section 90(2) exemption to be operative, provided all other exemption conditions are met. As a practical matter, such projects will occur within urban/built areas on previously disturbed lands, with little to no potential for impact on Indigenous communities. Further, as noted below, the other criteria being proposed in relation to section 90(2) are ascertainable without OEB involvement. There is therefore an opportunity for greater regulatory efficiency enhancement if the requirement for an OEB process is reserved to cases where duty-to-consult is actually triggered.

The regulatory proposal also states that: “... in cases where a relocated or reconstructed pipeline stays the same diameter or decreases in diameter, and where the acquisition of land or authority to use land is not necessary, an exemption would automatically apply and no consideration by the OEB would be required”. While this is a helpful clarification, for relocation or construction projects that do require additional land rights but that satisfy the other exemption conditions (e.g., land re-purposing; funding by the transit or road authority), adopting the recommendation above would go a step further in alleviating the regulatory burdens facing these priority infrastructure developments. In Enbridge’s view, the assessment of these other exemption conditions is expected to be clear and fact-driven, in that they can be ascertained for specific projects (e.g., where additional land is controlled by the transit authority and is planned to form part of public road allowance, and funding responsibility of the relevant authority is well-understood/documented) without involving an application to the OEB.

Enbridge fully supports and recognizes the importance of ensuring effective Indigenous consultation and undertakes consultation as appropriate on projects even where no LTC application is required. Where the duty-to-consult is triggered in relation to pipeline relocation or

reconstruction, Enbridge urges the Government to consider a streamlined OEB process with simplified filing requirements. For example, any such application to the OEB for section 90(2) exemption should only have to focus on the issue of Indigenous consultation. Further, the OEB process should be scoped efficiently to allow impacted Indigenous groups an opportunity to raise any concerns (and the OEB would only initiate a further process to assess the discharge of the duty-to-consult if the OEB deems it necessary based on any concerns raised) while materially shortening the duration typically associated with LTC proceedings.

If duty-to-consult is not triggered, then similar to the above-noted clarification that “an exemption would automatically apply”, Enbridge submits that an automatic exemption from s. 90(1) should be provided if applicable conditions are met and that no OEB process is warranted.

Clarity Regarding Criteria for "Land Re-purposing"

The regulatory posting describes the land acquisition-related criteria as follows: “The additional land that is necessary, is under control of the transit project or road authority project being facilitated and meets certain criteria set out in the regulations regarding re-purposing (e.g., the land will form part of a public road allowance upon completion of the transit project or road authority project)” (underline added for emphasis).

Based on the underlined text, it is not clear if the relevant criteria will be included in the same regulation in which all the changes described in this regulatory posting are expected to be reflected (i.e., O. Reg. 328/03) or some other regulation. For clarity and efficiency, Enbridge recommends that the relevant criteria be clearly set out all in the same regulation.

Funding of Pipe Relocation/Construction by Transit or Road Authority

In respect of the other exemption condition relating to funding of the relocation/construction project, the regulatory posting describes it as: “The cost of the relocation or reconstruction is exclusively paid by the priority transit project or road authority project”. Enbridge urges the Government to consider adjusting this condition to reflect the fact that, while pipeline works necessitated by priority transit projects are expected to be 100% funded by the transit authority (e.g., Metrolinx), a different cost apportionment would apply to share part (but not all) of the costs with road authorities pursuant to either the franchise agreement between Enbridge Gas and a municipality or the cost allocation stipulated by the *Public Service Works on Highways Act*.

Accordingly, the exemption condition should be adjusted to reflect this practical nuance – for instance, “the cost of the relocation or reconstruction is exclusively paid by the priority transit project or shared with the road authority pursuant to the cost apportionment provisions of the applicable municipal franchise agreement or the *Public Service Works on Highways Act*.” Adopting this recommendation would significantly enhance the practical value of the proposed exemption condition in realizing regulatory efficiency, in alignment with how funding of pipeline relocation/reconstruction is actually determined.

Conclusion

Enbridge appreciates the opportunity to provide feedback on and is supportive of the proposed amendments to the OEBA.

If you have any questions or require additional information, please do not hesitate to contact Islam Elsayed, Senior Advisor, Government Affairs (islam.elsayed@enbridge.com).