Enbridge Gas Feedback on Bill 171, Building Transit Faster Act, 2020

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Written Submission to the Ontario Standing Committee on Social Policy

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Executive Summary

Enbridge Gas welcomes the opportunity to provide written feedback on the Government of Ontario's *Bill 171, Building Transit Faster Act, 2020.* This submission builds on the collaborative Memorandum of Understanding (MOU) between Enbridge Gas and the Government of Ontario as well as our ongoing dialogue with government, industry and local partners to help deliver the four priority subway projects in a timely and cost-effective manner.

We know the City of Toronto and Government of Ontario are in need of these four priority transit projects and Enbridge Gas will be a helpful partner in ensuring that happens. Enbridge Gas has significant experience working with Metrolinx on previous transportation relocation projects. In our submission you will find best practices that show that with the right tools and participation, the relocation of utility infrastructure can be made without major difficulties. Additionally, you will find recommendations for *Bill 171 – The Building Transit Faster Act 2020* that Enbridge Gas believes would help improve timelines and clarify processes. Further, Enbridge Gas has included additional considerations for the Government of Ontario and Metrolinx that would help advance the required relocations.

About Enbridge[1]

Enbridge's perspective is built on our role as North America's premier energy infrastructure company, with strategic interests across a range of energy solutions. We safely deliver an average of 2.9 million barrels of crude oil each day and we move roughly 22% of all natural gas consumed in the U.S.

Our regulated utilities, including Enbridge Gas, serve approximately 3.7 million customers in Ontario and Quebec. We are also involved in electricity infrastructure with interests in more than 1,700 MW of net renewable generating capacity, and an expanding offshore wind portfolio in Europe.

Enbridge is a large employer with over 4,500 Ontario-based employees and is a significant economic driver in the province. In 2019, Enbridge invested over $900 million in capital expenditures in Ontario (e.g. items such as pipe steel, system integrity-related investments, and capital leases) and $1.55 billion in operating and administrative expenditures in 2019 (e.g. maintenance costs, equipment leases, power consumption and personnel salaries and wages). In Ontario alone, Enbridge creates $156.6 million in tax revenues. This revenue can be used for schools, infrastructure, health and wellness, recreation, transportation and other services that help strengthen the fabric of Ontario communities.

Leveraging private partnerships and best practices

Enbridge Gas has and continues to be a strong partner for the Government of Ontario on delivering key infrastructure projects, including investments in major transit systems. On February 18th, Enbridge Gas and the Government of Ontario signed a collaborative MOU outlining how Enbridge Gas would be a willing participant in helping to facilitate the four priority transit projects. This MOU demonstrated that the province, Metrolinx and Infrastructure Ontario will work together with affected utilities to achieve common goals. Many of the common goals are related to ensuring that utilities are a part of the planning process when it comes to making some of the decisions around timelines, engagement and cost recovery.

Enbridge Gas, Infrastructure Ontario, Metrolinx and the province have been working collaboratively toward achieving many positive outcomes including; agreement by all parties to create an expedited process for locating and developing treatments for the protection and relocation of utility infrastructure that conflicts with where the new transit lines are planned, the creation of a plan to reduce the risk

[1] "Enbridge" refers to Enbridge Inc. and its subsidiary companies.

of schedule or budget impacts and that the transit projects will not adversely affect the safety and reliability of Enbridge Gas infrastructure. Enbridge Gas has successfully worked with Metrolinx on transit projects in the past and understands what is required for utility infrastructure relocations and protection. With a signed MOU and a working Preparatory Activities Agreement (PAA) and RFP agreement, Enbridge Gas believes we are on a positive path forward. Through previous working experience, Enbridge Gas and Metrolinx have created key processes that we believe should be brought forward for future projects:

- PAA & RFP agreement to outline what Enbridge will do to help support the government's procurement process ensuring that all parties are informed and that appropriate dialogue can occur
- Collaborative approach to identification of utility conflicts
- Creation of relocation design summary packages which include design, dependencies, and estimate of cost and duration
- Collaborative approach for technical design input
- In previous transit relocation projects Enbridge Gas provided: utility baseline document, inputs document as well as Enbridge Gas work restrictions/embargo period document
- Advancement of relocations under PAA so that the work is completed prior to ProjectCo commencing in order to reduce ProjectCo scope and risk

Targeted feedback on draft legislation

Process for project execution remains unclear – Bill 171 (ss. 46-51) contemplates that the utility will receive a notice from Metrolinx to do work necessary for a transit project, that the utility and Metrolinx will coordinate the work, the utility company will make reasonable efforts to acquire necessary approvals/permits and the parties may agree on the apportionment of actual cost of the work. This is very similar to how coordination occurs currently. Though final details are still unknown, we look forward to finalizing a PAA to help alleviate some of these concerns and allowing the relocation work to begin.

Bill 171 does not appear to facilitate/expedite current process of utility relocations/work – The Bill does not appear to have provisions that facilitate or expedite required utility work. On the contrary, the Bill imposes a minimum timeline of 60 days to complete work and offers no facilitation of such work. If a utility will conduct required relocations prior to transit work proceeding, it is also not clear how the timing of designating land as transit corridor land will impact utility work.

The legislation states "The notice shall specify the date by which the notice must be complied with, and the date shall be the date agreed on by Metrolinx and the utility company, or, in default of agreement, shall be at least 60 days after the notice is served." These timelines are not reasonable. Enbridge Gas and Metrolinx must work collaboratively to select a new gas main location that maintains gas networks and meets Metrolinx requirements which allows for space to construct transit infrastructure. Bill 171 allows for some expedited permitting and land acquisition but this has not been granted to the utilities. Special permitting, as needed land acquisition and leave to constructs are alone over the 60 day timeline. A majority of residents and businesses within the priority subway project zone are gas customers. Natural gas relocations must consider customer services as each customer requires individual service with scheduled technicians for servicing associated to the work. Unlike the electric, water and telecom utilities Enbridge Gas is mandated to enter a customer's premise to complete the service work. The distribution of natural gas requires code compliance, heightened governance and oversight for safe working protocols which are embedded in our end to end processes. It is not possible to complete any substantive work within 60 days. When it comes time to set these timelines, Enbridge Gas would appreciate being a part of the consultation to help set realistic timelines for any project steps that involve Enbridge Gas.

Potential contingent cost liabilities imposed on utilities are unprecedented and lack clear criteria – Utilities are potentially subject to unforeseeable and uncontrollable costs related to the priority transit projects pursuant to sections 68 and 69 of the Bill. The progress of these transit projects is largely outside of the control of the utilities. The Bill provides no explanation for what might be contained within a notice with which a utility must comply or against which non-compliance may be measured, except for the impossible minimum 60 day time limit to complete work (the nature of which is currently unknown). It is not known how a failure to comply would be determined. Enbridge Gas will take all reasonable steps to obtain required permits/approvals and conduct the work. How might these actions be considered a failure to comply? Will Metrolinx be empowered to require compliance with unreasonable timelines and terms of work?

Further, utilities are exposed to loss or expenses Metrolinx may incur as a result of such failure to comply. Such financial exposure is undeterminable and subjects a utility to unacceptable levels of financial risk for projects over which utilities have no control. For Enbridge Gas infrastructure, it would violate the MOU for Metrolinx to take over the utility work because the parties to the MOU acknowledge that Enbridge Gas is a self-performing utility. The fact that utilities would not be permitted to recover payable costs under sections 51, 68 and 69 of the Bill is also egregious because utilities do not know the forms of agreements that Metrolinx may require them to execute and the nature and level of costs to which they may be exposed and whether they are reasonable in the context of the utility's business.

Broad administrative penalties and other enforcement powers for failure to comply – These broad powers to impose penalties or issue offences for "failure to comply" attract the same concerns as the above uncertainties about how a failure to comply will be determined and whether compliance will be measured against an unreasonable or impractical standard.

Additional recommendations to help reduce red tape and deliver priority transit projects

Raise the Ontario Energy Board's leave to construct threshold - Raising the threshold from $2 million to $10 million would significantly reduce regulatory burden. Enbridge Gas has raised this previously as a way to expedite projects by 6-9 months. The threshold is very outdated. Even a minor pipeline relocation can quickly breach the $2 million threshold. Raising the threshold to $10 million would position Enbridge Gas to help deliver the four priority subway projects in a more effective and timely manner. It would also allow us more quickly and effectively to deliver upcoming community projects. With transit focused development and community hubs, additional capacity may be required, which would result in the upsizing of pipe and need for easements.

Complete utility relocation work under Metrolinx – Enbridge Gas would like to have assurance that as much relocation work as possible done by Enbridge Gas can be completed under Metrolinx. By allowing this in previous transit relocations the benefits have been that 88-95% of Enbridge Gas relocations were entirely removed from ProjectCo's risk profile.

Access to subsurface utility engineering data – If Metrolinx allows Enbridge Gas to obtain the required subsurface utility engineering data, it will allow Enbridge Gas to create higher quality designs with more accurate estimated cost and duration as well as reduced field changes. If provided this information, it will minimize construction delays.

Increase Metrolinx funded Enbridge Gas personnel – Increasing the number of Metrolinx funded Enbridge Gas roles will further increase the ability to review and respond to Metrolinx and ProjectCo's questions or concerns. This will help address the increased demand on Enbridge Gas to support the priority transit projects.

Garner municipal support for extended working hours – In order to be able to move Enbridge Gas lines quickly which would allow transit lines to be built quicker, Enbridge Gas is requesting that Metrolinx have discussions with municipalities to support the Enbridge Gas relocations. These discussions should include the need for utilities to have increased working hours, the ability to do work on the weekend, and overnight and long-term lane closures. This would help advance Enbridge Gas construction by 5-30%, again reducing construction timelines.

Undertake lessons learned exercise – Lastly, we would request that Metrolinx and Enbridge Gas conduct a "lessons learned" exercise to continue the healthy working relationship currently in place. This could include the adoption of best practices from previous projects and identifying areas that require improvement while working together on solutions.

Conclusion

Enbridge Gas appreciates the opportunity to provide feedback on *Bill 171, Building Transit Faster Act, 2020*.

As North America's premier energy infrastructure company and a significant contributor to Ontario's economic growth, we remain committed to continue working with the Government of Ontario and our local partners to help deliver the priority transit projects.

Contact

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).