



Ontario Energy Board Commission de l'énergie de l'Ontario

DECISION AND ORDER

EB-2018-0097

ENBRIDGE GAS DISTRIBUTION INC.

Bathurst Reinforcement Project

BEFORE: **Emad Elsayed**
 Presiding Member

Allison Duff
Member

January 3, 2019

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1 INTRODUCTION AND SUMMARY

Enbridge Gas Distribution Inc. (Enbridge) applied to the Ontario Energy Board (OEB) under sections 90 and 97 of the *Ontario Energy Board Act, 1998* (OEB Act) for an order granting leave to construct natural gas pipelines and ancillary facilities in the North York area of the City of Toronto (the Bathurst Reinforcement Project, or the Project).

Specifically, Enbridge is seeking the following orders:

- a) Under section 90 of the OEB Act, leave to construct approximately 3.2 kilometres of nominal pipe size (NPS) 12 inch steel high pressure natural gas pipeline, approximately 20 metres of NPS 8 inch steel intermediate pressure pipeline, and associated pressure regulating equipment
- b) Under section 97 of the OEB Act, approval of the proposed form of land use agreement

A map of the proposed Project is attached as Schedule A to this Decision and Order.

For the reasons that follow, the OEB finds that the Project is in the public interest, although the OEB had some initial concerns with Enbridge's evaluation of Demand Side Management (DSM) alternatives as a means of deferring or replacing the Project. Leave to construct the Project is granted subject to the Conditions of Approval attached as Schedule B to this Decision and Order. The OEB also approves the proposed form of land use agreement.

2 PROCESS

Enbridge filed its application on August 1, 2018. A Notice of Hearing was issued on August 30, 2018. School Energy Coalition (SEC) was granted intervenor status and cost award eligibility.

The OEB proceeded by way of a written hearing. In accordance with the procedural order issued on September 21, 2018, Enbridge responded to interrogatories from OEB staff and SEC on October 11, 2018. SEC and OEB staff filed written submissions on October 22 and 23, 2018, respectively. Enbridge filed its reply submission on November 6, 2018.

SEC and OEB staff submitted that there was insufficient evidence to support Enbridge's assertion that DSM is not a viable alternative to the Project, and requested that the OEB require Enbridge to provide further information before making a decision on the application. In its reply submission, Enbridge objected to this request.

The OEB issued a second procedural order on November 12, 2018 which allowed for an additional round of interrogatories and submissions on the DSM issue.

Enbridge responded to the supplemental interrogatories on November 26, 2018. SEC and OEB staff filed supplemental written submissions on December 3, 2018. Enbridge filed its supplemental reply submission on December 10, 2018.

3 LEAVE TO CONSTRUCT

This application seeks an order for leave to construct a natural gas pipeline under section 90 of the OEB Act. Section 96 of the OEB Act provides that the OEB shall make an order granting leave if the OEB finds that “the construction, expansion or reinforcement of the proposed work is in the public interest”. When determining whether a project is in the public interest, the OEB typically examines the need for the project, the nature of the proposed facilities and any alternatives, environmental matters, Indigenous consultation, the project economics, and conditions of approval.

In this case, the main issue was whether the Project is needed, and relatedly, whether there is a viable alternative. More specifically, the issue was whether Enbridge had adequately considered DSM as a means of avoiding or delaying the project.

3.1 NEED FOR THE PROJECT / ALTERNATIVES TO THE PROJECT

Enbridge submitted that the Project is needed to address current low pressure issues in its existing system and forecast load growth. Enbridge provided information on forecast customer additions beginning in 2020.

Enbridge proposed to initiate construction of the Project in April 2019 with gas distribution service continuing to be available for existing customers and service to new customers starting in December 2019. Enbridge explained that it proposes an in-service date of December 2019, despite the customer addition forecast not beginning until 2020, because it must coordinate its construction with that of other utilities in the same area. Upon completion of the Project and other utility works on Bathurst Street, Enbridge anticipates that the City of Toronto will impose a moratorium on further work along the preferred route.¹

In December 2014, the OEB issued a DSM framework for natural gas distributors. The OEB mandated that, “[a]s part of all applications for leave to construct future infrastructure projects, the gas utilities must provide evidence of how DSM has been considered as an alternative at the preliminary stage of project development.”²

¹ SEC interrogatory #6.

² Report of the Board, *Demand Side Management Framework for Natural Gas Distributors (2015-2020)*, December 22, 2014 (EB-2014-0134), p. 35. In the recent *Report of the Ontario Energy Board: Mid-Term Review of the Demand Side Management Framework for Natural Gas Distributors (2015-2020)*, November 29, 2018 (EB-2017-0127/EB-2017-0128), the OEB reiterated that leave to construct applications should include “a comprehensive evaluation of conservation and energy efficiency considered as an alternative to reduce or defer infrastructure investments”, p. 20-21.

Enbridge did not include any discussion of DSM as an alternative to the Project in its application.

In response to an SEC interrogatory, Enbridge provided a report prepared by ICF Canada on behalf of Enbridge and Union Gas Limited, dated January 2018, entitled *Natural Gas Integrated Resource Planning: Initial Assessment of the Potential to Employ Targeted DSM to Influence Future Natural Gas Infrastructure Investment*, which had been filed in the OEB's DSM Mid-term review.³ The ICF report included a case study on the Bathurst Reinforcement Project. It concluded that:

... it may be more cost-effective to launch geo-targeted DSM program [sic] than to install the reinforcement project. This finding is primarily a result of the high capital costs of the reinforcement project and the relatively small demand growth rate in this community (i.e. 0.5% annually).

Enbridge provided an internal report, prepared for Enbridge's senior management in May 2018, which explained that ICF's conclusion was no longer valid, because it relied on outdated assumptions. In particular, Enbridge had revised its growth forecasts. Instead of an average annual load growth of 158 m³/h, which Enbridge had given to ICF, Enbridge forecast growth increased to 590 m³/h. Enbridge had also expanded the "area of impact" considered in the planning process.

In their initial submissions, OEB staff and SEC both requested the opportunity to ask supplemental interrogatories about why Enbridge had significantly increased its growth forecast, and the extent to which Enbridge had considered the feasibility of using DSM to defer or reduce the need for the Project. That request was granted by the OEB.

In its responses to the supplemental interrogatories, Enbridge explained that it followed the same planning for the Bathurst Reinforcement Project that it follows for all of its reinforcement projects. The planning was iterative, beginning with a high level plan and then moving towards detailed design: "It is certainly not uncommon for there to be differences, sometimes material, between original estimates generated in the early planning stages and those generated as part of the final detailed project design and specifications work."⁴ Enbridge further explained that the growth forecasts provided to ICF were based on Enbridge's 2016 Long Range Plan (LRP), "which was developed relying largely on long term organic growth forecasts provided by a third party."⁵ The

³ EB-2017-0128

⁴ OEB staff IR#18.

⁵ *Ibid.*

LRP for 2017/2018 was more sophisticated, as it incorporated information about specific development proposals, in addition to third party data about longer-term growth. Using the more accurate forecasting methodology in the new LRP, and looking at a larger planning area, Enbridge determined that the growth forecast provided to ICF was too low: “The combination of short term development knowledge, long term growth forecasts, and a greater understanding of the impact of upstream development on low inlet pressures in the area led to the final forecast relied upon by this Application.”⁶

Enbridge also included with its responses to the supplemental interrogatories an updated analysis prepared by ICF using Enbridge’s revised growth forecasts. In the updated analysis, ICF stated that, “For this case study, geo-targeted DSM does not appear to be cost-effective.”⁷

In its supplemental submission, OEB staff argued that given the additional information provided, Enbridge had demonstrated that DSM is not a viable alternative. However, OEB staff was concerned with Enbridge’s processes. It appeared that Enbridge approved the Project internally before it considered the viability of the DSM alternative. OEB staff noted that internal approval was provided in August 2017, several months before ICF completed its report, and there was no evidence of any other studies or assessments of the suitability of DSM as an alternative to the Project that were completed before the ICF report. OEB staff pointed out that the OEB had previously said that DSM “should be considered as an alternative at the preliminary stage of project development”, and that it “expects the gas utilities to consider the role of DSM in reducing and/or deferring future infrastructure investments far enough in advance of the infrastructure replacement or upgrade so that DSM can reasonably be considered as a possible alternative.”⁸

SEC argued that Enbridge never seriously considered using DSM to defer or displace this Project, despite the OEB’s direction to do so. SEC further submitted that Enbridge had not adequately explained why it increased its load forecast so significantly after ICF concluded that DSM may be cost-effective. SEC asserted that DSM actually remains a viable option in this case. Nevertheless, SEC did not recommend that the OEB refuse to grant leave to construct, as doing so might create an unacceptable level of supply uncertainty in the short term. Instead, SEC suggested that the OEB approve the application, but not allow Enbridge to earn a return on the investment. This would not have a material impact on Enbridge, but would “send a clear message to Enbridge that

⁶ OEB staff IR#18.

⁷ Attachment to OEB staff IR#20.

⁸ Report of the Board, *Demand Side Management Framework for Natural Gas Distributors (2015-2020)*, December 22, 2014 (EB-2014-0134), p. 7.

continued delays in implementing integrated resource planning, in the face of clear direction from the Board, are not acceptable.”

In Enbridge’s reply to the supplemental submissions, it took issue with SEC’s suggestion that it has not taken DSM seriously. Enbridge also raised several objections to SEC’s proposal to deny the ability to earn a return on the Project, including that:

- It was procedurally unfair for the proposal to be raised so late in the process, rather than in the first round of interrogatories, as Enbridge was unable to file evidence about “the impropriety and impact of such a proposal”
- OEB staff was not provided with an opportunity to comment
- It would be inconsistent with the regulatory compact by denying the ability to earn a return on a needed infrastructure investment, and would therefore set a precedent that would discourage all utilities from responding in a timely manner to system needs
- It would amount to a finding of non-compliance, which can only be made in accordance with the procedures set out in the compliance provisions of the OEB Act

Findings

The OEB finds that Enbridge should have provided more evidence as part of its application to support its conclusion that DSM is not a viable alternative to the Project. The OEB had to extend the regulatory process and provide for a second round of interrogatories to obtain such evidence.

The OEB further finds that Enbridge’s process for considering DSM as a viable alternative to the Project was not appropriate. Consideration of the DSM alternative should have been an ongoing process starting at the early stages of project identification and updated to reflect material changes in underlying assumptions such as demand forecasts. The assessment of the DSM alternative should have been completed before Enbridge sought internal approval of the Project.

Despite these shortcomings, the OEB finds that it would not be in the public interest to deny leave to construct. The OEB bases its approval on the additional evidence provided by Enbridge which showed that the DSM was no longer a viable alternative. In addition, the OEB is cognizant of the fact that delaying the Project could create supply uncertainty in the area.

The OEB is not imposing a financial penalty on Enbridge, as suggested by SEC, as the regulatory and legal implications of such a penalty have not been considered and tested in this proceeding.

In future applications, the OEB directs Enbridge to provide sufficient and timely evidence of how DSM has been considered as an alternative at the preliminary stage of project development. Otherwise, Enbridge faces the risk that future application will be deemed incomplete.

3.2 PROJECT ECONOMICS

In accordance with the OEB's EBO 188 Guidelines⁹, Enbridge provided evidence that it used the discounted cash flow (DCF) method in its evaluation of the economic feasibility of the Project. The EBO 188 Guideline's profitability index calculation uses forecast revenues, based on the customer additions forecast for a 10-year period, with a DCF analysis of 40 years. The total capital cost of the Project is estimated to be approximately \$9.15 million and its profitability index (PI) is forecast to be 0.857. This exceeds the minimum PI of 0.8 required by the EBO 188 Guidelines for an individual project.

OEB staff noted that there is a 30% contingency applied to the Project cost sub-total and asked Enbridge to explain the need for such contingency. Enbridge responded that it followed its established guidelines for a project at this stage of scope development and risk profile. OEB staff noted that the contingency is higher than the 25% associated with Enbridge's Liberty Village project.¹⁰ In that proceeding, the OEB found there was "insufficient evidence to support the assumed 25% contingency level."¹¹

OEB staff submitted that it is reasonable to expect the level of contingency to be higher the less developed the planning. Accordingly, OEB staff did not suggest that the contingency is unreasonable. However, given the level of cost uncertainty at the time the application was developed and filed, in OEB staff's view, it would be appropriate to include a condition of approval similar to Condition 5 attached to the OEB's approval of the Liberty Village project that imposed additional final cost reporting requirements. Enbridge consented to such a condition in its interrogatory responses.

⁹ Appendix B to the Report of the Board, January 30, 1998 (EBO 188).

¹⁰ EB-2018-0096.

¹¹ *Ibid.*, Decision and Order, September 27, 2018, pages 5-6.

Findings

The OEB agrees with OEB staff's proposal, which was accepted by Enbridge, to include a final cost reporting condition in the Conditions of Approval for this Project.

3.3 ENVIRONMENTAL AND OTHER MATTERS

Enbridge retained Dillon Consulting (Dillon) to complete an environmental assessment and to propose a route for the pipeline. Enbridge followed the OEB's Environmental Guidelines¹² to assess the potential environmental impact of the Project. The environmental assessment, including alternative routing and proposed mitigation measures, was documented in an Environmental and Socio-Economic Impact Assessment Report (ER) completed by Dillon on behalf of Enbridge. Dillon does not anticipate any permanent or adverse environmental impacts from the construction and operation of the Project, provided the mitigation measures recommended in the ER are followed.

The proposed facilities are composed of approximately 3.2 km of NPS 12 inch high-pressure steel pipe and approximately 20 m of NPS 8 inch intermediate pressure steel pipe and is located within the municipal road allowance. The proposed route begins at the intersection of Bathurst Street and Steeles Avenue West, travels south along Bathurst Street, and terminates south of the intersection of Bathurst Street and Ellerslie Avenue. There would be a district station constructed at the intersection of Bathurst Street and Betty Ann Drive.

Dillon proposed two potential routes; the Preliminary Preferred Route (PPR) and the Alternative Route (AR). The reasons for selecting the PPR as the Final Preferred Route (FPR) related to considerations of biophysical, socio-economic and technical constraints, as well as feedback from consultation activities.

In accordance with the OEB's Environmental Guidelines, Enbridge contacted the Ministry of Energy (MOE)¹³ with respect to the Crown's duty to consult Indigenous groups on January 19, 2018, and again on February 2, 2018 with updated routing. Enbridge received a written reply from the MOE on February 27, 2018. The MOE indicated that no duty to consult has been triggered, and it will not be necessary for the MOE to provide a letter of opinion regarding the sufficiency of Indigenous consultation.

¹² *Environmental Guidelines for the Location, Construction and Operation of Hydrocarbon Pipelines in Ontario*, 7th Edition, 2016 (Environmental Guidelines).

¹³ Subsequent to Enbridge filing its application, the MOE became the Ministry of Energy, Northern Development and Mines.

On September 20, 2018, Enbridge received written confirmation from the Ministry of Tourism Culture and Sport (MTCS) of its acceptance of Enbridge's Stage 1 Archaeological Assessment.

By way of the Ontario Pipeline Coordinating Committee (OPCC) review process, Enbridge provided the design specifications of the Project to the Technical Standards and Safety Authority (TSSA). The TSSA has not expressed concern with the safety or design of the proposed facilities.

In its submission, OEB staff did not express concerns about any of these issues. SEC's submission did not address these issues.

Findings

The OEB finds that Enbridge selected a preferred route for the Project based on an adequate assessment of potential routes. The OEB accepts Dillon's assessment that it does not anticipate any long-term impacts from the construction and / or operation of the Project. The OEB finds that Enbridge will be able to adequately address the environmental issues by implementing the mitigation recommendations identified in the ER and by adhering to the Conditions of Approval relating to mitigation, construction monitoring and reporting.

The OEB is satisfied with the September 20, 2018 clearance letter from MTCS regarding the archaeological assessment.

In light of the MOE's confirmation that the Crown's duty to consult does not apply to the Project, the OEB is not required to make any findings in respect of such consultation.

3.4 CONDITIONS OF APPROVAL

OEB staff proposed the conditions of approval typically attached to leave to construct decisions, plus the addition of the cost reporting condition (described above) that was attached to the OEB's approval of the Liberty Village project. Enbridge reviewed the draft conditions of approval and indicated that it had no concerns.

Findings

The OEB will adopt the conditions proposed by OEB staff and accepted by Enbridge.

The approved Conditions of Approval are attached as Schedule B to this Decision and Order.

4 LAND MATTERS

The entire proposed route is located within municipal road allowance. Although Enbridge does not expect to require the use of private land, it has filed a Form of Working Area Agreement which Enbridge would offer to affected landowners should the need arise. The OEB has previously approved this Form of Working Area Agreement.¹⁴

Through its consultation process, Enbridge was made aware of concerns about traffic congestion and access to emergency services for senior citizens during construction of the Project. Enbridge anticipates that these impacts will be minimized by implementing the mitigation measures identified in the ER.

Findings

The OEB finds that land matters associated with this Project are being adequately addressed and approves the form of land use agreement filed by Enbridge.

¹⁴ The OEB previously approved this Form of Working Area Agreement for use in the proceeding for Enbridge's Liberty Village Project (EB-2018-0096).

5 ORDER

THE ONTARIO ENERGY BOARD ORDERS THAT:

1. Enbridge is granted leave, pursuant to subsection 90(1) of the OEB Act, to construct approximately 3.2 kilometres of nominal pipe size (NPS) 12 inch steel high pressure natural gas pipeline, approximately 20 metres of NPS 8 inch steel intermediate pressure pipeline, and pressure regulating equipment.
2. The OEB approves the proposed form of land use agreement that Enbridge has offered or will offer to each owner of land affected by the approved pipeline route for the Project.
3. Leave to construct is subject to Enbridge complying with the Conditions of Approval set forth in Schedule B.
4. SEC shall file with the OEB and forward to Enbridge its cost claim in accordance with the OEB's *Practice Direction on Cost Awards* on or before January 17, 2019.
5. Enbridge shall file with the OEB and forward to SEC any objections to the claimed costs on or before January 31, 2019.
6. If Enbridge objects to SEC's costs, SEC shall file with the OEB and forward to Enbridge any responses to any objections for cost claims on or before February 7, 2019.
7. Enbridge shall pay the OEB's costs of and incidental to this proceeding upon receipt of the OEB's invoice.

DATED at Toronto January 3, 2019

ONTARIO ENERGY BOARD

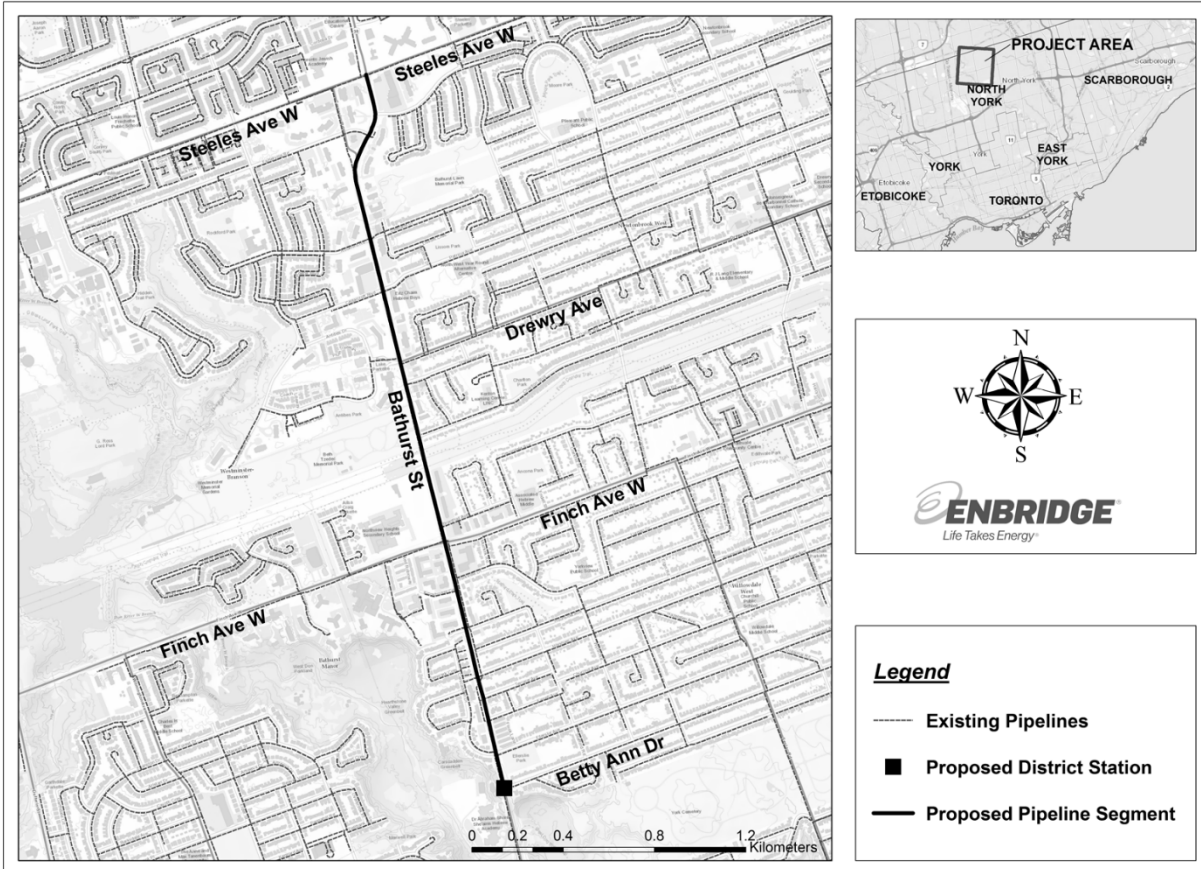
Original Signed By

Kirsten Walli
Board Secretary

SCHEDULE A
DECISION AND ORDER
ENBRIDGE GAS DISTRIBUTION INC.
EB-2018-0097
JANUARY 3, 2019

SCHEDULE A – MAP

Proposed Pipelines to Serve Bathurst St



SCHEDULE B
DECISION AND ORDER
ENBRIDGE GAS DISTRIBUTION INC.
EB-2018-0097
JANUARY 3, 2019

SCHEDULE B – CONDITIONS OF APPROVAL

Application under Section 90 of the OEB Act

Enbridge Gas Distribution Inc.

EB-2018-0097

1. Enbridge Gas Distribution Inc. (Enbridge) shall construct the facilities and restore the land in accordance with the OEB's Decision and Order in EB-2018-0097 and these Conditions of Approval.
2. (a) Authorization for leave to construct shall terminate 18 months after the decision is issued, unless construction has commenced prior to that date.

(b) Enbridge shall give the OEB notice in writing:
 - i. of the commencement of construction, at least ten days prior to the date construction commences;
 - ii. of the planned in-service date, at least ten days prior to the date the facilities go into service;
 - iii. of the date on which construction was completed, no later than 10 days following the completion of construction; and
 - iv. of the in-service date, no later than 10 days after the facilities go into service.
3. Enbridge shall implement all the recommendations of the Environmental Report filed in the proceeding, and all the recommendations and directives identified by the Ontario Pipeline Coordinating Committee review.
4. Enbridge shall advise the OEB of any proposed change to OEB-approved construction or restoration procedures. Except in an emergency, Enbridge shall not make any such change without prior notice to and written approval of the OEB. In the event of an emergency, the OEB shall be informed immediately after the fact.
5. Concurrent with the final monitoring report referred to in Condition 6(b), Enbridge shall file a Post Construction Financial Report, which shall indicate the actual capital costs of the project and shall provide an explanation for any significant variances from the cost estimates filed in this proceeding. Enbridge shall also file a copy of the Post Construction Financial Report in the proceeding where the actual capital costs of the project are proposed to be included in rate base or any proceeding where Enbridge proposes to start collecting revenues associated with the project, whichever is earlier.

6. Both during and after construction, Enbridge shall monitor the impacts of construction, and shall file with the OEB one paper copy and one electronic (searchable PDF) version of each of the following reports:
 - a) a post construction report, within three months of the in-service date, which shall:
 - i. provide a certification, by a senior executive of the company, of Enbridge's adherence to Condition 1;
 - ii. describe any impacts and outstanding concerns identified during construction;
 - iii. describe the actions taken or planned to be taken to prevent or mitigate any identified impacts of construction;
 - iv. include a log of all complaints received by Enbridge, including the date/time the complaint was received, a description of the complaint, any actions taken to address the complaint, the rationale for taking such actions; and
 - v. provide a certification, by a senior executive of the company, that the company has obtained all other approvals, permits, licences, and certificates required to construct, operate and maintain the proposed project.
 - b) a final monitoring report, no later than fifteen months after the in-service date, or, where the deadline falls between December 1 and May 31, the following June 1, which shall:
 - i. provide a certification, by a senior executive of the company, of Enbridge's adherence to Condition 3;
 - ii. describe the condition of any rehabilitated land;
 - iii. describe the effectiveness of any actions taken to prevent or mitigate any identified impacts of construction;
 - iv. include the results of analyses and monitoring programs and any recommendations arising therefrom; and
 - v. include a log of all complaints received by Enbridge, including the date/time the complaint was received, a description of the complaint, any actions taken to address the complaint, the rationale for taking such actions.