



**EB-2011-0391**

**APPLICATION BY ENBRIDGE GAS DISTRIBUTION INC. FOR  
AUTHORITY TO EXPROPRIATE INTEREST IN CERTAIN LANDS**

**NOTICE OF APPLICATION**

Enbridge Gas Distribution Inc. ("Enbridge") filed an application (the "Application"), dated November 29, 2011, with the Ontario Energy Board (the "Board") for a declaration and order(s) to recognize existing rights and to expropriate certain lands for the purposes of continuing to operate a natural gas distribution main in the City of Welland ("Welland"). The Board has assigned File No. EB-2011-0391 to the Application.

The Application relates to approximately 2800 metres of an existing Nominal Pipe Size ("NPS") 12 Extra High Pressure ("XHP") steel gas main that crosses under the Welland Canal (the "NPS 12 pipeline") near Townline Tunnel Road and approximately 365 metres of an existing NPS 8 XHP steel gas main on the west side of the Welland Canal (the "NPS 8 pipeline") (together the "Pipelines"). The NPS 8 pipeline was constructed in 1972 to provide natural gas to the City of Port Colborne ("Port Colborne"). The NPS 12 pipeline was constructed in 1975 to provide natural gas to the Town of Fort Erie. The general layout of the Pipelines is attached as Appendix "A".

A description of the lands affected by the Pipelines and that are the subject of this proceeding (the "subject lands") is as follows:

- (a) Part of Lots 21, 22 and 23 Concession 5, and part of the allowance for road between Lots 22 and 23 (closed by By-law 414) now in the City of Welland (formerly the geographic Township of Humberstone) in the Regional Municipality of Niagara being Parts 1, 2, 3 and 4 of Reference No. 11-12-209-00-B;

- (b) Part of Lots 20 and 21, Concession 5, and Part of the allowance for road between Lots 20 and 21 (closed by By-law 4337, Inst. 90236B) now in the City of Welland (formerly the geographic Township of Humberstone) in the Regional Municipality of Niagara being Parts 1, 2, and 3 of Reference No. 11-12-209-00-C;
- (c) Part of Lots 16, 17, 18 and 19, Concession 5, and part of the Road Allowance between Lots 16 and 17 and Part of the Road Allowance between lots 18 and 19 (closed by By-law 4350 Inst. R0185603), Concession 5, formerly Geographic Township of Humberstone now in the City of Welland, Regional Municipality of Niagara designated as Parts 1 and 2 on Reference No. 11-12-209-00-D;
- (d) Part of Lot 16, Concession 5, (formerly the geographic Township of Humberstone) now in the City of Welland in the Regional Municipality of Niagara being Part 1 of Reference No. 11-12-209-00-E;

When the Pipelines were constructed, the subject lands were owned by the St. Lawrence Seaway Authority (the "SLSA"). At that time, the SLSA entered into license agreements with the Consumers' Gas Company (Enbridge's predecessor) giving the gas utility certain rights to install, operate, maintain, and replace the Pipelines. In the years since, the subject lands were transferred from the St. Lawrence Seaway Management Corporation (the successor to the SLSA) to the Canada Lands Corporation CLC Limited, who in turn transferred the subject lands to private individuals.

Enbridge has requested that the Board recognize its existing legal rights and interest in the subject lands as set out in the *Public Utilities Act*, R.S.O. 1990, c.P-52.

Enbridge has requested that the Board issue an Order:

- 1) For a declaration that Enbridge has certain rights and interest in the subject lands;
- 2) For a declaration that Enbridge is not trespassing on the subject lands;

- 3) Expropriating an easement over the subject lands in favour of Enbridge Gas Distribution Inc. and any successors, assigns, servants or agents thereof, in perpetuity to survey, remove trees, clear, lay, construct, install, operate, use, inspect, remove, renew, replace, alter, enlarge, reconstruct, repair, expand, maintain pipelines and all works, appurtenances, attachments, apparatus, appliances, markers, fixtures and equipment; and,
- 4) Convening a settlement conference at the earliest opportunity.

If the Board finds it in the public interest to do so, it may make an order under Part VI of the *Ontario Energy Board Act, 1998*, S.O 1998, Chapter 15, Schedule B (the “Act”) authorizing Enbridge to expropriate an easement over the subject lands. However, **the Board does not have the authority to determine the amount of compensation payable**. If the authority to expropriate is granted and the affected parties do not agree upon compensation, section 100 of the Act requires that compensation be determined under the *Expropriations Act*, R.S.O. 1990, Chapter E.26.

### **How to Participate**

You may participate in this proceeding by requesting either intervenor or observer status, or by submitting a letter of comment:

1. **Intervenors** participate actively in the proceeding (i.e., submit written questions, evidence, and arguments, and cross-examine witnesses at an oral hearing). You may request intervenor status by sending a letter of intervention to the Board and copying Enbridge no later than **January 31, 2012**. The letter of intervention must include:
  - a. A description of how you are, or may be, affected by the outcome of this proceeding;
  - b. If you represent a group, a description of the group and its membership; and
  - c. Whether you intend to seek an award of costs and the grounds for your cost award eligibility.

As an intervenor you have the right to actively participate in the proceeding and will receive copies of relevant documents issued by the Board.

2. **Observers** do not participate actively in the proceeding but receive documents issued by the Board in the proceeding. There is no fee for observers to receive documents issued by the Board. You may request observer status by sending a request to the Board no later than **January 31, 2012**.
3. **Letters of Comment** are to be sent to the Board no later than **January 31, 2012**. All letters of comment will be placed on the public record, subject to the privacy terms for personal information stated below. This means that the letters will be available for viewing at the Board's offices and will be placed on the Board's website.
4. **Affected Landowners** will automatically be given copies of the Application and other relevant documents issued by the Board in this proceeding. If you are an affected landowner, you may choose to participate in this proceeding as an intervenor, as an observer, or by providing a letter of comment and your personal information will be treated accordingly.

**YOUR PERSONAL INFORMATION IS TREATED DIFFERENTLY DEPENDING ON HOW YOU CHOOSE TO PARTICIPATE IN THE HEARING:**

- **Intervenors** - everything you file with the Board, including your name and contact information, will be placed on the public record (i.e., the public file and the Board's website).
- **Letters of comment or observers** - the Board removes any personal (i.e., not business) contact information from the letter of comment or the request for observer status (i.e., address, fax number, phone number, and e-mail address of the individual), however, your name and the content of the letter of comment or of the request for observer status will become part of the public record.

**Filing Information for Intervenors**

If you already have a user ID, please submit your intervention request through

the Board's web portal at <https://www.errr.ontarioenergyboard.ca>. Additionally, two paper copies must be submitted to the address set out below.

If you do not have a user ID, visit the Board's website under e-Filing Services and complete a user ID/password request form. For instructions on how to submit documents and naming conventions please refer to the RESS Document Guidelines found at <http://www.ontarioenergyboard.ca/OEB/Industry>, e-Filing Services.

The Board also accepts interventions by e-mail, at the address below. Additionally, two paper copies must be submitted to the address set out below. Those who do not have internet access are required to submit their intervention request on a CD in PDF format, along with two paper copies.

### **Need more information?**

For more information on how to participate please go to the Board's website at <http://www.ontarioenergyboard.ca/OEB/Industry/Regulatory+Proceedings/Hearings/Participating+in+a+Hearing> or call the Board at 1-888-632-6273 (toll free).

### **How to Contact the Board or Enbridge Gas Distribution**

Please reference Board file number **EB-2011-0391** in the subject line of your e-mail or at the top of your letter. It is also important that you provide your name, postal address and telephone number and, if available, an e-mail address and fax number. All communications should be directed to the attention of the Board Secretary at the address below, and be received no later than 4:45 p.m. on the required date.

**ADDRESSES**

<b>Ontario Energy Board</b> P.O. Box 2319 2300 Yonge Street 27th Floor Toronto, Ontario M4P 1E4  Attention: Kirsten Walli Board Secretary  Tel: 1-888-632-6273 (Toll free) Fax: 416-440-7656 E-mail: <a href="mailto:boardsec@ontarioenergyboard.ca">boardsec@ontarioenergyboard.ca</a>	<b>Applicant</b> Enbridge Gas Distribution Inc. 500 Consumers Road Toronto, Ontario M2J 1P8  Attention: Regulatory Affairs  Tel: 416-495-5499 Fax: 416-495-6072 E-mail: <a href="mailto:EGDRegulatoryProceedings@enbridge.com">EGDRegulatoryProceedings@enbridge.com</a>  <b>Counsel for the Applicant</b> Scott Stoll Aird & Berlis LLP 181 Bay Street Brookfield Place Suite 1800, P.O. Box 754 Toronto, Ontario M5J 2T9  Tel: 416-865-4703 Fax: 416-863-1515 E-mail: <a href="mailto:sstoll@airdberlis.com">sstoll@airdberlis.com</a>
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**IMPORTANT**

**IF YOU DO NOT REQUEST TO PARTICIPATE IN ACCORDANCE WITH THIS NOTICE, THE BOARD MAY PROCEED IN YOUR ABSENCE AND YOU WILL NOT BE ENTITLED TO ANY FURTHER NOTICE OF THESE PROCEEDINGS.**

DATED at Toronto, January 4, 2012  
**ONTARIO ENERGY BOARD**

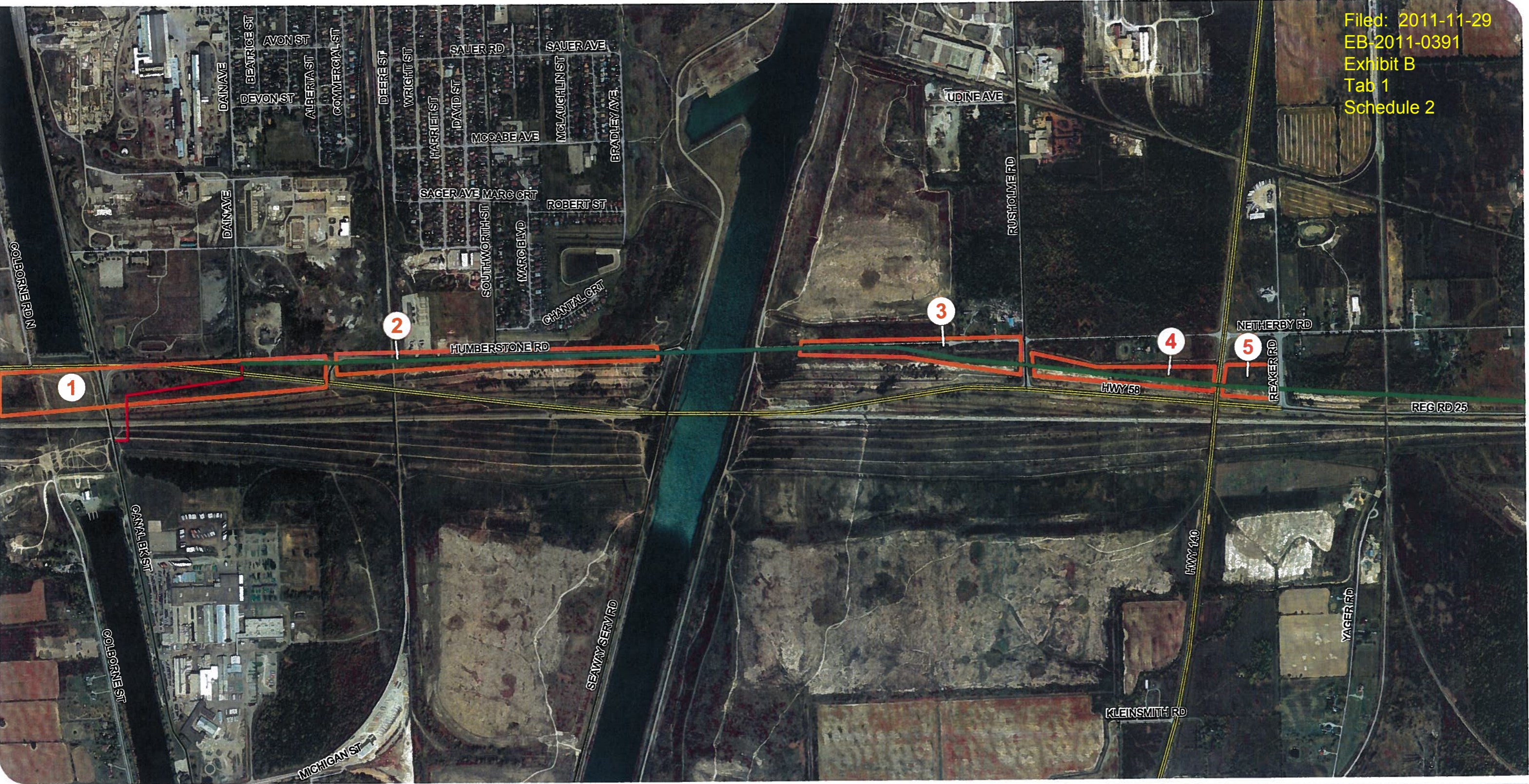
*Original signed by*

Kirsten Walli  
Board Secretary

**APPENDIX “A”**

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**Schematic of the Pipelines and Affected Lands**



**SCHEMATIC OF THE PIPELINES  
AND AFFECTED LANDS**

- NPS 12 ST XHP
- NPS 8 ST XHP
- Property Boundary
- Expressway / Highway
- Major Road



Image Not to Scale  
Pipeline Location is Approximate