



**EB-2011-0391**

**IN THE MATTER OF** the *Ontario Energy Board Act*,  
1998, S.O. 1998, c. 15 (Schedule B);

**AND IN THE MATTER OF** the *Public Utilities Act*,  
R.S.O. 1990, c.P-52;

**AND IN THE MATTER OF** the *Expropriations Act*,  
R.S.O. 1990, c. E-26;

**AND IN THE MATTER OF** an application by Enbridge  
Gas Distribution Inc. for a declaration and order(s) to  
expropriate land for the purposes of a natural gas  
distribution main in the City of Welland in the Region  
of Niagara.

**PROCEDURAL ORDER NO. 2**

**April 16, 2012**

Enbridge Gas Distribution Inc. (“Enbridge” or the “Applicant”) 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. The NPS 12 pipeline was constructed in 1975 to provide natural gas to the Town of Fort Erie.

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. The subject lands were later transferred from the St.

Lawrence Seaway Management Corporation (the successor to the SLSA) to the Canada Lands Corporation CLC Limited. The subject lands have since been transferred 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.

The Board issued its Procedural Order No. 1 on March 5, 2012, in which it granted Group IV Solar intervenor status and the Regional Municipality of Niagara observer status. Procedural Order No. 1 also set out the procedural schedule for the filing of interrogatories, intervenor evidence and established the date for an oral hearing.

The Board notes that no interrogatories or intervenor evidence were filed in response to Procedural Order No. 1. The Board notes that on February 22, 2012, Enbridge filed an update to its evidence stating that it has entered into an easement agreement with one of the affected landowners. The Board also notes that by letter dated March 12, 2012, another one of the affected landowners stated that they do not object to the requested relief and do not plan to attend the oral hearing.

The Board canvassed the other affected parties and was informed that no parties plan to cross-examine witnesses at the oral hearing or make oral argument. As such, the Board has determined that there is no need to hold an oral hearing. The oral hearing scheduled for April 20, 2012 will be cancelled.

Instead, the Board will proceed by way of a written hearing, allowing for the filing of argument-in-chief, argument of the intervenor (and other affected landowners) and Board staff, and reply by the Applicant. The Board notes that it welcomes any and all submissions by the approved intervenor and the other affected landowners. After the record has been closed, the Board will issue a written decision on this matter.

The Board makes provision for the following procedural matters. Please be aware that further procedural orders may be issued from time to time.

#### **THE BOARD ORDERS THAT:**

1. The oral hearing scheduled for **April 20, 2012** is cancelled and the Board will instead proceed by way of a written hearing.
2. Enbridge shall file its argument-in-chief on or before **April 25, 2012**.
3. Any intervenors, affected landowners, and Board staff who wish to file submissions may do so on or before **May 2, 2012**.
4. Enbridge shall file its reply submission on or before **May 9, 2012**.

All filings to the Board must quote the file number, **EB-2011-0391**, be made through the Board's web portal at <https://www.errr.ontarioenergyboard.ca>, and consist of two paper copies and one electronic copy in searchable / unrestricted PDF format. Filings must clearly state the sender's name, postal address and telephone number, fax number and e-mail address. Parties must use the document naming conventions and document submission standards outlined in the RESS Document Guideline found at <http://www.ontarioenergyboard.ca/OEB/Industry>. If the web portal is not available parties may email their documents to the address below. Those who

do not have internet access are required to submit all filings on a CD in PDF format, along with two paper copies. Those who do not have computer access are required to file 7 paper copies.

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.

**ADDRESS**

Ontario Energy Board  
P.O. Box 2319  
2300 Yonge Street, 27th Floor  
Toronto ON M4P 1E4  
Attention: Board Secretary

E-mail: [boardsec@ontarioenergyboard.ca](mailto:boardsec@ontarioenergyboard.ca)  
Tel: 1-888-632-6273 (Toll free)  
Fax: 416-440-7656

**DATED** at Toronto April 16, 2012  
**ONTARIO ENERGY BOARD**

*Original signed by*

Kirsten Walli  
Board Secretary