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June 18, 2020

**VIA EMAIL & COURIER**

Christine E. Long  
Registrar and Board Secretary  
Ontario Energy Board  
2300 Yonge Street, 27<sup>th</sup> Floor  
P.O. Box 2319  
Toronto, Ontario M4P 1E4

Dear Ms. Long,

**RE: Application of the County of Essex for Intervenor Status in the Application of Enbridge Gas Inc. under Section 101 of the *Ontario Energy Board Act* regarding Decision and Order EB-2019-0172**

Please be advised that I am the Solicitor for the County of Essex (the "**County**") and my office represents the County with respect to the Application of Enbridge Gas Inc. ("**Enbridge**") under section 101 of the *Ontario Energy Board Act* (the "**Act**") regarding Decision and Order EB-2019 1172 (the "**Decision**"). As such, I kindly request that you direct all further correspondence to my attention.

As I am sure you know, as of the date of this letter, the Ontario Energy Board (the "**Board**") has not yet issued a notice of proceeding in this matter. As such, I do not have the relevant file number to provide as a reference to you for this Application. However, Enbridge provided the County with a copy of its above-noted Application (the "**Application**") on June 15, 2020, and I want to make it clear that the County intends to respond to the Application.

The County has a substantial interest in the Application, and intends to participate actively and responsibly in the hearing of this matter. Therefore, we are submitting this letter of intervention to apply for intervenor status on behalf of the County, pursuant to Rule 21.01 of the Rules of Practice and Procedure of the Board.

## **Description of the Intervenor**

The County is comprised of seven municipalities, namely the towns of Amherstburg, Essex, Kingsville, Lakeshore, Lasalle, Leamington, and Tecumseh. The County administers the County Road network, including County Road 46, which is the location of Enbridge's proposed construction that is currently at issue in this Application. For the purpose of this Application, it is important to note that the County specifically owns the land under and around County Road 46 and is the road authority for County Road 46.

Enbridge made an Application pursuant to section 90(1) of the *Act* to construct a natural gas pipeline and associated facilities to replace a section of its pipeline (the "**Project**") located in the Municipality of Lakeshore and the Town of Tecumseh. In particular, the Project required construction under and/or around County Road 46.

Enbridge received leave to construct the Project in the Board's Decision, subject to the Board's Conditions of Approval, including the requirement that it obtain consent from relevant municipalities and road authorities, including the County.

The County has provided its consent to construct, and specifically passed By-law 2020-23 to allow for the construction to proceed, subject to certain conditions outlined in a draft Road User Agreement. However, Enbridge has specifically taken issue with the County requiring a minimum depth of cover of 1.5 metres (despite that being the minimum depth set by various engineering guidelines) for any pipeline installed within 6 metres of the paved portion of County Road 46. Enbridge has refused to sign the Road User Agreement and has brought this Application instead.

Prior to Enbridge obtaining the Decision from the Board related to the Project, the County repeatedly advised Enbridge that there are plans to widen County Road 46, that Enbridge should use the existing path of the pipeline, and that if Enbridge did not do so, that any part of the pipeline that was within 6 metres of the paved portion of County Road 46 would have to be at least 1.5 metres deep. The County, as a Road Authority uses and insists on minimum standards that are set out for construction, maintenance and alteration for infrastructure within the right of way.

Enbridge insisting that the depth to 1.5 metres is not necessary is very concerning to the County, as Enbridge apparently intends to engage in construction for the Project in a manner that conflicts with the County's requirements and planned road projects on or around County Road 46, for which the County is responsible as the Road Authority.

In light of the foregoing, the County states that it has a substantial interest in this Application. Therefore, the County is submitting this letter of intervention with the intention of participating actively and responsibly in the Application and its hearing.

## **Intervenor's Intended Participation**

The County intends to participate actively and responsibly in all aspects of the Application and its hearing including submitting a response to the Application under Rule 22.08 of the Board's Rules of Practice and Procedure (the "**Rules**"), requesting any necessary written evidence from Enbridge,

submitting any necessary interrogatories, presenting witnesses, evidence, and argument at the hearing, and cross-examining any witnesses produce by Enbridge.

The County states that it has not had sufficient time to study the Application to provide more detail regarding its intended participation in the hearing. If the Board requires more information in this regard, or for any other reason, the County reserves the right to rely on Rule 22.04 of the Board's Rules to amend, refile, and serve this letter of intervention as required by the Board.

### **Request for the Written Evidence**

The County is requesting any written evidence that Enbridge intends to rely upon that it did not submit in its Application.

In addition, the County reserves the right to request additional written evidence from Enbridge once it has had the opportunity to fully review and consider the Application and/or it reserves the right to amend, refile, and serve this letter with a request for written evidence pursuant to Rule 22.04 of the Board's Rules.

### **Intervenor's Request for Costs**

The County states that Enbridge seeks to engage in construction under and/or around County Road 46. The County it is the owner and road authority responsible for County Road 46. Therefore, it has an interest in land that is affected by the Application.

In addition, the County states that it informed Enbridge of the terms and conditions associated with engaging in construction under or around County Road 46, which are currently at issue, before it made its previous Application under section 90(1) of the *Act*. However, Enbridge failed and/or refused to relay that information to the Board before it rendered its Decision. The County did not see the need to participate at that time, as the issue of depth of the pipeline did not appear to be an issue before the Board.

In light of the foregoing, now that the depth of the pipeline is a live issue before the Board, the County notes that its participation in this Application is necessary and will help the Board obtain a better understanding of the key matters at issue. The County has and will incur significant legal and engineering fees and costs associated with Enbridge's Application.

Therefore, the County will be requesting compensation for its costs, disbursements, and any applicable HST in this Application.

### **Intention to Participate in French**

The County does not intend to participate in this Application in French.

### **Intervenor's Two Representatives**

The County has designated the following representatives for this Application:

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Thank you in advance for your attention to this letter of intervention. Please do not hesitate to contact me if you have any questions or concerns relating to this letter of intervention or the County's position with respect to Enbridge's Application.

Yours truly,

**McTAGUE LAW FIRM LLP**



**DAVID M. SUNDIN**  
DMS/MCB

*c.c. Enbridge via email:*

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