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BY EMAIL

June 30, 2020

Mr. Mark Kitchen
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EGIRegulatoryProceedings@enbridge.com

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County of Essex
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NOTICE OF HEARING AND PROCEDURAL ORDER NO. 1

**Re: Enbridge Gas Inc.
Windsor Pipeline Replacement Project – Section 101 Application
Ontario Energy Board File Number: EB-2020-0160**

Application

Enbridge Gas Inc. (Enbridge Gas) has filed an application with the Ontario Energy Board (OEB) under section 101 of the OEB Act, for approval to construct 29 km of natural gas pipeline and related facilities, along County Road 46, located in the Towns of Tecumseh and Lakeshore in the County of Essex. The proposed pipeline and facilities are part of the Windsor Pipeline Replacement Project that was approved by the OEB in its Decision and Order¹, dated April 1, 2020.

Enbridge Gas says the application is being filed to resolve a dispute between Enbridge Gas and The Corporation of the County of Essex (Essex County), the road authority for

¹ EB-2019-0172 Decision and Order

County Road 46. Enbridge Gas says that it has not been able to reach agreement with Essex County regarding the construction of a 22.9 km segment of pipeline along County Road 46. The contested issues include the depth of cover of certain segments of the replacement pipeline and removal of certain segments of the existing pipeline in lieu of abandonment in place.

Enbridge Gas alleges that Essex County is withholding approval for construction along County Road 46, unless Enbridge Gas makes significant and costly departures from the requirements of the CSA Z662 code and Enbridge Gas' construction policies and procedures. Enbridge Gas also says that it is filing this application pursuant to condition 4 in the OEB's Decision and Order.

Enbridge Gas is seeking the following relief:

- a. an order pursuant to section 101 of the OEB Act, granting Enbridge Gas authorization to, within the County Road 46 right of way, construct a work upon, under or over a highway, utility line or ditch at a depth of cover of approximately 1 metre and otherwise in accordance with Enbridge Gas' standards and procedure; including abandoning the existing pipeline in-place; or
- b. in the alternative to a), an order, pursuant to section 101 of the OEB Act and Condition 4 of the Decision in the LTC application, direction and authorization, in whole or in part, to:
 - i. construct a work upon, under or over a highway, utility line or ditch at a depth of cover of approximately 1.5 metres and otherwise in accordance with CSA Z662 and Enbridge Gas' construction policies and standards; and/or
 - ii. Removal and remediation of approximately 21.8 kms of NPS 10 existing steel main.

The OEB is convening a hearing to consider Enbridge Gas' application and has assigned File No. **EB-2020-0160** to this application. The scope of the hearing will be strictly limited to the issues at dispute in this application. This Notice of Hearing and Procedural Order No. 1 provides for procedural steps in the OEB's review of Enbridge Gas' application. The OEB will make a determination on whether to hold a written or oral hearing at a later date.

To access the Enbridge Gas application and evidence, please select the file number **EB-2020-0160** from the list on the OEB website: www.oeb.ca/notice. You can also phone our Consumer Relations Centre at 1-877-632-2727 with any questions.

Service of Notice and Procedural Order No. 1

This letter serves as notice that the OEB is holding a hearing to consider Enbridge Gas' application.

Enbridge Gas is directed to immediately serve this letter in its exact form and the application on:

- The clerk of Essex County
- The clerk of the Corporation of the Town of Lakeshore (Lakeshore)
- The clerk of the Corporation of the Town of Tecumseh (Tecumseh)
- Technical Standards and Safety Authority (TSSA)
- All intervenors of record in the leave to construct application for the Windsor Pipeline Replacement Project, EB-2019-0172.

Enbridge Gas is further directed:

To complete service by July 7, 2020 and to file with the OEB an affidavit confirming service, immediately thereafter.

To post this notice and procedural order and the application on a prominent place on its website and to make copies available at its offices in Chatham and Toronto.

Requests for intervenor status and cost eligibility

Any party that wishes to participate as an intervenor in this proceeding should apply for intervenor status by **July 17, 2020**. For information on how to apply for intervenor status, please refer to the *OEB's Rules of Practice and Procedure* and the *OEB's Practice Direction on Cost Awards*.

Further, the OEB will determine at a later date whether to proceed by way of a written or oral hearing. If you think an oral hearing is needed, you can write to the OEB to explain why by **July 17, 2020**.

Request for intervenor status and cost eligibility by Essex County

On June 18, 2020 the OEB received a letter from Essex County requesting intervenor status and cost eligibility.

Essex County states that as the owner and road authority responsible for County Road 46, it has an interest in land that is affected by the application and notes that its participation is necessary and will help the OEB obtain a better understanding of the key matters at issue. Essex County states that it has and will incur significant legal and engineering fees and costs associated with its participation and is therefore requesting compensation for its costs.

Essex County is approved as an intervenor. However, the OEB denies Essex County's request for costs.

Section 3.05 (i) of the *Practice Direction on Cost Awards* (Practice Direction) sets out that a municipality in Ontario is not eligible for a cost award. The OEB has noted previously that municipalities have been specifically excluded from eligibility for costs because they have access to a revenue stream from their own constituent taxpayers to whom they are responsible and should therefore not be funded by ratepayers, and also because, in some circumstances, the municipalities are owners of regulated distributors who are ineligible for costs.²

Section 3.07 of the Practice Direction permits the OEB to make exceptions to classes excluded from cost awards in special circumstances. The OEB does not find that the case put forward by Essex County constitutes unique or special circumstances. The OEB has therefore determined that Essex County will not be eligible for costs in respect of its interest in this application.

The OEB is making provision for the following procedural steps in the order below. The OEB may issue further procedural orders from time to time.

IT IS THEREFORE ORDERED THAT:

1. Enbridge Gas shall serve this notice and procedural order and the application on Essex County, Lakeshore, Tecumseh, all parties in the original leave to construct proceeding and on the Technical Standards and Safety Authority.
2. Any evidence of Essex County relevant to this proceeding shall be filed with the OEB and served on all parties by **July 24, 2020**.
3. If intervenors or OEB staff seek information from Enbridge Gas that is in addition to the evidence filed with the OEB and that is relevant to the hearing, they shall request the information by means of written interrogatories filed with the OEB and delivered to all parties by **July 31, 2020**. All interrogatories and responses must include a specific reference to the evidence on which the interrogatory is based.
4. If Enbridge Gas, intervenors or OEB staff seek information from Essex County that is in addition to the evidence filed with the OEB and that is relevant to the hearing, they shall request the information by means of written interrogatories filed with the OEB and delivered to all parties by **August 7, 2020**. All interrogatories and

² EB-2014-0002 Procedural Order No. 1

responses must include a specific reference to the evidence on which the interrogatory is based.

5. Enbridge Gas shall file with the OEB complete written responses to all interrogatories and serve them on all parties by **August 14, 2020**.
6. Essex County shall file with the OEB complete written responses to all interrogatories and serve them on all parties by **August 21, 2020**.

All materials filed with the OEB must quote the file number, **EB-2020-0160**, and be submitted in a searchable / unrestricted PDF format with a digital signature through the OEB's web portal at <https://pes.ontarioenergyboard.ca/eservice>. Filings must clearly state the sender's name, postal address, telephone number, fax number and e-mail address. Parties must use the document naming conventions and document submission standards outlined in the RESS Document Guidelines found at <http://www.oeb.ca/OEB/Industry>. If the web portal is not available, parties may email their documents to boardsec@oeb.ca.

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.

With respect to distribution lists for all electronic correspondence and materials related to this proceeding, parties must include the Case Manager, Judith Fernandes at Judith.Fernandes@oeb.ca and OEB Counsel, Michael Millar at Michael.Millar@oeb.ca.

ADDRESS

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

Email: boardsec@oeb.ca
Tel: 1-888-632-6273 (Toll free)
Fax: 416-440-7656

DATED at Toronto, June 30, 2020

ONTARIO ENERGY BOARD

By delegation, before: Christine E. Long

Original signed by

Christine E. Long
Registrar and Board Secretary

cc: Guri Pannu, Counsel for Enbridge Gas
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Scott Stoll, Counsel for Enbridge Gas
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