

July 22, 2020

SENT VIA RESS and EMAIL

**Ontario Energy Board**  
2300 Yonge Street  
27<sup>th</sup> Floor, P.O. Box 2319  
Toronto, ON M4P 1E4

**Attention: Ms. Christine Long, Board Secretary**

Dear Ms. Long:

**Re: Windsor Pipeline Replacement Project ("Project") – Section 101 Application  
Board File No. EB-2020-0160**

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We are counsel to Enbridge Gas Inc. ("Enbridge Gas").

Enbridge Gas is seeking an order of the Board pursuant to Section 101 of the *Ontario Energy Board Act, 1998* regarding the appropriate depth of installation of a portion (1 metre versus 1.5 metres) of the Project and the appropriateness of abandoning-in-place the existing pipeline which is being replaced.

*101(3) Without any other leave and despite any other Act, if after the hearing the Board is of the opinion that the construction of the work upon, under or over a highway, utility line or ditch is in the public interest, it may make an order authorizing the construction upon such conditions as it considers appropriate.*

We have reviewed the intervenor requests of 5 potential participants including the Corporation of the County of Essex ("Essex County"), Pollution Probe, Energy Probe Research Foundation ("Energy Probe"), Environmental Defence and Federation of Rental-housing Providers of Ontario ("FRPO"). Only two of those parties, Energy Probe and FRPO were intervenors in the prior leave to construct proceeding. Only one of the persons requesting intervenor status, Essex County, is directly impacted by this Application.

In reviewing the requests and the fact that only 2 requestors participated in the Leave to Construct proceeding (EB-2019-0172), Enbridge Gas has concerns that requestors may try to use this Application in an attempt to re-litigate the Leave to Construct proceeding or attempt to raise issues (e.g. appropriateness of rate treatment, an assessment of funds, matters related to the general mandate of their organization) that are not relevant to the live issues in the Application. The language of section 101(3) is not an invitation for the re-litigation of the Leave to Construct proceeding, broad policy discussions, nor the litigation of issues that are not directly and squarely in front of the Board. The pipeline serves an important distribution service for hundreds of customers and Enbridge Gas wants to ensure that the construction of the Project is completed in a timely manner to address the risks discussed in detail in EB-2019-0172. The Project has been granted approval by the OEB to construct on April 2, 2020.

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Accordingly this Application before the Board is to determine a very narrow issue: the manner in which the construction and installation of the Project takes place.

Enbridge Gas would request that the Board direct parties granted intervenor status to focus on the issues of the depth of cover and the manner of decommissioning the existing pipeline and remind any participant that costs awards may be impacted by attempting to raise or litigate extraneous issues.

It is expected that Essex County, who is represented by counsel, will provide evidence and will test the evidence of Enbridge Gas. However, given the narrow scope of this proceeding and the number of entities requesting intervenor status, there is a high potential for duplication and repetition. Enbridge Gas would request that parties co-operate to minimize duplication and repetition.

Enbridge Gas would also note the urgency of resolving this Application in an expeditious manner and wishes to avoid any unnecessary delay in this proceeding.

Yours truly,

AIRD & BERLIS LLP



Scott Stoll

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cc: M. Millar, OEB Legal Counsel  
J. Fernandes, OEB Case Manager  
G. Pannu, Enbridge Gas  
Requestors of Intervenor Status

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