

ONTARIO ENERGY BOARD

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

AND IN THE MATTER OF an application by Enbridge Gas Inc. pursuant to Condition 4 from the Ontario Energy Board's Decision and Order, and Section 101 of the *Ontario Energy Board Act, 1998* for authority to construct a work upon, under or over a highway, utility line or ditch in the County of Essex for the purposes of a natural gas pipeline in respect of which the Ontario Energy Board granted leave to construct in EB-2019-0172 to Enbridge Gas Inc.;

SUMMARY OF POSITION OF THE CORPORATION OF THE COUNTY OF ESSEX

1. This matter involves an application by Enbridge Gas Inc. ("**Enbridge**") seeking authority from the Board to construct a high pressure steel natural gas pipeline within the right-of-way of County Road 46 at depth of cover of one metre and to abandon the existing pipeline in place.

2. Pursuant to the Notice of Hearing and Procedural Order No. 1¹, the Corporation of the County of Essex (the "**County**"), the road authority for County Road 46, was granted intervenor status with respect to the current application of Enbridge.

LEAVE TO CONSTRUCT APPLICATION

3. Enbridge originally applied to the Board for leave to construct a natural gas pipeline and ancillary facilities to replace approximately sixty-four kilometres of the Windsor pipeline including a portion within the jurisdiction of the County.

¹ Tab 4 – EB2020-0160, Notice of Hearing & Procedural Order No. 1 dated June 30, 2020

4. The County was aware of the intention of Enbridge to replace the natural gas pipeline, entering into discussions regarding the replacement of approximately thirty kilometres of pipeline along County Road 46 (the "**Subject Section**") in May 2019.

5. The current pipeline is located both within the right-of-way of the County and within a number of private easements with individual property owners. The proposal presented to the County by Enbridge in May of 2019 was that the new pipeline would be located solely within the right-of-way of Essex County with all private easements being abandoned.

6. From the commencement of negotiations with Enbridge, the County maintained its position that Enbridge should continue to utilize all private easements where ever possible given that the right-of-way had limited room for the current and future infrastructure into the foreseeable future.

7. In an effort to accommodate the request of Enbridge, the County was prepared to allow Enbridge to use the right-of-way for the entire length of the pipeline on the condition that Enbridge would remove any abandoned portion of the existing pipeline and that if the new pipeline was installed within six metres of the existing paved portion of the road, the new pipeline would have a minimum depth of cover of 1.5 metres.

8. The County did not participate in the leave to construct application as the County had no issue with the actual installation of the pipeline. The only issues of concern to the County that remain unresolved while the application for leave to construct was ongoing

related to the depth of cover and the removal of the existing pipeline. The County's interactions with Enbridge prior to the Decision of the OEB being granted indicated that the depth issue and the removal of the existing pipeline would be resolved. As, among other things, the depth of cover was not raised by Enbridge as an issue, the County did not participate in the application for leave to construct. In reviewing the leave to construct application, it appeared that neither of these matters would be addressed at that time.

9. The Decision and Order of the OEB dated April 1, 2020² to the application for leave to construct approved the construction by Enbridge of an NPS6 pipeline. It did not detail nor address the depth of cover of the new pipeline. As part of the Decision and Order, Enbridge agreed, "To certify that it has obtained all approvals, permits, licenses and certificates required to construction, upgrade and maintain the proposed project."³

CONSTRUCTION OF NEW PIPELINE

10. Enbridge proceeded to commence construction of the new pipeline without obtaining the prior approvals, permits, licences and certificates from the County to construct the pipeline within its jurisdiction.

11. The initial concerns expressed by the County related to the proposed location of the new pipeline. The County was of the view that the new pipeline should be constructed in the same or adjacent area of the existing pipeline, including within the private easements. Although requested on a number of occasions to provide a justification for

² EB 2019-0172, Decision & Order, dated April 1, 2020

³ EB 2019-0172, Decision & Order, dated April 1, 2020, page 15

the construction of the new pipeline entirely within the municipal right-of-way, to date, Enbridge has not provided any such justification.

12. Once it became apparent that Enbridge intended to construct the new pipeline in an area within six metres of the existing roadway, the County initially raised concerns regarding the depth of cover at a meeting on December 5, 2019. At that meeting, Enbridge raised no issue regarding the minimum depth of cover of 1.5 metres required by the County. To date, the County has maintained its position that the appropriate depth of cover is 1.5 metres given the proximity of the new pipeline within six metres of the existing roadway.

13. County Road 46 is a Class 2 arterial road and a truck route. It accommodates an Average Annual Daily Traffic (AADT) count of up to 12,000 vehicles per day with 5% of that count consisting of heavy truck traffic. Part of the regular usage of County Road 46 is the transportation of oversized and heavy loads that use not only the roadway itself but the adjacent unpaved shoulder. The County advised Enbridge of these facts and that the County intends to widen County Road 46. As such, the areas of the current unpaved shoulder may become part of the paved roadway, including some of the areas in which Enbridge intends to construct the new pipeline.

TAC GUIDELINES

14. As the road authority, the County is tasked with ensuring that all road projects meet or exceed the minimum requirements approved by Essex County and used and followed in all road projects.

15. In all road projects within the authority of Essex County, Essex County relies upon and follows the TAC Guidelines. According to the TAC Guidelines, the depth of cover required for an unencased pipeline as proposed by Enbridge Gas is a minimum of 1.5 metres.

16. The TAC Guidelines, in the Forward, sets out the objective of the Guidelines as follows:

“The purpose of these general guidelines is to assist the various road authorities in establishing and administering reasonably uniform criteria for the accommodation of utilities crossing highway (and freeway) rights-of-way. Ideally, existing utility accommodation guidelines should be updated in light of these guidelines, as appropriate.”

17. In Section 2, “Applicability”, the TAC Guidelines state as follows:

“These guidelines apply to all public and private underground utilities, including, but not limited to, electric power, communications (EG cable television), water, gas, petroleum products, sewer and similar facilities that are to be located, adjusted or relocated within the rights-of-way under the jurisdiction of road authorities.

These general guidelines are provided for consideration and use by road authorities in regulating the use and occupancy of highway (and freeway) rights-of-way by utilities. They are limited to matters, which are the responsibility of road authorities for preserving the safe operation, maintenance, construction and integrity of the highway.”

18. The position of Enbridge that the TAC Guideline do not apply to the construction of the new pipeline does not accord with the clear mandate of the Guidelines to apply to “all public and private underground utilities including, ... gas.” The TAC Guidelines in

Section 3.2.3 set out the responsibility of a utility regarding the installation of its facilities as follows:

*“The utility should be responsible to ensure that their installations are properly designed, installed, operated and maintained including depth, clearances and separation between facilities, and the work is in accordance with the **road authority’s utility accommodation guidelines and standards**.*

The road authority should be responsible for review and approval of the utility’s proposed installation in accordance with the road authority’s utility accommodation guidelines and standards.”

Section 3.2.5 Highway Integrity

Utilities should be designed to preserve and protect the structural integrity, aesthetic quality, safety, maintenance and operation of the highway during construction and operation of the utility.”

19. The TAC Guidelines specifically reference the CSA-Z662 Guidelines in Section 4.1 as follows:

“All gas and liquid pipelines, water and sewer pipes and underground electric power distribution and communication lines crossing highway rights-of-way should be installed alone, in joint use or in proximity to each other or other facilities according to the higher requirements for the design, construction, operation and maintenance stipulated in the present general guidelines, in CAN/CSA – C22.3 No. 7 ‘Underground Systems’ NCA/CSA – Z662 ‘Oil and Gas Pipelines System’ Standards and in National Energy Board Act and Regulations.”

20. The TAC Guidelines in Section 4.1.3 recommend that underground utility installations should be separated from highway facilities to avoid damage during construction and to provide reasonable success in locating utilities with electronic devices. The Guidelines note that this may require the utility to acquire additional property. Enbridge is proposing to construct the new pipeline in an area over which the

County intends to construct the widening of County Road 46. This will result in the new pipeline being under the travelled portion of the road.

21. Enbridge has made numerous comments and statements in its application that requiring a depth of cover of 1.5 metres will impact its ability to properly service and maintain the new pipeline. If the new pipeline becomes buried beneath a paved roadway, this will result either in the inability of Enbridge to maintain the new pipeline, significantly increase costs in the maintenance of that pipeline or require the removal of the new pipeline prior to the construction of the new roadway. All of these alternatives will result in significant increased costs to Enbridge which can easily be avoided by the installation of the new pipeline in an area more than 6.0 metres from the existing travelled portion of County Road 46.

22. In the initial application for leave to construct, Enbridge in its Argument in Chief to the Board advised that the pipeline would be “designed to meet or exceed all applicable codes and regulations”.⁴ However, in the current application, Enbridge is seeking to utilize a depth of cover that does not even accord with the most recent CSA-Z662 requirements of 1.2 metres.

23. The County is the responsible road authority in the circumstances of this matter. Regardless of the views of Enbridge as to the appropriate standards, the County has chosen to rely on, among other provincial standards and guides, the TAC Guidelines.

⁴ EB 2019 – 0172, LTC Application Enbridge Gas Agreement in Chief, page 2, paragraph 5

The County is relying on a standard that “exceeds” rather than only meets the minimum requirements that Enbridge is advocating for.

23. The County has serious and legitimate concerns regarding the depth of cover of 1.0 metre proposed by Enbridge. The proposed pipeline is an NPS6 that will have a maximum operating pressure of 3,450 kPa while the existing NPS10 pipeline had a maximum operating pressure of 1,380 kPa. The new pipeline will operate at a significantly higher maximum operating pressure than the previous pipeline. The County has serious concerns that a depth of cover of 1.0 metre under a heavily travelled roadway with significant volumes of overweight vehicles will not meet the minimum necessary safety requirements for its residents and other users of the road and those adjacent to it. Although requested on numerous occasions, Enbridge has not provided an engineering report that specifically addresses these concerns and establishes that a depth of cover of 1.0 metre in the circumstances is sufficient to safeguard the public.

REPORTS OF HADDAD MORGAN

25. The County retained an independent third party engineer, Haddad Morgan & Associates Ltd., to review and comment on a reports prepared by Enbridge. Haddad Morgan & Associates provided three reports all of which concluded that the depth of 1.5 metres is the minimum depth of cover required given the location of the new pipeline. Enbridge is relying on outdated 2015 CSA Standards which provide for a 1.0 metre minimum depth of cover. The more recent CSA Standards of 2019 require a minimum depth of 1.2 metres below the travelled surface of a road.

26. The engineer retained by the County noted that in both the CSA Standards and the TAC Guidelines, the term “minimum” is used and emphasis should be placed on the fact that the guidelines are “minimum” standards.

27. The Haddad report dated May 7, 2020 reviewed the Enbridge Pipeline Vehicle Loading Analysis, 2020. Of note, the Enbridge calculations were based on a vehicle crossing over the proposed pipeline rather than travelling along its length. The current construction will result in the new pipeline running parallel and not perpendicular to County Road 46. Thus vehicles will travel along the length of the pipeline and not simply cross over it.

28. The Haddad report dated May 7, 2020 also notes that soil considerations including the fact that the soil in and around a roadway has generally been disturbed will impact the load analysis. It does not appear that the Enbridge analysis took any of these factors into account.

29. The Haddad reports clearly note that the utilization of the TAC Guidelines in the circumstances is appropriate and proper. The Haddad reports note that the County would be within its rights as the road authority to require a greater depth of bury than required under the TAC Guidelines. The reports note that the proposal by Enbridge of a depth of cover of 1.0 metres fails to comply with even the minimum most recent Z662-19 standards of a depth of bury of 1.2 metres below the travelled surface of the road.

30. The Haddad report of May 7, 2020 notes that Clause 1.4 of Z662-19 states, “This standard is intended to establish essential requirements and minimum standards for the design, construction ...” The report states, “Emphasis should be placed on the declaration of minimum, thus in the presence of other guidelines specific to the zone of construction the most stringent should be considered in the interest of best engineering practice and public safety.” Further, Clause 4.11.1 of Z662-19 notes that, “Cover requirements for buried pipelines shall not be less than the values given in table 4.9”. The value in table 4.9 is a minimum depth of bury of 1.2 metre below the travelled surface of a road which is more than the 1.0 metre being proposed by Enbridge Gas.⁵ (Haddad Morgan & Associates report dated May 7, 2020 page 4)

31. As engineering practices and standards are reviewed, requirements both for safety and best engineering practices do not remain static but improve as new methods and considerations are reviewed. Given that this construction did not commence until 2020, to proceed on the basis of CSA Standards in 2015 given the concerns for public safety is not appropriate nor is it in the best interest of the public and the users of County Road 46.

FRANCHISE AGREEMENT DECEMBER 11, 1957

32. The relationship between Enbridge and the County is governed by a Franchise Agreement dated December 11, 1957 entered into between Union Gas Company of Canada and the Corporation of the County of Essex as Bylaw # 1278. Enbridge has taken over all of the previous agreements of Union Gas and is bound by the Franchise

⁵ Tab 3C– Report of Haddad Morgan & Associates dated May 7, 2020, page 4

Agreement dated December 11, 1957.⁶ There have been no updates or alternations to that Agreement and it remains in full force and effect. The Franchise Agreement provides the County with the authority to provide any necessary approvals for the installation by Enbridge of any pipeline, such approval includes the depth of cover in the circumstances.

REMOVAL OF EXISTING PIPELINE

33. There are numerous other utilities and various infrastructures that utilize the same corridor as the existing pipeline and the proposed new pipeline. The failure to remove the existing pipeline significantly impacts the ability of the County to allow for the installation of various necessary and required utilities. In essence, the proposal of Enbridge results in two corridors for its pipeline, one for the existing pipeline if it is abandoned in place and one for the newly constructed pipeline.

34. There are numerous infrastructure demands within the right-of-way in which Enbridge intends to construct the new pipeline. The County, from the commencement, always maintained its position that the new pipeline be constructed in the same corridor as the existing pipeline, utilizing all available private easements. When it became apparent that Enbridge would not agree to this requirement, the County, reluctantly agreed to the construction of the new pipeline within the right-of-way on condition that the old pipeline be removed and not simply abandoned and that the depth be a minimum of 1.5 metres if within 6.0 metres from the edge of the existing paved portion of the roadway.

⁶ Franchise Agreement dated December 11, 1957

35. Given the demand for use of the right-of-way by numerous facilities, the County cannot have Enbridge essentially use two corridors, the old abandoned pipeline and the new pipeline. Enbridge has been aware of the position of the County from the commencement of this project in May 2019 and the reason the old existing pipeline needs to be abandoned.

36. The County wishes this project to proceed but not at the expense of the safety of the public and users of County Road 46. The County prepared a Road User Agreement and provided the final form to Enbridge prior to Enbridge commencing the application in the within matter.

37. Although the County continued with reservations regarding the proposed location of the pipeline, the County was prepared to agree that the pipeline be constructed within the municipal right-of-way subject to Enbridge Gas using a minimum depth of cover of 1.5 metres and that Enbridge Gas remove the existing pipeline.

38. It is the position of Essex County that the Board order that in order for Enbridge to proceed with the Project in the County's right of way that:

- a) the minimum depth of cover for the proposed pipeline be 1.5 metres in all areas where the proposed pipeline falls within 6.0 metres of the edge of the existing paved portion of the roadway;
and
- b) Enbridge Gas remove the existing pipeline.

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Summary of Position
Page 13

DAVID M. SUNDIN
LSO # 60296N
JOSEPHINE STARK
LSO # 24691J
McTAGUE LAW FIRM LLP
Barristers & Solicitors
455 Pelissier Street
Windsor, Ontario N9A 6Z9
(T) 519-255-4344
(F) 519-255-4384
(E) dsundin@mctaguelaw.com

LAWYERS FOR THE CORPORATION
OF THE COUNTY OF ESSEX