

# Elson Advocacy

August 27, 2020

**BY COURIER (2 COPIES) AND RESS**

**Ms. Christine Long**

Board Secretary

Ontario Energy Board

2300 Yonge Street, Suite 2700, P.O. Box 2319

Toronto, Ontario M4P 1E4

Dear Ms. Long:

**Re: EB-2020-0160 – Enbridge Gas Inc.  
Windsor Pipeline Replacement Project Section 101 Application**

I am writing on behalf of Environmental Defence pursuant to *Procedural Order #3* to provide reply submissions on its motion for full and adequate interrogatory responses.

Environmental Defence relies first and foremost on the grounds as outlined in its Notice of Motion, which are not repeated here.

## **Interrogatory #1 – Estimate of Removal Costs**

Part (a) of this interrogatory seeks greater clarity regarding the cost of removing the pipeline in question. Enbridge's application itemized \$5.875 million in costs to remove the NPS 10 pipe. In response to this application, Enbridge disclosed that the cost is up to \$3.9 million higher than that amount, such that the total is approximately \$9.780 million. This information would not have come out but for this motion. However, further important questions remain to be dealt with via a technical conference or better interrogatory responses, including the following:

1. Enbridge stated that it "included \$3.9 million for the abandonment and decommissioning the entire existing NPS 10 pipeline." Presumably it meant that it included this in the EB-2019-0172 application financial. However, it is not 100% clear whether that is what Enbridge meant.
2. Furthermore, if Enbridge did include the \$3.9 million in EB-2019-0172, it is not clear where that is stated in the evidence for that application (if anywhere) and what line item it would be associated with.
3. Furthermore, it is unclear why Enbridge believed it could include \$3.9 million in abandonment costs for the old pipeline in the leave to construct application in EB-2019-0172 for the new pipeline seeing as, in response to interrogatory #4, it said that abandonment costs are paid out of amounts collected throughout the lifetime of a pipeline via rates and recorded as a liability by Enbridge.

4. The \$3.9 million relates to the entire existing NPS 10 pipeline, not only the segment of the pipeline within the area of this Application. It is unclear how much of the \$3.9 million is reasonably attributable to this segment.

It is unusual and concerning that basic questions around cost remain unanswered.

OEB staff noted that additional detail regarding cost “would not necessarily be helpful to the OEB’s consideration.” However, the test for relevance does not require the party seeking information to establish that it will be “necessarily” determinative of the final issue in whole or in part. OEB staff submissions do not support the position that the information is irrelevant nor the position that the motion should be denied.

Although it may not be material because OEB staff do not ask that the motion be denied, it is important to note that the OEB staff submissions are premised on a fundamental error of law. OEB staff seem to presuppose the answer of matters under intense dispute when it says the “application is primarily focused on the CSA standards that should apply with respect to construction of the replacement pipeline.” In contrast, Essex argues that the CSA standards are *minimum standards* only and that other considerations apply, including the agreements with Enbridge, a balance of interests, and other applicable guidelines. Environmental Defence agrees with Essex that Board’s mandate to consider the “public interest” under s. 101 is not limited only to a consideration of CSA standards and includes other important factors, including cost and who will bear the cost. Disputes about the proper factors to consider under a s. 101 application should be resolved at the hearing, not in a preliminary motion. This is particularly important because this is the first s. 101 application ever adjudicated by the Board.

We believe cost is clearly relevant. In any event, cost information should be provided such that parties will not be hamstrung in making arguments around cost in this first application under s. 101 by a lack of information.

Parts (b) to (d) of this interrogatory seek to examine the accuracy of Enbridge’s cost estimate, in part by comparing this estimate with the costs in other pipeline removals. Enbridge opposed this on the basis that those comparisons would be irrelevant because each removal is unique. Although costs will vary based on various factors, that does not make comparisons completely irrelevant. Furthermore, caveats can be noted as necessary to address the various factors.

The same is true for new pipeline construction. Indeed, Enbridge has provided comparisons between pipeline construction projects and OEB staff have requested this kind of comparison (see attached) even though, like removal projects, each construction project is unique and the costs depend on various factors. If comparisons are relevant for assessing the cost of construction, they are also relevant for assessing the cost of removal.

Enbridge also objects to providing cost information from projects outside Ontario. However, part (c) asked for comparisons with “the projects that Enbridge believes are the most appropriate comparators.” This allows Enbridge to provide information on the projects it believes are the best comparators.

At this stage we do not know whether or not the removal cost estimate is in line with previous experience. It is possible that it is out of line by a number that is quite material. Furthermore,

Enbridge may argue that requiring removal would result in a negative precedent that would increase costs in the future, and this argument would amplify the relevance of any cost overestimation that may or may not exist. However, the only way we can know if there is a material cost overestimate or underestimate is for Enbridge to provide a response to the interrogatory.

Finally, it is important to note that Enbridge did not suggest that these interrogatories would be onerous or time consuming to respond to. The most efficient approach would be for Enbridge to simply provide the response rather than consume unnecessary resources with this dispute.

#### **Interrogatory #4 – Recovery of removal costs**

Environmental Defence asked questions about how these costs would be recovered, including how they would be counted against or attributed to amounts collected via rates over time for future abandonment and recorded as a liability for Enbridge. Enbridge argues this information is irrelevant because “the costs incurred will be treated in the normal fashion.” This answer is far from sufficient, including for the following reasons:

1. This situation is unusual because it may ultimately involve full removal, in which case the abandonment method would be changing following leave-to-construct approval. Enbridge has not explained how this usual situation would be “treated in the normal fashion.”
2. Although Enbridge asserts that these costs would be treated in the normal fashion, it has not provided details or figures to back up this assertion. For example, Enbridge has not explained how much it has collected from ratepayers for abandonment, how this compares to its estimate of the removal cost, and whether this amount/liability would be used to fund this abandonment.
3. As noted above, it is unclear why Enbridge would include \$3.9 million in its leave-to-construct application in relation to the abandonment of the old pipeline if abandonment costs are to be covered by amounts collected over time through the asset depreciation rate and recorded as a liability by Enbridge.

In our submission, these questions require additional clarify and the parties should not be precluded from exploring this area, particularly as this is the first s. 101 application that the Board will consider.

Yours truly,



Kent Elson

cc: Parties in the above proceeding

ENBRIDGE GAS INC.

Answer to Interrogatory from  
Board Staff (STAFF)

INTERROGATORY

Reference:

Exhibit B, Tab 1, Schedule 4, page 1  
Exhibit B, Tab 2, Schedule 6

Preamble:

Enbridge Gas states the total estimated 10-year cost for the Project is approximately \$10.1 million. This cost is offset by \$8.7 million of funding provided through Bill 32, for a net capital investment by Enbridge Gas of approximately \$1.4 million over the 10 years. The estimated cost covers all costs related to materials, construction and labour required to construct distribution mains, and a regulating station. This figure also includes estimated land costs and environmental costs.

Question:

Please provide a table, similar to the table below, comparing the costs of the Project to three or more comparable projects completed by Enbridge Gas in the last five years broken down by pipe size, length, material, pressure class, material cost, construction/labour cost, other cost (i.e. land, legal, regulatory etc.), contingency, total project cost and year of construction.

[illegible]

Response:

Please see Attachment 1. Enbridge Gas has provided the requested detail for each of the expansion projects included in the legacy Union Gas OEB-approved 2017 Community Expansion Application (EB-2015-0179). These projects include Kettle Point and Lambton Shores; Milverton, Rostock, Wartburg; Moraviantown; and Prince Township. With respect to costing, Enbridge Gas submits that no two projects approved by the OEB and completed by Enbridge Gas are identical. Costing for pipeline projects varies throughout Enbridge Gas's service area. Factors such as the location of construction (e.g. soil conditions, road allowance, private easement, etc.) and the overall scope and complexity of a project impacts costing.

The Project has particular construction challenges related to geography which are reflected in elevated construction costs. The presence of rock as well as variations in elevation along the highway and municipal portions affect the cost per metre for the installation of both distribution and service piping. The Project also requires tree removal, the fee simple purchase of a parcel of land as well as the acquisition of private easements, thus increasing the overall cost to construct in comparison to the other projects.

Project	Pipe Size (NPS)	Length (km)	Material	Pressure (kPa)	Material cost	Construction/Contract Labour*	Other Costs**	Project Contingency	Total Project Cost (Year 1)	Construction Year
Kettle Point & Lambton Shores	2	9.9	Plastic	550						
	4	10.4	Plastic	550	\$ 175,880	\$ 1,199,958	\$ 343,969	\$ 58,367	\$ 1,778,174	2017
Milverton, Rostock, Wartburg	2	22.765	Plastic	550						
	4	4.125	Plastic	550	\$ 702,533	\$ 3,246,475	\$ 888,248	\$ 196,000	\$ 5,033,256	2017
	4	20.5	Steel	3450						
Moraviantown	1.25	0.25	Plastic	550						
	2	4	Plastic	550	\$ 55,393	\$ 328,970	\$ 121,365	\$ 34,385	\$ 540,113	2018
	4	3.18	Plastic	550						
Prince Twp	1.25	2.25	Plastic	420						
	2	12.315	Plastic	420	\$ 151,280	\$ 1,760,373	\$ 168,025	\$ 88,395	\$ 2,168,073	2018
	4	7.885	Plastic	420						
Northshore & Peninsula Road	1.25	6.8	Plastic	420						
	2	12.6	Plastic	420	\$ 192,456	\$ 6,410,359	\$ 1,315,729	\$ 729,602	\$ 8,648,146	2020
	4	7	Plastic	420						

\*Includes Year 1 service costs

\*\*Includes internal labour, and other misc. items such as environmental, lands, etc.

Source: EB-2015-0179 updated filing March 31, 2017 and EB-2019-0188