



Ontario  
Energy  
Board

Commission  
de l'énergie  
de l'Ontario

---

# **DECISION AND ORDER ON ENVIRONMENTAL DEFENCE MOTION**

**EB-2020-0160**

**Enbridge Gas Inc.**

**Section 101 Application**

**BEFORE: Michael Janigan**  
Presiding Member

**Robert Dodds**  
Vice Chair and Member

---

**September 9, 2020**

# 1 INTRODUCTION AND SUMMARY

Enbridge Gas Inc. (Enbridge Gas) applied to the Ontario Energy Board (OEB) on June 12, 2020 under section 101 of the *Ontario Energy Board Act, 1998*, (Act) for authority 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 leave to construct Decision and Order<sup>1</sup>, dated April 1, 2020.

Enbridge Gas stated that 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 County Road 46. Enbridge Gas stated 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 relate to the depth of cover of certain segments of the replacement pipeline and the removal of certain segments of the existing pipeline in lieu of abandonment in place.

The OEB issued a Notice of Hearing and Procedural Order No. 1 on June 30, 2020, approving the intervention request of Essex County and made provision for the filing of interrogatories and interrogatory responses. In Procedural Order No. 2, issued on July 24, 2020, Energy Probe, Pollution Probe, Environmental Defence and FRPO were approved as intervenors. Interrogatories on Enbridge Gas' evidence were filed by OEB staff and intervenors on July 31, 2020. Enbridge Gas filed its responses to interrogatories on August 14, 2020.

Enbridge Gas declined to provide complete answers to Environmental Defence interrogatories: I.ED.1 and I.ED.4. Interrogatory I.ED.1 included a request for the differential in costs between abandonment and removal of the existing pipeline, a comparison to costs of other recent pipeline removal projects in Canada that Enbridge has been involved in and the provision of estimates of average abandonment and removal costs. Interrogatory I.ED.4. requested information on how Enbridge Gas intends to recover the removal costs and how pipeline abandonment costs are paid for.

On August 17, 2020, Environmental Defence filed a Notice of Motion (Motion) pursuant to Rule 27.03 of the Ontario Energy Board Rules of Practice and Procedure requesting the OEB to order:

1. Enbridge Gas to provide full and adequate responses to Interrogatories I.ED.1(a) to (d) and I.ED.4(a) to (e); and
2. In the alternative, that a technical conference be held in this matter.

---

<sup>1</sup> EB-2019-0172 Decision and Order

On August 19, 2020, the OEB issued Procedural Order No. 3, making provision for written submissions by parties on Environmental Defence's motion and for a reply submission by Environmental Defence. In its submissions, Enbridge Gas provided some additional information in response to I.ED.1(a) and reiterated its position that the other questions posed by Environmental Defence are not relevant to the relief requested and the issues in this application.

The OEB has reviewed the submissions of Enbridge Gas, Energy Probe, and Pollution Probe, FRPO and OEB staff on the Motion. The OEB has decided that it will not grant the order sought by Environmental Defence and consequently, the Motion is denied.

The OEB finds it would be better assisted in the determination of the issue of abandonment or removal of the existing pipeline by the provision of the information requested in Appendix A to this Decision and Order.

The OEB has also determined that it will proceed to determine the application by way of a written hearing, the schedule for which is set out in the Order section.

## 2 THE MOTION

### Notice of Motion

Environmental Defence submitted that Enbridge Gas has declined to answer important interrogatories regarding the estimated costs to remove the NPS 10 pipeline at issue in this matter and how these costs would be recovered in rates. Environmental Defence argued that full and adequate responses to its interrogatories are required to ensure that the OEB and intervenors have the information they need to consider the issues in this proceeding. Environmental Defence requested that, in the alternative, a technical conference be held.

### Submissions on the Motion

Submissions on the Motion were filed by Energy Probe, Pollution Probe, Enbridge Gas, FRPO and OEB staff on August 24, 2020.

Energy Probe submitted that the OEB should direct Enbridge Gas to provide full and adequate responses to interrogatory I.ED.1 a) to d), stating that the requested information is clearly within the scope of this application as Enbridge Gas is relying on it in its assertions, and that it is appropriate for intervenors to test the basis of the cost estimate by comparing it to other pipeline removal costs. In Energy Probe's view, the OEB would be assisted in its decision by having this information. Energy Probe submitted that the responses provided by Enbridge Gas to interrogatory I.ED.4(a) to(e) are full and adequate and no directive from the OEB is required regarding that interrogatory.

Pollution Probe submitted that the provision of the information requested in I.ED.1(a) to (d) and I.ED 4 (a) to (e) is necessary to objectively review Enbridge Gas's requested approvals in this application.

In the cover letter to its now withdrawn motion<sup>2</sup> filed on August 24, 2020, FRPO supported the requests made in the Environmental Defence motion.

OEB staff submitted that to the extent that this proceeding results in some changes to Enbridge Gas' abandonment in place or depth of cover plans as Essex County requests, this would (all else being equal) result in increased costs for the project. OEB staff

---

<sup>2</sup> FRPO filed a motion requesting the OEB to order full responses to its interrogatories relating to the capacity of the proposed pipeline. The OEB responded that the scope of this proceeding is limited to the issues of depth of pipeline coverage and the abandonment of the existing pipeline and that the issue of pipeline capacity will not be re-visited in this proceeding. FRPO withdrew its motion.

submitted that Enbridge Gas has provided an estimate of these incremental costs and the ultimate recovery of any increased costs would be addressed by the OEB in the appropriate rates proceeding. OEB staff submitted that the level of detail provided by Enbridge Gas is sufficient to allow the OEB to make a determination on the section 101 application. OEB staff further submitted that requiring the provision of itemized removal costs and/or abandonment costs would not necessarily be helpful to the OEB's consideration of this application.

In its submissions, Enbridge Gas provided additional information in response to Interrogatory I.ED1.(a). Enbridge Gas stated that it had included \$3.9 million for the abandonment and decommissioning the entire existing NPS 10 pipeline and confirmed that the incremental cost to remove the NPS 10 pipeline of \$5.9 million is attributed to additional costs for general construction, lands (traditional land use studies), additional environmental and archaeology studies to support permits required, hydro pole support and tree clearing.

Enbridge Gas submitted that the questions in Interrogatory I.ED.1(b),(c) and (d) are beyond the scope of this proceeding. Enbridge Gas submitted that the information requested would not help the OEB in assessing the relative merits of the two options – abandonment-in-place of the NPS 10 pipeline as compared to the removal of the pipeline – and commented that each removal is unique and dependent upon a number of factors.

With respect to Interrogatory I.ED.4 (a) to (e), Enbridge Gas indicated that the costs incurred will be treated in the normal fashion and that it is not requesting any extraordinary or unusual accounting treatment. Enbridge Gas also indicated the process of accounting is the same whether it proceeds with abandonment in place or whether the pipeline is removed and therefore the accounting for specific aspects of certain costs will not assist the OEB in determining whether it should permit the NPS 10 pipeline to be abandoned in place or removed.

Enbridge Gas submitted that these questions are not relevant to the relief requested and the issues in this application.

### **Reply of Environmental Defence**

In its reply, Environmental Defence submitted that with respect to Enbridge Gas' additional response to I.ED.1(a), it is unclear why Enbridge Gas believed it could include \$3.9 million in abandonment costs in the leave to construct application<sup>3</sup> as, in its

---

<sup>3</sup> EB-2019-0172

response to I.ED.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 Gas. Environmental Defence also submitted that as the \$3.9 million relates to the entire existing NPS 10 pipeline, it is unclear how much of the \$3.9 million is reasonably attributable to the segment of the pipeline within the area of this application. Environmental Defence argued that cost is relevant and that cost information should be provided.

With respect to Interrogatory I.ED.1(b) to (d), Environmental Defence submitted that although costs will vary based on various factors, that does not make comparisons completely irrelevant stating that caveats can be noted as necessary to address the various factors. Environmental Defence argued that at this stage it is not known whether or not the removal cost estimate is in line with previous experience and that the only way of knowing if there is a material cost overestimate or underestimate is for Enbridge Gas to provide a response to the interrogatory.

With respect to Interrogatory I.ED.4, Environmental Defence submitted that Enbridge Gas' submission that the information is irrelevant because "the costs incurred will be treated in the normal fashion" is not sufficient for several reasons. Environmental Defence noted that 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. Environmental Defence submitted that Enbridge Gas has not explained how costs would be "treated in the normal fashion" as it has not provided details or figures to back up its assertion. Environmental Defence asserted that Enbridge Gas 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 FINDINGS

The Motion by Environmental Defence sought additional information regarding the abandonment cost and the cost of removing the existing pipeline and how these costs would be recovered.

The Motion requested the OEB to order:

1. Enbridge Gas to provide full and adequate responses to Interrogatories I.ED.1(a) to (d) and I.ED.4(a) to (e); and
2. In the alternative, that a technical conference be held in this matter.

The OEB has decided that it will not grant the order sought by Environmental Defence regarding the provision of additional responses to Interrogatories I.ED.1(a) to (d) and I.ED.4(a) to (e) as it is overly broad in terms of the potential assistance that the answers might provide to the resolution of the issues to be decided herein. However, the OEB is interested in some additional information from Enbridge Gas and the County of Essex on some related points. The OEB finds it would be assisted in the determination of the issue of abandonment or removal of the existing pipeline by the provision of the information requested in Appendix A to this Decision and Order.

In reviewing the record and the submissions of the parties, and considering the provision of the information that has been requested in Appendix A, the OEB also does not consider that a technical conference is necessary.

The OEB has determined that it will proceed to determine the application following a written hearing, the schedule for which is set out in the Order section below.

The OEB notes that in response to Pollution Probe Interrogatory 10, Enbridge Gas redacted confidential information contained in Attachment 1 to that response. The OEB has made provision for submissions on this confidential filing.

## 4 ORDER

### THE OEB ORDERS THAT:

1. Enbridge Gas and the County of Essex shall file with the OEB and deliver to all parties responses to the questions set out in Appendix A by **September 15, 2020**.
2. Enbridge Gas shall file a written argument-in-chief with the OEB and serve it on all parties by **September 22, 2020**. Enbridge Gas shall include an explanation, including specific reasons, why the information provided in Attachment 1 of the response to Pollution Probe Interrogatory 10 should be treated as confidential and why public disclosure of that information would be detrimental.
3. OEB staff and intervenors shall file their written submissions, if any, with the OEB and serve them on all parties by **October 2, 2020**. OEB staff and intervenors may include in their submissions any objections to confidential treatment of the information specified in paragraph 2 of this order.
4. Enbridge Gas may file a written reply submission with the OEB and serve it on all parties by **October 8, 2020**. Enbridge Gas shall include its response to any objections to confidential treatment of the information specified in paragraph 2 of this order.
5. The OEB deems the information provided in Attachment 1 of the response to Pollution Probe Interrogatory 10 as confidential on an interim basis.
6. Should counsel and/or consultants for intervenors require access to the proposed confidential information, the party shall make a written request to the OEB, copying Enbridge Gas, and provide a signed copy of the OEB's [Declaration and Undertaking](#) by **September 11, 2020**. In the event that Enbridge Gas objects to sharing the proposed confidential information with any party representative that has signed the Declaration and Undertaking, it must file its objections with the OEB and copy the relevant party by **September 14, 2020**. If the party to whom the objection is directed wishes to respond to the objection, it must file its reply by **September 16, 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](mailto: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](mailto:Judith.Fernandes@oeb.ca) and OEB Counsel, Michael Millar at [Michael.Millar@oeb.ca](mailto:Michael.Millar@oeb.ca).

### **ADDRESS**

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

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

DATED at Toronto, September 9, 2020

ONTARIO ENERGY BOARD

*Original Signed By*

Christine E. Long  
Registrar and Board Secretary

**APPENDIX A**

**TO**

**DECISION AND ORDER ON**

**ENVIRONMENTAL DEFENCE MOTION**

**EB-2020-0160**

**Information Requested in the Decision and Order****Questions to Enbridge Gas:**

**Ref: Enbridge Gas submission on Environmental Defence Motion, para. 4-6, pages 2,3**

Abandonment costs:

Please explain why Enbridge Gas would incur \$3.9M costs associated with decommissioning and abandonment of the existing pipeline if the OEB ordered the removal of the existing pipeline.

Removal costs:

1. How were the removal costs of \$5.875M calculated? Were any comparisons made to the costs of other pipeline removals?
2. How does Enbridge Gas expect the removal costs would be collected from ratepayers if the OEB orders the removal of the existing pipeline?

Coverage costs:

Please provide a breakdown of additional costs to accommodate coverage depth of 1.2 metres. Please include an explanation on how the estimates were derived.

**Question to County of Essex:**

**Ref: County of Essex Evidence, Tab 1, Summary of Position of the Corporation of the County of Essex, para. 7, page 3**

It is stated that 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.

1. Please confirm that in this statement the wording “**remove any abandoned portion of the existing pipeline**” refers only to any abandoned portion of the existing pipeline currently within the right-of-way and not to any abandoned portion of the existing pipeline that lies on private property.