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VIA EMAIL and RESS

September 22, 2020

Ms. Christine Long
Board Secretary
Ontario Energy Board
2300 Yonge Street, 27th Floor
Toronto, ON M4P 1E4

**Re: EB-2020-0160 Enbridge Gas Inc. ("Enbridge Gas")
Windsor Line Replacement Project – Section 101 Application
Argument-in-Chief**

In accordance with the Decision and Order on the Environmental Defence Motion dated September 9, 2020, enclosed please find Enbridge Gas's Argument-in-Chief in the above noted proceeding.

Please contact the undersigned if you have any questions.

Yours truly,

(Original Digitally Signed)

Rakesh Torul
Technical Manager,
Regulatory Applications

cc: Scott Stoll, Aird and Berlis LLP
EB-2020-0160 Intervenors

ONTARIO ENERGY BOARD

IN THE MATTER OF the *Ontario 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 dated April 1, 2020, 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.;

SUBMISSIONS OF ENBRIDGE GAS INC. ("ENBRIDGE GAS")

Introduction

1. Enbridge Gas is seeking an order of the Board to resolve the current impasse with the Corporation of the County of Essex ("**Essex County**") so that it can complete the Windsor Pipeline Replacement Project ("**Project**"). The Board is presented with selecting between Enbridge Gas' proposal and that of Essex County to complete the Project. To make that selection, we first address the method of interpreting the public interest. Then for each of the depth of cover and the method of abandonment issues, we review the evidence and how that evidence should be weighed. Enbridge Gas respectfully submits its proposed method of completing the Project with a 1.0 metre depth of cover of 1.0 and by abandoning in place the existing 30km of NPS 10 Windsor Pipeline fulfills a greater public interest.
2. Enbridge Gas' proposal fulfils the public interest greater than the Essex County option because the Enbridge Gas proposal is safer, less disruptive to landowners, motorists, the Town of Lakeshore, the environment and costs less for Ontario ratepayers. Enbridge Gas requires the Board use its authority under section 101(3) of the *Ontario Energy Board Act, 1998*, S.O. 1998, c. 15 (Schedule B)[the "**OEB Act**"] to grant the necessary access to complete the Project within the County Road 46 right-of-way as Enbridge Gas has requested.

Background

3. The origin of this proceeding begins with the leave to construct application for the Project. Enbridge Gas applied for leave to construct the Windsor Pipeline Replacement Project, 64km of distribution pipeline, on August 9, 2019 under Board file number EB-2019-0172.

4. The evidence from Enbridge Gas in EB-2019-0172 was the Windsor Pipeline Replacement Project would be completed in accordance with the CAN/CSA Z-662-15 (“**Z662-15**”) and its construction procedures. The evidence identified excavation depth would be approximately 1 metre (EB-2019-0172, Environmental Report, Exhibit C, Tab 6, Schedule 1, page 4.4) which would accommodate a depth of installation of 0.75 metres to the top of pipe which is the minimum required by Enbridge Gas’ specifications. Additional depth was contemplated for watercourse and road crossings. Evidence regarding the proposed abandonment included specific requirements of Z662-15 and the TSSA Abandonment Checklist.
5. In EB-2019-0172, the Board, after determining the Project was in the public interest, granted leave to construct the Windsor Pipeline Replacement, subject to certain conditions, including Condition 4, which provides:
 - a) Enbridge Gas shall advise the OEB of **any proposed change in the project**, including but not limited to changes in: OEB-approved construction or restoration procedures, the proposed route, construction schedule and cost, the necessary environmental assessments and approvals, and all other approvals, permits, licences, certificates and rights required to construct the proposed facilities. Except in an emergency, Enbridge Gas shall not make any such change without prior notice to and written approval of the OEB. In the event of an emergency, the OEB shall be informed immediately after the fact. **[emphasis added]**
6. Despite being provided with excerpts of the draft of the evidence prior to filing the leave to construct application, and being served with notice of the application, Essex County chose not to intervene or to file a letter of comment in EB-2019-0172.
7. Following receipt of leave to construct, Enbridge Gas was able to obtain municipal consents for the Project from each of the Municipality of Chatham-Kent, the Town of Tecumseh and the Town of Lakeshore - all municipalities except Essex County. No municipality required additional depth other than at specific areas of conflict. This included Chatham-Kent where the pipeline was also installed within a few metres of the pavement similar to the situation in this Application. Also, Essex County was the only municipality to express any concern about the removal of the existing NPS 10 pipeline.
8. Essex County refused to issue to any permits, even preliminary field permits to conduct geotechnical investigations, unless Enbridge Gas committed to the following:
 - a) First, Essex County has demanded an extra depth of cover of 1.5 metres for approximately 22.9km along County Road 46 (east of County Road 19) which is a departure from Enbridge Gas’ construction standards and the evidence provided and approved in EB-2019-0172. This change would cost an additional approximately \$7.2million.
 - b) Second, Essex County was seeking to have almost 30km of the existing NPS 10 pipeline removed. The typical procedure, and the procedure noted in EB-2019-0172, was that the existing NPS 10 pipeline would be “abandoned in place”. Removing the pipeline would not only cause significant disruption to adjacent

landowners and the removal of hundreds of trees, it would result in additional costs of approximately \$5.9million.

9. Enbridge Gas could not agree the basis for either request from Essex County was reasonable in the circumstances nor was it consistent with furthering the public interest.
10. With respect to the depth of cover, Enbridge Gas viewed its proposal as reasonable because: (i) the engineering evidence from Enbridge Gas and Wood PLC confirmed a 1.0 metre depth of cover was safe; (ii) the additional depth would increase the impact on the Township of Lakeshore's watermain; (iii) the additional depth would change construction techniques thereby extending construction schedules and inconvenience landowners and motorists; and (iv) the additional depth would unnecessarily increased construction costs by \$7.2million compared to the cost of installing the pipeline with a 1.0 metre depth of cover.
11. For abandonment, Essex County's demand to physically remove the pipeline would cause significant disruption to landowners to excavate the entire 30 km stretch of pipe; require removal of hundreds of trees; increase restoration and remediation activities and increase costs by approximately \$5.9 million.
12. As Essex County refused to provide consent for Enbridge Gas' proposed construction within the County Road 46 right-of-way ("**ROW**") and Enbridge Gas could not agree with the Essex County demands there was no alternative but to seek the Board's assistance to resolve the disagreement.
13. This Application requires the Board to choose to either:
 - a) determine that meeting the demands of Essex County better serves the public interest in a manner that is superior to Enbridge Gas' proposal and utilize the authority under Condition 4 to approve the changes to the Project;
 - or,
 - b) determine that Enbridge Gas' proposal better fulfills the public interest and utilize the authority under section 101(3) of the *OEB Act* to provide Enbridge Gas with the necessary authority to complete the project with the installation within the County Road 46 ROW.

Public Interest, Leave to Construct and Section 101(3)

14. It is Enbridge Gas' view that the Board is being called upon to determine which method of completing the Project, in accordance with Enbridge Gas' request or Essex County's requirements, serves the public interest **[emphasis added] to a greater extent.**
15. As noted, the Board granted Enbridge Gas leave to construct pursuant to section 96 upon determining the Windsor Pipeline Replacement was in the public interest. [EB-2019-0172, Decision and Order, page 1].

96 (1) If, after considering an application under section 90, 91 or 92 the Board is of the opinion that the construction, expansion or reinforcement of the proposed work is in the public interest, it shall make an order granting leave to carry out the work.

16. Section 23 of the OEB Act permits the Board to impose conditions with orders that the Board considers “proper”. As such, Enbridge Gas submits the conditions issued in the leave to construct are in furtherance of, or to ensure, the public interest is achieved. It would be improper to impose a condition that was inconsistent with the public interest. It is on this basis that Enbridge Gas understands the Board imposed Condition 4 acknowledging that details in the execution of the Project may arise that would warrant a change to the Project, as approved in the leave to construct, yet would still be within the public interest.

23 (1) The Board in making an order may impose such conditions as it considers proper, and an order may be general or particular in its application.

17. Section 101(3) provides the Board with the authority to make orders to authorize construction upon, under or over a highway without the consent of the municipality and despite what may be provided in any other Act. Further, Section 101(3) expressly authorizes the Board impose such conditions as it deems appropriate.

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.

18. The delivery of natural gas throughout the province is in the public interest and a singular municipality should not be able to impose unnecessary conditions to thwart fulfillment of, or adversely impact, the public interest. The primacy of the OEB Act is expressly provided in Section 101(3) in that it applies “*despite any other Act*”.
19. While section 101(3) has not been expressly considered in a disputed case, the court have made comment upon the Board’s role and its paramountcy over municipal interests. In *Union Gas v. Dawn*¹ the Divisional Court recognized the Board’s broader public interest mandate compared to that of a municipality. *Union Gas v. Dawn* involved the passage of a municipal by-law that attempted to curtail or regulate the location of pipelines. In considering the validity of the by-law the Court stated:

28 In my view this statute makes it crystal clear that all matters relating to or incidental to the production, distribution, transmission or storage of natural gas, including the setting of rates, location of lines and appurtenances, expropriation of necessary lands and easements are under the exclusive jurisdiction of the Ontario Energy Board and are not subject to legislative authority by municipal councils under The Planning Act.

¹ *Union Gas Ltd. v. The Corporation of the Township of Dawn* [1977] CarswellOnt 328 (Ont. Div. Ct.).

29 These are all matters that are to be considered in the light of the general public interest and not local or parochial interests. The words "in the public interest" which appear, for example, in ss. 40(8), 41(3) and 43(3) which I have quoted, would seem to leave no room for doubt that it is the broad public interest that must be served. In this connection it will be recalled that s. 40(1) speaks of the requirement for filing a general location of proposed lines or stations showing "the municipalities, highways, railways, utility lines and navigable waters through, under, over, upon or across which the proposed line is to pass".

30 Persons affected must be given notice of any application for an order of the Energy Board and full provision is made for objections to be considered and public hearings held.

31 In the final analysis, however, it is the Energy Board that is charged with the responsibility of making a decision and issuing an order "in the public interest".

20. Of note, section 43(3) discussed above is the predecessor to 101(3) and contained virtually the same wording which should inform the Board's consideration herein.
21. First, from this passage it is clear, there should be no concern, and certainly no party has alleged, the Board lacks jurisdiction to make an order in the nature of what has been requested. Second, if a municipality cannot pass a by-law that is inconsistent with or supersedes the Board's jurisdiction then the municipality cannot enter into a contract or agreement that would have such effect. This does not mean the 1957 Franchise Agreement is invalid but rather requires the interpretation and application of the 1957 Franchise Agreement to be consistent with the broader public interest. Third, it does include a reference to the potentially impacted party's obligation to participate.
22. Therefore, the primary analysis for the Board should be to determine which proposal, Enbridge Gas or Essex County, is more in the public interest. Public interest is not expressly defined. Therefore, it must be understood which elements comprise the public interest in these circumstances.
23. In the present case, both Enbridge Gas and Essex County have obligations to ensure public safety. Certainly the public has an interest in the safe installation and construction of the Project. However, Enbridge Gas has additional obligations such as prudent spending, and the mitigation of impacts on the environment and third parties, such as the Town of Lakeshore and adjacent property owners in carrying out the Project. It is these elements that Enbridge Gas submits are relevant to the consideration of the public interest in this Application.
24. Enbridge Gas views the Project as it has proposed in the leave to construct and herein as providing a greater enhancement of the public interest. It is safe and arguably safer, costs less and creates less impact on the environment, the Town of Lakeshore,

motorists and adjacent landowners than would otherwise be required to meet the demands of Essex County. There is no evidence on the record demonstrating significant benefits for the expenditures that would be required to complete the project as Essex County has required.

Depth of Cover

25. Enbridge Gas has proposed installing an NPS 6 steel distribution pipeline with a depth of cover of 1.0 metre along County Road 46. Where the proposed pipeline is to be closer than 6.5 metres to the edge of pavement, Essex County is demanding 1.5 metres of cover. Enbridge Gas does not view any interim depth, such as 1.2 metres, as feasible compromise as there is no evidence regarding any improved safety or other benefit, and there is evidence that any such depth will result in significant cost increases as if cover was 1.5 metres.
26. A typical cross-section of the proposed installation is found at Exhibit B, Tab 1, Schedule 1, Attachment 1. It is Enbridge Gas' submission the totality of the evidence in considering the facts below clearly demonstrates that a 1.0 metre depth of cover: (i) exceeds the required depth of cover specified of 0.60 metres for distribution pipelines within the applicable code, CAN/CSA Z662-15; (ii) exceeds the depth of cover of 0.75 metres in the Enbridge Gas construction manual; (iii) has been demonstrated to provide a safe installation by Wood PLC; (iv) provides a more cost effective and less impactful installation; and (v) is unlikely to interfere with future road widenings should that ever occur. Each of these factors will be discussed below.

Z662-15 – The Distribution Standard

27. The Windsor Pipeline Replacement is a distribution pipeline. While Enbridge Gas submits that any challenge to whether the pipeline is properly classified as a distribution pipeline should have been raised in EB-2019-0172 and that the failure to do so should render the issue moot, it will address this point below.
28. Essex County has premised much of its submission on the basis the Windsor Pipeline Replacement is a transmission line. In its overview, Essex County asserted that Enbridge Gas was failing to meet the requirements of Z662-19, Clause 4.11.1 [County of Essex, Tab 1, 20200724, page 10, para. 30] which is a provision applicable to transmission lines. While the table quoted refers to a minimum depth of 1.2 metres, Essex County has continued to demand 1.5 metres of cover. Further, Essex County ignored the following provisions:

12.4.7.1

The requirements for cover specified in Clause 4.11 shall not apply. Except as allowed by Clause 12.4.7.2, the cover requirements for buried pipelines shall be as given in Table 12.2.

Note: *Where erosion or other factors are likely to reduce the cover, consideration should be given to providing additional cover or other means of protection.*

29. Enbridge Gas has on numerous occasions tried to correct this mischaracterization by Essex County without success. An excerpt from the last such communication from Enbridge Gas to Mr. Sundin, Counsel to Essex County, clearly outlines the error Essex County has made. [Essex County, 20200724, Tab 2, Exhibit Q, page 1].

2. Mr. Tape's response is based on the depth requirements of section 4.11 contained in CSA Z662. Section 4.11 is part of the design requirements for transmission pipelines and not distribution pipelines. The NPS 6 Windsor Line is a distribution pipeline, as defined in Z662, and therefore the relevant clauses are in Section 12 of the CSA Z662 standard. Section 12.4.7 and table 12.2 identify that pipe needs to be a minimum of 0.6m below the paved portions of the road. Furthermore, section 12.4.7.1 specifically states that the depth of cover in section 4.11 "shall not" apply.

30. Dr. Tape never directly addresses the section references provided by Enbridge Gas but rather proceeds to use continue to rely upon the wrong sections of the wrong version of the code.

31. The Z662-15 is the legally adopted code regulating the standards for natural gas pipelines in Ontario. The proposed installations meets all of the requirements of the currently applicable Z662-15 for depth of a distribution pipeline. The Technical Standards and Safety Authority ("TSSA"), the government organization charged with applying and enforcing the pipeline standards in Ontario, confirmed these facts in its Review Letter dated July 21, 2020.

32. While a new version of the Z662 has been proposed, it has not been adopted in Ontario. Further, the existence of a new version of the Z662-15 is not relevant to this issue as the depth of cover for distribution pipelines has not changed from the in force CAN/CSA Z662-15 to the not yet adopted CAN/CSA Z662-19.

33. The proposed pipeline meets the definition of a distribution provided in the Z662-15 which is reproduced below.

Line, distribution — a pipeline in a gas distribution system that conveys gas to individual service lines or other distribution lines.

Line, transmission — a pipeline in a gas transmission system that conveys gas from a gathering line, treatment plant, storage facility, or field collection point in a gas field to a distribution line, service line, storage facility, or another transmission line.

34. The Code Adoption Document, Exhibit I.Staff.1(a) Attachment 1, page 3 of 12, specifically states that for the purpose of the Code Adoption Document transmission lines are those lines that operate at or above 30% of the pipe's specified minimum yield strength ("SMYS").

- (3) Clause 2.2 is amended by adding the following clarification:

For the purpose of this Code Adoption Document, within a gas pipeline system, transmission pipelines are those lines that operate at or above 30% of the pipe's specified minimum yield strength (SMYS) at MOP.

35. The Windsor Pipeline Replacement provides distribution service to almost 400 customers, connects multiple distribution lines and contains odourized gas which are all indicative of a distribution line.
36. The percentage specified minimum yield strength or %SMYS for the minimum acceptable grade of the NPS 6 pipeline in the leave to construct resulted in a 25% SMYS [EB-2019-0172, Ex. B, Tab 1, Sched. 5, page 2]. Pipe that was available and purchased has a hoop stress calculation of 16.8% SMYS even further below the threshold of 30% SMYS set out in the Code Adoption Document and referenced in clause 12.1.2, see below, which permits the requirements of Chapter 12 and more specifically Table 12.2 to apply to the pipeline.

12.1.2

C There is a commentary available for this Clause.

Clause 12 does not apply to steel distribution or service lines intended to be operated at hoop stresses of 30% or more of the specified minimum yield strength of the pipe.

Note: Steel distribution lines to be upgraded for operation at hoop stresses of 30% or more of the specified minimum yield strength of the pipe can necessitate significant modifications.

37. Based upon the above definitions, it is beyond doubt the Windsor Pipeline Replacement is a distribution line. We note that Essex County has indicated it relies solely upon an unstated pressure to distinguish between distribution and transmission lines. While pressure is a factor, such a method of distinguishing between lines ignores, hoop stress, the size, thickness and grade of steel of the pipe. These are all factors that Enbridge Gas' analysis considered.
38. The Z662-15 provides the depth of cover for distribution pipelines in Table 12.2, excerpt below.

Location	Cover for buried pipelines, minimum, m	
	Distribution lines	Service lines
Private property	0.60	0.30*
Right-of-way (road)	0.60	0.45
Right-of-way (railway)	0.75	0.75
Below travelled surface (road)	0.60	0.45
Below base of rail (railway):	1.20	1.20
Cased	2.00	2.00
Uncased steel or polyethylene		
Water crossing	1.20†	1.20†
Drainage or irrigation ditch invert	0.75	0.75

39. A 1.0 metre depth of cover exceeds the relevant requirements of Z662-15 of 0.6 metres for both the road right-of-way and below the travelled surface. The TSSA has acknowledged this in its Review Letter. Of note, the Z662-15 specifically and expressly considers both below the travelled surface of the road and within the right-of-way.
40. Enbridge Gas provided an excerpt of its construction procedures, see below, which shows a depth of cover of 1.0 metres for “road crossings” and 0.75 metres for distribution main within the untraveled portion of the roadway. Again, the Enbridge Gas proposal of a depth of cover exceeds these minimums.

Minimum Cover Requirements for New Installations

Location	Minimum Cover for Buried Pipelines		
	Distribution Main	Distribution Service	Transmission (30% SMYS)
GENERAL			
Agricultural	1200 mm	1200 mm	1200 mm
Non-agricultural	1000 mm ³	500 mm ¹	1200 mm
Non-agricultural, rock excavation	600 mm ¹	300 mm ²	1200 mm
ROADWAYS			
Road crossing ⁴	1000 mm	750 mm	1200 mm
Untravelled portion of right-of-way	750 mm	500 mm	1200 mm

41. The proposal for a 1.0 metre depth of cover throughout the Project exceeds Enbridge Gas’ standard construction specification. Enbridge Gas operates throughout Ontario in accordance with these specifications.
42. Enbridge Gas’ position that this is a distribution pipeline is confirmed by multiple professional engineers with significant experience, including by the TSSA, the provincial organization with technical oversight of pipelines in Ontario.
43. Enbridge Gas submits that it would be illogical and an error for the Board to accept Essex County’s rationale in this regard to support the request for a greater depth of cover through the application of standards applicable to a transmission line. Essex County’s provision is inconsistent with the applicable codes and lacks evidence to warrant a departure from such requirements.

Engineering Analysis

44. Consultation with Essex County began with Stantec seeking input from employees of the Essex County in January 2019.
45. Enbridge Gas approached Essex County Council in May 2019 about the Project. Discussions regarding the Project occurred over the next year with early discussions focused on the capacity of the pipeline. Eventually, in December 2019, Essex County stated that Enbridge Gas would be required to enter into a Road User Agreement to obtain approval. It was not until February 2020, that a sample road user agreement from a wind generation project was provided to Enbridge Gas with an actual first draft for the Project provided in April 17, 2020. [Essex County Response to EGI IR-34].
46. As part of the discussions with Essex County, Enbridge Gas sought to demonstrate the efficacy of a 1.0 metre depth of cover through its own engineering analysis Exhibit B, Tab 1, Schedule 5, Appendix A and that of an independent consultant, which was provided by Wood PLC (the “Wood Report” Exhibit B, Tab 1, Schedule 5, Appendix B).
47. Enbridge Gas staff, B. Warnock, P.Eng., provided a stamped analysis of the hoop stress which is consistent with the approach used in the Z662-15 to analyze the sufficiency of a pipe design [Exhibit B, Tab 1, Schedule 5, Appendix A]. Conservatism was factored into the analysis in multiple ways including the analysis for the hoop stress using a load **10 times the MTO road legal limit** which had a calculated %SMYS of 77.1% as compared to the maximum allowable limit of 85%. Again, even under extreme loading the pipeline performance was acceptable. The MTO road legal limit is 9,000kg/axle [Exhibit B, Tab 1, Schedule 5, Appendix A, page 5].
48. The Wood Report was prepared and stamped by engineers with significant experience in pipeline and road construction [Exhibit I, Essex. 1, Attachments 1,2,3]. Conservative loadings were used and Wood PLC considered cyclic stresses in welds, through-wall bending stresses, critical bending, ovality of pipe, as well as the code stresses per Z662-15 and even the 2019 version. The conclusion was the pipeline meets the requirements for superloads.
49. The Wood Report reviewed the potential stress that would be present under multiple load scenarios and the pipeline was adequate for all loading conditions. The assumption used in this analysis considers the entire weight supported by the axle directly over the pipeline. This is conservative as any other orientation necessary reduces the weight of the axle. For example, a vehicle traveling parallel to the pipeline – would have just one wheel – or 50% of the axle load over top of the pipeline. As such, the comments about overweight permits from Essex County should have little bearing.
50. However, contrary to the analysis and conclusions provided by Enbridge Gas and Wood PLC demonstrating the pipeline is safe under all loading conditions that could be anticipated, Essex County has steadfastly refused to approve a 1.0 metre depth of cover. Enbridge Gas understood that Essex County would review engineering information provided to it in support of the 1.0 metre depth of cover. Given Essex

County did not even conduct a proper review the Wood Report it would not appear that serious consideration was given to a 1.0 metre depth.

51. Dr. Tape, Essex County's witness, acknowledged the analysis provided was "conservative" [Exhibit B, Tab 1, Schedule 5, Appendix C, page 4 of 7].
52. Dr. Tape's commentary must be read carefully as he never suggests the Wood Report is in error or there is a safety concern. Rather he speaks about the ability of a municipality to set criteria and presumably a more strict standard, whether applicable or not, is better. This cannot be the appropriate approach – especially in the absence of any real engineering analysis. Further, such analysis has not considered the implications of imposing the additional depth.
53. While Dr. Tape made comments about consistency of soil and other potential factors that could be considered in doing a proper review of the Wood Report, he acknowledged that he had not done any work on such an analysis nor had he read any geotechnical reports relevant to the pipeline, nor the Enbridge Gas backfilling specifications. [County of Essex Response to EGI, Tab 1, Question ENB10]. Further, Dr. Tape does not seem to give credit to the ability of Enbridge Gas and its inspectors to monitor and control the backfill and rather resorts to the it does not comply with TAC.
54. Interestingly, Essex County chose an engineer that admittedly has little experience in this area [Essex County, Tab 3, Exhibit A]. While Dr. Tape speaks about the general approach to reviewing codes and standards, he also says the distinction between distribution and transmission is not relevant. This in spite the provisions of Z662 and further, he dismisses the engineering analysis as Essex County is following the TAC Guideline. This defies common sense.
55. Essex County has asserted that County Road 46 is used for "excess weight" loads. However, Essex County has been unable to identify any permits or loads that had been issued that exceeded the loading analysed by Enbridge Gas or Wood PLC [IR response County of Essex_EGI_20200821, page 24, Q25]. It is clear they would have to analyse such loads to issue a permit so evidence could have been readily available. Essex County has failed to provide evidence to support its position.
56. The only evidence in this proceeding regarding the engineering performance of the pipeline is that of Enbridge Gas provided in its analysis and that of the Wood Report. Further, to the extent there has been any review of the Wood Report, Enbridge Gas submits the analysis and conclusions have been unchallenged. The pipeline is safe with a 1.0 metre depth of cover.
57. It is Enbridge Gas' submission that Essex County would need evidence on the record to substantiate any additional safety benefits from an additional depth of cover. Only in providing that evidence could the Board be able to assess any potential safety enhancement in light of the additional cost and other consequences. However, Essex County has omitted to provide any such evidence. There is no engineering evidence on the record to demonstrate the additional depth is safer – in fact many additional safety

precautions must be taken to install the pipeline at such depth which would indicate more risk to the workers – let alone justify the additional costs.

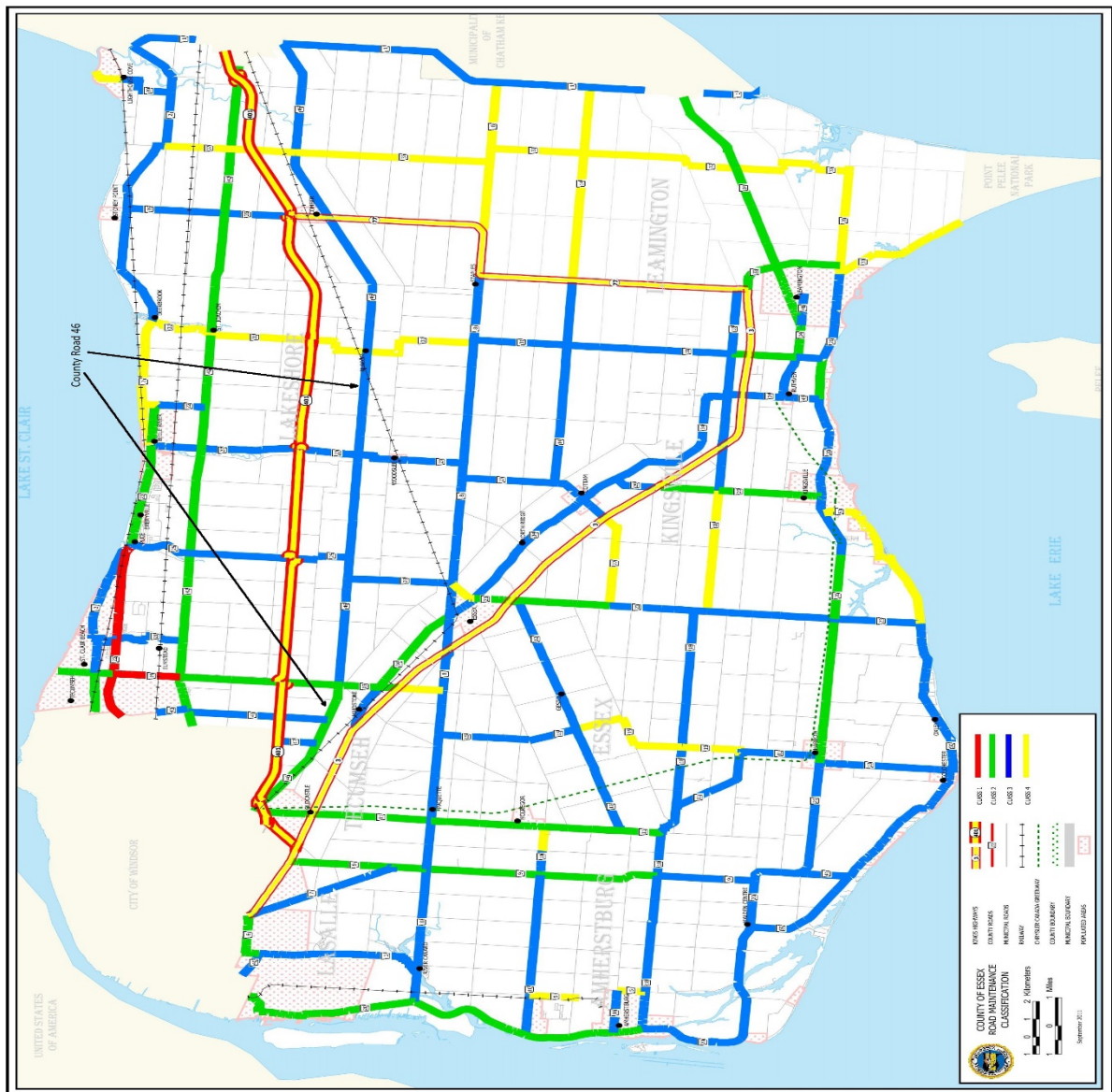
1957 Franchise Agreement – Future Conflict and the TAC Guideline

58. Enbridge Gas' predecessor entered into a franchise agreement in 1957, a copy of which can be found at Exhibit B, Tab 1, Schedule 3, Appendix A with Essex County. It appears Essex County is advancing its authority to impose requirements for additional depth upon the terms of the Franchise Agreement and a purported potential conflict with a future expansion of County Road 46 and its adoption of the *TAC Guidelines for Underground Utility Installations Crossing Highway Rights-of-Way*, a copy of which is provided at Exhibit B, Tab 1, Schedule 5, Appendix E.
59. However, it is Enbridge Gas' position that the Franchise Agreement must be interpreted properly in accordance with its terms and the regulatory regime. The regulatory regime includes the paramountcy of the OEB Act and the fulfillment of the broader public interest which was discussed in *Union Gas v. Dawn* referenced above in paragraphs 19 to 22.
60. It is Enbridge Gas' submission that any request for additional depth by Essex County must be premised upon a conflict with existing or proposed infrastructure or other valid concerns. Valid concerns must be real issues with sound supporting rationale. A concern for safety is valid but must be supported by evidence and Essex County has failed to provide such evidence.
61. While section 3 of the 1957 Franchise Agreement provides the Road Superintendent with authority to approve the location of pipelines, this authority is modified through the language of Section 4 which provides that the installation shall not obstruct or interfere with the use of the highway or other municipal infrastructure. In the draft Road User Agreement, Essex County was very clear to make sure the control of the County Engineer was not limited and subject to her "sole discretion" [County of Essex, Tab 2, Exhibit U, page 16, 18 and 19 of pdf].
62. As part of the extensive discussions between Enbridge Gas and Essex County, Enbridge Gas accommodated the future road widening from Concession 8 east to County Road 19 by moving approximately 6.2 km of the pipeline a greater distance from the travelled portion of the roadway. In this area, Essex County has done some work on the project and the widening is to be complete in less than 10 years. By moving the pipeline, Enbridge Gas is expending additional monies in exchange for reducing the potential for conflict with construction scheduled to occur in a few years. Enbridge Gas submits that this is an appropriate balancing of Enbridge Gas' obligation in respect of the public interest and Essex County's more local interests.
63. While Ms. Mustac, the Essex County affiant, has advised of a potential widening for County Road 46, there is no evidence in the nature of an official Essex County document, resolution to support a County Road 46 widening east of Manning Road at any point in the reasonably foreseeable future. She has provided no official document that shows the expansion of County Road 46 east of Manning Road (County Road 19).

She acknowledges there is no money, no environmental assessment, no design, no real schedule and no evidence of having the necessary land. It is interesting that the purported plans are so clear to Ms. Mustac in the absence of having undertaken the study of any alternatives through an environmental assessment process.

64. In responses to interrogatories posed by Enbridge Gas, Essex County confirmed that the road widening was not identified in its Official Plan; was not included in its Transportation Master Plan; and was not identified in its Capacity Expansion Program (2020-2037). Enbridge Gas notes the Capacity Expansion Program, prepared in October 2019 by Ms. Mustac [Essex County_IRR_EGI. Question 26(b)] does not show any activities – even preconstruction activities - on County Road 46 east of Manning Road in the next 17 years. While Ms. Mustac indicated online information on the Essex County website was dated – she acknowledged completing that diagram in the fall of 2019 – during the time when Essex County was actively discussing the Project with Enbridge Gas. It would seem strange that Ms. Mustac would prepare such a document so recently that would omit such information and be so inaccurate.
65. Enbridge Gas would note that while Essex County has provided traffic volumes for County Road 46 [County of Essex_Ex Tab2_20200724.pdf, Tab 2, paragraph 14], there is no evidence on the record that such volumes support the need for expansion. Enbridge Gas notes that volumes in certain areas (segments) were 1/5 the volumes in other areas and so it is hard to understand – even accepting a potential need for expansion – that expansion would be done throughout. Further, in light of the variation in the volume information, Essex County is suggesting that two additional lanes would be required over the entire length.
66. While Ms. Mustac claimed in her response to Pollution Probe Q#5 that County Road 46 is a Class 2 Arterial Road, a review of the Essex County Road Classification Map,² shows it is only Class 2 west of County Road 19 where Enbridge Gas has agreed to a location more than 6.0 metres from the edge of the travelled portion of the road. East of County Road 19 it shows as a blue Class 3 Road. A copy of this map is on the next page. It would be helpful if Essex County could provide the by-law supporting this description or her description in the Interrogatory responses.
67. Essex County has no demonstrated financing, no long term plans, no property acquisition for such work. Further, several segments of County Road 46 have very little traffic nor any demonstrated need for expansion. The additional depth requested by Essex County will require additional costs of \$7.2 million.

² https://www.countyofessex.ca/en/resident-services/resources/Images/County_Road_Map_Classifications-2.jpg



68. Wood PLC (Exhibit B, Tab 1, Schedule 5, Appendix B, page 22) expressed the view that road expansion in flat areas such as County Road 46 often results in a raised road rather than retaining or lowering the road profile. Lowering the road profile would lower the edge of the drains/ditches and require larger excavations to provide the necessary drainage capacity and therefore create greater demands for land.

Further, it is often the case that the bury depth of utilities constructed within the undeveloped portion of a road allowance will *increase* following the placement of the pavement structure (granular subbase, base and asphalt) associated with road widening, which can result in an increased bury depth of 500 mm or more, depending on the road profile, drainage and pavement design. Consequently, a depth of bury of 1.0 m within a pre-existing road right of way could be expected to result in a depth of bury in the order of 1.5 m or more following widening of the roadway.

69. Enbridge Gas cannot be expected to make provision for every potential future reconstruction project. Enbridge Gas views the potential for reconstruction, and potential conflict, as too speculative and remote to warrant the additional expenditures to provide the additional depth of cover.
70. As the final rationale for requesting additional depth, Essex County has purportedly relied upon its application of the TAC *Guidelines for Underground Utility Installations Crossing Highway Rights-of-Way* ("TAC Guideline") as a basis to support its demand for a depth of cover of 1.5 metres.
71. The status of Essex County's reliance upon the TAC Guideline is unclear. First, it seemed that Essex County was calling the TAC Guideline a standard that it applied. However, more recently, Essex County has taken the position, in response to Interrogatory, County_of_Essex_IRR_EGI_20200821, question 19(f) that it can choose to apply any guideline, document or standard at any time. Clearly, discretion must have a boundary of reasonableness to be permissible within the context of the "public interest".

Question f): *When did the County of Essex adopt the Guidelines for Underground Utility Installations Crossing Highway Rights-of-Way?*

Response: The County Engineer has the discretion to determine what standards and guidelines to consider in making a determination on any project. Neither the County Engineer nor County Council has ever officially "adopted" any standard or guideline. However, the County Engineer is expected to exercise her discretion in choosing what standards or guidelines to apply to each particular project to ensure that the use, function, and safety of the County road system is protected.

72. Essex County acknowledged there is no formal adoption process.
73. Further, several circumstances would seem to indicate the adoption is one of recent convenience rather than required and routine application:
- a) Essex County did not communicate with any utilities prior to its purported adoption. The adoption of such a standard should have been the result of

internal review and external stakeholders that would be impacted by such a change [County of Essex_IRR_EGI_20200821.pdf, Q. 23(e), page 22 of 99].

- b) Essex County did not inform Enbridge Gas or its consultant during the preparation of the Environmental Report filed in EB-2019-0172 of its requirement to follow the TAC Guideline. Such information regarding an important and impactful change to the way business is to be conducted should have resulted in Essex County ensuring the environmental consultant and Enbridge Gas were fully aware of the change [County of Essex_IRR_EGI_20200821.pdf, Q. 23(d) and 24(d), page 23 of 99].
 - c) Enbridge Gas further notes that this *TAC Guidelines for Underground Utility Installations Crossing Highway Rights-of-Way* has not been incorporated into any other recent permit applications issued by Essex County until after this Application was filed. In response to Interrogatory 29, 30 Tab#2 and Tab#3, Essex County provided it was noted that Enbridge Gas had completed several recent projects subject to Essex County approval in the previous few years and not once had Essex County sought to impose or reference the TAC Guideline. Essex County has not provided any evidence of its application of the TAC Guideline in any other utility project. While Essex County can claim these are compliant with the TAC Guidelines, each permit provided is a road crossing at right angles.
 - d) There is no reference to the TAC Guideline in the draft Road User Agreement.
74. It would appear the “adoption” of the TAC Guideline is an after the fact support to justify the position previously taken by Essex County.
75. Further, the notion that the TAC Guideline is an adopted Essex County “standard” is questionable based upon the evidence in this proceeding summarized above. A standard should have been vetted and should be consistently applied. Neither of these steps were done and no engineering analysis was performed.
76. First, Enbridge Gas submits that the TAC Guideline is just that, a guideline without any binding authority. Further, the guidelines make no reference to the utilities right to use or occupy the highway. These limitations are expressly noted by TAC in the Objectives of the TAC Guideline [Exhibit B, Tab 1, Schedule 5, Appendix E, page 7 of 40 and page 12 of 40].

These guidelines do not constitute a policy, a standard, a specification or a regulation. It simply proposes criteria, and road authorities have the option of applying other criteria.

These guidelines make no reference to the legal right of utilities to use or occupy highway rights-of-way or to the financial responsibility involved in the adjustment or relocation of utilities on such rights-of-way.

77. Enbridge Gas does not believe that the TAC Guideline is intended to be applicable to installations parallel to the travelled portion of the roadway. Such belief is based upon the title of the document, a plain reading of the contents of the TAC Guideline, see below [Exhibit B, Tab 1, Schedule 5, Appendix E, page 7 of 40].

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.

78. Further support is communications with a member of the TAC Committee responsible for the Guideline wherein it was acknowledged by the member of the TAC Committee that Essex County may not be applying the Guideline appropriately [Exhibit I, Staff.4, Attachment 4 pages 1 and 2].

Thanks for reaching out to us regarding the application of this document. As discussed you assessment listed below regarding the intent of the document is correct. I have attached a copy for everyone's reference. Look particularly at the Figure 4, which I have also cut and pasted to the bottom of this e-mail for ease.

I am including some additional people on this correspondence for input and to assist.

- Juan Barrera – Vice Chair PUMS
- Christopher Scott – Secretary PUMS
- Steve Murphy – Former Co-Chair and current active member PUMS
- Tony DiFabio – Member PUMS and MTO Team Lead - Provincial Highway Corridor Management Section

Gentlemen. It appears as though Essex County is using our document and may be misinterpreting the content relative to this situation. I know when written it was intended, as per the title, to be relevant for crossings and not parallel lines. Figure 4 may however open the door to this misinterpretation.

79. Essex County has failed to provide any reasonable support for its interpretation that the guideline somehow was intended to apply to parallel or longitudinal installations.
80. Further, the TAC Guideline, see excerpt below, borrows heavily from a US source document dealing with utilities within the highway right-of-way – not crossings. The US source document speaks to longitudinal installations expressly. The TAC Guideline makes no such mention of longitudinal installations.

Much of this document has been prepared based on *A Guide for Accommodating Utilities Within Highway Right-of-Way*, 2005, published by the American Association of State Highway and Transportation Officials, Washington, D.C.

81. Enbridge Gas acknowledges that the diagram of a typical crossing in the TAC Guideline includes a reference to a depth of cover of parallel installations that is shows a depth of 1.0 metre. This diagram has been reproduced below. However, this is not determinative given the limitations noted above.

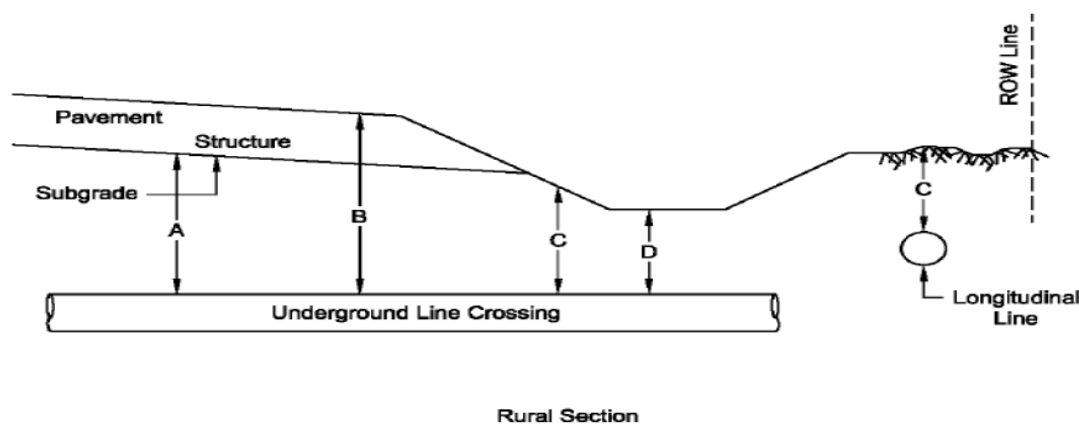


TABLE 1 -- Minimum Cover DEPTH FOR Underground Installations Crossing Highways (and Freeways)

Utility Facility Type		A	B	C	D
		Below pavement structure (subgrade) mm	Below pavement surface mm	Below ground elevation mm	Below ditch line elevation mm
High Pressure Gas or Liquid Petroleum Pipelines (> 680 kPa)	unencased existant	450	1 200	900	900
	unencased new	450 or $\frac{1}{2}\phi$	1 500	1 000	1 200
	encased existant	300	1 000	750	750
	encased new	450 or $\frac{1}{2}\phi$	1 200	900	1 200

82. Enbridge Gas submits there is no legal requirement to abide by the TAC Guideline, that the TAC Guideline was not intended to be applied to parallel installations, but even if it was intended to apply, a proper interpretation of the TAC Guideline would lead to the conclusion that the Enbridge Gas proposal is consistent with its suggested depth.

Cost

83. Enbridge Gas has an obligation to act prudently in making expenditures. Enbridge Gas has built out an estimate of the additional costs that would be incurred to have a 1.5 m depth of cover. No intervenor has provided evidence nor credibly challenged this estimate. A summary of the additional costs, Exhibit B, Tab 1, Schedule 4, and the additional activities are provided in the tables below:

General Construction	\$6,700,000
Service Install Impacts	\$350,000
Tiling, Insurance, Compaction	\$137,000
<hr/>	
TOTAL	\$7,187,000

84. The general construction increased costs are related to the additional excavation and the safety requirements for any excavation exceeding 1.2 metres. In its response to the Board questions on September 15, 2020 Enbridge Gas identified the numerous additional obligations required with the additional depth. These obligations are applicable to depths exceeding 1.2 metres so with a NPS 6 pipe – any increased depth beyond 1.0 metre will result in these additional requirements.

.75m Typical Depth	1m Proposed Depth	1.2m Proposed Depth	1.5m Proposed Depth
Typical Traffic Plan	Typical Traffic Plan with Enhancements to Tie In Areas	Detailed Traffic Plan to accommodate unique requirements. Lane closures mandatory for worker safety.	
Prepare Project Emergency Plan	Prepare Project Emergency Plan	Prepare Project Emergency Plan	
Small to Mid Excavators to construct generally in available ROW gravelled and grassed portions.	Small to Mid Excavators to construct generally in available ROW gravelled and grassed portions.	Evaluate available space to construct at this depth in ROW without added temporary land use agreements.	
Backhoe and Sideboom for Installation	Backhoe and Sideboom for Installation	Backhoe and Sideboom for Installations where practical	
Mid size trenching and HDD equipment utilized for standard distribution construction	Mid size trenching and HDD equipment utilized for standard distribution construction	Mid size trenching and HDD equipment provide limited value in populated areas	
	Mid/Large Excavators required for general construction to trench and support shoring	Mid/Large Excavators required for general construction to trench and support shoring protection	
	Tie in locations would require trenching and shoring considerations as 1m depth plus welding areas would bring into the 1.2m proposed depth requirements.	Increased areas of work in required to keep workers safe to construct mainline, pressure test and complete customer attachments. May not be available without significant excavations in municipal drainage areas, roadways, privately owned lands or road crossings.	
	For any occasions where tie in locations are 1.2m or greater please see additional requirements	Increased areas of work required for compliance as equipment, spill piles, tools or any materials cannot be within 1m of trench edge on either side. Limited running line availability this will be difficult to achieve for worker safety.	
		Increasing use of HDD will require min of 150m lengths of ROW to string out and weld pipe in days prior to installations. Impractical in densely populated areas as lengths insufficient to drill or necessitate homeowner restrictions of access for lengths of time. These often revert back to open trenching for efficient stringing, welding and installation methods with minimal disruptions to adjacent residents, traffic etc.	
		Create Rescue Procedures for Worker Retrievals for all excavations.	
		Continuous air quality monitoring to ensure workers have sufficient oxygen, free of gases or vapors with monitor agent.	
		Ensure safe means of entry/exit sufficient length with secured ladder at appropriate distances (must be within 25ft of all workers)	
		Additional cost for extraneous hauling of soils from excavations and trenches for compliance to 1m restriction. Haulage off and return to site for native replacement of soils difficult to manage with environmental compliance. Excavation soils are intended to be returned to native locations which will be difficult to prevent mixing.	
		Increased Labor Support for any trenchbox utilizations (Min 2 per excavation throughout schedule)	
		Protection methods required for connecting approximately 200 residential distribution services. Mainline to be pressure tested and commissioned prior to service attachments.	
		Construct Supports in all excavations for utilities exposed to attempt minimized plant damage (anticipate significant work as 1.2-1.5m places our new construction at the same depth as water lines)	
		Proper barriers and guardrails in place to protect items from falling into trench	
		High likelihood of soil movement based on soil types from adjacent work areas, daily inspections for water seepage and continuous pump installations during execution of work.	

85. Is it prudent to spend an additional \$7.2 million to install the pipeline with a depth of cover of 1.5 metres rather than 1.0 metre where there is no demonstrated material benefit? Enbridge Gas would note that any excavation exceeding 1.2 metres will drive significant cost increases in order to comply with safe working requirements. As such, even a depth of cover of 1.2 metres is not supportable as the additional cost is essentially the same as the 1.5 metres.
86. Enbridge Gas has included the forecast cost increase for the construction and installation only and would reiterate that the additional depth, if ordered, would also increase future customer connections costs and operations and maintenance costs. Therefore, the cost increase should be considered a conservative forecast.

Other Impacts

87. It should be noted that the additional depth will cause additional disruption and inconvenience in the following ways:
- a) Town of Lakeshore – The additional depth will bring the proposed pipeline closer to the Town of Lakeshore watermain and will likely create issues for construction. This is highlighted in the drawing at Exhibit B, Tab 1, Schedule 1, Attachment 2. Enbridge Gas has stated the extra depth will cause additional work to repair the watermain.
 - b) Duration of Construction – As noted the additional depth would create numerous additional construction requirements which would extend the duration of and level of construction activity in 2021 by up to 7 months [Exhibit B, Tab 1, Schedule 4, page 2].
88. The preponderance of evidence in this proceeding demonstrates a depth of cover proposed by Enbridge Gas advances the public interest more than the requirements of Essex County.

Removal of NPS 10 Pipeline

89. Enbridge Gas is seeking authority of the Board to abandon the NPS 10 pipeline in place consistent with the LTC Application, its procedures and as permitted by the Z662-15. Approximately 22 km of the NPS 10 pipeline is within the County Road 46 right-of-way. Another 7 km of NPS 10 pipeline is located within private lands within Essex County. Given the nature of the request by Essex County, it would drive the removal of the entire length of NPS 10.
90. Contrary to the comments of Essex County, Enbridge Gas has not agreed to remove the pipeline within all of the private easements. Discussions with landowners regarding abandonment are ongoing. In EB-2019-0172, Enbridge Gas included approximately \$3.9 million for abandonment for the entire 64 km project. This included abandonment work at stations which was referenced in EB-2019-0172, Exhibit B, Tab 1, Schedule 5, page 3 of 4, Exhibit B, Tab 1, Schedule 1, page 2, and Exhibit C, Tab 5, Schedule 3.
91. In response to the Board's question submitted September 15, 2020 – Enbridge Gas indicated that with abandon in place the pipeline is sectionalized. Road and creek crossings would be isolated, grouted and capped. Then the remaining pipeline would be sectionalized into segments less than 450 metres in length and made safe. However, aside from these discrete locations where sectionalization occurs, the abandoned pipeline remains in place. In doing this, Enbridge Gas can choose places to complete the sectionalization to avoid trees, hydro poles, environmentally sensitive and other congested areas. This minimizes the disruption to landowners and the environment, remediation requirements, third party involvement and costs of abandonment. This is the typical practice followed by the industry and Enbridge Gas.

92. Essex County has requested that Enbridge Gas remove the entirety of the NPS 10 pipeline within its jurisdiction. Enbridge Gas has forecast the cost of removing the pipeline for the 29 km would result in an additional cost of approximately \$5.9 million for abandonment. The breakdown, which was provided at in the Supplement responses to the Board's interrogatory filed September 15, 2020, of the additional costs is provided below:

	Total for entire length of pipeline		
	LTC Filing ^a	101 Filing ^b	Total costs ^c
General Construction	3,900,000	3,500,000	7,400,000
Lands TLU	-	1,100,000	1,100,000
Environmental and Archaeology	-	800,000	800,000
Hydro Pole Support	-	255,000	255,000
Tree Clearing	-	225,000	225,000
Total cost	3,900,000	5,880,000	9,780,000

a - Cost included in LTC to abandon & section NPS 10 per original scope to cut and cap per our C&M practices

b - Incremental cost \$5.8M to project if the OEB ordered the removal of entire pipe on the West end

c -Total abandonment cost should OEB order removal of pipe on the west end.

93. There has been no evidence that contradicts the forecasted costs associated Enbridge Gas' forecast.
94. The NPS 10 pipeline was installed from the 1930 to the 1960s using mechanical connections rather than welded connections which are used in today's construction. As such, the pipeline cannot be pulled, rather, Enbridge Gas will have to excavate the entire length of the project to uncover the pipeline, lift it out, and load it on a truck for disposal. The excavation would then have to be backfilled and remediated. Enbridge Gas would review the remediation in each of the next 2 years to ensure settlement has not occurred and vegetation has taken hold.
95. The need to physically excavate the pipeline drives a number of activities and cost impacts:
- a) Additional studies and permit applications will be required – archaeology and environmental, tree removal.
 - b) Additional agreements for temporary land use will be required with numerous property owners.

- c) Excavations will occur near every Hydro pole requiring the attendance of Hydro crews.
- d) The current NPS 10 pipeline has seen significant growth of vegetation, including numerous trees, that would need to be removed.
- e) Removal will impact a number of landowners where the pipeline is within the ROW but is visually part of the yard or lawn. This will not only cause significant disruption to the owner it will increase the cost of restoration. The pipeline must be properly disposed of in accordance with all applicable requirements.

1957 Franchise Agreement

96. Section 2 of the Franchise agreement provides for a right to abandon the pipe. Pipelines that are removed from service are not necessarily required to be removed. As such, Enbridge Gas submits any obligation to remove the pipeline pursuant to a request from Essex County must reside elsewhere in the Franchise Agreement.
97. Enbridge Gas acknowledges Section 6 the 1957 Franchise Agreement provides certain rights to request removal of a pipeline that has been taken out of service. However, this right is not unfettered but must be exercised within the intent and the express provisions of the 1957 Franchise Agreement and in a manner that is consistent with the broad public interest.

6. In the event that the Corporation in pursuance of its statutory powers shall deem it expedient to alter the construction of any highway or of any municipal drain, ditch, bridge, culvert or other municipal works or improvements thereon or therein and in the course thereof it shall become reasonably necessary that the location of a main, line, pipe or works of the Company laid or operated under this By-law should be altered at a specified point to facilitate the work of the Corporation, then upon receipt of reasonable notice in writing from the Clerk of the Corporation specifying the alteration desired, the Company shall, at its own expense, alter or re-locate its main, pipe, line or works at the point specified.

98. In analyzing this section, it is useful to consider certain phrases to understand what is necessary to trigger the obligation to remove a section of pipeline.
- a. First, Essex County must “*deem it expedient to alter the construction of any highway or of any municipal drain*” connotes an imminence in the timing of activities. It is not enough for the Ms. Mustac to provide her belief of future road expansion, rather Essex County must have formal plans advanced in this regard. It is only in this way there is sufficient certainty to warrant the demand to expend

resources to re-locate or alter a pipeline. In paragraphs 63 to 67 above, Enbridge Gas noted the lack of evidence of any real plans regarding the purported expansion of County Road 46. Without the plans, there is no certainty that the municipal corporation will follow through with the construction. As such, the request lacks the imminence necessary to make a request. It should be noted that in the western end of the Project, where the plans for the expansion of County Road 46 are more advanced, Enbridge Gas has located the pipeline away from the travelled portion of the roadway.

- b. Second, *“and in the course thereof it shall become reasonably necessary”* incorporates an obligation to consider the necessity of the request. In the present scenario, there is no way to establish necessity as there are no plans regarding the expansion of the roadway and so it is impossible to conclude there is a real “conflict” with the proposed construction. The obligation to demonstrate necessity protects Enbridge Gas from having to expend monies in the absence of a physical conflict in infrastructure that is intended to serve the public. Therefore, Essex County does not satisfy the necessity precondition required to make the request for removal of the NPS 10 pipeline.

Essex County, Response to Interrogatory 21(c), see response below, confirmed that the NPS 10 pipeline is “unlikely” to be directly impacted by the purported widening even if it were to occur.

Response: Again, the County is not yet at the design phase. However, given that the existing NPS 10 pipeline is generally in private easements or closer to the property line in the County's right-of-way, away from the edge of the roadway, it is unlikely that the widening of County Road 46 will have a direct impact on the existing NPS 10 pipeline.

- c. Finally, *“should be altered at a specified point to facilitate the work”* and *“alter or re-locate its main, pipe, line or works at the point specified”* has the ability to include the activity of removing a pipeline. However, the phrases preclude an overly broad request for alteration or removal through the use of the words *“at a specified point”* and *“at the point specified”*. This provides protection that Enbridge Gas will not be subject to overly broad requests and incur unnecessary costs. In the present circumstances, Essex County has not identified discrete elements of the pipeline but has rather made a blanket demand which is inconsistent with the wording of the clause.

- 99. The Franchise Agreement balances the rights and obligations of Essex County and Enbridge Gas. Essex County can undertake its projects without undue interference of a pipeline or other work of Enbridge Gas and without incurring additional costs. Enbridge Gas has the protection that it will not be put to unnecessary work nor will it have to expend resources prematurely to accommodate Essex County.

100. Enbridge Gas notes that the Z662-15 permits the use of abandon in place. The TAC Guideline, to the extent it has any value, permits the use of the abandon in place method.
101. Essex County was aware of Enbridge Gas' plan to abandon the pipeline in place. Enbridge Gas would note that Essex County failed to provide any comment in respect of the environmental study performed by Stantec about the abandonment procedure or the purported road widening. Essex County chose not to participate in the leave to construct proceeding despite being aware of the proposal to abandon in place. Essex County should not be permitted to assert this demand at this late juncture in the absence of a compelling basis for the removal and disposal of the NPS 10 pipeline.
102. In respect of the space the NPS 10 pipeline occupies, Enbridge Gas disputes the value of the resource alleged by Essex County. First, Essex County has not identified any service that has requested or would benefit from the use of the area located by the NPS 10 pipeline. Second, the proximity of the Hydro pole line and significant vegetation make it a poor choice for infrastructure to be installed. There are significant environmental considerations – such as the removal of numerous trees – that would be created with the use of this area of the right-of-way.
103. The evidence is clear that abandon in place is an acceptable practice and there has been no demonstrated need for the pipeline to be removed and the outlay of an additional \$5.9 million in costs.

Submissions on Confidentiality

104. In response to the interrogatories Exhibit PP.10, Attachment 1, Enbridge Gas filed a redacted version of the Services Agreement with Wood PLC. Enbridge Gas notes the document filed is in the names of predecessors of both Enbridge Gas and Wood PLC.
105. In its decision and order dated September 9, 2020, the Board directed Enbridge Gas to make submissions regarding the need for confidentiality.
106. The public response included redactions of two segments – insurance and pricing – of the Services Agreement. The Practice Direction on Confidential Filings states that it may consider any prejudice to a person's competitive position in determining whether or not such information should be disclosed.
107. Wood PLC operates in the highly competitive environment of engineering consulting services. It would be harmful to Wood PLC if its competitors were able to review the contents of the Services Agreement in respect of the information filed confidentially as the competitors would be able to alter their service offerings based upon this information. It is obvious that price is a significant consideration in such agreements and the decisions to enter such agreements. It is also possible that competitors could use this information for work from entities other than Enbridge Gas so the damage may go beyond engineering services from Enbridge Gas.

108. While less obvious than price, insurance can be a significant factor in the decision to retain a consultant. All of the entities covered, the nature of the coverage in subject matter and amount are all negotiated items. Disclosure of such information could impact Wood's ability to compete for work with Enbridge Gas and third parties.
109. We also note that Enbridge Gas may be adversely impacted if other competitors who may have provided more favourable terms to Enbridge Gas determine that it is not necessary to have provided such terms. In those future situations, Enbridge Gas and thereby ratepayers may not receive the full benefit of competitive offerings.
110. We also note that lack of probative value this element of the evidence has in respect of the matters at issue in this proceeding. As such, Enbridge Gas requests these sections of the Services Agreement be retained in confidence.

Relief Sought and Conclusions

111. Enbridge Gas submits that the Board should exercise its power under Section 103(3) of the OEB Act by ensuring that the proposed depth of cover, abandonment/decommissioning of the pipeline is serving the public interest. The Board determined that the Project was serving the public interest by granting Enbridge Gas leave to construct in EB-2019-0172. Having regard to all the factors, Enbridge respectfully submits its construction methods and abandoning in place serves the public interest more than the alternative requests of Essex County. Enbridge Gas' proposed methods meet or surpass applicable code requirements, are consistent with the requirements of the 1957 Franchise Agreement, create less disruption to landowners, motorists and the natural environment while costing \$13 million less. Enbridge Gas believes its preferred choice is the more prudent course of action.
112. Essex County has failed to provide real evidence that contradicts that provided by Enbridge Gas. It has not provided an engineering analysis nor has provided a reasonable basis for its application of the TAC Guideline in these circumstances. Much of its rationale relies upon an assertion that County Road 46 will be widened east of County Road 19 within 5 to 10 years. Yet, Essex County has not or cannot provide a single piece of evidence that supports that position – no money, no environmental assessment, no land acquisition, no design. Such speculation cannot be the basis for causing significant additional costs.
113. Enbridge Gas submits that it should be permitted to install the NPS 6 pipeline with a depth of cover of 1.0 metre. In addition, Enbridge Gas should be permitted to abandon the NPS 10 pipeline in place consistent with its procedures and the requirements in the CAN/CSA Z662-15. The record is clear that proceeding to complete the Windsor Pipeline Replacement Project. However, if the Board were to find otherwise, Enbridge Gas would request the Board grant the necessary approval pursuant to EB-2019-0172, Condition 4.

114. Enbridge requests the Board issue a decision with:

- a. an order, pursuant to section 101 of the *Ontario Energy Board Act, 1998*, S.O. 1998, c-15, Schedule B, granting Enbridge 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's standards and procedure; including abandoning the existing NPS 10 pipeline in-place;

or, if the Board disagrees with Enbridge Gas' preferred option,

- b. In the alternative to a), an order, pursuant to section 101 of the *Ontario Energy Board Act, 1998*, S.O. 1998, c-15, Schedule B and Condition 4 of the Decision and Order in the Leave to Construct 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 Z662-15 and Enbridge's construction policies and standards; and/or
 - ii. Removal and remediation of approximately 29km of NPS 10 steel existing steel main.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 22nd day of September, 2020.

ENBRIDGE GAS INC.

(Original Digitally Signed)

By its Counsel
Scott A. Stoll
Aird & Berlis LLP