



Enbridge Gas Inc.

**Application for leave to construct natural gas pipeline
and associated facilities in the City of Ottawa**

PROCEDURAL ORDER NO. 5

January 13, 2022

Enbridge Gas Inc. (Enbridge Gas) applied to the Ontario Energy Board (OEB) on March 2, 2021, under sections 90 and 97 of the *Ontario Energy Board Act, 1998*, S.O. 1998, c.15, (Schedule B), for an order granting leave to construct approximately 19.8 kilometres of natural gas pipeline and associated facilities in the City of Ottawa (Project). The proposed natural gas pipeline will replace the existing St. Laurent Pipeline in two final phases of its multiple year project. Enbridge Gas also applied to the OEB for approval of the form of land-use agreements it offers to landowners for the routing and construction of the Project.

This Procedural Order addresses a request for an oral hearing in this proceeding and related scheduling matters.

Oral vs Written Hearing

In its Notice of this application, the OEB advised that Enbridge Gas applied for a written hearing; that the OEB was considering this request; and that if a recipient thought an oral hearing was needed, they could write to the OEB to explain why by April 13, 2021. In Procedural Order No. 1, issued on November 8, 2021, the OEB observed that no party requested an oral hearing, but that a number of intervenors noted that the OEB's determination on a type of hearing could be more appropriately made after interrogatory responses were filed by Enbridge Gas. The OEB determined that it would decide whether to process this application by way of a written or oral hearing after its review of the interrogatory responses. Those responses were filed on December 13, 2021.

The City of Ottawa, in a letter dated November 26, 2021, requested that the OEB hold an oral hearing. It provided no reasons for this request. Pollution Probe, in a letter dated December 16, 2021, supported the City of Ottawa's request, and advised that additional correspondence would be submitted soon to provide additional information that will assist the OEB in assessing the proposed Project during an oral hearing. The OEB, having considered the submissions of the parties, determined in Procedural Order No. 3 on December 17, 2021 that it would proceed by way of a written hearing. However, the

OEB decided to provide for a technical conference as a forum for parties to seek clarification on Enbridge Gas's responses to interrogatories.

On December 29, 2021, the School Energy Coalition (SEC), in a letter submitted on its own behalf and in collaboration with the City of Ottawa and Pollution Probe (collectively, the Sponsors), requested that the OEB allow the Sponsors to submit "documentary evidence, and a panel of witnesses, speaking to the need, cost-effectiveness, and timing of the proposed project. The Sponsors request that the Board make provision in a Procedural Order to receive this evidence, allow written discovery by other parties, and provide for the witnesses to present the evidence to the Board in an oral proceeding."¹ The Sponsors' letter indicated that the evidence will be fact based and is "expected to comprise the natural gas reduction plans of several of the major customers currently relying on the St. Laurent pipeline, and forecasts of reductions in demand from those customers over the coming years. The reduction plans are expected to include at least the City of Ottawa, Ottawa Community Housing, University of Ottawa, and the Cliff Street Heating Plant."² The letter further raised concerns with the justification for the proposed Project in terms of need and timing, cost effectiveness comparisons and integrated resource planning.

Enbridge Gas, in a letter dated January 7, 2022, challenged the relevance of the Sponsors' intended evidence; however, Enbridge Gas stated that should the OEB allow the Sponsors to file their evidence, the OEB should also provide for discovery and for responding evidence from Enbridge Gas, should Enbridge Gas choose to file it. Enbridge Gas proposed a timeline that included the Sponsors' evidence; responding evidence from Enbridge Gas; interrogatories on both the Sponsors' evidence and the Enbridge Gas responding evidence; and a technical conference on the Enbridge Gas and Sponsors' evidence. Enbridge Gas reiterated its request that the OEB proceed by way of a written hearing pending the completion of the additional interrogatory process and technical conference.

SEC replied on January 7, 2022, reiterating the Sponsors' challenge of the justification for the Project and submitting that "the thrust of the Applicant's objection [to an oral hearing] appears to be to either a) prevent the major customers on this pipeline from providing evidence to the Board, or b) prevent the Board from hearing from those affected customers directly."³ SEC submitted that while it has no procedural objection to the Applicant's proposal to have the customer evidence presented in a rescheduled technical conference, nor any objection to Enbridge providing reply evidence if it feels that is appropriate, the desire of two customers to "speak directly to the Board on issues

¹ EB-2020-0293, Letter from the Sponsors dated December 29, 2021

² EB-2020-0293, Letter from the Sponsors dated December 29, 2021

³ EB-2020-0293, Letter from the Sponsors dated January 7, 2022

that matter to them”⁴ should not be refused, and that the insistence on a written hearing is “ inconsistent with the Board’s goals of openness, transparency, and customer focus.”⁵ SEC suggests that a written hearing represents a refusal to hear from those customers.

Enbridge Gas, in a letter dated January 11, 2022, disagreed with the assertions made by SEC (on behalf of the Sponsors) maintaining its position regarding the Sponsors’ evidence.

FRPO’s Request

The Federation of Rental-housing Providers of Ontario (FRPO), in its January 6, 2022 letter, raised concerns with Enbridge Gas’s responses to some of its interrogatories and provided supplemental questions with a request that Enbridge Gas respond to them in advance of the technical conference to improve the efficiency and effectiveness of the technical conference. FRPO stated that asking these questions at the technical conference would lead to further undertakings.

Enbridge Gas, in its January 11, 2022 response to FRPO, stated that:

- Enbridge Gas properly responded to FRPO’s interrogatories and the questions and clarifications sought in FRPO’s letter are questions typically posed at a technical conference
- FRPO’s request is guised as an attempt to create efficiency that would result in multiple rounds of interrogatories contrary to the OEB’s Procedural Order No. 3 which included a scheduled technical conference
- FRPO provided no basis to amend Procedural Order No. 3

FINDINGS

FRPO’s Request

The OEB directs Enbridge Gas to respond to FRPO’s questions contained in its January 6, 2022 letter as soon as possible but no later than February 22, 2022.

In its January 6, 2022 letter, FRPO submitted five multipart questions. The OEB agrees with FRPO that Enbridge Gas’s response to FRPO.1 is incomplete and notes that the clarification sought in its first question appears to be straightforward and not burdensome to respond to. Questions 2 through 5, the OEB notes, are either new or supplemental interrogatories and agrees with FRPO and Enbridge Gas that these are

⁴ EB-2020-0293, Letter from the Sponsors dated January 7, 2022

⁵ EB-2020-0293, Letter from the Sponsors dated January 7, 2022

questions that could be posed at the technical conference that would likely require technical conference undertakings. The OEB however agrees with FRPO that providing responses in advance of the technical conference will improve the efficiency and effectiveness of the technical conference. In directing Enbridge Gas to respond to the FRPO questions, the OEB is not establishing a new round of interrogatories, but rather, is attempting to make the most efficient use of the time available for the technical conference.

Oral vs Written Hearing

With regard to the Sponsors' request for an oral hearing, the OEB has considered the correspondence of the Sponsors and Enbridge Gas, and has decided to proceed with a written hearing for the reasons below. However, the OEB will provide for written evidence from the Sponsors and responding evidence from Enbridge Gas; interrogatories in respect of the Sponsors' evidence and any Enbridge Gas responding evidence; and a transcribed technical conference for the purpose of clarifying any matters arising from the responses to all interrogatories in this proceeding.

Subsections 5.1(1) and (2) of the *Statutory Powers Procedure Act* (SPPA)⁶ provide that a tribunal whose rules made under section 25.1 of the SPPA deal with written hearings may hold a written hearing in a proceeding, but that the tribunal shall not hold a written hearing if a party satisfies the tribunal that there is good reason for not doing so. The OEB's *Rules of Practice and Procedure* provide that "In any proceeding, the OEB may hold an oral, electronic or written hearing, subject to the [SPPA] and the statute under which the proceeding arises; and that the "format, date and location of a hearing shall be determined by the OEB."⁷

The OEB is not satisfied that the Sponsors have provided a good reason for not proceeding by way of a written hearing. The Sponsors clearly articulated the nature of their proposed evidence – as noted above, it relates to their natural gas reduction plans; it is fact evidence; and the Sponsors' proposed witness panel "will not express any opinion on whether the proposed project is either necessary or cost effective."⁸ The OEB is prepared to receive the Sponsors' evidence, but finds that the Sponsors can adequately present that evidence in written form, after which it will be subject to discovery, both in writing and through a transcribed technical conference. An oral hearing is not necessary since the Sponsors' own plans should be clear from their written evidence.

⁶ R.S.O. 1990, c. S.22

⁷ See Rules 32.01 and 31.02 of the OEB's *Rules of Practice and Procedure*

⁸ EB-2020-0293, Letter from the Sponsors dated December 29, 2021

The OEB rejects the Sponsors' suggestion that the witnesses' desire to appear in person, in the absence of a good reason for doing so, warrants an oral hearing. The ability to file their evidence (particularly in light of the nature of that evidence), participate in written and oral discovery, and file written submissions will afford the Sponsors the opportunity to be heard in this case, and will provide an ample opportunity for all parties to have the necessary information to prepare their final submissions to the OEB. The OEB is satisfied that the additional procedural steps, beyond the interrogatories already filed in respect of Enbridge Gas's evidence and the intervenor and applicant submissions, will ensure that a complete record will be developed that will assist the OEB in arriving at a decision in this proceeding that is in the public interest. The OEB considers this process fair, comprehensive, and transparent.

Given the concerns raised by the Sponsors and FRPO regarding the justification and adequacy of interrogatory responses for the proposed Project, the OEB is introducing additional steps to ensure that feasible alternatives to the Project have been explored and that there is a complete record in this proceeding. The OEB will:

- Allow the Sponsors to introduce documentary evidence to specifically address the steps being undertaken to reduce gas use by certain customers. As proposed by the Sponsors, the evidence shall be fact based and shall not provide opinions on the need or cost effectiveness of the Project.
- Allow Enbridge Gas to submit responding evidence if it chooses to do so. Enbridge Gas is directed to indicate on or before January 21, 2022 by letter to the OEB copying intervenors in this proceeding whether it will file responding evidence. If Enbridge Gas indicates that it will not file responding evidence, the OEB will consider issuing a procedural order to advance subsequent procedural dates.
- Allow interrogatories on both the Sponsors' evidence and Enbridge Gas's responding evidence, if any.
- Reschedule and expand the scope of the previously planned transcribed technical conference. The technical conference scope will include Enbridge Gas's initial interrogatory responses; Enbridge Gas's responses to FRPO's supplemental questions contained in its January 6, 2022 letter; responses to interrogatories on the Sponsors' evidence; and responses to interrogatories on any Enbridge Gas responding evidence. The scope of the technical conference will be limited to clarification of any matters arising from all interrogatories filed. Enbridge Gas and the Sponsors shall make witnesses available for questioning at the technical conference. The dates for the procedural schedule set out in Procedural Orders Nos. 3 and 4 are superseded by the dates below.

It is necessary to make provision for the following matters related to this proceeding. Further procedural orders may be issued by the OEB.

THE ONTARIO ENERGY BOARD ORDERS THAT:

1. The Sponsors shall file their written evidence with the OEB and serve it on all parties by **January 17, 2022**.
2. Enbridge Gas shall file a letter indicating whether it will file responding evidence with the OEB and copy all parties by **January 21, 2022**.
3. Enbridge Gas shall file any reply evidence with the OEB and deliver to all parties by **January 27, 2022**.
4. OEB staff and intervenors requesting information or material from Enbridge Gas that arises from the reply evidence filed and is relevant to the proceeding shall file written interrogatories with the OEB and deliver them to Enbridge Gas and all intervenors by **February 8, 2022**.
5. OEB staff, intervenors, and Enbridge Gas requesting information or material from the Sponsors related to their evidence shall file written interrogatories with the OEB and deliver them to the Sponsors and all intervenors by **February 8, 2022**.
6. Enbridge Gas shall file their responses to the interrogatories with the OEB and deliver those responses to all parties by **February 22, 2022**.
7. The Sponsors shall file their responses to the interrogatories with the OEB and deliver those responses to all parties by **February 22, 2022**.
8. Enbridge Gas shall respond to FRPO's questions contained in its January 6, 2022 letter as soon as possible but no later than **February 22, 2022**.
9. A transcribed, virtual technical conference among the parties and OEB staff will be convened on **March 4, 2022**, starting at 9:30 a.m. The technical conference scope will include Enbridge Gas's initial interrogatory responses; Enbridge Gas's responses to FRPO's supplemental questions contained in its January 6, 2022 letter; responses to interrogatories on the Sponsors' evidence; and responses to interrogatories on any Enbridge Gas responding evidence. The scope of the technical conference will be limited to clarification of any matters arising from all

interrogatories filed. Enbridge Gas and the Sponsors shall make witnesses available for questioning at the technical conference. Information on virtual participation will be communicated to parties later.

10. Responses to undertakings from the technical conference shall be filed with the OEB and sent to all parties by **March 11, 2022**.
11. Intervenors and OEB staff who wish to file final arguments shall file them with the OEB and send to all parties by **March 21, 2022**.
12. Enbridge Gas shall file its reply argument, if any, with the OEB and send it to all parties by **April 4, 2022**.

Parties are responsible for ensuring that any documents they file with the OEB, such as applicant and intervenor evidence, interrogatories and responses to interrogatories or any other type of document, **do not include personal information** (as that phrase is defined in the *Freedom of Information and Protection of Privacy Act*), unless filed in accordance with rule 9A of the OEB's [Rules of Practice and Procedure](#).

Please quote file number, **EB-2020-0293** for all materials filed and submit them in searchable/unrestricted PDF format with a digital signature through the [OEB's online filing portal](#).

- Filings should clearly state the sender's name, postal address, telephone number and e-mail address
- Please use the document naming conventions and document submission standards outlined in the [Regulatory Electronic Submission System \(RESS\) Document Guidelines](#) found at the [Filing Systems page](#) on the OEB's website
- Parties are encouraged to use RESS. Those who have not yet [set up an account](#), or require assistance using the online filing portal can contact registrar@oeb.ca for assistance

All communications should be directed to the attention of the Registrar at the address below and be received by end of business, 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, Zora Crnojacki at Zora.Crnjacki@oeb.ca and OEB Counsel, James Sidlofsky at James.Sidlofsky@oeb.ca

Email: registrar@oeb.ca

Tel: 1-877-632-2727 (Toll free)

DATED at Toronto, January 13, 2022

ONTARIO ENERGY BOARD

Nancy Marconi
Acting Registrar