



Enbridge Gas Inc.
50 Keil Drive North
Chatham, Ontario, Canada
N7M 5M1

July 13, 2022

Ms. Nancy Marconi
Registrar
Ontario Energy Board
2300 Yonge Street, 27th Floor
Toronto, ON M4P 1E4

Dear Ms. Marconi:

**Re: Enbridge Gas Inc.
Application for Approval of Franchise Agreement
County of Essex**

Attached is an Application by Enbridge Gas Inc. for Orders of the Ontario Energy Board with respect to a Franchise Agreement with the County of Essex pursuant to section 10 of the *Municipal Franchises Act*. There is a disagreement between Enbridge Gas Inc. and the County of Essex with regards to the need for the proposed Franchise Agreement.

Should you have any questions on this application, please do not hesitate to contact me. I look forward to the receipt of your instructions.

Yours truly,

Patrick McMahon
Technical Manager
Regulatory Research and Records
patrick.mcmahon@enbridge.com
(519) 436-5325

Encl.

ONTARIO ENERGY BOARD

IN THE MATTER OF the *Municipal Franchises Act*, R.S.O. 1990, c.M.55, as amended;

AND IN THE MATTER OF an Application by Enbridge Gas Inc. for an Order approving the terms and conditions upon which, and the period for which, Enbridge Gas Inc. will be given the right to construct and operate works for the distribution, transmission and storage of natural gas and the right to extend and add to the works in the County of Essex;

AND IN THE MATTER OF an Application by Enbridge Gas Inc. for an Order directing and declaring that the assent of the municipal electors of the County of Essex to the franchise agreement is not necessary.

APPLICATION

1. Enbridge Gas Inc. (Enbridge Gas), a regulated public utility, is a corporation incorporated under the laws of the Province of Ontario, with its offices in the City of Toronto and the Municipality of Chatham-Kent.
2. The Corporation of the County of Essex (Municipality) is a municipal corporation incorporated under the laws of the Province of Ontario. Attached hereto and marked as Schedule "A" is a map showing the geographical location of the Municipality and a customer density representation of Enbridge Gas' service area. Enbridge Gas currently serves approximately 70,640 customers within the Municipality.
3. The County of Essex is an upper-tier regional municipality comprised of seven lower-tier municipalities in southwestern Ontario - the Town of Amherstburg, the Town of Essex, the Town of Kingsville, the Municipality of Lakeshore, the Town of LaSalle, the Municipality of Leamington and the Town of Tecumseh. Enbridge Gas has Franchise Agreements with and Certificates of Public Convenience and Necessity for each of the lower-tier municipalities within the County of Essex. Enbridge Gas and its predecessors have been providing access to gas distribution services within the County of Essex since approximately 1889.
4. Enbridge Gas currently has a "perpetual" franchise agreement with the County of Essex dated December 11, 1957 (attached hereto as Schedule "B"). The franchise agreement and associated bylaw of the Municipality only refer to allowing the transmission of gas along county roads:

"A By-law to authorize Union Gas Company of Canada, Limited (hereinafter called "the Company") to lay down, maintain and use pipes and other necessary works for the transmission of gas on, in, under, along or across any highway under the jurisdiction of the Council of the Council of County of Essex." [Bylaw 1270, page 1, emphasis added]

“Full right, power, permission and consent are hereby granted, conferred and assured unto Union Gas Company of Canada, Limited its successors and assigns, to keep, use, operate, repair, maintain, remove, abandon, replace, reconstruct, alter and extend its existing lines, pipes and works in the highways under the jurisdiction of the Council of the Municipality and to lay down, maintain and use pipes and other necessary works for the transmission of gas on, in, under, along or across any highway under the jurisdiction of the said Council for the purpose of passing through the Municipality in the continuation of a line, work or system which is intended to be operated in or for the benefit of another municipality and is not used or operated in the Municipality for any other purpose except that of supplying gas in a township to persons whose land abuts on a highway along or across which gas is carried or conveyed or to persons whose land lies within such limits as the said Council by by-law passed from time to time at the request of the Company determines should be supplied with such service.” [Franchise Agreement, paragraph 1, emphasis added]

“The rights and privileges hereby granted shall continue and remain in force for a period of ten years from the date hereof and so long thereafter as the said lines are in actual use for the transportation of gas.” [Franchise Agreement, paragraph 2, emphasis added]

5. The existing franchise agreement does not reference the distribution of gas although there is an exception within the franchise agreement (as noted above) which states that Enbridge Gas may provide gas service to a customer from any pipeline if the customer abuts the road:

“...and is not used or operated in the Municipality for any other purpose except that of supplying gas in a township to persons whose land abuts on a highway along or across which gas is carried or conveyed or to persons whose land lies within such limits as the said Council by by-law passed from time to time at the request of the Company determines should be supplied with such service.” [Franchise Agreement, paragraph 1, emphasis added]

6. Enbridge’s Windsor Line starts at the Port Alma Station, located in the Municipality of Chatham-Kent, and ends in the City of Windsor. It serves portions of the Municipality of Chatham-Kent and the County of Essex including the Municipality of Lakeshore, the Town of Essex, the Town of Tecumseh, and the City of Windsor.
7. In 2019, Enbridge Gas proposed a pipeline replacement project designed to address pipeline integrity issues with the Windsor Line by constructing approximately 64 km of NPS 6 replacement pipeline operating at a pressure of 3450 kPa between the intersection of Concession 8 and County Road 46 (located in the Town of Tecumseh) and the existing Enbridge Gas Port Alma Transmission Station (located in the Municipality of Chatham-Kent). The proposed pipeline was designed as a distribution pipeline operating at less than 30% SMYS.

8. The Ontario Energy Board approved the construction of the new Windsor Line as a distribution pipeline as part of its review of the Windsor Line Replacement Project (EB-2019-0172¹ and EB-2020-0160²) based on the description of the distribution pipeline in the EB-2019-0172 evidence.³
9. Copies of the Ontario Energy Board's decisions in the EB-2019-0172 and EB-2020-0160 proceedings are provided for reference and attached hereto as Schedules "C" and "D".
10. Enbridge Gas also has other distribution pipelines along roads under the jurisdiction of the County of Essex. Enbridge Gas has a Certificate of Public Convenience and Necessity for the County of Essex (FBC 192) dated January 8, 1958 (attached hereto as Schedule "E") which allows for the construction of works associated with the transmission and distribution of gas within the County of Essex.
11. On November 3, 2021, Enbridge Gas notified the County of Essex that a Model Franchise Agreement needs to be put in place to cover distribution and transmission assets and associated operations within the County of Essex. At that time, Enbridge Gas provided the Municipality with a draft bylaw, a draft resolution and the proposed Model Franchise Agreement to be used for this process. The Municipality was also provided with a copy of the Gas Franchise Handbook as an explanatory supplement to the 2000 Model Franchise Agreement.
12. On January 25, 2022, the same package of material related to the Model Franchise Agreement proposed for the Municipality was provided to the County Solicitor for review.
13. On February 22, 2022, Enbridge Gas spoke with the County Solicitor to discuss concerns that the Municipality had with the Model Franchise Agreement and to review the regulatory process associated with having a franchise agreement approved by the Ontario Energy Board.
14. In a letter dated April 6, 2022 (attached hereto as Schedule "F"), the County of Essex confirmed that it had no desire to discuss the Model Franchise Agreement as an option. The County of Essex remained satisfied with its existing franchise agreement dated December 11, 1957 related to the transportation of natural gas and saw no compelling reason to abandon it for the Model Franchise Agreement.
15. Enbridge Gas does not support the Municipality's position that the current transmission franchise agreement satisfies the *Municipal Franchises Act* which requires that municipalities must have a Franchise Agreement in place for the use of the rights of way of the highways of the municipality.

¹ EB-2019-0172 - Decision and Order - Windsor Pipeline Leave to Construct (April 1, 2020)

² EB-2020-0160 - Decision and Order - Section 101 Application - Windsor Pipeline Replacement Project (November 12, 2020)

³ EB-2019-0172 - Exhibit B, Tab 1, Schedules 3 and 5

16. The Model Franchise Agreement outlines the terms that the Ontario Energy Board finds reasonable under the *Municipal Franchises Act*.⁴ The Ontario Energy Board has previously advised natural gas distributors that they are expected to follow the form of the Model Franchise Agreement when filing applications for the approval of franchise agreements unless there is a compelling reason for deviation.⁵
17. The franchise agreement currently in place between Enbridge Gas and the County of Essex is outdated in its language relative to the Model Franchise Agreement, and the language in the Model Franchise Agreement better confirms Enbridge Gas' distribution rights within the Municipality and provides the Municipality with updated language regarding insurance and relocations.
18. In particular, the franchise agreement currently in place between Enbridge Gas and the County of Essex stipulates that Enbridge Gas (and its ratepayers) pay all costs of relocation work requested by the Municipality:

“In the event that the Corporation in pursuance of its statutory power 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 joint to facilitate the work of the Corporation, then Union on 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 joint specified.” [Franchise Agreement, paragraph 6, emphasis added]

19. This is contrary to the cost sharing mechanism identified in the Model Franchise Agreement which is in use in all other municipalities in which Enbridge Gas operates.
20. Enbridge Gas proposes that the right to operate works for the distribution, transmission and storage of natural gas and to extend or add to the works within the County of Essex should be formalized for a period of twenty (20) years pursuant to the provisions of the Model Franchise Agreement without amendment attached hereto as Schedule “G”.
21. Enbridge Gas currently has franchise agreements in place with 312 lower and single-tier municipalities as well as with 26 other upper-tier municipalities and all are the current Model Franchise Agreement without amendments (except for one franchise agreement with a lower-tier municipality that contains a service area limitation).

⁴ Report of the Ontario Energy Board - Natural Gas Facilities Handbook - EB-2022-0081, March 31, 2022

⁵ EB-2021-0269, Decision and Order, February 17, 2021

22. The address of the Municipality is as follows:

County of Essex
360 Fairview Avenue West
Essex, ON N8M 1Y6
Attention: Mary Birch, Director of Council Services & Community Services / Clerk
Telephone: (519)776-6441 ext. 1335
Email: mbirch@countyofessex.ca

The address for Enbridge Gas' regional operations office is:

Enbridge Gas Inc.
109 Commissioners Road
London, ON N6A 4P1
Attention: Steven Jelich, Director, Southwest Region Operations
Telephone: (519) 667-4109
Email: steven.jelich@enbridge.com

23. The newspaper having the highest circulation in the County of Essex is the *Windsor Star*. This is the newspaper used by the County of Essex for its notices.
24. Enbridge Gas now applies to the Ontario Energy Board for:
- (a) an Order under s.10 approving the terms and conditions upon which, and the period for which, the County of Essex is, by by-law, to grant Enbridge Gas the right to construct and operate works for the distribution, transmission and storage of natural gas and the right to extend and add to the works; and
 - (b) an Order pursuant to s.9(4) directing and declaring that the assent of the municipal electors of the County of Essex is not necessary for the proposed franchise agreement by-law under the circumstances.

DATED at the Municipality of Chatham-Kent, in the Province of Ontario this 13th day of July, 2022.

ENBRIDGE GAS INC.

Patrick McMahon
Technical Manager
Regulatory Research and Records

Comments respecting this Application should be directed to:

Mr. Patrick McMahon
Technical Manager, Regulatory Research and Records
Enbridge Gas Inc.
50 Keil Drive North
Chatham, ON N7M 5M1
patrick.mcmahon@enbridge.com
Telephone: (519) 436-5325

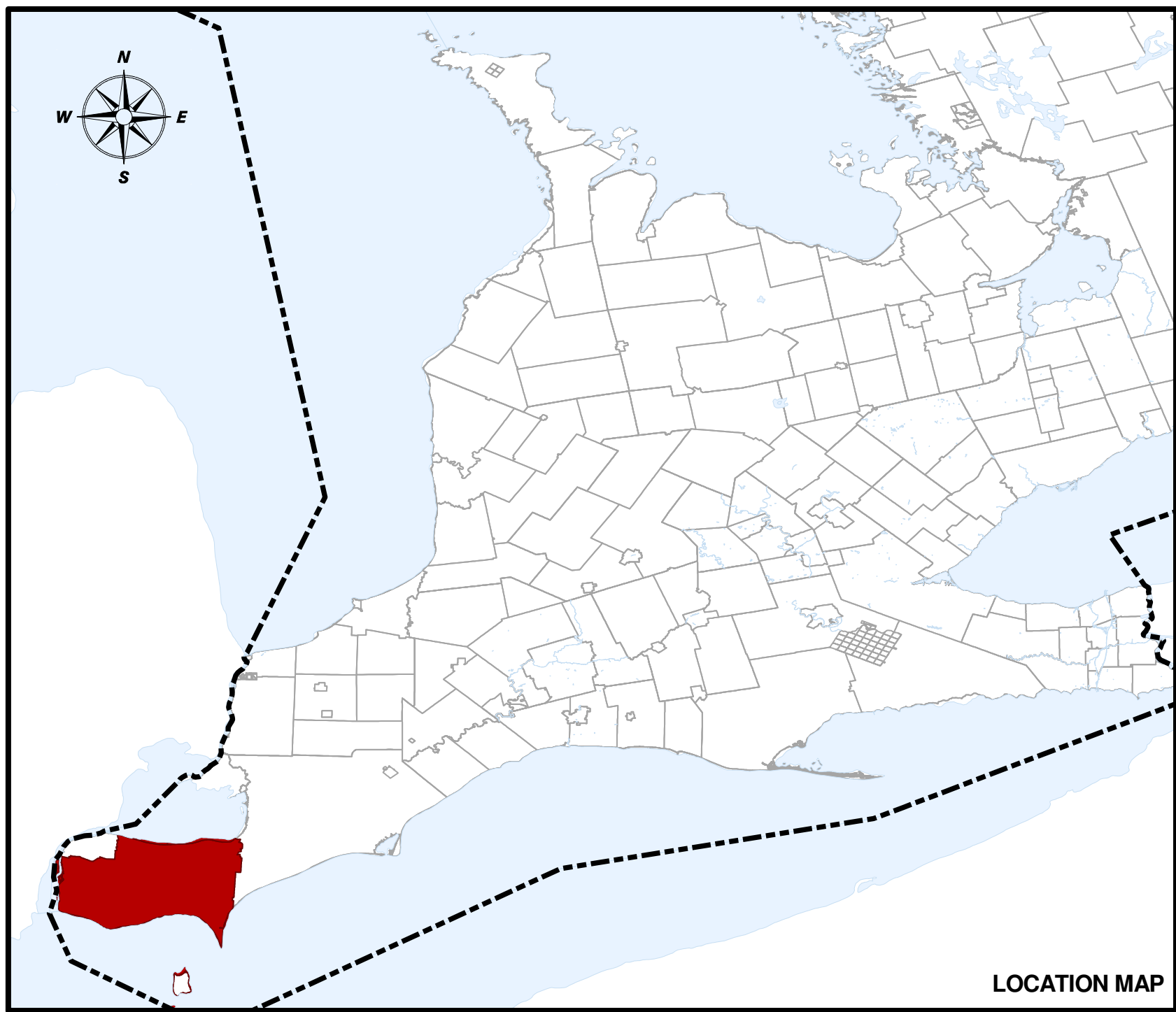
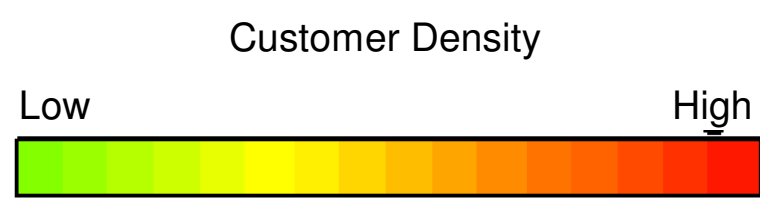


County of Essex



Disclaimer:
The map is provided with no warranty express or Implied and is subject to change at any time. Any Person using the Density Map shall do so at its own Risk and the Density Map is not intended in any way As a tool to locate underground infrastructure for the purposes of excavation

- Legend**
- Enbridge Gas Pipeline Coverage Area
 - County of Essex
 - Roads
 - Railways
 - Municipal and Township Boundaries
 - First Nation Boundaries



LOCATION MAP

AS WITNESS my hand as Secretary and the corporate seal
of the said Union Gas Company of Canada, Limited this
11th day of May, 1965.

Secretary.

A By-law to authorize Union Gas Company of Canada, Limited (hereinafter called "the Company") to lay down, maintain and use pipes and other necessary works for the transmission of gas on, in, under, along or across any highway under the jurisdiction of the Council of The Corporation of the County of Essex. *LR*

FINALLY PASSED the ~~10th~~ day of December, A.D. 1957.

WHEREAS the Company has requested The Corporation of the County of Essex (hereinafter called "the Municipality") to grant it a franchise or right to lay down, maintain and use pipes and other necessary works for the transmission of gas on, in, under, along or across any highway under the jurisdiction of the said Council for the purpose of passing through the Municipality in the continuation of a line, work or system which is intended to be operated in or for the benefit of another municipality and is not used or operated in the Municipality for any other purpose except that of supplying gas in a township to persons whose land abuts on a highway along or across which gas is carried or conveyed or to persons whose land lies within such limits as the said Council by by-law passed from time to time at the request of the Company determines should be supplied with such service.

AND WHEREAS subject to the terms and conditions herein-
after set forth, the Council of the said Municipality has agreed to
grant the said franchise.

BE IT THEREFORE ENACTED by the Council of The Corporation
of the County of Essex as follows:-

1. Full right, power, permission and consent are hereby granted, conferred and assured unto Union Gas Company of Canada, Limited, its successors and assigns, to keep, use, operate, repair, maintain, remove, abandon, replace, reconstruct, alter and extend its existing lines, pipes and works in the highways under the jurisdiction of the Council of the Municipality and to lay down, maintain and use

pipes and other necessary works for the transmission of gas on, in, under, along or across any highway under the jurisdiction of the said Council for the purpose of passing through the Municipality in the continuation of a line, work or system which is intended to be operated in or for the benefit of another municipality and is not used or operated in the Municipality for any other purpose except that of supplying gas in a township to persons whose land abuts on a highway along or across which gas is carried or conveyed or to persons whose land lies within such limits as the said Council by by-law passed from time to time at the request of the Company determines should be supplied with such service.

2. Such right or franchise shall be subject to all the terms and conditions set out in an Agreement to be entered into in pursuance of this By-law.

3. The Warden and Clerk of the Municipality are hereby authorized and empowered to enter into and to execute on behalf of the Corporation an Agreement in the form hereto annexed, and to affix the corporate seal thereto.

4. This By-law shall come into force and take effect immediately after the Agreement hereto annexed shall have been executed by all the parties hereto.

THE CORPORATION OF THE COUNTY OF ESSEX

[Original Signed By Lawrence Brunet]

Warden.

[Original Signed By]

Clerk.



118 113
118 113
JCSH

AGREEMENT made in duplicate this ~~11th~~ day of December,

A.D. 1957.

B E T W E E N:

THE CORPORATION OF THE COUNTY OF ESSEX,
hereinafter called "the Corporation"

- OF THE FIRST PART - 2

A N D

UNION GAS COMPANY OF CANADA, LIMITED,
hereinafter called "the Company"

- OF THE SECOND PART -

WHEREAS the Company has requested The Corporation of the County of Essex (hereinafter called "the Municipality") to grant it a franchise or right to lay down, maintain and use pipes and other necessary works for the transmission of gas on, in, under, along or across any highway under the jurisdiction of the said Council for the purpose of passing through the Municipality in the continuation of a line, work or system which is intended to be operated in or for the benefit of another municipality and is not used or operated in the Municipality for any other purpose except that of supplying gas in a township to persons whose land abuts on a highway along or across which gas is carried or conveyed or to persons whose land lies within such limits as the said Council by by-law passed from time to time at the request of the Company determines should be supplied with such service.

JCSH
AND WHEREAS the Council of the Corporation has by By-law passed on the ~~11th~~ day of December, A.D. 1957, granted the said franchise from and after the date of the execution of this Agreement and has authorized and empowered the Warden and Clerk of the Corporation to execute this Agreement and to affix the corporate seal thereto.

NOW THEREFORE THIS AGREEMENT made in consideration of the premises and of the performance of the covenants and obligations hereinafter contained on the part of the Company, WITNESSETH as follows:-

1. Full right, power, permission and consent are hereby granted, conferred and assured unto Union Gas Company of Canada, Limi-

ted, its successors and assigns, to keep, use, operate, repair, maintain, remove, abandon, replace, reconstruct, alter and extend its existing lines, pipes and works in the highways under the jurisdiction of the Council of the Municipality and to lay down, maintain and use pipes and other necessary works for the transmission of gas on, in, under, along or across any highway under the jurisdiction of the said Council for the purpose of passing through the Municipality in the continuation of a line, work or system which is intended to be operated in or for the benefit of another municipality and is not used or operated in the Municipality for any other purpose except that of supplying gas in a township to persons whose land abuts on a highway along or across which gas is carried or conveyed or to persons whose land lies within such limits as the said Council by by-law passed from time to time at the request of the Company determines should be supplied with such service.

2. The rights and privileges hereby granted shall continue and remain in force for a period of ten years from the date hereof and so long thereafter as the said lines are in actual use for the transportation of gas.

3. The said pipelines shall be laid across the said highways in locations approved by the Road Superintendent of the County of Essex for the time being or such other officer as may be appointed by the Council for that purpose, and the charges of such Road Superintendent or other officer attending to give such approval shall be paid by the Company.

4. All pipelines shall be placed underground, if required by the officer of the Corporation and shall be so constructed as not to obstruct or interfere with the use of the highway or with any sewers, water-pipes, drains or ditches thereon or therein, or with works of improvement or repair thereof or with the roads or bridges to property fronting thereon.

5. Upon the laying down of the said pipelines or other works hereby authorized or taking any of the same up, or moving the same from place to place in any highway, the highway shall be left unbroken on its surface and in as safe and good a state of repair as it was before

it was entered upon or opened.

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.

7. The Company shall and does hereby at all times indemnify and save harmless the Municipality from and against all loss, damage, injury or expense which the Municipality may bear, suffer or be put to by reason of any damage to property or injury to persons caused by the construction, repair, maintenance, removal or operation by the Company of any of its mains, pipes, lines or works in the Municipality unless such loss, damage, injury or expense is occasioned by Act of God or by the act, neglect, or default of some person, firm or corporation other than the Company, its servants, contractors, sub-contractors, agents or employees.

8. This agreement shall enure to the benefit of and be binding upon the parties hereto, their successors and assigns.

IN WITNESS WHEREOF the said parties have caused to be affixed hereto their respective corporate seals duly attested by the hands of their proper officers in that behalf.

SIGNED, SEALED AND DELIVERED



APPROVED AS IN FORM
[Signature]

THE CORPORATION OF THE COUNTY OF ESSEX

[Original Signed By Lawrence Brunet]

[Original Signed By]

Warden.

Clerk.

UNION GAS COMPANY OF CANADA, LIMITED

[Original Signed By]

Vice-President and General Manager.

[Original Signed By]

Assistant Secretary.

IN THE MATTER OF The Municipal Franchises
Act, Chapter 249, R.S.O. 1950 Section 8
as amended, and

The Corporation of the County of Essex ✓
The Corporation of the County of Kent
The Corporation of the County of Lambton
The Corporation of the County of Middlesex
The Corporation of the County of Perth
The Corporation of the County of Waterloo
The Corporation of the County of Wellington
The Corporation of the County of Wentworth
The Corporation of the County of Halton
The Corporation of the Town of Ojibway
The Corporation of the Township of Sandwich West
The Corporation of the Township of Sandwich East
The Corporation of the Township of Maidstone
The Corporation of the Township of Rochester
The Corporation of the Township of Tilbury North
The Corporation of the Township of Dover
The Corporation of the Township of Chatham
The Corporation of the Township of Sombra
The Corporation of the Township of Dawn
The Corporation of the Township of Caradoc
The Corporation of the Township of London
The Corporation of the Township of Westminster
The Corporation of the Township of Blanshard
The Corporation of the Township of Downie
The Corporation of the Township of North Dumfries
The Corporation of the Township of Waterloo
The Corporation of the Township of Guelph
The Corporation of the Township of West Flamborough
The Corporation of the Township of Trafalgar

A. R. Crozier, Chairman, and) Monday, the 6th day
W. R. Howard, Commissioner) of January, 1958.

UPON the Application of Ontario Natural Gas Storage and Pipelines Limited for approval of the Ontario Fuel Board to construct works to supply and to supply gas to any person engaged in the transmission and/or distribution of gas in each or any of the municipalities referred to in the style of cause in this Application pursuant to Section 8 of The Municipal Franchises Act, R.S.O. 1950, Chapter 249, as amended; upon the hearing of such Application by the Board at its Offices, 4 Richmond Street, East, in the City of Toronto and Province of Ontario on the 6th day of January, 1958, after due Notice of such Hearing had been given as directed by the Board; in the presence of

Counsel for the Applicant and in the presence of F. R. Palin, Esquire, C.A., Assistant General Manager of and for the Applicant, Sheppard McCallum, Esquire, Reeve of the Township of Sombra, Norman Wilson and Byron Young, President and Secretary respectively of Lambton Gas Storage Association; upon hearing the evidence adduced, the exhibits filed and Counsel aforesaid;

THIS BOARD DOTH CERTIFY, pursuant to Section 8 of The Municipal Franchises Act, R.S.O. 1950, Chapter 249, as amended, that Public Convenience and Necessity appear to require that approval of the Ontario Fuel Board shall be and the same is hereby given to Ontario Natural Gas Storage and Pipelines Limited to construct works to supply and to supply gas to any person engaged in the transmission and/or distribution of gas in all or any of the following municipalities, namely:-

County of Essex	Township of Tilbury North
County of Kent	Township of Dover
County of Lambton	Township of Chatham
County of Middlesex	Township of Sombra
County of Perth	Township of Dawn
County of Waterloo	Township of Caradoc
County of Wellington	Township of London
County of Wentworth	Township of Westminster
County of Halton	Township of Blanshard
Town of Ojibway	Township of Downie
Township of Sandwich West	Township of North Dumfries
Township of Sandwich East	Township of Waterloo
Township of Maidstone	Township of Guelph
Township of Rochester	Township of West Flamborough
	Township of Trafalgar.

AND THIS BOARD DOTH further Order and Direct that the costs of this Application fixed at the sum of \$145.00 shall be paid forthwith by the Applicant to the Board.

DATED at Toronto, Ontario, this 8th day of January, 1958.

ONTARIO FUEL BOARD

"A. R. Crozier"
Chairman

"W. R. Howard"
Commissioner

ONTARIO FUEL BOARD

IN THE MATTER OF The Municipal Franchises Act, Chapter 249, R.S.O. 1950, Section 8 as amended, and

IN THE MATTER OF an Application by Ontario Natural Gas Storage and Pipelines Limited to the Ontario Fuel Board for approval of the Board to construct works to supply and/or to supply gas in the under-mentioned municipalities

The Corporation of the County of Essex,
et al

BEFORE:

A. R. Crozier, Chairman, and

W. R. Howard, Commissioner

Monday, the 6th day of January, 1958.

CERTIFICATE OF PUBLIC CONVENIENCE
AND NECESSITY

McNevin, Gee & O'Connor,
Barristers, etc.,
Bank of Montreal Bldg.,
CHATHAM, Ontario.

DECISION AND ORDER

EB-2019-0172

ENBRIDGE GAS INC.

Application for approval to construct a natural gas pipeline and associated facilities in the Municipality of Chatham-Kent and the Towns of Lakeshore and Tecumseh

**BEFORE: Michael Janigan
Presiding Member**

**Robert Dodds
Vice Chair and Member**

April 1, 2020

TABLE OF CONTENTS

1	INTRODUCTION AND SUMMARY.....	1
2	THE PROCESS	2
3	THE PUBLIC INTEREST TEST	4
4	NEED FOR THE PROJECT.....	5
5	PROPOSED FACILITIES AND ALTERNATIVES	7
6	PROJECT COST AND ECONOMICS.....	13
7	ENVIRONMENTAL MATTERS.....	14
8	INDIGENOUS CONSULTATION	16
9	LAND MATTERS	17
10	CONDITIONS OF APPROVAL	18
11	ORDER	19
	SCHEDULE A.....	20
	SCHEDULE B.....	22

1 INTRODUCTION AND SUMMARY

This is the Decision and Order of the Ontario Energy Board (OEB) regarding an application filed by Enbridge Gas Inc. (Enbridge Gas) on August 9, 2019.

Enbridge Gas applied under section 90(1) of the *Ontario Energy Board Act, 1998* (Act) for approval to construct a natural gas pipeline and ancillary facilities replacing approximately 64 kilometres of the Windsor pipeline in the Municipality of Chatham-Kent and the Towns of Lakeshore and Tecumseh (the Project). Enbridge Gas also applied under section 97 of the Act for approval of the forms of agreement it will offer to landowners to use their land for routing or construction of the proposed pipeline.

Enbridge Gas stated that the Project is needed to address multiple pipeline integrity concerns that it has identified in order to ensure the safety and reliability of the Windsor pipeline. Construction of the Project is scheduled to begin in May 2020 and is expected to be in-service in November 2020.

A map of the Project is attached as Schedule A to this Decision and Order.

The OEB examined all aspects of Enbridge Gas' leave to construct application and while it is satisfied that the replacement of the pipeline is in the public interest, the OEB only approves the construction of the hybrid option, the reasons for which are detailed in Section 5 below. Furthermore, leave to construct the Project is granted subject to the conditions of approval attached as Schedule B to this Decision and Order (Conditions of Approval). The OEB also approves the proposed form of agreement that Enbridge Gas will offer to affected landowners.

2 THE PROCESS

Enbridge Gas filed the leave to construct application on August 9, 2019.

The OEB issued a Notice of Hearing on September 13, 2019. Energy Probe Research Foundation (Energy Probe) and Federation of Rental-housing Providers of Ontario (FRPO) applied for, and were granted, intervenor status and cost eligibility.

On October 11, 2019, the OEB issued Procedural Order No. 1, indicating that it was proceeding by way of written hearing and making provision for interrogatories, interrogatory responses and submissions. Interrogatories were filed by OEB staff on October 17, 2019 and by Energy Probe, and FRPO on October 21, 2019. Enbridge Gas filed its responses to interrogatories on November 1, 2019.

On November 11, 2019, FRPO filed a letter requesting additional discovery on the application by means of a technical conference. The OEB issued Procedural Order No. 2 on November 13, 2019, which sought submissions from parties on the merits of FRPO's request, and suspended the dates set out in Procedural Order No. 1 for submissions on the application. FRPO's request was supported by Energy Probe and OEB staff.

On November 22, 2019, the OEB issued Procedural Order No. 3 ordering a transcribed technical conference, which was held on December 5, 2019. Enbridge Gas filed responses to undertakings on December 18, 2019. On December 23, 2019, the OEB issued Procedural Order No. 4 making provision for written submissions.

On January 4, 2020, FRPO filed a letter requesting an oral hearing. FRPO stated that the evidence filed by Enbridge Gas regarding the sizing of the pipeline and the costs of alternatives was confusing and that it would be in the public interest to hold an oral hearing to clarify the record. Enbridge Gas responded to FRPO's request on January 8, 2020 stating that an oral hearing was not necessary and that there is a full record to enable the OEB to determine if the application is in the public interest. FRPO filed another letter on January 10, 2020 reiterating its request for an oral hearing.

On January 13, 2020, the OEB issued a letter stating that it would not proceed by way of an oral hearing and required Enbridge Gas to file an Argument-in-Chief (AIC) addressing the need and prudence for the size of the pipeline sought to be built with reference to the appropriate sections of the evidence.

The OEB issued Procedural Order No. 5 on January 15, 2020 setting out a revised schedule for the filing of written submissions. On January 27, 2020, Enbridge Gas filed its AIC. OEB staff, FRPO, and Energy Probe filed submissions on February 10, 2020 followed by a reply submission from Enbridge Gas on February 24, 2020.

3 THE PUBLIC INTEREST TEST

This proceeding concerns an application by Enbridge Gas under section 90(1) of the Act seeking an order for leave to construct a natural gas pipeline.

Section 96(1) of the Act provides that the OEB shall make an order granting leave to construct if the OEB finds that the “construction, expansion or reinforcement of the proposed work is in the public interest”. When determining whether a project is in the public interest, the OEB typically examines the need for the project, project alternatives, project cost and economics, environmental impacts, land matters, and Indigenous consultation.

4 NEED FOR THE PROJECT

The Windsor Line is a large diameter high-pressure distribution pipeline that receives gas from the Enbridge Gas Panhandle Transmission System and provides natural gas service to residents and businesses from Port Alma, in the Municipality of Chatham-Kent to the City of Windsor, located in the County of Essex. A significant portion of the Windsor Line was installed in the 1930s, 1940s and 1950s.

Enbridge Gas stated that surveys and inspections of the Windsor Line that are undertaken annually have identified multiple integrity issues which, if not addressed, are expected to impact both the safety and security of supply of the pipeline. These include a history of leakage with significant costs to repair, portions of the older vintage pipe that are not weldable, sections of the pipeline that cannot be isolated because of inoperable mainline valves, and sections that have poor depth of cover with less than 0.6 metre.¹

In responses to questions from parties, Enbridge Gas confirmed that there are currently 24 active leaks and 3 inoperable mainline valves and also provided information showing that leaks had increased from 20 in 2017 to 34 in 2019. Enbridge Gas stated that the most recent depth of cover survey identified approximately 19 kilometres of pipe at a depth of cover of less than 0.6 metre, with 23 locations with exposed pipe.²

Enbridge Gas estimated that maintenance costs of the line could range from \$381,000 in 2020 rising to \$857,000 in 2022. Enbridge Gas also stated that it expects incremental costs ranging from \$10 to \$18 million from 2020 to 2022 to address depth of cover issues.³

Enbridge Gas submitted that as there are currently three inoperable mainline valves and if the pipeline had to be isolated, this would result in significant customer outages.⁴ There are 399 residential and commercial customers directly served off the section of pipeline that Enbridge Gas proposes to replace.

Enbridge Gas submitted that the Windsor Line was deemed a high operational risk in April 2017.⁵ The Project was identified in Enbridge Gas' Utility System Plan and Asset Management Plan filed in Enbridge Gas' 2019 rate application.⁶

¹ Application, Exhibit B, Tab 1, Schedule 1,p.2

² Exhibit I, OEB Staff 2 and Exhibit JT1.19

³ Exhibit JT1.18

⁴ Response to OEB Staff Interrogatory, Exhibit I, Staff 2, p.2

⁵ Exhibit I, OEB Staff 2

⁶ Exhibit I, OEB Staff 6

Energy Probe submitted that there is inadequate evidence provided by Enbridge Gas that the OEB can rely upon regarding the various integrity concerns that necessitates the replacement of the pipeline. Energy Probe argued that there is no integrity report provided by an independent expert that verifies the integrity issues claimed by Enbridge Gas. In Energy Probe's view, the evidence provided is of a summary nature. Energy Probe also argued that Enbridge Gas was unable or unwilling to provide clarifying evidence as to the extent and nature of the identified integrity issues (leaks, depth of cover issues, inoperable valves, and vintage pipe that is not weldable) during the technical conference. Energy Probe submitted that without this evidence, it is not possible to draw a reasonable conclusion regarding the urgency for the replacement of the pipeline.⁷ FRPO supported the submissions of Energy Probe on integrity issues.

OEB staff submitted that based on the evidence filed by Enbridge Gas, the need for the replacement is supported by the integrity concerns identified and the age of the pipeline.

In its reply submissions, Enbridge Gas reiterated that if the multiple integrity issues identified are not addressed, they are expected to impact both the safety and security of supply of the pipeline. Enbridge Gas submitted that a large proportion was installed from the 1930s to the 1950s and that there are sections that are between 70 and 90 years, emphasizing that Enbridge Gas witnesses at the Technical Conference had expressed that the Windsor line is near end of life. Enbridge Gas submitted that the OEB in its leave to construct decision on the Sudbury Line Replacement Project had acknowledged that age was a consideration that justified the need for the project in addition to multiple integrity concerns.

Findings

On balance, the OEB finds that the need for the replacement project is supported by the integrity concerns identified and the age of the pipeline. The OEB would have been better assisted in making this conclusion if Enbridge Gas had offered more comprehensive supporting evidence as to the extent of the integrity issues and the ability of those issues to be rectified without necessitating the replacement. Safety and security of supply concerns are of paramount importance in determining need for the Project particularly given the age of the existing Windsor Line. However, the OEB has a responsibility to ensure that the proposed ratepayer-funded capital expenditure of \$106.8 million is based on clear, well-supported and objective evidence. While the OEB does find that the Project is required and in the public interest, it generally expects a more thorough presentation of Project need given the funding requested.

⁷ Energy Probe Argument, p.5

5 PROPOSED FACILITIES AND ALTERNATIVES

Alternatives Assessed

Enbridge Gas plans to replace the existing pipeline, comprised of NPS 10 and NPS 8 pipe and currently operating at a maximum operating pressure (MOP) of 1380 kPa with a NPS 6 pipeline operating at a MOP of 3450 kPa at a cost of \$92.7M (excluding overheads).

Enbridge Gas stated that the Project was chosen as it offers the lowest cost while also providing the required capacity to serve the current and forecasted system demands. Enbridge Gas used a ten year customer attachment forecast of demands on the pipeline to identify reinforcement facilities required to support forecasted growth.⁸

Enbridge Gas reviewed several different pipeline operating pressures when considering alternatives for the Project. Enbridge Gas also reviewed options of installing a NPS 6, NPS 8 or a NPS 10 replacement pipeline.

The first MOP considered for the Project was to replace the existing 1380 kPa pipeline with a new pipeline also operating at 1380 kPa. Enbridge determined that a NPS 6 was the minimum size required for a replacement project operating at a 1380 kPa MOP. However, this option costs \$92M and was rejected as it would only provide enough capacity to satisfy the current system demands, leaving little remaining capacity to support the forecasted system growth.

Enbridge Gas considered a NPS 8 replacement option costing \$103M, but this option would only provide enough capacity to support approximately five years of forecasted growth. A NPS 10 option was also considered. This option offers capacity to support significant system-wide growth. However, this option was rejected due to the significant cost (\$108.4M) when compared to the Project.

Enbridge Gas also examined the options of using NPS 8 and NPS 10 pipeline to replace the existing pipeline, operating at 3450 kPa. The NPS 8 and NPS 10 provide more capacity than the proposed pipeline, however Enbridge Gas stated that the forecast could not justify the increased costs (\$104M for the NPS 8 and \$109.3M for the NPS 10) associated with generating the incremental capacity.

⁸ Exhibit C, Tab 3, Sch 1, p.11

Other alternatives that were considered and rejected in early analysis included the installation of a 1900kPa MOP, 6040 kPa MOP, and 420kPa MOP pipelines. Enbridge Gas determined that if the Windsor Line is to be replaced at a higher MOP, a 3450kPa MOP would provide the most capacity with minimal cost increases.

In its review of alternatives, Enbridge Gas considered replacing both a longer section of the line as well as a shorter section of the line. Enbridge Gas determined that replacement of the entire Windsor Line was not currently required, as the portion of the pipeline that is not proposed to be replaced at this time has not presented the same integrity concerns as the rest of the line and costs significantly more (\$110M). With respect to replacing a shorter section (48 kms) of the Windsor line, Enbridge Gas stated that this would leave a 16km section of 1950's vintage pipe still in service which has significant integrity concerns.

Enbridge Gas evaluated options of joining previously independent distribution pipelines as well as obtaining supply from non-Enbridge pipelines but determined that there were no nearby distribution pipelines with adequate reliable capacity to serve the system demands.

Finally, Enbridge Gas considered geo-targeted demand side management (DSM) but stated that as the proposed pipeline is integrity driven, DSM cannot defer or eliminate the project need. Enbridge Gas also evaluated whether DSM would be viable to reduce the size of the proposed project; however, it was found that an NPS 4 project could not serve the existing system demand, even with geo-targeted DSM being implemented.

FRPO questioned whether Enbridge Gas had considered the option of using a NPS 4 for some or all of proposed pipeline construction. In its response, Enbridge Gas dismissed the use of a NPS 4 exclusively as this would not serve the existing demand requirements on design day. With respect to a hybrid option (combination of NPS 4 and NPS 6), Enbridge Gas stated that 40% of the proposed line requires the capacity of NPS 6 and that a hybrid option would be unable to meet unforecasted demand.⁹

Enbridge Gas stated that the proposed pipeline was designed as a "like-for-like" replacement with the existing NPS 10 Windsor Line in terms of capacity. FRPO argued that a "like-for-like" replacement should not constitute a disciplined approach to investment as prudent sizing is accomplished by design, using the best information available on current and future needs.

⁹ Exhibit I, FRPO 15

FRPO asked Enbridge Gas to provide information on the capacity east of the Comber Transmission Station (Comber), (a midway point on the section of Windsor pipeline that is proposed to be replaced) under different sizing scenarios. Based on Enbridge Gas' response, FRPO argued that the use of a NPS 6 pipeline results in surplus capacity that is over 200 times the forecasted need at the end of ten years while the hybrid option results in additional capacity that is over 70 times the need at the end of ten years and questioned the need for the NPS 6 pipeline. FRPO questioned how much speculative capacity should be allowed to be installed and argued that Enbridge Gas should be held to a standard of prudent investment.¹⁰

OEB staff submitted that the proposed design appears to be designed to meet demand that is above the ten-year demand forecast. OEB staff further submitted that while it is reasonable to consider future growth potential in a reinforcement project, it is important that evidence on potential load additions to justify additional capacity be provided to enable the OEB to assess the need of a proposed project. Energy Probe submitted that the evidence and submissions of Enbridge Gas on alternative pipe sizes was inadequate and supported FRPO's submissions.

Enbridge Gas stated that un-forecasted demand arises from large agricultural and greenhouse customers whose locations and demands are difficult to predict.

OEB staff submitted that it is not clear when or if Enbridge Gas will be required to meet all or any of these potential demands.

In its reply submission, Enbridge Gas clarified that it has received five separate customer inquiries in the Port Alma and surrounding areas for demands for over 8,000 m³/hour east of Comber.¹¹ Enbridge Gas acknowledged that not all these potential loads may proceed; however, it noted that many of these requests were received in the last two years and are expected to continue in the future. Enbridge Gas also stated that demands in these quantities will likely require reinforcement sooner if the hybrid option is pursued than if all NPS 6 is installed.¹²

Enbridge Gas indicated that the hybrid option will reduce the pressure and flows available on the pipeline, reducing its ability to provide a backfeed to other systems for both operational and emergency scenarios in the area.¹³ FRPO argued that the Windsor line has interconnections which could provide feed that could potentially meet un-

¹⁰ Technical Conference Transcript, pp 17-20, FRPO January 4, 2020 letter and Final Argument, p.3

¹¹ Exhibit JT 1.15 and Reply Submission

¹² Exhibit KT1.5 and Argument-in-Chief, p.10

¹³ Reply Submission, p. 7 and Exhibit KT1.6

forecasted load and that now, the OEB does not have evidence to understand the capabilities of alternatives to meet the un-forecasted load.

In its reply submissions, Enbridge Gas submitted that one benefit that was not accepted by OEB staff and FRPO is that the NPS 6 pipeline provides the same capacity as the existing pipeline. Enbridge Gas argued that in addition to maintaining a “like-for-like” comparison from a capacity perspective, the advantage of using the NPS 6 pipeline is the ability to meet the increasing un-forecasted demand that Enbridge Gas has been receiving from greenhouse customers within the general area of the Project. Enbridge Gas also stated that it had expressed in its interrogatory responses and in its Argument-in-Chief that the hybrid option would not be able to meet this un-forecasted demand.

With respect to the un-forecasted demand, Enbridge Gas stated that as it continues to receive these customer requests, the hybrid option is not the best alternative to serving these customer requests. Enbridge Gas also stated that if the un-forecasted demand is added, the NPS 4 may not be able to meet the future demands that the NPS 6 could provide.

Enbridge Gas submitted that the NPS 6 is the more prudent option because it supports the economic growth in the Windsor-Essex area, provides more flexibility for emergency response, and it will allow Enbridge Gas to meet the increasing demands sought by the greenhouse industry. Enbridge Gas also submitted that from a design perspective it is more efficient to proceed with the NPS 6 today, particularly when considered against the incremental costs for creating the surplus capacity of an NPS 6 vs the hybrid option.

Cost of proposed facilities and hybrid alternative

FRPO and OEB staff requested a cost estimate for the hybrid alternative at different stages of the discovery process. Prior to the technical conference, OEB staff requested a cost estimate of the hybrid option. In its response, Enbridge Gas did not provide a cost estimate but stated that the hybrid option is estimated to be \$0.8M less than the NPS 6 option.¹⁴ However, in undertaking responses to FRPO, Enbridge Gas stated that the cost of the proposed Project is estimated to be \$77.4M while the hybrid option is estimated to be \$76.1M, or a difference of \$1.3M.¹⁵

FRPO requested information on costs, including unit cost per km, for OEB approved projects ranging from NPS 2 to NPS 6 over the past 10 years. Enbridge Gas provided

¹⁴ Exhibit KT 1.6

¹⁵ Exhibit JT1.14

costs for three previous pipeline projects, which FRPO argued demonstrates that the unit cost for a NPS 4 was less than one-third of the cost of a NPS 6 and which also showed the contractor cost per unit length for a NPS 4 as being less than half of the unit cost for NPS 6.¹⁶

In its AIC, Enbridge Gas submitted that comparison with these past projects is not appropriate as they are small pipeline projects such as new general infill expansion enhancement to existing pipelines while the proposed replacement is a much larger project.

OEB staff submitted that while the costs of the hybrid option should be less than the NPS 6, the cost differential between the hybrid option and the proposed NPS 6 appears to be understated. OEB staff recommended that in the absence of better clarity from Enbridge Gas in its reply submission that the OEB approve the hybrid option.

FRPO submitted that Enbridge Gas has not met its onus to demonstrate that NPS 6 is the appropriate size for the eastern leg of the Windsor line replacement and urged the OEB not to approve the application as presented until the applicant can provide more compelling evidence.

In its reply submissions, Enbridge Gas stated that the Windsor Line replacement is far more complex than the previous pipeline projects provided by Enbridge Gas for comparison purposes. Enbridge Gas submitted that comparison based on a simple per kilometre cost ratio is not appropriate. There are multiple factors that differentiate this Project from the previous projects which influence the cost. There are a number of conditions that are present in this Project that would not be reflected in the construction costs of the comparator projects. These include:

- 19 new station installations with 5 abandonments with bypass or stop and tap activities for NPS 10;
- NPS 4 and NPS 2;3 complex river crossings within wetland designated areas West of Comber Transmission;
- An extensive list of landowner purchase agreements and temporary land use agreements; abandonment of sections of NPS 10 main;
- both in place and full removal of natural gas delivery is required through both NPS 10 and NPS 6 for all residents throughout construction.

Enbridge Gas argued that in its decision on the Sudbury Replacement Project, the OEB granted the approval because the new replacement line provided incremental capacity

¹⁶ FRPO submission, p.7

at a modest cost (i.e. the difference between NPS 10 and NPS 12 was \$1.5 million) and also submitted that in this proceeding, in order to meet the un-forecasted demands (i.e. greenhouse and agricultural customers) in the Windsor-Essex area the NPS 6 design is more efficient than the hybrid option.

Enbridge Gas asserted that for a small incremental cost of \$0.8M, the NPS 6 creates surplus capacity that would avoid or delay potential future reinforcements and accommodate the growing demand in the area.

Findings

The OEB approves construction of the hybrid option combining the use of NPS 4 and NPS 6 pipeline sizes estimated to cost \$76.1 M, some \$1.3M less than the cost of the completion of the Project using only the NPS 6 pipeline capacity.

The OEB acknowledges the potential benefits of planning to meet un-forecast demand by the construction of NPS 6 line throughout the length of the Project but the evidence of Enbridge Gas on the record concerning this demand, which was not set out in its original application, is somewhat speculative. The OEB acknowledges that Enbridge Gas may choose of its own volition to construct a NPS 6 line throughout but the incremental increase in cost over the hybrid option will not be eligible for inclusion in rate base until the need for NPS 6 actually arises.

The existence of inquiries from potential customers provides some, but not conclusive evidence of the need to accommodate future demand. It would have also been helpful for Enbridge Gas to have addressed in its original application the need for the Project to ensure back feed capacity and avoid pressure reductions – needs that were raised by Enbridge Gas later in the proceeding.

In weighing the merits of the arguments of Enbridge Gas, OEB staff and intervening parties, the OEB finds a lack of sufficient evidentiary support for the Project using the Enbridge Gas pipeline size option instead of the less expensive hybrid.

6 PROJECT COST AND ECONOMICS

Enbridge stated that total estimated cost of the Project is \$106.8M. This comprises \$77.4M for the main pipeline, \$15.3M for ancillary facilities (stations and services), and \$14.1M in indirect overhead costs.

Enbridge Gas stated that a Discounted Cash Flow report was not completed as the Project is underpinned by the integrity requirements and will not create a significant change in capacity available on the Windsor Line.

OEB staff submitted that the rationale for not conducting an economic analysis is acceptable and notes that the OEB has accepted the rationale in previous applications for leave to construct replacement projects where the need was driven by integrity requirements.¹⁷

Enbridge Gas expects the Project will meet the criteria for rate recovery through the OEB's Incremental Capital Module (ICM) mechanism. The ICM request for the Project will form part of Enbridge Gas' 2020 rate application.

Findings

The OEB approves a total estimated cost of the Project of \$105.5 M. This comprises \$76.1M for the main pipeline, \$15.3M for ancillary facilities (stations and services), and \$14.1M in indirect overhead costs.

The OEB accepts the rationale from Enbridge Gas for not conducting an economic analysis. The OEB has accepted the rationale in previous applications for leave to construct replacement projects where the need was driven by integrity requirements.

¹⁷ EB-2018-0108, Decision and Order, p.6 and EB-2017-0118, Decision and Order, p.6

7 ENVIRONMENTAL MATTERS

Enbridge Gas retained Stantec Consulting Ltd. (Stantec) to complete an environmental assessment of the proposed pipeline.

Enbridge Gas followed the OEB's *Environmental Guidelines for the Location, Construction, and Operation of Hydrocarbon Pipelines and Facilities in Ontario, 7th Edition, 2016* (Guidelines) for the environmental assessment. This was documented in an Environmental Report (ER) prepared by Stantec examining the potential effects of the Project on the environmental and socio-economic features of the area. According to the ER, Stantec does not anticipate any permanent or adverse environmental impacts from the construction and operation of the Project, provided the mitigation measures recommended in the ER are followed.

Enbridge Gas has committed to complying with all mitigation measures recommended in the ER.¹⁸

Enbridge Gas submitted copies of the ER to the Ontario Pipeline Coordinating Committee (OPCC) for review and comment on July 22, 2019. Enbridge Gas provided a summary of the OPCC review comments, noting a couple of outstanding matters relating to comments from the Essex Region Conservation Authority (ERCA).¹⁹ Enbridge Gas stated that it has contacted the Essex Region Risk Management Official/Inspector as recommended by the ERCA to discuss the Project and appropriate risk management measures and will also work with the ERCA on a permit application for identified water crossings.

Enbridge Gas confirmed that a Stage 1 Archaeological Assessment (AA) report was submitted to the Ministry of Heritage, Sport, Tourism and Culture Industries (MHSTCI) on March 11, 2019 and that the MHSTCI issued a compliant letter on April 12, 2019. Enbridge Gas stated that a Stage 2 AA began in June 2019 and a Stage 2 AA report was submitted to the MHSTCI in December 2019. On January 9, 2020, Enbridge Gas received a letter of acceptance from the MHSTCI regarding the Stage 2 AA.²⁰ On March 26, 2020, Enbridge Gas provided an update on the Stage 2 AA stating that a number of additional properties located within the Project area were identified for assessment following the submission of the December 2019 Stage 2 AA report. These additional properties will be assessed in Spring 2020 and an additional Stage 2 AA report will be submitted to MHSTCI for review and acceptance. Enbridge Gas stated

¹⁸ Application, Exhibit B, Tab 1, Schedule 6, p.3

¹⁹ OEB Staff Interrogatory 8

²⁰ OEB Staff Interrogatory 9 and Enbridge letter of March 26, 2020

that it will not conduct works within these areas until MHSTCI acceptance letters are received.

Enbridge Gas stated that it will continue to work with agencies as well as municipalities throughout the Project area to secure any necessary permits and authorizations prior to construction.

OEB staff submitted that it has no concerns with the environmental aspects of the Project, given that Enbridge Gas is committed to implementing the mitigation measures set out in the ER. OEB staff also submitted that Enbridge Gas agrees with the draft conditions of approval proposed by OEB staff, including those that require Enbridge Gas to certify that it has obtained all approvals, permits, licences, and certificates required to construct, operate and maintain the proposed Project.²¹

Findings

The OEB finds that Enbridge Gas has complied with the OEB's Guidelines for the environmental assessment and notes that Enbridge Gas is committed to implementing the mitigation measures set out in the ER.

The OEB also notes that Enbridge Gas agrees with the draft conditions of approval proposed by OEB staff, including those that require Enbridge Gas to certify that it has obtained all approvals, permits, licenses, and certificates required to construct, operate and maintain the proposed Project.

²¹ OEB Staff Interrogatory 12

8 INDIGENOUS CONSULTATION

In accordance with the OEB's Guidelines, on April 13, 2018, Enbridge Gas contacted the Ministry of Energy, Northern Development and Mines (MENDM) with respect to the Crown's duty to consult, providing the MENDM with a description of the Project.

The MENDM sent a letter to Enbridge Gas on September 10, 2018 delegating the procedural aspects of the Crown's duty to consult for the Project to Enbridge Gas.

On August 9, 2019, Enbridge Gas provided the MENDM with its Indigenous Consultation Report for the Project and requested that the MENDM determine if the procedural aspects of the duty to consult have been sufficiently addressed.

As part of its application, Enbridge Gas filed a summary of Enbridge Gas' indigenous consultation activities for the Project.²²

On January 22, 2020, Enbridge Gas updated its evidence with a letter from the MENDM that stated that the MENDM is of the opinion that the procedural aspects of consultation undertaken by Enbridge Gas with respect to the Project are satisfactory.

Findings

The OEB finds that the procedural aspects of consultation undertaken by Enbridge Gas with respect to the Project are satisfactory.

²² Application, Exhibit C, Tab 8, Schedules 1,2

9 LAND MATTERS

Enbridge Gas indicated that the Project will follow the same route as the existing pipeline and will be located entirely within existing municipal road allowances.

Enbridge Gas proposes to purchase land for five new station sites. In addition, Enbridge Gas will require Temporary Land Use rights on 28 properties adjacent to municipal road allowances to facilitate construction activities. Enbridge Gas stated that negotiations are ongoing with landowners and it expects to have all necessary land rights in place before construction begins.

Enbridge Gas seeks approval of the form of Temporary Land Use Agreement, which has been approved by the OEB in previous pipeline projects.²³

OEB staff submitted that it has no concerns with respect to Enbridge Gas' proposed land use. OEB staff submitted that the OEB should approve the proposed form of Temporary Land Use Agreement.

Findings

The OEB approves the proposed form of Temporary Land Use Agreement.

²³ Application, Exhibit C, Tab 7, Schedule 3

10 CONDITIONS OF APPROVAL

Section 23 of the OEB Act permits the OEB, when making an order, to impose conditions of approval as it considers appropriate.

OEB staff proposed a number of conditions of approval for the Project based on conditions approved by the OEB for similar projects.

Enbridge Gas accepted the proposed conditions of approval with the exception that the minimum 10 day OEB notice period prior to construction be lifted (i.e., construction can commence at any time leave to construct has been granted).²⁴

Findings

The OEB notes that the standard conditions of approval require compliance with all recommendations of the Environmental Protection Act, the Environmental Report and the Ontario Pipeline Coordinating Committee. Accordingly, the OEB accepts the Enbridge Gas request that the minimum 10 day OEB notice period prior to construction be lifted (i.e., construction can commence at any time leave to construct has been granted). The OEB finds that compliance of Enbridge Gas with the conditions of approval will ensure that the requirements of other approvals, permits, licenses, and certificates are fully addressed.

The approved conditions of approval are attached as Schedule B to this Decision and Order.

²⁴ Reply Submission, p. 2

11 ORDER

THE ONTARIO ENERGY BOARD ORDERS THAT:

1. Enbridge Gas Inc. is granted leave, pursuant to section 90(1) of the OEB Act, to construct approximately 64 kilometers of natural gas pipeline and associated facilities to replace a section of the Windsor pipeline located in the Municipality of Chatham-Kent and the Towns of Lakeshore and Tecumseh, using the hybrid option.
2. The OEB approves the proposed form of temporary land use agreement that Enbridge Gas Inc. has offered or will offer to each owner of land affected by the approved pipeline route for the Project.
3. Leave to construct is subject to Enbridge Gas Inc. complying with the conditions of approval set out in Schedule B.
4. Eligible intervenors shall file with the OEB and forward to Enbridge Gas Inc. their respective cost claims in accordance with the OEB's *Practice Direction on Cost Awards* on or before April 15, 2020.
5. Enbridge Gas Inc. shall file with the OEB and forward to intervenors any objections to the claimed costs of the intervenors on or before April 29, 2020.
6. If Enbridge Gas Inc. objects to any intervenor costs, those intervenors shall file with the OEB and forward to Enbridge Gas Inc. their responses, if any, to the objections to cost claims on or before May 13, 2020.
7. Enbridge Gas Inc. shall pay the OEB's costs incidental to this proceeding upon receipt of the OEB's invoice.

DATED at Toronto April 1, 2020

ONTARIO ENERGY BOARD

Original Signed By

Christine E. Long
Registrar and Board Secretary

SCHEDULE A
DECISION AND ORDER
ENBRIDGE GAS INC.
EB-2019-0172
APRIL 1, 2020



SCHEDULE B
DECISION AND ORDER
ENBRIDGE GAS INC.
EB-2019-0172
APRIL 1, 2020

CONDITIONS OF APPROVAL
Application under Section 90(1) of the OEB Act
Enbridge Gas Inc.
EB-2019-0172

1. Enbridge Gas Inc. (Enbridge Gas) shall construct the facilities and restore the land in accordance with the OEB's Decision and Order in EB-2019-0172 and these Conditions of Approval.
2. (a) Authorization for leave to construct shall terminate 12 months after the decision is issued, unless construction has commenced prior to that date.

(b) Enbridge Gas shall give the OEB notice in writing of the following:
 - i. The planned in-service date, at least 10 days prior to the date the facilities go into service
 - ii. The date on which construction was completed, no later than 10 days following the completion of construction
 - iii. The in-service date, no later than 10 days after the facilities go into service
3. Enbridge Gas shall implement all the recommendations of the Environmental Report filed in EB-2019-0172, and all the recommendations and directives identified by the Ontario Pipeline Coordinating Committee review.
4. 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.
5. Concurrent with the final monitoring report referred to in Condition 6(b), Enbridge Gas shall file a Post Construction Financial Report, which shall provide a variance analysis of project cost, schedule and scope compared to the estimates filed in this

proceeding, including the extent to which the project contingency was utilized. Enbridge Gas shall also file a copy of the Post Construction Financial Report in the proceeding where the actual capital costs of the project are proposed to be included in rate base or any proceeding where Enbridge Gas proposes to start collecting revenues associated with the project, whichever is earlier.

6. Both during and after construction, Enbridge Gas shall monitor the impacts of construction, and shall file with the OEB one paper copy and one electronic (searchable PDF) version of each of the following reports:
 - (a) A post construction report, within three months of the in-service date, which shall:
 - i. Provide a certification, by a senior executive of the company of Enbridge Gas' adherence to Condition 1
 - ii. Describe any impacts and outstanding concerns identified during construction
 - iii. Describe the actions taken or planned to be taken to prevent or mitigate any identified impacts of construction
 - iv. Include a log of all complaints received by Enbridge Gas, including the date/time the complaint was received, a description of the complaint, any actions taken to address the complaint, the rationale for taking such actions
 - v. Provide a certification, by a senior executive of the company, that the company has obtained all other approvals, permits, licences, and certificates required to construct, operate and maintain the proposed project
 - (b) A final monitoring report, no later than fifteen months after the in-service date, or, where the deadline falls between December 1 and May 31, the following June 1, which shall:
 - i. Provide certification, by a senior executive of the company, of Enbridge Gas' adherence to Condition 3
 - ii. Describe the condition of any rehabilitated land

- iii. Describe the effectiveness of any such actions taken to prevent or mitigate any identified impacts of construction
 - iv. Include the results of analyses and monitoring programs and any recommendations arising therefrom. Include a log of all complaints received by Enbridge Gas, including the date/time the complaint was received, a description of the complaint, any actions taken to address the complaint, the rationale for taking such actions
7. Enbridge Gas shall designate one of its employees as project manager who will be responsible for the fulfillment of these conditions, and shall provide the employee's name and contact information to the OEB and to all the appropriate landowners, and shall clearly post the project manager's contact information in a prominent place at the construction site.

The OEB's designated representative for the purpose of these Conditions of Approval shall be the OEB's Manager of Natural Gas Applications (or the Manager of any OEB successor department that oversees natural gas leave to construct applications).

DECISION AND ORDER

EB-2020-0160

ENBRIDGE GAS INC.

Application under Section 101 of the *Ontario Energy Board Act*,
1998

BEFORE: Michael Janigan
Presiding Commissioner

Robert Dodds
Commissioner

November 12, 2020

TABLE OF CONTENTS

1	INTRODUCTION AND SUMMARY.....	1
2	THE PROCESS	3
3	BACKGROUND	5
4	THE PUBLIC INTEREST TEST	7
5	DECISION ON THE ISSUES	8
5.1	THE OEB'S JURISDICTION UNDER SECTION 101	8
5.2	DEPTH OF COVER OF THE PROPOSED PIPELINE.....	10
5.3	ABANDONMENT OF THE EXISTING PIPELINE.....	16
5.4	CONFIDENTIALITY OF INFORMATION.....	19
6	CONCLUSION	20
7	ORDER	21

1 INTRODUCTION AND SUMMARY

This is the Decision and Order of the Ontario Energy Board (OEB) regarding an application filed by Enbridge Gas Inc. (Enbridge Gas) on June 12, 2020.

Enbridge Gas applied to the OEB under section 101 of the *Ontario Energy Board Act, 1998*, (OEB Act) for an order authorizing the construction of 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 (Project) that was approved by the OEB in its decision and order¹, dated April 1, 2020 (LTC Decision).

According to Enbridge Gas, the current application was 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 with respect to the construction of the Project. Enbridge Gas states that Essex County has refused to issue the necessary permits for the construction of the pipeline along County Road 46 unless Enbridge Gas agrees to: (a) install the pipeline with a depth of cover of 1.5m rather than the 1m depth of cover proposed by Enbridge Gas; and (b) remove the existing pipeline in the right-of-way in lieu of abandonment in place.

Enbridge Gas requests the following specific relief from the OEB:

- a) an order, pursuant to section 101 of the OEB Act, granting Enbridge Gas 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 1m and otherwise in accordance with Enbridge Gas' standards and procedure including abandoning the existing pipeline in place
- b) In the alternative to a), an order, pursuant to section 101 of the OEB Act 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 1.5m and otherwise in accordance with CSA Z662 and Enbridge Gas' construction policies and standards; and/or
 - ii. Removal and remediation of approximately 21.8 kms of NPS 10 steel existing steel main.

¹ EB-2019-0172 Decision and Order

Based on review of the evidence filed in this proceeding, the OEB is satisfied that the construction of the pipeline as proposed by Enbridge Gas is in the public interest.

Accordingly, the OEB approves the Enbridge Gas application for an order, pursuant to section 101 of the OEB Act, granting Enbridge Gas authorization to, within the County Road 46 right of way, construct the Project previously approved in the LTC Decision at a depth of cover of approximately 1m and to abandon the existing pipeline in place.

2 THE PROCESS

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 evidence by Essex County and for the filing of interrogatories and interrogatory responses. In response to the OEB's notice, Energy Probe Research Foundation (Energy Probe), Pollution Probe, Environmental Defence and the Federation of Rental-housing Providers of Ontario (FRPO) applied for intervenor status and cost eligibility.

In Procedural Order No. 2, issued on July 24, 2020, Energy Probe, Pollution Probe, Environmental Defence and FRPO were approved as intervenors.

Interrogatories on the 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. Essex County filed its evidence on July 24, 2020. Interrogatories on Essex County's evidence were filed by OEB staff and intervenors on August 7, 2020 and responded to by Essex County on August 21, 2020.

On August 17, 2020, Environmental Defence filed a motion requesting that the OEB order Enbridge Gas to provide full and adequate responses to Interrogatories I.ED.1 (a) to (d) and I.ED.4 (a) to (e); and in the alternative, that a technical conference be held.

On August 20, 2020, the OEB issued Procedural Order No. 3, making provision for written submissions by parties on the merits of Environmental Defence's motion and reply submissions by Environmental Defence.

Submissions on Environmental Defence's motion were filed by parties on August 24, 2020 and a reply submission was filed by Environmental Defence on August 27, 2020.

On August 24, 2020, FRPO filed a motion for full and adequate responses to certain interrogatories, which was later withdrawn.

On September 9, 2020, the OEB issued a decision denying the motion filed by Environmental Defence and determined that it would proceed to determine the application by way of a written hearing setting, for which it set out the schedule for the filing of an Argument-in-Chief (AIC), submissions by parties and a reply submission. The OEB also requested the provision of the certain information to assist its review of the issue of abandonment or removal of the existing pipeline.

Enbridge Gas filed its AIC on September 22, 2020. Submissions were filed by intervenors and OEB staff on October 2, 2020. In its submissions, Essex County requested permission to make responding submissions to the submission of OEB Staff. On October 5, 2020 the OEB issued a letter permitting Essex to file a short written reply

to the arguments of OEB staff by October 8, 2020 and revised the date for the filing of Enbridge Gas' reply submissions to October 14, 2020.

3 BACKGROUND

The relief sought in this application relates to the portion of the route of the 64 kilometer Project that lies along County Road 46 in the Essex County. The purpose of the Project is to replace the existing Windsor pipeline (which covers essentially the same route) in order to address multiple pipeline integrity concerns identified by Enbridge Gas and to ensure the safety and reliability of the pipeline. As required by section 90 of the OEB Act, Enbridge Gas applied to the OEB for an order granting leave to construct the Project. After holding a public hearing, the OEB determined that the Project was in the public interest and granted the application in the LTC Decision.² The OEB's approval was subject to a number of conditions of approval, including condition 4 which requires Enbridge Gas to advise the OEB of any proposed changes to the Project, and to obtain OEB approval for these changes.

A 29 kilometer portion of the Project passes along County Road 46. The leave to construct application approved in the LTC Decision included Enbridge Gas' proposal for a depth of cover of approximately 1m for the replacement pipeline and its proposal to abandon the existing pipeline in place.

Pursuant to the terms of a 1957 municipal franchise agreement (Franchise Agreement), Enbridge Gas requires a number of approvals from Essex County to construct the Project. Enbridge Gas also requires various permits. Although Enbridge Gas and Essex County have agreed on a number of matters, Essex County has refused to issue permits or approvals for the construction of the pipeline along County Road 46 unless Enbridge Gas agrees to: (a) install the pipeline with a depth of cover of 1.5m rather than the 1m depth of cover proposed by Enbridge Gas; and (b) remove the existing pipeline in the right-of-way in lieu of abandonment in place.³

Enbridge Gas has asserted that the demands of Essex County will result in increased construction costs that, if implemented, would constitute a "change" within the meaning of Condition 4 and that requires OEB approval before it can be implemented.

Condition 4 sets out the following:

4. 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, licenses, certificates and rights required to construct the proposed

² EB-2019-0172 Decision and Order

³ EB-2019-0172 Application

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.

Enbridge Gas has stated that as it could not agree with the Essex County requirements, there was no alternative but to seek the OEB's assistance to resolve the disagreement.

4 THE PUBLIC INTEREST TEST

Section 101 of the OEB Act states:

101 (1) The following persons may apply to the Board for authority to construct a work upon, under or over a highway, utility line or ditch:

1. Any person who has leave to construct the work under this Part.
2. Any person who intends to construct the work and who is exempted under section 95 from the requirement to obtain leave.
3. Where the proposed work is the expansion or reinforcement of a transmission or distribution system, any person who is required by the Board, pursuant to a condition of the person's licence, to expand or reinforce the transmission or distribution system.
4. The officers, employees and agents of a person described in paragraph 1, 2 or 3.

(2) The procedure set out in subsections 99 (1) to (4) applies with necessary modifications to an application under this section.

(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.

The onus for demonstrating that the proposed order is in the public interest rests with the applicant, Enbridge Gas.

5 DECISION ON THE ISSUES

5.1 The OEB's Jurisdiction under Section 101

5.1.1 Submissions of Parties

Enbridge Gas has argued that section 101(3) provides the OEB 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. Enbridge Gas also argued that Section 101(3) expressly authorizes the OEB to impose such conditions as it deems appropriate.⁴

Essex County's view is that the County and the OEB each have exclusive jurisdiction in separate areas relative to pipelines. Essex County submitted that the OEB has exclusive jurisdiction, among other things, in determining where expansions of transmission and distribution systems take place and the associated cost recovery while the County has exclusive jurisdiction, as the road authority, to determine the appropriate standards and conditions for utilities such as Enbridge Gas, to utilize the right-of-way.⁵

Essex County argued that its authority in determining the appropriate placement of the pipeline within the right-of-way is addressed in the Franchise Agreement between Enbridge Gas and Essex County and that the OEB does not have the jurisdiction to override the provisions of the Franchise Agreement.⁶

Enbridge Gas submitted that the Franchise Agreement must be interpreted within its provisions as a whole and within the comprehensive regulatory scheme set out by the OEB Act.⁷ Enbridge Gas referenced the preeminence of the OEB's authority as provided in Section 128 of the OEB Act, stating that an agreement entered into under by-law must be considered in light of the OEB's exercise of its statutory mandate, including decisions made pursuant to section 101(3). Enbridge Gas also noted that the OEB Act, sub-section 19(6), provides the OEB with the exclusive jurisdiction over the issues in this application.⁸

Other parties such as Environmental Defence submitted that the OEB should defer to Essex County as the rightful authority in this case stating that Essex County has put

⁴ AIC, pages 3-5

⁵ Essex County Submissions, paragraphs 8, 87

⁶ Essex County Submissions, paragraph 15

⁷ Reply Argument, paragraph 20

⁸ Reply Argument, paragraph 21

forward reasonable justifications for withholding permission in this case pending modifications in Enbridge Gas' proposal.⁹

Pollution Probe supported Essex County's authority to enforce its permitting rights under the Franchise Agreement stating that the public interest is best served by minimizing long term costs and impacts related to the proposed pipeline and abandonment of the existing pipeline.¹⁰

FRPO and OEB staff generally supported the relief requested by Enbridge Gas.

Findings

In this application, pursuant to its responsibilities under sec. 101 of the OEB Act, the OEB is required to assess the public interest with respect to two issues regarding the Project along County Road 46: 1) What is the appropriate depth of cover? and 2) Should the existing pipeline be removed, or should it be abandoned in place?

While the OEB recognizes the rights and responsibilities of Essex County as the road authority and pursuant to its Franchise Agreement with Enbridge Gas (as the successor to the signatory Union Gas Ltd.), the OEB's statutory responsibilities under the OEB Act requires the OEB to determine this application in accordance with the public interest. As noted by Enbridge Gas, section 19(6) of the OEB Act gives the OEB exclusive jurisdiction over matters covered by section 101 (and all other provisions of the OEB Act and any other act that confers jurisdiction on the OEB).

It is important to note that the OEB has already determined in the LTC Decision that the overall Project itself is in the public interest. The Project, as presented in the evidence of the leave to construct proceeding, included a depth of cover of 1m along County Road 46, and stated that the existing pipeline would be abandoned in place. The cost estimates for the Project (which in the ordinary course will be passed on to ratepayers) were reviewed in the LTC Decision and were premised on both the 1m depth of cover and abandoning the existing pipeline in place. No party to the leave to construct proceeding took issue with the proposed depth of cover or proposal to abandon the existing pipeline in place. Essex County received notice of the leave to construct proceeding but chose not to intervene.

In making its determination on the public interest, the OEB is guided by its statutory objectives with respect to natural gas. Of particular relevance in this case is the objective of protecting the interests of consumers with respect to prices and the

⁹ Environmental Defence submission, page 3

¹⁰ Pollution Probe submission, page 8

reliability and quality of gas service. The principal criteria relied upon by the OEB in assessing this application are cost (including the need for and relative cost of the options presented before the OEB) and reliability (including safety and pipeline integrity issues).

5.2 Depth of Cover of the Proposed Pipeline

5.2.1 Submissions of Enbridge Gas and Essex County

Enbridge Gas has proposed a depth of cover of 1m for the pipeline to be installed along County Road 46.¹¹ Essex County requested that when the proposed pipeline is within 6m of the edge of the road, the pipeline needs to be installed with a 1.5m depth of cover.¹²

Enbridge Gas stated that its proposal to use a depth of cover of 1m is consistent with the Canadian Standards Authority(CSA) CSA Z662-15 Oil and Gas Pipeline Systems standard which sets out a minimum depth of cover of 0.6m for both the road right-of-way and below the travelled surface of a road for a distribution pipeline.¹³

Essex County stated that it relies on the Transportation Association of Canada's Guidelines (TAC Guidelines) for Underground Utility Installations Crossing Highway Rights-of-Way as a basis to support its request for a depth of cover of 1.5m. Essex County stated that the TAC Guidelines set out a minimum depth of cover of 1.5m for an uncased pipeline as proposed by Enbridge Gas.¹⁴

Enbridge Gas submitted that the TAC Guidelines are just guidelines and have no binding authority.

Essex County's evidence indicated potential future widening of County Road 46 and stated that this will result in the new pipeline being constructed under the travelled portion of the road. Essex County expressed concern that a depth of cover of 1.0m under a heavily travelled roadway with significant volumes of overweight vehicles will not meet the minimum necessary safety requirements for its residents and other users of the road and those adjacent to it.¹⁵

¹¹ Application, Exh A/Tab 2/Sch 1/page 4, paragraph 13

¹² Essex County Evidence, Tab 1, Page 2, paragraph 7

¹³ Enbridge Gas OEB Staff IRR 1(h)

¹⁴ Essex County Evidence, Tab 1, page 5

¹⁵ Essex County evidence, Tab 1, paragraph 23, page 8

As part of its evidence, Enbridge Gas provided engineering analysis reports prepared by its own engineers and by an independent engineering firm, Wood PLC, to demonstrate the sufficiency of a 1.0m depth of cover.¹⁶ Essex County retained an independent engineering firm, Haddad Morgan & Associates Ltd. (Haddad Evidence), to review and comment on the engineering analysis reports prepared by Enbridge Gas and Wood PLC. Haddad prepared two reports which noted that conservative loadings were used and soil considerations including the fact that the soil in and around a roadway has generally been disturbed will impact the load analysis.¹⁷

Enbridge Gas submitted that it undertook a detailed engineering analysis of the stresses that would be transferred to the pipe under the most severe loading conditions permissible by law in Ontario and found that the pipe could withstand these stresses with a large margin of safety at the proposed 1m depth of cover.¹⁸ Enbridge Gas argued that Essex County has provided no technical information that demonstrates that Enbridge Gas' proposed installation is unsafe or otherwise deficient.

Enbridge Gas also argued that Essex County has not demonstrated a future conflict with a road project supporting the increase in the depth of cover, stating that while Essex County has advised of a potential widening for County Road 46, Essex County has not provided any official document that shows the expansion of County Road 46 east of Manning Road (County Road 19).¹⁹

Enbridge Gas stated that its proposal meets all relevant technical requirements and any other option would impose significant costs. Enbridge Gas estimated that \$7.2 million of additional costs (i.e. \$7.2 million higher than the budget reviewed by the OEB in the LTC Decision) would be incurred to accommodate coverage depth of 1.5m.

Essex County argued that Enbridge Gas is seeking to utilize a depth of cover that does not accord with the most recent CSA Z662 standard, CSA Z662-19, as Enbridge Gas has insisted that the CSA Z662-15 standard applies. Essex County further asserted that in applying the CSA Z662 standard, Enbridge is relying on clauses that do not apply to steel pipelines for which the minimum cover for buried pipelines below the travelled surface of a road is 1.2m and not 1m as proposed by Enbridge Gas.²⁰

¹⁶ Application, Exh B/Tab1/Sch5/App A

¹⁷ Essex County Evidence, Tab 3, Exhibit C

¹⁸ AIC, paragraphs 47-49, page 10

¹⁹ AIC, paragraphs 63,64

²⁰ Essex County October 2nd submissions on application, paragraphs 37-45

Enbridge Gas responded to Essex County's assertions, stating that Clause 4.11.1 of the CSA Z662 standard, upon which Essex County relies, is a provision that is applicable to transmission lines.

Enbridge Gas argued that the proposed pipeline meets the definition of a distribution line as per Clause 2.2 of the CSA Z662 standard as it has a number of distribution stations attached to it and, has several hundred customers (residential and commercial) connected directly to the pipeline.²¹ Enbridge Gas submitted that the hoop stress calculation of 16.8% specified minimum yield strength (SMYS) is below the threshold set out in Clause 3 of the Technical Standards and Safety Authority (TSSA) Code Adoption Document which states that transmission pipelines are those that operate at or above 30% of the pipe's SMYS at maximum operating pressure.²²

Enbridge Gas referenced clause 12.4.7.1 of CSA Z662 standard, which states that the requirements for cover under Clause 4.11.1 do not apply and which confirms that the appropriate cover requirements are those set out in Table 12.2 of the standard.²³ In response to interrogatories, Enbridge Gas confirmed that the requirements for depth of cover for distribution pipelines is identical between CSA Z662-15 and CSA Z662-19.²⁴

Essex County has argued that the Franchise Agreement provides the discretion as to the placement of the pipelines to the County Engineer.²⁵ Conditions 3 and 4 of the Franchise Agreement provide that any pipeline constructed shall be laid at locations approved by the Road Superintendent of the County and shall be constructed so as to not interfere with the use of the highway or any sewers, water-pipes, drains, or ditches therein or thereon. Enbridge Gas argued that the Franchise Agreement limits the purview of the Road Superintendent to reviewing proposed pipeline installations for such interference and does not grant the Road Superintendent authority to impose design or other restrictions beyond those necessary to limit such interference.²⁶

5.2.2 Submissions of Other Parties

Energy Probe submitted that the depth of cover of the pipeline as proposed by Enbridge Gas is appropriate because it meets the standards of the TSSA for distribution

²¹ AIC, paragraphs 33 and 35

²² AIC, paragraphs 34,36

²³ Application, Exhibit B/Tab 1/Schedule 2/Page 3 and AIC, paragraph 28

²⁴ Enbridge IRR OEB staff 2(d)

²⁵ Essex County October 2 submissions, paragraph 15

²⁶ Application, Exhibit B/Tab 1/Schedule 3, page 2

pipelines. Energy Probe stated that the pipeline meets the definition of a distribution pipeline and is therefore not a transmission pipeline as Essex County claims.

Energy Probe asserted that the TSSA is responsible for technical standards under which gas distributors operate in Ontario and stated that the technical standard currently in effect in Ontario is CSA Z662-15 that TSSA has adopted. Energy Probe submitted that the fact that there is a later version and that it may be adopted by TSSA in the future is irrelevant.

FRPO submitted that Essex County's plans for this section of road are not advanced sufficiently to provide detail and therefore without the nature, timing and scope of the expansion, the impact on the pipe cannot be known and it would be hard to justify the costs of additional depth.

Pollution Probe submitted that CSA Z662 provides a minimum standard and clearly indicates that its minimum standards are not intended to be used prescriptively. Pollution Probe noted that Essex County outlines specific concerns related to its safe operation and maintenance of County Road 46 which is a major (Class 2) arterial road. Pollution Probe also noted that Essex County has also confirmed that it intends to widen County Road 46 in the next 5 to 10 years. Pollution Probe argued that in consideration of the current and future impacts of the proposed pipeline on the road allowance it appears clear that prescriptive application of the minimum CSA Z662 standards is not sufficient or appropriate.

OEB staff submitted that based on a review of all of evidence provided, Enbridge Gas' proposal regarding the depth of cover is in the public interest. OEB staff noted that the TSSA reviewed the pipeline design specification and did not raise any issues regarding the safe operation of the pipeline. OEB staff submitted that the TSSA, as the agency overseeing the operation of the pipelines in Ontario, has the authority over the applicable standards.

The OEB also received a letter regarding the Project from the TSSA (TSSA Letter). The TSSA is an entity governed by the *Technical Standards and Safety Act*, whose purpose is to enhance public safety by providing for the efficient and flexible administration of technical standards for a number of matters, including natural gas pipelines. Ontario regulation 210/01 assigns various responsibilities to the TSSA with respect to natural gas pipelines, and imposes a number of requirements on pipeline operators (such as Enbridge Gas). The TSSA reviews and audits all new pipeline projects that are submitted to the OEB for leave to construct to ensure that they meet all applicable standards.

The TSSA Letter confirmed that the applicable standards for the Project is CSA Z662-15. It further indicated that the TSSA has reviewed the technical aspects of the Project, including design, material specifications, wall thickness calculations and required depth of cover. The TSSA did not identify any concerns and indicated that in general it supported the Project.

Findings

The OEB notes that the TSSA has confirmed that CSA Z662-15 is the applicable standard, which requires a minimum depth of cover of 0.6m for distribution pipelines. The TSSA has not identified any concerns with the Project, including the proposed depth of cover of 1m.

Essex County argues that as the road authority it should be permitted to apply a different standard, in this case the TAC guidelines. Although Essex County raises general concerns about safety related to the depth of cover, it has not provided any compelling evidence that the standard adopted by the TSSA and the depth of cover proposed by Enbridge Gas leads to an unsafe or otherwise technically deficient result. The Haddad Evidence filed by Essex County speaks to a road authority's ability to set appropriate criteria; however, it does not point to any actual safety concerns with respect to the proposed 1m depth of cover. The Wood Report, prepared under seal by a licensed engineer, filed by Enbridge Gas includes a comprehensive review of the depth of cover issue, and concluded that there were no safety concerns regarding a 1m depth of cover. This is also consistent with the conclusion of Enbridge Gas's in-house engineers.

Essex County has drawn attention to the fact that the evidence offered by Enbridge Gas in this proceeding was "unsworn". This follows the standard practice of the OEB in written proceedings, where, generally speaking, written evidence filed with the OEB is not sworn or affirmed. The OEB's Rules of Practice and Procedure (Rules) do not require that written evidence be sworn or affirmed.²⁷ Essex County also noted that the Wood PLC evidence was not accompanied by an acknowledgement of the expert's duty pursuant to Rule 13A.03 of the Rules. This issue was raised in final argument and not explored through the interrogatory process. While the lack of the formal acknowledgment is unfortunate, the OEB will not disregard the Wood PLC evidence on account of this oversight. Enbridge Gas is reminded to ensure that the appropriate form accompanies experts' reports in the future, even where there is expected to be a written hearing.

²⁷ Rule 13, OEB Rules of Practice and Procedure.

The OEB has reviewed the TAC guidelines referenced by Essex County with respect to required depth of coverage. It is clear that these guidelines are not binding on Essex County (or the OEB), and that the applicable standard is CSA Z662-15. It is also unclear to the OEB that the TAC guidelines actually recommend a depth of cover of 1.5 m for pipelines running parallel to a road. As Enbridge Gas points out in its AIC, the TAC guidelines state: “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 (emphasis added) highway (and freeway) rights-of-way”.²⁸ This wording suggests that the TAC guidelines in this respect are not meant to provide guidance with respect to depth of cover for pipelines running parallel (as opposed to across) a roadway.

The appropriate standard for depth of cover for the Project is set out in CSA Z662-15 – a minimum of 0.6m. This applies whether the pipeline is beside the road, on the road allowance, or underneath the road. The proposed depth of cover of 1m exceeds this standard. The TSSA has reviewed the Project and has not identified any concerns with the proposed depth of cover (or in any other area). The engineering evidence filed by Enbridge Gas looked specifically at this issue and indicated that a depth of cover of 1m was safe. The engineering evidence filed by Essex County does not point to any specific safety concerns regarding a depth of cover of 1m along County Road 46. The OEB accepts that there could be circumstances under which a depth of cover should exceed (or, in this case, more greatly exceed) the standards established in CSA Z662-15. However, in the current case there appears to be no justification for requiring or approving a 1.5 m depth of cover. The OEB will not require an expense that would ultimately be borne by ratepayers where there is no proper justification for this cost.

The OEB further notes the applicability of the non-mandatory TAC guidelines to this project is not clear. As well, the OEB is unwilling to supplant the standards and views expressed by the TSSA and the engineering reports under seal that were filed by Enbridge Gas with a standard derived from the TAC guidelines.

The OEB is accordingly not convinced that the expenditure of an additional \$7.2 million to afford an extra 0.5m of depth of cover is required as a prudent cost to ratepayers.

²⁸ Enbridge Gas AIC, para. 77. Emphasis added. A member of the TAC Committee responsible for the TAC guidelines also expressed doubt as to whether the guidelines are meant to cover pipelines travelling parallel to the roadway – see Enbridge Gas AIC para. 78.

5.3 Abandonment of the Existing Pipeline

5.3.1 Submissions of Enbridge Gas and Essex County

Enbridge Gas is seeking the OEB's authority to abandon the NPS 10 pipeline in place consistent with its proposal in the leave to construct application. Essex County argues that Enbridge Gas should be required to remove the existing NPS 10 steel main from the right-of-way rather than permitting it to be abandoned in-place.

In its application, Enbridge Gas stated that the existing pipeline was installed primarily within 1m of the property line offering homeowners, municipalities and the Essex County the ability to establish landscaping and tree coverage. Enbridge Gas argued that removal of the pipeline would require significant excavation and would result in significant long-term remediation for restorations. Enbridge Gas estimated \$5.9 million in additional costs for removal of the pipeline.

Enbridge Gas confirmed that its proposal is in compliance with the requirements of section 12.10.3.4 of the CSA Z662-15 standard for the abandonment of distribution lines.

Essex County submitted that there are numerous infrastructure demands within the right-of-way in which Enbridge Gas intends to construct the new pipeline. Essex County stated that it had requested that the new pipeline be constructed in the same corridor as the existing pipeline, utilizing all available private easements. Essex County submitted that when it became apparent that Enbridge Gas would not agree to this request, it reluctantly agreed to the construction of the new pipeline within the right-of-way on condition that the existing pipeline be removed and not simply abandoned.²⁹

Essex County submitted that the Franchise Agreement provides Essex County with the authority to demand that Enbridge Gas remove the abandoned pipeline at Enbridge Gas' expense. In its AIC, Enbridge Gas submitted that Essex County's rights under the Franchise Agreement are not unfettered but must be exercised within the intent and the express provisions of the Franchise Agreement and in a manner that is consistent with the broad public interest.

²⁹ Essex County evidence, Tab 1, paragraph 33, page 11

5.3.2 Submissions of Other Parties

Energy Probe submitted that the OEB does not have the authority to direct a utility as to how it must dispose of shareholder owned assets no longer in use and not in rate base and can only approve or disapprove the costs of removal or the revenues from disposal of such assets in a rate proceeding.

Energy Probe submitted that if Essex County wants the old NPS10 pipeline removed, it can either negotiate with Enbridge Gas or take it to court.

FRPO argued that Essex County has not provided any specific need which drives the need to remove the pipe at this time stating that Essex County has only expressed concern that it takes up a corridor in a crowded right of way. FRPO stated that Enbridge Gas has acknowledged that with the existing Franchise Agreement, Essex County maintains the right to request removal if there is a specific need. FRPO submitted that these factors weigh in favour of not incurring the cost and environmental impact unless there is a specific need and that if that time comes, Essex County can exercise that right.

Pollution Probe submitted that there is no basis under Section 101 of the OEB Act for consideration of the requested approval for the abandonment of the 30 km stretch of NPS 10 pipeline. Pollution Probe stated that removal of abandoned pipelines is particularly important in congested rights-of-way to provide valuable room for future infrastructure.

OEB staff submitted that Enbridge Gas' proposal for the abandonment in place of the existing NPS 10 pipeline as set out in the leave to construct application is in the public interest.

OEB staff submitted that Essex County has not provided evidence of any concrete plans to expand the road that would necessitate the removal of the pipeline. OEB staff also noted Essex County's response to Enbridge Gas' interrogatory which states that the existing NPS 10 pipeline is "unlikely" to be directly impacted by the purported widening even if it were to occur.³⁰

Findings

Much of the argument with respect to the abandonment in place issue relates to the Franchise Agreement. Unlike the great majority of franchise agreements in Ontario, the Franchise Agreement in this case is not in the form of the OEB's model franchise

³⁰ Essex County IRR – Enbridge 21

agreement. It was executed in 1957 and appears to have no expiry date, and therefore has not come before the OEB since the creation of the model franchise agreement in 2000. The OEB notes that franchise agreements under the *Municipal Franchises Act* are not “enforceable provisions” under the OEB Act, and are therefore not subject to the compliance provisions under Part VII.1 of the OEB Act. The OEB further notes that disputes relating to the terms of a franchise agreement have in some cases been brought to the courts for resolution.³¹

Essex County appears to rely on section 6 of the Franchise Agreement, which states: “In the event that [Essex County] in pursuance of its statutory powers shall deem it expedient to alter the construction of any highway ... and in the course thereof it shall become reasonably necessary that the location of main, line, pipe or works of [Enbridge Gas] ... should be altered at a specific point to facilitate the work of the [Essex County], then upon receipt of a reasonable notice in writing from the Clerk of the [Essex County] specifying the alteration desired, [Enbridge Gas] shall, at its own expense, alter or re-locate its main, pipe, line or works at the point specified.” This is not a general provision related to abandonment, and indeed the section does not mention abandonment at all. The Franchise Agreement requires Enbridge Gas to alter or re-locate its pipeline only as may be reasonably necessary to accommodate some alteration or construction of a highway. As noted above, there do not appear to be any immediate plans to expand County Road 46, nor is the OEB aware of any reason that an alteration or relocation of the (soon to be abandoned) existing pipeline is reasonably necessary.

This relates to a more general observation of the OEB that irrespective of the Franchise Agreement, the Essex County has not provided any compelling reasons why the existing pipeline should be removed. It has not pointed to any specific current or potential future conflicts with other infrastructure projects or uses. It does not dispute the fact that Enbridge Gas's proposal to abandon the pipeline in place is consistent with CSA Z662-15.

The OEB finds that there is insufficient evidence, at least at this time, to justify removal of the NPS 10 pipeline as requested by Essex County. The public interest does not support the expenditure of an additional \$5.9 million in costs for such removal. The OEB notes that the proposed removal would also unnecessarily impact the surrounding environment to meet as yet undefined future needs for that land.

³¹ *Union Gas Ltd. v. Norwich (Township)*, 2018 ONCA 11.

5.4 Confidentiality of Information

5.4.1 Submissions of Enbridge Gas

In response to Pollution Probe Interrogatory 10, Enbridge Gas filed a redacted version of the Services Agreement with Wood PLC.

The OEB's Decision on Environmental Defence's Motion directed Enbridge Gas to provide 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.

In its AIC, Enbridge Gas explained that the public response included redactions of two segments of the Services Agreement, namely insurance and pricing.

Enbridge Gas referenced the OEB's *Practice Direction on Confidential Filings* which states that the OEB may consider any prejudice to a person's competitive position in determining whether or not such information should be disclosed.

Enbridge Gas submitted that Wood PLC operates in the highly competitive environment of engineering consulting services and that it would be harmful to Wood PLC if its competitors were able to review the contents of the Services Agreement as the competitors would be able to alter their service offerings based upon this information.

Enbridge Gas noted the lack of probative value that this element of the evidence has in respect of the matters at issue in this proceeding and requested that this information be retained in confidence.

5.4.2 Submissions of other parties

OEB staff submitted that Wood PLC's competitive position could be harmed by the release of the redacted information and supported Enbridge Gas' confidentiality request. OEB staff also noted that the redacted information has little relevance to the merits of the proceeding. No other parties filed submissions on this issue.

Findings

The OEB agrees with Enbridge Gas' submissions on the issue of confidentiality in that the provision of the unredacted agreement could harm the competitive position of Wood PLC and is not material to the resolution of the issues herein.

6 CONCLUSION

As stated earlier, in this application the OEB is required to determine whether the construction of the proposed pipeline within the right-of-way with a 1m depth of cover as well as abandonment in place of the existing NPS 10 pipeline is in the public interest.

The OEB reiterates that while it recognizes the rights and responsibilities of the Essex County road authority, and its Franchise Agreement with Enbridge Gas, the OEB's statutory responsibilities under the OEB Act requires the OEB to determine this application in accordance with the public interest.

The OEB's decision does not rescind or amend the Franchise Agreement but is a determination of the public interest in the execution of the project based on the evidentiary record.

Accordingly, the OEB approves the Enbridge application for an order, pursuant to section 101 of the OEB Act, granting Enbridge Gas authorization to, within the County Road 46 right of way, construct the Project approved by the OEB in the LTC Decision at a depth of cover of approximately 1m and to abandon the existing pipeline in place.

7 ORDER

THE ONTARIO ENERGY BOARD ORDERS THAT:

1. Enbridge Gas Inc. is granted authorization, pursuant to section 101 of the OEB Act, to, within the County Road 46 right of way, construct the Project approved by the OEB in proceeding EB-2019-0172 at a depth of cover of approximately 1m and to abandon the existing pipeline in place.
2. Eligible intervenors shall file with the OEB and forward to Enbridge Gas Inc. their respective cost claims in accordance with the OEB's *Practice Direction on Cost Awards* on or before **November 19, 2020**.
3. Enbridge Gas Inc. shall file with the OEB and forward to intervenors any objections to the claimed costs of the intervenors on or before **November 26, 2020**.
4. If Enbridge Gas Inc. objects to any intervenor costs, those intervenors shall file with the OEB and forward to Enbridge Gas Inc. their responses, if any, to the objections to cost claims on or before **December 3, 2020**.
5. Enbridge Gas Inc. shall pay the OEB's costs incidental to this proceeding upon receipt of the OEB's invoice.

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 [Regulatory Electronic Submission System \(RESS\) Document Guidelines](#) found at www.oeb.ca/industry. We encourage the use of RESS; however, parties who have not yet [set up an account](#), may email their documents to registrar@oeb.ca.

All communications should be directed to the attention of the Registrar and be received no later than 4:45 p.m. on the required date.

Email: registrar@oeb.ca

Tel: 1-888-632-6273 (Toll free)

Fax: 416-440-7656

DATED at Toronto November 12, 2020

ONTARIO ENERGY BOARD

Original Signed By

Christine E. Long
Registrar



David M. Sundin, B.A.(Hons.), LL.B.
County Solicitor
The Corporation of the County of Essex

April 6, 2022

Enbridge Gas Inc.
50 Keil Drive North
Chatham, Ontario N7M 5M1

Sent Via: EMAIL ONLY

Attention: Brian Lennie
Senior Advisor, Municipal and Stakeholder Engagement

Dear Mr. Lennie,

Re: Franchise Agreement Request of Enbridge

Further to our various email and telephone correspondence to date regarding the request of Enbridge Gas Inc. ("**Enbridge**") that the County of Essex enter into the 2000 Model Franchise Agreement (the "**Model Agreement**"), this letter is to confirm that the County of Essex has no desire to discuss the Model Agreement as an option at this time. The County of Essex remains satisfied with its existing Agreement related to the transportation of natural gas, dated December 11, 1957 (the "**Existing Agreement**"), and sees no compelling reason to abandon it for the Model Agreement.

I note that you have taken the position that the Existing Agreement does not reference "distribution". However, your email of November 3, 2021 to the County's CAO acknowledges that there is an exception in the Existing Franchise Agreement that allows for the provision of gas service to any customer abutting the road on which the pipeline is located. I further note, that the Existing Agreement provides that it remains in place as long "as the said lines are in actual use for the transportation of gas." Whether the line is now a "distribution" line or a "transmission" line is of no consequence, as the lines continue to be used for the "transportation" of gas regardless of how the line is classified. As such, the Existing Agreement has not expired and remains in force.

The *Municipal Franchises Act*, R.S.O. 1990, c. M.55 (the "**Franchises Act**") requires that municipalities must have a Franchise Agreement in place for the use of the rights of way of the highways of the municipality for, among other things, the transportation of natural gas. The position of the County is that the Existing Agreement satisfies that requirement.

I thank you for the request to adopt the Model Agreement. However, since the County of Essex is satisfied with the Existing Agreement and remains in compliance with its obligations under the *Franchises Act*, the County of Essex will not be taking any steps at this time to adopt the Model Agreement.

☎ 519-776-6441 ext. 1345
TTY 1-877-624-4832

📍 360 Fairview Ave. W.
Suite # 202 Essex, ON N8M 1Y6

💻 countyofessex.ca

I trust that the foregoing adequately outlines the position of the County of Essex. However, should you have any questions or concerns, or should you need to discuss this matter further for any reason, please do not hesitate to contact me by email at dsundin@countyofessex.ca or by phone at 519-776-6441 ext. 1345.

Regards,

[Original Signed By]

David M. Sundin
County Solicitor

CC:

- Mike Galloway, CAO, mgalloway@countyofessex.ca
- Allan Botham, County Engineer, abotham@countyofessex.ca



519-776-6441 ext. 1345
TTY 1-877-624-4832



360 Fairview Ave. W.
Suite # 202 Essex, ON N8M 1Y6



countyofessex.ca

2000 Model Franchise Agreement

THIS AGREEMENT effective this day of , 2022

BETWEEN:

THE CORPORATION OF THE COUNTY OF ESSEX

hereinafter called the "Corporation"

- and -

ENBRIDGE GAS INC.

hereinafter called the "Gas Company"

WHEREAS the Gas Company desires to distribute, store and transmit gas in the Municipality upon the terms and conditions of this Agreement;

AND WHEREAS by by-law passed by the Council of the Corporation (the "By-law"), the duly authorized officers have been authorized and directed to execute this Agreement on behalf of the Corporation;

THEREFORE the Corporation and the Gas Company agree as follows:

Part I - Definitions

1. In this Agreement

- (a) "decommissioned" and "decommissions" when used in connection with parts of the gas system, mean any parts of the gas system taken out of active use and purged in accordance with the applicable CSA standards and in no way affects the use of the term 'abandoned' pipeline for the purposes of the *Assessment Act*;
- (b) "Engineer/Road Superintendent" means the most senior individual employed by the Corporation with responsibilities for highways within the Municipality or the person designated by such senior employee or such other person as may from time to time be designated by the Council of the Corporation;

- (c) "gas" means natural gas, manufactured gas, synthetic natural gas, liquefied petroleum gas or propane-air gas, or a mixture of any of them, but does not include a liquefied petroleum gas that is distributed by means other than a pipeline;
- (d) "gas system" means such mains, plants, pipes, conduits, services, valves, regulators, curb boxes, stations, drips or such other equipment as the Gas Company may require or deem desirable for the distribution, storage and transmission of gas in or through the Municipality;
- (e) "highway" means all common and public highways and shall include any bridge, viaduct or structure forming part of a highway, and any public square, road allowance or walkway and shall include not only the travelled portion of such highway, but also ditches, driveways, sidewalks, and sodded areas forming part of the road allowance now or at any time during the term hereof under the jurisdiction of the Corporation;
- (f) "Model Franchise Agreement" means the form of agreement which the Ontario Energy Board uses as a standard when considering applications under the *Municipal Franchises Act*. The Model Franchise Agreement may be changed from time to time by the Ontario Energy Board;
- (g) "Municipality" means the territorial limits of the Corporation on the date when this Agreement takes effect, and any territory which may thereafter be brought within the jurisdiction of the Corporation;
- (h) "Plan" means the plan described in Paragraph 5 of this Agreement required to be filed by the Gas Company with the Engineer/Road Superintendent prior to commencement of work on the gas system; and
- (i) whenever the singular, masculine or feminine is used in this Agreement, it shall be considered as if the plural, feminine or masculine has been used where the context of the Agreement so requires.

Part II - Rights Granted

2. To provide gas service

The consent of the Corporation is hereby given and granted to the Gas Company to distribute, store and transmit gas in and through the Corporation and to the inhabitants of those local or lower tier municipalities within the Municipality from which the Gas Company has a valid franchise agreement for that purpose.

3. To Use Highways

Subject to the terms and conditions of this Agreement the consent of the Corporation is hereby given and granted to the Gas Company to enter upon all highways now or at any time hereafter under the jurisdiction of the Corporation and to lay, construct, maintain, replace, remove, operate and repair a gas system for the distribution, storage and transmission of gas in and through the Municipality.

4. Duration of Agreement and Renewal Procedures

- (a) If the Corporation has not previously received gas distribution services, the rights hereby given and granted shall be for a term of 20 years from the date of final passing of the By-law.

or

- (b) If the Corporation has previously received gas distribution services, the rights hereby given and granted shall be for a term of 20 years from the date of final passing of the By-law provided that, if during the 20 year term of this Agreement, the Model Franchise Agreement is changed, then on the 7th anniversary and on the 14th anniversary of the date of the passing of the By-law, this Agreement shall be deemed to be amended to incorporate any changes in the Model Franchise Agreement in effect on such anniversary dates. Such deemed amendments shall not apply to alter the 20 year term.
- (c) At any time within two years prior to the expiration of this Agreement, either party may give notice to the other that it desires to enter into negotiations for a renewed franchise upon such terms and conditions as may be agreed upon. Until such renewal has been settled, the terms and conditions of this Agreement shall continue, notwithstanding the expiration of this Agreement. This shall not preclude either party from applying to the Ontario Energy Board for a renewal of the Agreement pursuant to section 10 of the *Municipal Franchises Act*.

Part III – Conditions

5. Approval of Construction

- (a) The Gas Company shall not undertake any excavation, opening or work which will disturb or interfere with the surface of the travelled portion of any highway unless a permit therefor has first been obtained from the Engineer/Road Superintendent and all work done by the Gas Company shall be to his satisfaction.
- (b) Prior to the commencement of work on the gas system, or any extensions or changes to it (except service laterals which do not interfere with municipal works in the highway), the Gas Company shall file with the Engineer/Road Superintendent a Plan, satisfactory to the Engineer/Road Superintendent, drawn to scale and of sufficient detail considering the complexity of the specific locations involved, showing the highways in which it proposes to lay its gas system and the particular parts thereof it proposes to occupy.
- (c) The Plan filed by the Gas Company shall include geodetic information for a particular location:
 - (i) where circumstances are complex, in order to facilitate known projects, including projects which are reasonably anticipated by the Engineer/Road Superintendent, or
 - (ii) when requested, where the Corporation has geodetic information for its own services and all others at the same location.
- (d) The Engineer/Road Superintendent may require sections of the gas system to be laid at greater depth than required by the latest CSA standard for gas pipeline systems to facilitate known projects or to correct known highway deficiencies.
- (e) Prior to the commencement of work on the gas system, the Engineer/Road Superintendent must approve the location of the work as shown on the Plan filed by the Gas Company, the timing of the work and any terms and conditions relating to the installation of the work.
- (f) In addition to the requirements of this Agreement, if the Gas Company proposes to affix any part of the gas system to a bridge, viaduct or other structure, if the Engineer/Road Superintendent approves this proposal, he may require the Gas Company to comply with special conditions or to enter into a separate agreement as a condition of the approval of this part of the construction of the gas system.

- (g) Where the gas system may affect a municipal drain, the Gas Company shall also file a copy of the Plan with the Corporation's Drainage Superintendent for purposes of the *Drainage Act*, or such other person designated by the Corporation as responsible for the drain.
- (h) The Gas Company shall not deviate from the approved location for any part of the gas system unless the prior approval of the Engineer/Road Superintendent to do so is received.
- (i) The Engineer/Road Superintendent's approval, where required throughout this Paragraph, shall not be unreasonably withheld.
- (j) The approval of the Engineer/Road Superintendent is not a representation or warranty as to the state of repair of the highway or the suitability of the highway for the gas system.

6. As Built Drawings

The Gas Company shall, within six months of completing the installation of any part of the gas system, provide two copies of "as built" drawings to the Engineer/Road Superintendent. These drawings must be sufficient to accurately establish the location, depth (measurement between the top of the gas system and the ground surface at the time of installation) and distance of the gas system. The "as built" drawings shall be of the same quality as the Plan and, if the approved pre-construction plan included elevations that were geodetically referenced, the "as built" drawings shall similarly include elevations that are geodetically referenced. Upon the request of the Engineer/Road Superintendent, the Gas Company shall provide one copy of the drawings in an electronic format and one copy as a hard copy drawing.

7. Emergencies

In the event of an emergency involving the gas system, the Gas Company shall proceed with the work required to deal with the emergency, and in any instance where prior approval of the Engineer/Road Superintendent is normally required for the work, the Gas Company shall use its best efforts to immediately notify the Engineer/Road Superintendent of the location and nature of the emergency and the work being done and, if it deems appropriate, notify the police force, fire or other emergency services having jurisdiction. The Gas Company shall provide the Engineer/Road Superintendent with at least one 24 hour emergency contact for the Gas Company and shall ensure the contacts are current.

8. **Restoration**

The Gas Company shall well and sufficiently restore, to the reasonable satisfaction of the Engineer/Road Superintendent, all highways, municipal works or improvements which it may excavate or interfere with in the course of laying, constructing, repairing or removing its gas system, and shall make good any settling or subsidence thereafter caused by such excavation or interference. If the Gas Company fails at any time to do any work required by this Paragraph within a reasonable period of time, the Corporation may do or cause such work to be done and the Gas Company shall, on demand, pay the Corporation's reasonably incurred costs, as certified by the Engineer/Road Superintendent.

9. **Indemnification**

The Gas Company shall, at all times, indemnify and save harmless the Corporation from and against all claims, including costs related thereto, for all damages or injuries including death to any person or persons and for damage to any property, arising out of the Gas Company operating, constructing, and maintaining its gas system in the Municipality, or utilizing its gas system for the carriage of gas owned by others. Provided that the Gas Company shall not be required to indemnify or save harmless the Corporation from and against claims, including costs related thereto, which it may incur by reason of damages or injuries including death to any person or persons and for damage to any property, resulting from the negligence or wrongful act of the Corporation, its servants, agents or employees.

10. **Insurance**

- (a) The Gas Company shall maintain Comprehensive General Liability Insurance in sufficient amount and description as shall protect the Gas Company and the Corporation from claims for which the Gas Company is obliged to indemnify the Corporation under Paragraph 9. The insurance policy shall identify the Corporation as an additional named insured, but only with respect to the operation of the named insured (the Gas Company). The insurance policy shall not lapse or be cancelled without sixty (60) days' prior written notice to the Corporation by the Gas Company.
- (b) The issuance of an insurance policy as provided in this Paragraph shall not be construed as relieving the Gas Company of liability not covered by such insurance or in excess of the policy limits of such insurance.
- (c) Upon request by the Corporation, the Gas Company shall confirm that premiums for such insurance have been paid and that such insurance is in full force and effect.

11. **Alternative Easement**

The Corporation agrees, in the event of the proposed sale or closing of any highway or any part of a highway where there is a gas line in existence, to give the Gas Company reasonable notice of such proposed sale or closing and, if it is feasible, to provide the Gas Company with easements over that part of the highway proposed to be sold or closed sufficient to allow the Gas Company to preserve any part of the gas system in its then existing location. In the event that such easements cannot be provided, the Corporation and the Gas Company shall share the cost of relocating or altering the gas system to facilitate continuity of gas service, as provided for in Paragraph 12 of this Agreement.

12. **Pipeline Relocation**

- (a) If in the course of constructing, reconstructing, changing, altering or improving any highway or any municipal works, the Corporation deems that it is necessary to take up, remove or change the location of any part of the gas system, the Gas Company shall, upon notice to do so, remove and/or relocate within a reasonable period of time such part of the gas system to a location approved by the Engineer/Road Superintendent.
- (b) Where any part of the gas system relocated in accordance with this Paragraph is located on a bridge, viaduct or structure, the Gas Company shall alter or relocate that part of the gas system at its sole expense.
- (c) Where any part of the gas system relocated in accordance with this Paragraph is located other than on a bridge, viaduct or structure, the costs of relocation shall be shared between the Corporation and the Gas Company on the basis of the total relocation costs, excluding the value of any upgrading of the gas system, and deducting any contribution paid to the Gas Company by others in respect to such relocation; and for these purposes, the total relocation costs shall be the aggregate of the following:
 - (i) the amount paid to Gas Company employees up to and including field supervisors for the hours worked on the project plus the current cost of fringe benefits for these employees,
 - (ii) the amount paid for rental equipment while in use on the project and an amount, charged at the unit rate, for Gas Company equipment while in use on the project,
 - (iii) the amount paid by the Gas Company to contractors for work related to the project,

- (iv) the cost to the Gas Company for materials used in connection with the project, and
 - (v) a reasonable amount for project engineering and project administrative costs which shall be 22.5% of the aggregate of the amounts determined in items (i), (ii), (iii) and (iv) above.
- (d) The total relocation costs as calculated above shall be paid 35% by the Corporation and 65% by the Gas Company, except where the part of the gas system required to be moved is located in an unassumed road or in an unopened road allowance and the Corporation has not approved its location, in which case the Gas Company shall pay 100% of the relocation costs.

Part IV - Procedural And Other Matters

13. Municipal By-laws of General Application

The Agreement is subject to the provisions of all regulating statutes and all municipal by-laws of general application, except by-laws which have the effect of amending this Agreement.

14. Giving Notice

Notices may be delivered to, sent by facsimile or mailed by prepaid registered post to the Gas Company at its head office or to the authorized officers of the Corporation at its municipal offices, as the case may be.

15. Disposition of Gas System

- (a) If the Gas Company decommissions part of its gas system affixed to a bridge, viaduct or structure, the Gas Company shall, at its sole expense, remove the part of its gas system affixed to the bridge, viaduct or structure.
- (b) If the Gas Company decommissions any other part of its gas system, it shall have the right, but is not required, to remove that part of its gas system. It may exercise its right to remove the decommissioned parts of its gas system by giving notice of its intention to do so by filing a Plan as required by Paragraph 5 of this Agreement for approval by the Engineer/Road Superintendent. If the Gas Company does not remove the part of the gas system it has decommissioned and the Corporation requires the removal of all or any part of the decommissioned gas system for the purpose of altering or improving a highway or in order to facilitate the construction of utility or other works in any highway, the Corporation

may remove and dispose of so much of the decommissioned gas system as the Corporation may require for such purposes and neither party shall have recourse against the other for any loss, cost, expense or damage occasioned thereby. If the Gas Company has not removed the part of the gas system it has decommissioned and the Corporation requires the removal of all or any part of the decommissioned gas system for the purpose of altering or improving a highway or in order to facilitate the construction of utility or other works in a highway, the Gas Company may elect to relocate the decommissioned gas system and in that event Paragraph 12 applies to the cost of relocation.

16. Use of Decommissioned Gas System

- (a) The Gas Company shall provide promptly to the Corporation, to the extent such information is known:
 - (i) the names and addresses of all third parties who use decommissioned parts of the gas system for purposes other than the transmission or distribution of gas; and
 - (ii) the location of all proposed and existing decommissioned parts of the gas system used for purposes other than the transmission or distribution of gas.
- (b) The Gas Company may allow a third party to use a decommissioned part of the gas system for purposes other than the transmission or distribution of gas and may charge a fee for that third party use, provided
 - (i) the third party has entered into a municipal access agreement with the Corporation; and
 - (ii) the Gas Company does not charge a fee for the third party's right of access to the highways.
- (c) Decommissioned parts of the gas system used for purposes other than the transmission or distribution of gas are not subject to the provisions of this Agreement. For decommissioned parts of the gas system used for purposes other than the transmission and distribution of gas, issues such as relocation costs will be governed by the relevant municipal access agreement.

17. Franchise Handbook

The Parties acknowledge that operating decisions sometimes require a greater level of detail than that which is appropriately included in this Agreement. The Parties agree to look for guidance on such matters to the Franchise Handbook prepared by the Association of Municipalities of Ontario and the gas utility companies, as may be amended from time to time.

18. Other Conditions

Notwithstanding the cost sharing arrangements described in Paragraph 12, if any part of the gas system altered or relocated in accordance with Paragraph 12 was constructed or installed prior to January 1, 1981, the Gas Company shall alter or relocate, at its sole expense, such part of the gas system at the point specified, to a location satisfactory to the Engineer/Road Superintendent.

19. Agreement Binding Parties

This Agreement shall extend to, benefit and bind the parties thereto, their successors and assigns, respectively.

IN WITNESS WHEREOF the parties have executed this Agreement effective from the date written above.

THE CORPORATION OF THE COUNTY OF ESSEX

Per: _____
Gary McNamara, Warden

Per: _____
Mary S. Birch, Clerk

ENBRIDGE GAS INC.

Per: _____
Mark Kitchen, Director
Regulatory Affairs

Per: _____
Steven Jelich, Director
Southwest Region Operations