



Enbridge Gas Inc.

**Application for leave to construct natural gas pipeline
and associated facilities in the Municipality of Chatham
Kent, Municipality of Lakeshore, Town of Kingsville and
Municipality of Leamington**

PROCEDURAL ORDER NO. 2

October 14, 2022

Enbridge Gas Inc. (Enbridge Gas) applied to the Ontario Energy Board (OEB) on June 10, 2022, under sections 90 and 97 of the *Ontario Energy Board Act, 1998*, S.O. 1998, c. 15, (Schedule B), for an order granting leave to construct approximately 19 kilometres of natural gas pipeline from its Dover Transmission Station in the Municipality of Chatham Kent to its existing pipeline in the Municipality of Lakeshore, and approximately 12 kilometres of natural gas pipeline in the Municipality of Lakeshore, Town of Kingsville and the Municipality of Leamington (Project). The Project also involves valve site station work required to tie-in the proposed pipelines. Enbridge Gas has also applied to the OEB for approval of the form of land-use agreements it offers to landowners for the routing and construction of the Project.

The OEB issued the Notice of Hearing on July 4, 2022, and Procedural Order No. 1 on August 12, 2022. In Procedural Order No. 1, Association of Power Producers of Ontario (APPrO), Atura Power, Middle Road Farms Limited and Courey Corporation (Courey Law), Environmental Defence, Energy Probe, Federation of Rental-housing Providers of Ontario (FRPO), Industrial gas Users Association (IGUA), Ontario Greenhouse Vegetable Growers (OGVG), Pollution Probe, and Three Fires Group (TFG) were approved as intervenors. In addition, APPrO, Environmental Defence, Energy Probe, FRPO, IGUA, OGVG, Pollution Probe, and TFG were granted eligibility to apply for an award of costs under the OEB's [Practice Direction on Cost Awards](#).

On September 27, 2022, Courey Law requested cost award eligibility and clarified that it now also represents Mr. Girard Thibodeau, a directly impacted landowner. On October 11, 2022, the OEB granted Mr. Girard Thibodeau intervenor status. The OEB also granted Courey Corporation, Middle Road Farms Limited, and Mr. Girard Thibodeau eligibility to apply for an award of costs.

Procedural Order No. 1, issued on August 12, 2022, set the schedule for written discovery by interrogatories and for a transcribed technical conference. The interrogatories by intervenors and OEB staff and responses by Enbridge Gas to the interrogatories were filed according to the schedule. Enbridge Gas requested confidential treatment for three of its interrogatory responses.

In Procedural Order No. 1, the OEB also ordered any intervenor seeking to file evidence to file a description of the proposed evidence and estimated cost of preparing the evidence. Environmental Defence and Courey Law responded by filing information on September 27, 2022.

On October 6, 2022 and October 7, 2022, the OEB held a two-day transcribed technical conference. Procedural Order No. 1 set an October 14, 2022 date for written responses to undertakings from the technical conference. On October 12, 2022, Enbridge requested an extension to file its written responses to undertakings to October 19, 2022.

Extension of time to file Undertakings

Considering the large number and complexity of the undertakings, the OEB grants Enbridge Gas's extension request from October 14th to October 19th.

Request for Confidential Treatment of Certain Interrogatory Responses

Enbridge Gas has requested confidential treatment of certain information in its interrogatory response to PP.5, PP.16 at Attachment 1, and PP.18 at Attachment 1. Enbridge Gas stated that the information is commercially sensitive, and its disclosure could prejudice competitive positions and/or interfere with ongoing negotiations.

Parties that wished to make submissions on the confidentiality requests were to follow the timelines and process in sections 5.1.6, 5.1.7 and 5.1.8 of the [Practice Direction on Confidential Filings](#). No parties filed submissions.

The OEB finds that the information contained in the interrogatory responses to PP.5, PP.16 at Attachment 1, and PP.18 at Attachment 1 is commercially sensitive, and grants Enbridge Gas's request for confidential treatment.

Scope and Cost of Preparing Intervenor Evidence

Courey Law and Middle Road Farms Limited and Mr. Thibodeau

In a letter dated September 27, 2022 Courey Law indicated that it plans to provide evidence on the need to extend proposed Panhandle Line west to terminate the pipeline on the properties of Courey Law and Middle Road Farms Limited. Courey Law also noted that Mr. Thibodeau may provide evidence and that a soil scientist may be required. The

letter stated that the intervenors were in the process of hiring a specialized counsel and that once that counsel is hired Mr. Courey would become a witness for Courey Corporation and Middle Road Farm Limited on agricultural issues in general and drainage in particular. In a letter dated October 11, 2022, the OEB requested a more specific description on discrete pieces of evidence and a high level description on the relevance of the evidence to the proceeding by October 13, 2022. The OEB also requested the estimated cost of preparing the evidence and CVs and qualifications of witnesses preparing the expert evidence.

Courey Law did not file a response by October 13, nor by the time of the issuance of this Procedural Order.

Environmental Defence

Environmental Defence proposed to retain as a witness Dr. McDiarmid to review Enbridge Gas's stage 2 analysis under EBO 134 (stage 2 analysis) and provide an analysis of the net savings or net costs of customers using natural gas in comparison to alternatives, such as high efficiency electric heat pumps, focusing on residential customers. Focus on residential customers was based on the rationale that residential customers "...constitute over 60% of the purported stage 2 savings". Environmental Defence maintained the importance of the stage 2 analysis noting that Enbridge Gas's evidence relies on the stage 2 analysis to justify the economic feasibility of the Project. Environmental Defence noted that if time permits, Dr. McDiarmid would also provide high level comments on the use of electric ground source heat pumps for new construction greenhouses. Environmental Defence stated that Dr. McDiarmid is qualified to provide the evidence. Dr. McDiarmid's CV was filed in support of her qualifications. Environmental Defence also noted that Dr. McDiarmid was an expert witness in Enbridge Gas's recent DSM proceeding (EB-2021-0002) on the subject of heat pump programming.

Environmental Defence proposed estimated cost for Dr. McDiarmid evidence preparation and interrogatories responses at between \$7,000 and \$14,000. Incremental counsel cost was estimated at between \$2,000 and \$4,000.

Pollution Probe and Enbridge Gas responded to the intervenor evidence proposals on September 29, 2022. Pollution Probe stated that Environmental Defence's proposed evidence regarding the stage 2 analysis is relevant to the current proceeding. Enbridge Gas stated that it is not able to comment on the relevance of the proposed evidence given the limited description of the evidence. Enbridge Gas requested that if the OEB allows the proposed evidence, it also allows for the discovery and for Enbridge Gas to file reply evidence.

On October 3, 2022, the OEB requested that Environmental Defence: (i) further identify the new work required for Dr. McDiarmid's proposed review and how the previously filed evidence in OEB's Demand Side Management (DSM) (EB-2021-0002) proceeding has been accounted for in the proposed budget for the new evidence; (ii) explain in more detail how the proposed evidence on costs and savings to residential customers will assist the OEB when the Project is proposed to meet demand almost exclusively from contract customers; and (iii) specify Dr. McDiarmid's qualifications to provide evidence on electric ground source heat pumps for new construction greenhouses.

On October 4, 2022, Environmental Defence responded to the OEB's questions. In response to the question how the previously filed evidence in OEB's Demand Side Management (DSM) (EB-2021-0002) proceeding has been accounted for in the proposed budget for the new evidence, Environmental Defence explained that the evidence in this proceeding will be focusing on customer-facing energy costs as opposed to avoided costs that were examined in the DSM proceeding. Environmental Defence also noted that the new evidence would be based on gas and electricity costs specific to the location of the Panhandle area with updated assumptions. Also, Dr. McDiarmid would analyze Enbridge Gas's model for stage 2 analysis and adjust and re-run the model if, in her opinion, additional variables should be captured.

Regarding the OEB's question on the relevance of evidence on cost and savings to residential customers for the Project, which is mostly driven by the need to respond to incremental demand of contract customers, Environmental Defence responded that the economics of the Project largely depend on the impacts on residential customers as 62% of the \$214 million to \$315 million savings set out in the stage 2 analysis are from residential customers. Environmental Defence also noted that evidence related to switching to residential heat pumps may indicate potential reduced need for incremental capacity and therefore impact the Project economics.

In response to the question of Dr. McDiarmid qualifications to provide expert evidence on electric ground source heat pumps for greenhouses, Environmental Defence submitted that the evidence will be factual third-party information, not expert opinion, and should be accepted.

On October 5, 2022, Enbridge Gas objected to Environmental Defence's proposed evidence on greenhouse heat pumps that will cite third-party information. Enbridge Gas stated that Dr. McDiarmid may not have the ability to fully respond to questions as to their factual accuracy or implications. On October 5, 2022, Environmental Defence responded clarifying that any third-party information would be clearly identified and that providing factual evidence does not require expert qualifications.

The OEB has considered the information and submissions provided by Enbridge Gas, Environmental Defence, Courey Law, and Pollution Probe in their respective letters. To the extent there are any concerns regarding Dr. McDiarmid's expert qualifications with respect to any aspects of the evidence, parties will be better positioned to comment on this after seeing the evidence. Any objections can be dealt with by the OEB at a later date, and potentially through final argument.

Courey Law did not respond to the OEB's October 11, 2022 request for more information with respect to the proposed evidence. Without this additional information, and in particular information with respect to the forecast, it is difficult for the OEB to assess the value of this evidence. Based on the information Courey Law provided on September 27, 2022, the OEB concludes that the nature of the proposed evidence appears to be within the scope of the proceeding. On this basis Courey Law will be permitted to file evidence on the schedule presented below. However, the OEB is unable to make any assessment at this point regarding the value of this evidence and cautions Courey Law that recovery of the costs for this evidence will be dependent on the extent to which it falls within the scope of the proceeding, assists the panel in its consideration of the issues, and is of a reasonable cost.

The OEB will grant Environmental Defence and Courey Law's request to file evidence and Enbridge Gas's request to file reply evidence, if necessary. The OEB will set the due date for the filing of Environmental Defence and Courey Law's evidence as October 28, 2022 and the filing of Enbridge Gas's reply evidence, if any, as November 4, 2022. The OEB believes these dates strike an appropriate balance between providing Enbridge Gas, Environmental Defence, and Courey Law with sufficient time to prepare its evidence and not introduce any undue delay in this proceeding.

Type of Hearing

In their letters of intervention, FRPO, IGUA and Pollution Probe stated that the OEB should make its determination on the type of hearing after the interrogatory process has concluded. Environmental Defence stated that the OEB should make provision for submissions on the matter after the conclusion of the discovery process. Courey Law stated that the OEB should hold an oral hearing. Based on the issues in this proceeding and the anticipated evidence, the OEB has determined that a written hearing is appropriate.

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

THE ONTARIO ENERGY BOARD ORDERS THAT:

1. Enbridge Gas shall file with the OEB complete written responses to all undertakings from the technical conference and serve them on all intervenors by **October 19, 2022**.
2. Environmental Defence and Courey Law shall file with the OEB their evidence and serve it on Enbridge Gas and all parties by, **October 28, 2022**.
3. Enbridge Gas shall file its reply evidence, if any, with the OEB and serve it on all parties by, **November 4, 2022**.
4. Enbridge Gas, OEB staff and intervenors shall request any relevant information and documentation from Environmental Defence and Courey Law that is related to its evidence, by written interrogatories filed with the OEB and serve them on all parties by, **November 11, 2022**.
5. OEB staff and intervenors shall request any relevant information and documentation from Enbridge Gas that is related to its reply evidence, if any, by written interrogatories filed with the OEB and serve them on all parties by, **November 11, 2022**.
6. Environmental Defence and Courey Law shall file with the OEB complete written responses to all interrogatories and serve them on all parties by, **November 21, 2022**.
7. Enbridge Gas shall file with the OEB complete written responses to all interrogatories and serve them on all parties by, **November 21, 2022**.
8. Enbridge Gas shall file its argument-in-chief with the OEB and send to all parties by, **November 28, 2022**.
9. OEB staff and intervenors shall file their written submissions with the OEB and serve them on all parties by, **December 9, 2022**.
10. Enbridge Gas shall file a written reply submission, if any, with the OEB and serve it on all parties by, **December 16, 2022**.

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

Please quote file number, **EB-2022-0157** for all materials filed and submit them in searchable/unrestricted PDF format with a digital signature through the [OEB's online filing portal](#).

- Filings should clearly state the sender's name, postal address, telephone number and e-mail address.
- Please use the document naming conventions and document submission standards outlined in the [Regulatory Electronic Submission System \(RESS\) Document Guidelines](#) found at the [File documents online page](#) on the OEB's website.
- Parties are encouraged to use RESS. Those who have not yet [set up an account](#), or require assistance using the online filing portal can contact registrar@oeb.ca for assistance.
- Cost claims are filed through the OEB's online filing portal. Please visit the [File documents online page](#) of the OEB's website for more information. All participants shall download a copy of their submitted cost claim and serve it on all required parties as per the [Practice Direction on Cost Awards](#).

All communications should be directed to the attention of the Registrar and be received by end of business, 4:45 p.m., on the required date.

With respect to distribution lists for all electronic correspondence and materials related to this proceeding, parties must include the Case Manager, Zora Crnojacki at Zora.Crnojacki@oeb.ca and OEB Counsel, Michael Millar at Michael.Millar@oeb.ca.

Email: registrar@oeb.ca

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

DATED at Toronto, October 14, 2022

ONTARIO ENERGY BOARD

Nancy Marconi
Registrar