



Ontario
Energy
Board | Commission
de l'énergie
de l'Ontario

BY EMAIL

February 29, 2024

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

Dear Ms. Marconi:

**Re: Ontario Energy Board (OEB) Staff Submission
Enbridge Gas Inc.
Panhandle Regional Expansion Project - Early Access
OEB File Number: EB-2022-0285**

Please find attached OEB staff's submission in the above referenced proceeding, pursuant to Procedural Order No. 3.

Yours truly,

Case Manager
Senior Advisor, Natural Gas Applications

Encl.

cc: All parties in EB-2022-0285



ONTARIO ENERGY BOARD

OEB Staff Submission

Enbridge Gas Inc.

Panhandle Regional Expansion Project - Early Access

EB-2022-0285

February 29, 2024

Application

On June 16, 2023, Enbridge Gas Inc. (Enbridge Gas) filed an application with the Ontario Energy Board (OEB) under section 98(2) of the *Ontario Energy Board Act, 1998* (OEB Act) seeking authorization to access three privately owned properties for the purposes of conducting archaeological, environmental and engineering examinations and surveys (Early Access Application).

The properties directly affected by the Early Access Application are within the planned route of a proposed natural gas pipeline that is the subject of a separate application under section 90 of the OEB Act filed by Enbridge Gas (Leave to Construct Application).¹ The Leave to Construct Application is currently being adjudicated by the OEB. The proposed project consists of a 19 km long, 36 inch diameter pipeline and associated facilities needed to reinforce the Panhandle System (Project).

Enbridge Gas proposed to start construction of the Project in the first quarter of 2024 to achieve an in-service date of November 2024. The properties subject to the Early Access Application are at the terminal point of the Project at the Richardson Sideroad where Enbridge Gas proposed to construct a tie-in station to connect to the existing Panhandle System. Enbridge Gas requested an OEB order to allow early access to these properties by April 1, 2024.

Process

The OEB issued a Notice of Hearing for the Early Access Application on July 7, 2023.

Courey Corporation and Middle Road Farms Limited (Courey Companies), the only landowners directly affected by this application, were granted intervenor status and cost award eligibility. There are no other intervenors in the proceeding.

On August 29, 2023, the application was placed in abeyance upon Enbridge Gas's request. On December 8, 2023, Enbridge Gas requested that the proceeding be restarted. The proceeding was resumed on January 8, 2024 with the issuance of Procedural Order No. 2. Procedural Order No. 2 set out the schedule for the written discovery process, along with an opportunity for parties to make submissions on the Courey Companies' request for an oral hearing.

OEB staff filed interrogatories on January 15, 2024. Enbridge Gas responded to OEB staff's interrogatories on January 26, 2024.

¹ EB-2022-0157

On January 30, 2024, OEB staff filed a submission stating that it has reviewed the responses to the interrogatories and does not require further discovery through an oral hearing. On February 1, 2024, Enbridge Gas filed a submission stating that the OEB should continue with a written hearing. The Courey Companies did not file a written reply to the submissions filed by OEB staff and Enbridge Gas with respect to the need for an oral hearing.

The OEB decided to proceed by way of a written hearing. The OEB issued Procedural Order No. 3 setting out dates for written submissions by OEB staff and the Courey Companies by February 29, 2024 and a written reply submission from Enbridge Gas by March 14, 2024.

Nature and Timing of the Early Access Activities

In its application, Enbridge Gas stated that it requires early access to the subject properties, in order to carry out environmental studies as well as engineering examinations and surveys including legal and civil surveys required to fix the precise location of the Project and to obtain necessary permits and approvals for the Project, including Archaeological and Natural Heritage Studies, Terrestrial Studies, Aquatic Studies, Hydrogeological Investigations, Geotechnical Investigations and Legal and Civil Surveys.² Enbridge Gas described the early access activities and indicated that these are needed to determine and address permitting requirements from the Lower Thames Valley Conservation Authority, Fisheries and Oceans Canada, the Ministry of Environment, Conservation and Parks and the Ministry of Citizenship and Multiculturalism as well to determine the potential environmental impacts and mitigation.³

Specifically, Enbridge Gas emphasized the need to start archaeological assessment on the three properties by April 1, 2024 to secure the clearance letter from the Ministry of Citizenship and Multiculturalism by July 2024. The clearance letter is required to start construction on the three properties to meet the planned in-service date of November 1, 2024.⁴

Enbridge Gas filed a schedule of the archeological survey activities on the three properties in the table below.⁵

² Exhibit B, Schedule 1, Tab 1, paragraph 21, page 8

³ Exhibit B, Schedule 1, Tab 1, paragraphs 21-22, pages 8-10

⁴ Exhibit I.STAFF.1 (a), pages 1-2

⁵ Exhibit I.STAFF.3, Table 1, page 2

Panhandle Regional Expansion Project-Early Access

Activity	April	May	June	July	August	September	October
Field Preparation							
Complete Pedestrian Survey							
Stage 2, 3 & 4 Archeological Assessments							
Clearance from MCM							
Construction							

Enbridge Gas described a contingency plan in the event that archeological surveys on the Courey Companies' properties are not completed by April 1, 2024 and if consequently the construction on these properties is not completed to accommodate the in-service date of November 1, 2024.⁶ Under that scenario, Enbridge Gas stated it would install a temporary tie-in east of the three properties which would increase the Project costs. Enbridge Gas also noted that, if a delay occurs, it would ask for an expedited review of the Archaeological Assessment Report by the Ministry of Citizenship and Multiculturalism.

Enbridge Gas's Negotiations with the Courey Companies

Enbridge Gas obtained permanent land rights and secured early access to conduct pre-construction activities to fix the site from all landowners along the proposed Panhandle pipeline route with the exception of the properties owned by the Courey Companies. Enbridge Gas secured the early access rights from all of the remaining 53 properties through the execution of Permission, Consent and Access Agreements (Early Access Agreement). Enbridge Gas has offered the Courey Companies the same form of the Early Access Agreement that it offered to all other landowners along the proposed route of the Project.⁷

In response to OEB staff interrogatories, Enbridge Gas provided the information of the process, status and prospects of negotiations with the Courey Companies in order to reach an agreement and acquire early access rights.⁸

Enbridge Gas met with the Courey Companies and engaged in discussions to secure a mutually agreeable tie-in station location and to obtain the required land permanent rights, however, no rights have been obtained as of January 29, 2024.

Enbridge Gas had two meetings with the Courey Companies – on April 12, 2022 and on July 29, 2022. On November 18, 2022, Enbridge Gas presented to the Courey Companies an offer of financial compensation for the early access activities as well as compensation for permanent land rights for the purposes of the Project. There was no response from the Courey Companies.⁹

⁶ Exhibit I.STAFF.1 (b), page 2

⁷ Exhibit B, Tab 1, Schedule 1, pages 5-6, paragraphs 14 -15 and I.STAFF.2

⁸ I.STAFF. 3 c)

⁹ Exhibit B, Tab 1, Schedule 1, page 6, paragraph 16 and page 7, paragraph 18

On June 7, 2023 Enbridge Gas updated the Courey Companies on the Project status and indicated that it would like to continue to secure the land rights through negotiation. Enbridge Gas also noted it would file the Early Access Application with the OEB. Enbridge Gas received a letter in response to the June 7, 2023 letter on December 27, 2023.¹⁰

Enbridge Gas and the Courey Companies restarted negotiating on January 11, 2024. The Courey Companies presented to Enbridge Gas an alternative location of the Project facilities on the three properties for Enbridge Gas's consideration. Enbridge Gas is currently reviewing this alternative location considering safety and applicable technical standards. The Courey Companies indicated that it had another alternative location for the facilities but did not share it with Enbridge Gas as of January 29, 2024.¹¹

Proposed Conditions of Approval

Enbridge Gas proposed, as part of the evidence, Conditions of Approval that would apply if it were to be granted access to the three properties. The Proposed Conditions of Approval:

- i) set out the boundaries and size of the areas of land to be affected
- ii) describe the permitted activities
- iii) set a one-year term for the OEB order permitting access to land
- iv) specify the timing and the means of notification to the landowners
- v) set the conditions of conduct for the permitted activities
- vi) set out the protocol for Enbridge Gas's communication with the OEB¹²

In response to an interrogatory from OEB staff¹³, Enbridge Gas stated that it had not specifically discussed the proposed Conditions of Approval with the Courey Companies. Enbridge Gas also noted that the Courey Companies has not raised any specific issues or concerns regarding the proposed Conditions of Approval for the Early Access Application as of January 29, 2024.

¹⁰ I.STAFF.4

¹¹ I.STAFF.4

¹² Exhibit B, Tab 1, Schedule 1, page 10, paragraph 23 ; Attachment 4, pages 1-4 Panhandle Regional Expansion Project, Section 98 Order Granting Early Access to Land, Conditions of Approval

¹³ I.STAFF.2

OEB Staff Submission

Section 98(2) of the OEB Act, in part, states:

The Board [OEB] may, on application, issue an order authorizing a person and the officers, employees and agents of that person to enter on land at the intended location of any part of a proposed hydrocarbon line and to make such surveys and examinations as are necessary for fixing the site of the hydrocarbon line and as are specified in the order if,

- (a) the person has applied for leave under section 90 and has complied with section 94; or....

Section 94 of the OEB Act, in turn, requires the applicant for leave to construct to file "...a map showing the general location of the proposed work and the municipalities, highways, railways, utility lines and navigable waters through, under, over, upon or across which the proposed work is to pass."

In its application, Enbridge Gas confirmed that a proposed Project location map, in accordance with section 94 of the OEB Act, was filed as part of the leave to construct application.¹⁴ As a result, OEB staff agrees that the OEB is authorized to issue an order granting early access rights to the Courey Companies' properties.

OEB staff supports Enbridge Gas's application for approval of access to the three affected properties owned by the Courey Companies.

OEB staff has not identified any specific concerns with the proposed activities or with the timing of the activities proposed by Enbridge Gas. OEB staff notes that the surveys and reports are required by various government entities to obtain permits and approvals for construction to meet the Project schedule and in-service date.

OEB staff further observes that Enbridge Gas has obtained permanent land rights and early access rights for all of the 53 remaining properties directly affected by the Project. OEB staff submits that Enbridge Gas has made efforts to negotiate with the Courey Companies and offered the Courey Companies the same form of Early Access Agreement that was offered to all other landowners along the proposed route of the Project.

OEB staff largely agrees with the Conditions of Approval proposed by Enbridge Gas but suggests that certain edits be as described below. In OEB staff's view, the Conditions of

¹⁴ Exhibit B, Tab 1, Schedule 1, page 5, paragraph 13 referencing EB-2022-0157, Exhibit A, Tab 2, Schedule 1, Attachment 1

Approval proposed by Enbridge Gas are appropriate and accommodate the conduct of the activities while limiting disruption to the Courey Companies to certain time windows. The Conditions of Approval provide for notice of activities to be performed and clear means of notification to the landowners. The notifications include the time of entry to the properties and a list of permitted activities. The Conditions of Approval also require Enbridge Gas to restore the affected and disturbed land areas to their original condition to the extent possible and practicable, and if not possible, Enbridge Gas is to pay damages as per section 98(6) of the OEB Act. In addition, the Conditions of Approval set out the protocol for Enbridge Gas's communication with the affected landowners and the OEB.

First, OEB staff suggest that duplicated text in the proposed Conditions of Approval be deleted as follows (see strikethrough text):

3.1 Enbridge Gas shall use all reasonable efforts to provide oral and written notice to landowners a minimum of 48 hours prior to entry. Unless otherwise agreed upon with landowners, entry is to be limited for a subsequent five-day window in which Permitted Activities could then occur. All Permitted Activities shall only take place during weekdays and not statutory holidays and between the hours of 8 am and 8 pm with the exception of Environmental Surveys which are required to be completed in the early morning or night. Example: Enbridge Gas will provide notice by Friday for a five-day entry window beginning the next Monday and until and including the following Friday. ~~all Permitted Activities will occur during this period between the hours of 8 am and 8 pm, except for any Environmental Surveys which are required to be completed in the early morning or night).~~

Second, as a matter of updating the terminology in the proposed Conditions of Approval, OEB staff suggests replacing references to the "Board" with "Ontario Energy Board".

Finally, OEB staff suggests that section 5 "Communication with the Ontario Energy Board" be revised as follows (see strikethrough text replaced by new paragraph 5.1):

5. COMMUNICATION WITH THE ONTARIO ENERGY BOARD

~~5.1 The Board's designated representative for the purpose of these conditions of approval shall be the Manager, Facilities.~~

~~5.2 Enbridge Gas shall designate a person as project manager and shall provide the name of the individual to the Board's designated representative. The project manager will be responsible for the fulfilment of the conditions of approval on the site. Enbridge Gas shall provide a copy of the Board's Decision and Order and these conditions of approval to the project manager, within seven days of the Board's order being issued.~~

~~5.3 Enbridge Gas shall furnish the Board's designated representative with all~~

~~reasonable assistance for ascertaining whether Enbridge Gas has complied with the Board's order.~~

5.1 Enbridge Gas shall designate one of its employees as project manager who will be the point of contact for these conditions and shall provide the employee's name and contact information to the Ontario Energy Board and to all affected landowners and shall clearly post the project manager's contact information in a prominent place at the construction site.

OEB staff's suggested Conditions of Approval are attached as Schedule A to this submission.

~All of which is respectfully submitted~

Schedule A

OEB Staff Proposed Conditions of Approval

EB-2022-0285

February 29, 2024

EB-2022-0285
Panhandle Regional Expansion Project
Section 98 Order Granting Early Access to Land
CONDITIONS OF APPROVAL
DRAFT

1. DEFINITIONS

1.1 Proposed Early Access Area – The Ontario Energy Board's order authorizes Enbridge Gas to enter only on lands identified on Attachment 3 of Enbridge Gas's prefiled evidence.

1.2 Permitted Activities – Permitted Activities are:

- a) Engineering surveys and examinations involving property staking and measuring by survey crews including: gathering the topography survey, the station location and geotechnical investigation as well as legal surveys and civil surveys. Legal surveys involving property staking and measuring by survey crews along the perimeter of the Proposed Early Access Areas and along the perimeter of the affected properties. Civil surveys involve subject matter experts walking the Proposed Early Access Areas to read the elevations of the lands, ditches and any other landmarks identified.
- b) Environmental surveys and examinations by personnel on foot involving terrestrial studies, aquatic studies and soil sampling for soybean cyst nematode as well as archaeological surveys conducted by licensed personnel on foot in accordance with Provincial Guidelines. Archeological survey work includes surface checks for items of interest in recently ploughed fields or digging of small test pits to a maximum depth of one meter should ploughing not be possible. In some cases, the use of mechanical equipment may be required where a Stage 4 Archaeological Assessment is necessary.

2. GENERAL REQUIREMENTS

2.1 Enbridge Gas shall conduct the Permitted Activities in accordance with its application and evidence filed in EB-2022-0285, except as modified by the Ontario Energy Board's Decision and Order and these conditions of approval.

2.2 Unless otherwise directed by the Ontario Energy Board, authorization for entry to and shall terminate one year from the date of this order.

2.3 A copy of these conditions of approval shall be attached to each written notice to landowners described in condition 3 below.

2.4 Enbridge Gas shall obtain all other approvals required to conduct the Permitted Activities.

3. ADVANCE NOTIFICATION OF LANDOWNERS

3.1 Enbridge Gas shall use all reasonable efforts to provide oral and written notice to landowners a minimum of 48 hours prior to entry. Unless otherwise agreed upon with landowners, entry is to be limited for a subsequent five-day window in which Permitted Activities could then occur. All Permitted Activities shall only take place during weekdays and not statutory holidays and between the hours of 8 am and 8 pm with the exception of Environmental Surveys which are required to be completed in the early morning or night. Example: Enbridge Gas will provide notice by Friday for a five-day entry window beginning the next Monday and until and including the following Friday.

3.2 The notification described in condition 3.1 above shall include a list of the Permitted Activities Enbridge Gas intends to perform during the entry time-window.

3.3 Where Enbridge Gas has not been able to contact a landowner prior to entry, Enbridge Gas shall keep a record of the Permitted Activities conducted and make it available to the landowner upon request.

3.4 In the event that activities are planned to be conducted on lands with tracked or motorized equipment, Enbridge Gas shall give the landowner at least five days' advance notice and shall use all reasonable efforts to consult with the landowner in advance of entry and provide a sketch depicting the access route and the location of the activities. This period of time is intended to provide landowners with the opportunity to indicate the locations of any special fixtures (such as wells, tile drainage or septic areas) that are to be avoided while activities are carried out.

4. CONDUCT OF PERMITTED ACTIVITIES

4.1 Reasonable accommodation is to be made in Enbridge Gas's schedule for reasonable landowner requests/concerns to ensure the Permitted Activities do not interfere with landowner operations. These accommodations will be determined on a site specific basis but where appropriate may include the following:

- a) The use of temporary fencing to surround any areas if tracked equipment remains onsite overnight; and
- b) The use and installation of temporary drainage (i.e. culverts) instruments on access routes to maintain drainage flows.

4.2 Enbridge Gas or its agents will consult with landowners in advance of entry as to the manner in which gates/fences/entryways are to be managed while entering property. In the event landowners cannot be contacted, Enbridge Gas shall ensure that gates/fences/entryways used by Enbridge Gas personnel or its agents are left as found. Work sites are to be left in a safe condition overnight.

4.3 Landowners can be present to observe the Permitted Activities subject to Enbridge Gas's safety policies and procedures and the *Occupational Health and Safety Act*.

4.4 Enbridge Gas shall keep records of the personnel attending and entering on lands, the time in which entry occurred and the locations entered.

4.5 Upon request, Enbridge Gas shall provide a landowner with the results of the information collected as a result of conducting the Permitted Activities on the landowner's property (such as legal surveys) and environmental or archeological information subject to applicable disclosure guidelines of the Ministry of Environment, Conservation and Parks or other agencies (e.g., with respect to species-at-risk protection). In the event this information cannot be disclosed to a landowner, Enbridge Gas will disclose that fact and provide to the landowner the rationale for such non-disclosure.

4.6 Affected areas are to be restored to their original condition to the extent possible and practicable, failing which damages shall be paid as per section 98(6) of the *Ontario Energy Board Act, 1998*.

5. COMMUNICATION

5.1 Enbridge Gas shall designate one of its employees as project manager who will be the point of contact for these conditions and shall provide the employee's name and contact information to the Ontario Energy Board and to all affected landowners and shall clearly post the project manager's contact information in a prominent place at the construction site.