

September 4, 2024

**BY EMAIL AND ON RESS**

Ontario Energy Board  
2300 Yonge Street, 27th Floor  
Toronto, ON M4P 1E4

Attention: Nancy Marconi, Registrar

Dear Sirs/Mesdames:

**Re: EB-2024-0200 – St. Laurent Pipeline leave to construct application  
Enbridge Comments on Intervenor Evidence Requests**

We are counsel to Enbridge Gas Inc. in the above application. Pursuant to Procedural Order No. 1, we are writing to provide Enbridge Gas's comments in response to the requests to file evidence by intervenors Pollution Probe (PP) and Environmental Defence (ED).

We are mindful that rules 13.02 to 13.04 of the OEB's *Rules of Practice and Procedure*, and their requirements, apply to these requests for leave to file evidence, and are providing these comments having regard to the considerations to be taken into account under rule 13.03. As outlined below, Enbridge Gas has concerns and questions regarding the proposed evidence filings. This includes (among other things) real concern regarding the timing of ED's proposed evidence. Enbridge Gas's position is that ED's request should be denied in the circumstances. And in the event leave is granted to either PP or ED to file evidence, Enbridge Gas requests that it be on certain conditions.

**PP's Evidence Request**

In its brief description of its proposed evidence, PP states that Sustainability Solutions Group (SSG) "will provide a report outlining the current and future energy needs in the Ottawa area and area served by the current St. Laurent system and proposed project." PP says this evidence pertains directly to the need for the project and indirectly to other issues. PP has indicated this proposed expert evidence will be led by Yuill Herbert (SSG principal) and also Mike Fletcher, who PP has indicated is "(SSG Consultant)". In respect of timing, PP has indicated it can file this report 4 weeks after receipt of EGI's interrogatory responses – which would mean a filing date of October 25 for this evidence.

PP's letter, however, does not provide details regarding the precise nature of the evidence (or how it would qualify as expert evidence), nor regarding the capacity in which Mr. Fletcher proposes to provide evidence. We note that in 2022, in the last St. Laurent pipeline application (EB-2020-0293), Mr. Fletcher provided evidence on behalf of and as a staff member representative of the intervenor City of Ottawa. According to that evidence, he was a Climate Change and Resiliency Project Manager at the City, who had a bachelor of science degree in

agriculture, and he expressly confirmed that his evidence was not based on expert opinion.<sup>1</sup> We do not have a current CV for Mr. Fletcher, and do not see reference to him or a CV for him on SSG's website.

We are unclear from PP's letter whether it is proposed that Mr. Fletcher would provide factual evidence regarding the City's plans. If so, and assuming he is no longer employed by the City, he would not be in a position to give evidence as its representative or on its behalf, and we note that the City is itself an intervenor in this application. On the other hand, if it is proposed that Mr. Fletcher provide independent expert evidence, on what basis would that evidence be provided and in what proposed expert capacity? We ask that PP clarify these points and provide a current CV for Mr. Fletcher. It would also be helpful if PP would further specify/clarify the proposed nature of Mr. Herbert's expert evidence and proposed expert capacity, and clarify if it is proposed that he will provide factual evidence.

As of this point and subject to the above-requested further clarification, Enbridge Gas reserves its right to subsequently object to the propriety or admissibility of the evidence, depending on the specific nature of it and the answers to the above questions.

Accordingly, Enbridge Gas requests that, if leave is granted to PP to file the proposed evidence, it be on the following conditions:

- (1) PP file the evidence by October 25, 2024 (consistent with its proposal);
- (2) the filing of the evidence be without prejudice to Enbridge Gas's right to subsequently object to the propriety or admissibility of the evidence if need be;
- (3) the OEB provide an opportunity for interrogatories in respect of the evidence; and
- (4) Enbridge Gas be permitted to file responding evidence by way of reply.

### **ED's Evidence Request**

ED is requesting leave to file evidence from Chris Neme of Energy Futures Group (EFG) "regarding the methodologies that Enbridge has used to compare alternatives in this case, including its methodology to compare the cost-effectiveness of repairing the pipe versus replacing the pipe and its consideration of Integrated Resource Planning Alternatives (IRPAs)." In respect of timing, ED says this evidence could be provided by EFG "by the last week of January, 2025 at the earliest" – and this is primarily because EFG is "extremely busy over the coming months". ED also expressly indicated that if the OEB concludes the regulatory schedule cannot accommodate this evidence, ED would accept this conclusion and that ED is "in the OEB's hands" in this regard.

Based on the description in ED's letter, Enbridge Gas questions the probative value or need for the proposed evidence in light of the other evidence on the record, and the opportunity to ask interrogatories to test the methodologies used by Enbridge Gas and to then make closing submissions. And Enbridge Gas has significant concern regarding the proposed timing and associated delay of ED's request.

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<sup>1</sup> EB-2020-0293, Evidence of Michael Fletcher and Daniel Dicaire, January 17, 2022, p. 2, 3 and 10.

Even without the proposed evidence by EFG, through the interrogatory process the parties are able to fully test and seek clarification regarding the methodologies Enbridge Gas used to compare the cost-effectiveness of the various options for the pipeline, which Enbridge Gas addressed in detail in its pre-filed evidence. Whether the OEB should ultimately accept Enbridge Gas's methodologies and its request to replace the pipe will be a matter for closing argument – and the OEB will be able to consider this issue, like it has done in many other leave to construct applications. This is not a novel type of application, and the issue before the OEB is not: what methodology should be used for assessing alternatives. Rather, the OEB will be considering whether Enbridge Gas has sufficiently considered alternatives given the pipeline integrity concerns and met the test for leave to construct in these particular circumstances.

It is therefore not clear from ED's letter how its proposed expert evidence would be probative/needed in this application, or assist the OEB with what it will need to determine. It is also not clear how this evidence would be distinct from or at least not partly duplicative of the proposed evidence from PP relating to energy transition, if the OEB ultimately believes that evidence to be relevant.

ED's proposed timing – to not file this evidence until the last week of January 2025 “at the earliest” – is not acceptable from Enbridge Gas's perspective. This would cause many months of delay and unnecessarily prolong these proceedings. We are informed that this, in turn, would cause execution risk and harm the timely completion of the project. Resourcing the project during summer months would be challenging, and with this delay the permitting and stakeholder plan would need to be re-evaluated. Most importantly, Enbridge Gas is concerned with the increased health, safety and reliability risks associated with such a delay. As demonstrated in the pre-filed evidence, there is urgency to adequately reduce the quantified risks on the pipeline. As stated in Exhibit A Tab 2, Schedule 2 of the application, “the results of the physical inspection, integrity assessments, and QRA demonstrate that not only is urgent mitigation required, but also maintaining the status quo as a permanent mitigation strategy is unacceptable because of the current condition and risks associated with the pipeline.”

Respectfully, this application should not be delayed and the project schedule impacted, with associated increased health, safety and reliability risks, because of EFG's own schedule and that Mr. Neme is busy.

All things considered, Enbridge Gas submits that ED has not met the requirements under r. 13.03 for obtaining leave, especially when the potential (limited) probative value of the evidence is balanced with efficiency and timeliness considerations and having regard to all the other evidence that is or will be on the record, and that ED will also have a full opportunity to make closing submissions regarding Enbridge Gas's assessment of the alternatives. It would therefore be appropriate for the OEB to exercise its discretion to deny ED's request in these circumstances to ensure an efficient process, and as noted above, ED has already indicated it is prepared to accept such a decision and is ‘in the OEB's hands’ on this.

Alternatively, in the event the OEB is inclined to grant leave to file this proposed evidence, Enbridge Gas requests that it be on the following conditions:

- (1) the evidence be filed by October 25, 2024 (consistent with the timing of PP's proposed evidence);
- (2) the filing of the evidence be without prejudice to Enbridge Gas's right to subsequently object to the propriety or admissibility of the evidence if need be;

- (3) the OEB provide an opportunity for interrogatories in respect of the evidence; and
- (4) Enbridge Gas be permitted to file responding evidence by way of reply.

Yours truly,

A handwritten signature in blue ink, appearing to read 'C. Keizer' or similar, with a stylized flourish at the end.

Charles Keizer/Arlen K. Sternberg

/tp