



Enbridge Gas Inc.

**Application for leave to applied to construct natural gas
pipelines in the City of Ottawa**

PROCEDURAL ORDER NO. 3

October 29, 2024

Enbridge Gas Inc. (Enbridge Gas) applied to the Ontario Energy Board (OEB) on June 17, 2024, under sections 90 and 97 of the *Ontario Energy Board Act, 1998* (OEB Act), for an order granting leave to construct approximately 17.6 kilometers of natural gas pipeline and associated facilities along St. Laurent Boulevard, Sandridge Road and Tremblay Road in the City of Ottawa. According to Enbridge Gas, the proposed natural gas pipeline will address significant consequences to safety and operational reliability on the St. Laurent Pipeline System.

Background

In Procedural Order No. 2 in the above-captioned proceeding, the OEB scheduled a technical conference “for parties to ask clarification questions related to interrogatory responses filed by Enbridge Gas.” The technical conference is scheduled for Wednesday and Thursday, October 30 and 31, 2024.

The Ontario Energy Board received a series of three letters on October 28th – the first from Environmental Defence Canada Inc. (Environmental Defence), followed by a response from Enbridge Gas and a further letter from Environmental Defence – regarding a request from Environmental Defence that Enbridge Gas make representatives of two of its consultants (Posterity Group, referred to here as Posterity; and Integral Engineering, referred to as Integral) available for the technical conference. This follows earlier correspondence from Environmental Defence on October 16th and a response from Enbridge Gas on October 18th in this proceeding, both of which dealt, in part, with this matter.

The five letters are available in the OEB webdrawer for this proceeding. In short, Environmental Defence has asked that Enbridge Gas make representatives of Posterity

and Integral available at the technical conference to enable Environmental Defence “to explore both the Posterity and Integral models.”¹ Enbridge Gas responded that:

Out of the total 186 interrogatories responded to in this proceeding, only five of the interrogatory questions made reference to Posterity, and only two of those required responses directly from Posterity. Only six interrogatory questions made reference to Integral, and none of those required a response directly from Integral. Enbridge Gas believes that clarification questions on these responses are appropriately directed to Enbridge Gas witnesses, and if a situation arises where clarification is required from Posterity or Integral, these questions can be handled by way of undertakings.²

Ten days later, in the first of its two letters filed yesterday, Environmental Defence reiterated its October 16th request and asked for an order of the OEB that Enbridge Gas produce the representatives. Environmental Defence submitted that the provision of answers by Enbridge Gas staff or through undertakings would not be effective. According to Environmental Defence:

We need answers from the experts themselves in order to fully understand the models and explore potential concerns. Furthermore, we will be prevented from asking follow up questions if our questions are answered by undertakings. Again, it is the back and forth of a discussion that makes a technical conference so useful. Enbridge’s proposal undermines that benefit.³

In yesterday’s letter responding to that of Environmental Defence, Enbridge Gas noted the following three main issues:

Out of all the interrogatories, there were only two that were responses directly from Posterity, and there were zero responses directly from Integral. So we would not expect there to be any response clarification questions for Integral itself, and only very limited questions that could properly be for Posterity. If there are any such questions, they could easily and efficiently be dealt with by way of written undertaking responses.

Second, Enbridge Gas expressed concern that in stating that it wants the consultants to attend so there can be “a full and adequate testing of the expert evidence,” Environmental Defence is suggesting that there are additional interrogatories it chose not to ask. Enbridge Gas submitted that this “goes beyond the proper scope of this

¹ Environmental Defence letter of Oct. 16, 2024

² Enbridge Gas letter of Oct. 18, 2024

³ Environmental Defence letter of October 28, 2024

technical conference. [Environmental Defence] had a full opportunity to ask whatever interrogatories it wanted, including for Posterity and Integral. If [Environmental Defence] chose not to ask various interrogatories, that was up to it. The technical conference is not the time to ask new interrogatories.”

Finally, Enbridge Gas submitted that with Environmental Defence having waited ten days to respond to Enbridge Gas on this issue, Enbridge Gas assumed that Environmental Defence was no longer pursuing this request in light of Enbridge Gas’s October 18th response. Enbridge Gas submitted that “there would not now be sufficient time to try to make arrangements for these consultants to attend (if they are even available) and permit them time to properly prepare in any event. It is unfair to these consultants (and to Enbridge Gas) for Environmental Defence to have waited until today to request this order.”⁴

Environmental Defence replied to Enbridge Gas on October 28, 2024. Among other comments, Environmental Defence submitted that it asked a number of questions of Integral and instead received responses from Enbridge Gas as well as refusals to answer certain questions, and this necessitates further questions at the technical conference regarding the Integral model; and it directed 21 questions to Posterity and has a number of follow up questions on those.

Second, Environmental Defence denied Enbridge Gas’s argument that “there are additional interrogatories [Environmental Defence] chose not to ask.” That is not the case. We are dealing here with new methodologies that Enbridge is putting forward. It is reasonable that additional questions would arise relating to the interrogatories.”

Third, Environmental Defence denied that it waited ten days to respond on this issue, and submitted that that is “a mischaracterization of the obligations of the parties in these circumstances. Environmental Defence did not miss any deadlines. Instead, it clearly indicated in its letter of October 16, 2024 that it had questions for these expert witnesses and that this would use the majority of Environmental Defence’s time at the technical conference.” Environmental Defence submitted that it is Enbridge Gas’s obligation to provide a witness panel that can answer the relevant questions put forward by intervenors; Environmental Defence fulfilled its obligations when it clearly indicated the need for those witnesses to be present at the technical conference; and it is Enbridge Gas that is not fulfilling its obligations with respect to the technical conference, and it should have already been making efforts to determine the availability of the Posterity and Integral representatives.

⁴ Enbridge Gas letter of October 28, 2024

Finally, Environmental Defence submitted that the OEB has not yet decided whether an oral hearing is necessary in this case; and that one of the benefits of an adequate technical conference is that it could eliminate or at least reduce the need for an oral hearing.⁵

Findings

Typically, the OEB does not involve itself in determining the composition of a witness panel in a technical conference. A party will present its witness panel, and if the panel is unable to answer a question during the technical conference, it will provide an undertaking to do so. Procedural Order No. 2 contemplates undertakings, and includes a requirement that Enbridge Gas file complete written responses to all undertakings by November 14, 2024.

However, having considered the submissions of Environmental Defence and Enbridge Gas, the OEB finds that it would be assisted by having Enbridge Gas make representatives of Posterity and Integral available for the technical conference. The OEB considers this to be the most expeditious and efficient means of concluding the discovery phase of this proceeding. Undertakings may still be necessary, to which written responses will be required, but having Posterity and Integral representatives in the technical conference may reduce the number of undertakings that might otherwise be required. The OEB Act provides that the OEB “may at any time on its own motion and without a hearing give directions or require the preparation of evidence incidental to the exercise of the powers conferred upon the Board by this or any other Act”⁶, and the OEB is giving such a direction here.

The OEB understands that currently, based on estimates provided by OEB staff and the parties, the technical conference will take the two full days allocated to it. In its October 16th letter, Environmental Defence anticipated “approximately 180 minutes of questions, with the greatest amount of time likely needed to explore both the Posterity and Integral models.”

The OEB will schedule up to an additional one-half day for the technical conference to allow for Environmental Defence, other intervenors, and OEB staff to ask clarification questions related to interrogatory responses filed by Enbridge Gas that pertain to the work of Posterity and Integral. This will give Enbridge Gas an opportunity to arrange for the participation of Posterity and Integral representatives. Enbridge Gas is free to

⁵ Second Environmental Defence letter of Oct. 28, 2024

⁶ OEB Act, s.21(1)

determine the composition of the complete witness panel for that session, but the OEB directs Enbridge Gas to include Posterity and Integral representatives.

To be clear, the OEB is not expanding the scope of this technical conference – its purpose was, and remains, to allow for clarification questions on interrogatory responses. This is also not an extension of the total of two days allocated for the technical conference. The OEB expects Environmental Defence and others wishing to question the panel to provide estimates of the time they intend to spend asking questions on the interrogatory responses related to Posterity and Integral. Their time allocations for the October 30th and 31st sessions of the technical conference will be reduced accordingly.

OEB staff will coordinate with the parties to arrange a date for that additional half day and to advise the OEB on the outcome of those discussions. If the parties are unable to arrive at a mutually agreeable date, the OEB will fix the date. To date, only Environmental Defence has expressed an interest in questioning representatives of Posterity and Integral. If another party seeks to question Posterity and Integral representatives on interrogatory responses related to their work, the party should advise OEB staff by 9:30 a.m. on October 31, 2024 and provide a time estimate – as with Environmental Defence, any time estimated for those questions will be deducted from time allocated for the Oct. 30th/31st session, and the duration of this week's session will be reduced accordingly.

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

IT IS THEREFORE ORDERED THAT:

1. Enbridge Gas Inc. shall produce representatives of Posterity Group and Integral Engineering to allow for Environmental Defence Canada Inc., other intervenors and OEB staff to ask clarification questions related to interrogatory responses filed by Enbridge Gas that pertain to the work of Posterity and Integral, on a date to be agreed upon by the parties. In the absence of an agreement by November 1, 2024, the OEB will fix the date. The OEB will provide for up to one-half day for this session, which will form part of the virtual, transcribed technical conference being convened on October 30, 2024 beginning at 9:30 a.m.
2. Environmental Defence and any other party wishing to ask questions at the session referred to in paragraph 1 shall provide OEB staff with an estimate of the time required for their questioning no later than 9:30 a.m. on October 31, 2024 (at the commencement of the October 31st session of the technical conference),

and the OEB expects Environmental Defence and any other party to reduce its time estimate for the October 30th and 31st sessions by that amount.

3. Enbridge Gas shall file with the OEB complete written responses to all undertakings from the October 30, 2024 and October 31, 2024 sessions of the technical conference and serve them on all intervenors by November 14, 2024.
4. The OEB will establish a deadline for complete written responses to all undertakings from the additional session of the technical conference referred to in paragraph 1 after a date for that session has been determined.

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-2024-0200** 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 the 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, James Sidlofsky at james.sidlofsky@oeb.ca

Email: registrar@oeb.ca

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

DATED at Toronto, **October 29, 2024**

ONTARIO ENERGY BOARD

Nancy Marconi
Registrar