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December 20, 2024

Nancy Marconi
Registrar
Ontario Energy Board
2300 Yonge Street, Suite 2700
Toronto, ON M4P 1E4

Dear Nancy Marconi,

**Re: Enbridge Gas Inc. (“Enbridge Gas” or the “Company”)
Ontario Energy Board (“OEB”) File No. EB-2024-0200
St. Laurent Pipeline Replacement Project
Response to OEB Procedural Order No. 5**

As directed in the OEB’s Procedural Order No. 5, Enbridge Gas is providing its submissions on whether there is need for an oral hearing (versus a written hearing) in the above-noted proceeding, including responses to requests from other parties.

In its pre-filed evidence, Enbridge Gas requested a written hearing in this proceeding. The Company continues to be of the view that a written hearing is the appropriate and efficient way to proceed – as is customary in most leave to construct applications -- and intervenors have not established any need for an oral hearing.

Of the nine intervenors, only three of them -- Pollution Probe (PP), CAFES Ottawa and FRPO (with two of them being represented by the same consultant) -- have suggested there should be an oral hearing. None of the other parties including the City of Ottawa and the IESO, has made any such suggestion or request. One of the intervenors (Energy Probe) has expressly submitted there is no need for an oral hearing.

Contrary to the assertion of PP and CAFES Ottawa, the prior St. Laurent project application (EB-2020-0293) did not proceed by way of an oral hearing. Following a technical conference and undertakings process the OEB proceeded by way of written hearing in that application. In concluding that a written hearing was sufficient, the OEB indicated that to obtain an oral hearing, intervenors are required “to provide a good reason for not proceeding by way of a written hearing.”¹ In considering a similar issue in a prior LTC case by a different applicant, the OEB held that “an oral hearing will be held if there is additional evidence or cross-examination required, but the matters must be of sufficient probative value to the Board’s decision-making.”² An oral hearing is not required where the written process has provided the parties with an

¹ EB-2020-0293, Procedural Order No. 5 (January 13, 2022), p. 4 (emphasis added).

² EB-2012-0365, Decision and Procedural Order No. 4 (March 19, 2013), p. 2 (emphasis added).

adequate opportunity to obtain relevant information. Also, if intervenors are of the view there are deficiencies in an applicant's evidence, this can be addressed through written argument, the OEB has held.³

Like in EB-2020-0293 (and also in EB-2012-0365), Enbridge Gas submits that the above three intervenors have not established there is good reason for requiring an oral hearing. In this application, there is already a very robust and detailed written record which will enable the OEB to fully and fairly adjudicate on the application and determine whether this project is in the public interest (an even more fulsome record than in EB-2020-0293). The written process has provided an adequate opportunity to obtain relevant information on the record. The intervenors' submissions do not establish that any additional relevant – let alone “sufficiently probative” -- evidence would likely be adduced to warrant an oral hearing. Also, from a timing perspective, there is some urgency to complete these proceedings as expeditiously as reasonably possible at this stage in light of the proposed construction schedule and evidence of project need. We address these points in the sections below.

The Existing Written Record is Extensive

There has already been an extensive record developed to enable the OEB to consider and determine whether this project (including the proposed full replacement option) is in the public interest. Enbridge Gas's pre-filed evidence consists of a 592-page application containing detailed evidence on the matters in issue. There were then approximately 181 interrogatories, comprising 438 sub-questions, to which Enbridge Gas responded (885 pages). After that, 2.5 days of technical conference took place, including a half-day session that was convened (at the request of intervenors) so that parties could ask questions of two experts (Posterity and Integral) relating to their reports and associated interrogatory responses relating to their work. Arising from the technical conference, there was also a total of 63 undertakings to which Enbridge Gas responded (257 pages).

The above evidence has addressed in detail the key issues in this proceeding, including an assessment of the project need, the current condition of the SLP pipeline, and risk assessment. This has included evidence in respect of:

- (a) the physical inspections that were carried out (In-line Inspections);
- (b) technical integrity assessments (i.e. field excavations);
- (c) a qualitative risk assessment (QRA) that details and evaluates the threats on the SLP against various risk criteria in order to assess the fitness of the SLP and the necessity for remediation; and
- (d) the results of the assessment of the technical regulator, the TSSA, regarding fitness of the SLP and need for remediation.

Additionally, the record includes extensive evidence in respect of an assessment of the pipeline replacement option and possible alternative solutions that were considered, as well as energy transition modelling related to the future energy needs of the City of Ottawa. During the discovery process a significant volume of questions was asked comparing the replacement option with the extensive inspection and repair option and non-facility alternatives to address the SLP condition. This included detailed questioning by OEB staff's own external technical consultant, Kinectrics, regarding the need for the project and technical elements, and risk

³ Ibid, p. 3.

assessment regarding the remedial options. The technical conference session dedicated to Enbridge Gas's experts, Posterity and Integral, included questions relating to the modelling of energy transition and customer disconnections and energy demand in the City of Ottawa.

This extensive discovery process has allowed for a thorough exploration of the pre-filed evidence and key issues and has resulted in a fulsome record that will enable the OEB to consider and determine whether the project is in the public interest and leave to construct should be granted.

The Intervenor's Submissions Do Not Establish a Need for an Oral Hearing

As noted, only three of the nine intervenors have requested an oral hearing. Enbridge Gas submits that those parties have not established any need for an oral hearing in these circumstances. They have not demonstrated there is any additional evidence or cross-examination required that would be "of sufficient probative value" to require an oral hearing, and thus have not provided a "good reason for not proceeding by way of written hearing" (which is the test referred to in prior OEB decisions on this procedural issue). And the majority of the other parties have not suggested there is any such need.

We respond below to the submissions of PP, CAFES Ottawa and FRPO.

PP and CAFES Ottawa Submissions

PP and CAFES Ottawa are both represented in this application by the same consultant, Mr. Brophy. CAFES Ottawa previously filed a brief letter on November 22, 2024, expressing support for an oral hearing, and more recently PP filed submissions on December 17, 2024 similarly requesting an oral hearing.

The main reason they each point to in support of their request is their erroneous assertion that the prior SLP proceeding involved an oral hearing, and so there should similarly be one in this application. CAFES Ottawa states: "We would like to express support for an oral hearing similar to what was conducted for the original consideration of this Project under EB-2020-0293." PP's submissions also state that there was an oral hearing in that prior proceeding, and it suggests there should be the same "full and transparent" project review in this application.

As noted above, however, the prior application (EB-2020-0293) did not in fact involve an oral hearing. Rather, it proceeded by way of a written hearing based on the written record. The OEB specifically considered whether to convene an oral hearing in that application and issued Procedural Order No. 5 (as well as Procedural Order No. 3) in which it concluded that no oral hearing was required, and that a technical conference and written discovery process was sufficient, stating that: "With regard to the Sponsors' request for an oral hearing, the OEB has considered the correspondence of the Sponsors and Enbridge Gas, and has decided to proceed with a written hearing."⁴ Similarly, a full and transparent project review – which PP requests – can take place in this application based on the existing detailed and robust written record, which is more extensive than the prior proceeding to which CAFES Ottawa and PP refer.

⁴ EB-2020-0293, Procedural Order No. 5 (January 13, 2022), p. 4; and Procedural Order No. 3 (December 17, 2021) p. 3.

We further note that in respect of phases 1 and 2 of this SLP project (which took place prior to the EB-2020-0293 application), the leave to construct application for them proceeded by way of written hearing as well.⁵

PP also baldly asserts that there are “gaps” in the record that an oral hearing could address. But PP provides no specifics other than briefly referring parenthetically to “those noted by Pollution Probe in our earlier correspondence”. That is a reference to PP’s recent request for production of an early draft of a report by one of the experts, DNV. Enbridge Gas responded to this request in prior correspondence, pointing out that the final DNV memo and full report were already filed on the record, along with responses to various other questions that were asked through the discovery process regarding the DNV engagement.

The OEB already considered PP’s request for production of additional material and ruled on it in Procedural Order No. 5 dated December 16, 2024. The OEB denied PP’s request, concluding that production of the prior draft of the DNV Report was not necessary:

Regarding Pollution Probe’s request for an earlier draft of the DNV report, the OEB finds this is not necessary. Enbridge Gas filed the final report and an associated memo on the record of this proceeding which described the scope of the DNV study and its conclusions. Enbridge Gas also responded to interrogatories and technical conference questions related to this report. Draft technical reports typically evolve in scope and content and the OEB does not consider it necessary or helpful in this case to require the release of a preliminary incomplete early draft version of the report.⁶

Neither PP nor CAFES Ottawa has pointed to any specific additional material evidence that would be adduced through further questioning and would be sufficiently probative to require an oral hearing. They, and the other intervenors, have already had a fulsome opportunity to ask questions and adduce written evidence through the discovery process that has taken place.

FRPO Submissions

In its December 18, 2024, submissions, FRPO submits as the basis for requesting an oral hearing that there is a “lack of clarity” in respect of certain evidence. In this regard, it raises the same two points (i.e. the same two technical topics) that were the subject of its repeated requests for further clarifying undertaking responses over the past month.

Enbridge Gas already responded to those requests by providing further and updated undertaking responses and explanations addressing those two points – which it provided along with its December 6 letter and also its December 13 letter. The OEB then addressed and ruled on FRPO’s requests for additional information to be filed in response to these requests, concluding that Enbridge Gas’s responses were sufficient and that no additional information or documents needed to be provided in this regard. The OEB stated: “The OEB finds that Enbridge Gas’s further responses and clarifications to the five technical conference undertakings requested by FRPO...to be adequate in terms of addressing the gaps that FRPO identified.”⁷

⁵ OEB Decision in EB-2019-0006.

⁶ Procedural Order No. 5, p. 4.

⁷ Procedural Order No. 5, p. 3.

FRPO's continued request for additional clarity on these factual points is not a proper basis for suggesting there should be an oral hearing, particularly since the OEB has already ruled that no additional information or responses are required from Enbridge Gas on these points. The responses already provided by Enbridge Gas are sufficiently clear, and FRPO can make submissions on them as part of its closing argument. As the OEB has noted in past decisions referred to above, parties can address in closing argument any deficiencies they might perceive in the evidence. Much of the content of FRPO's December 17 submissions in fact consists of argument on the merits regarding the two points it keeps raising. Enbridge Gas disagrees with FRPO's submissions and will address them in closing argument to the extent they are relevant to the issues.

Further and importantly – as was noted in Enbridge Gas's December 6 and 13 letters – these two points raised by FRPO principally relate to the pipe sizing in respect of only a small section of the pipeline, which is an issue that is financially immaterial in the context of the overall size of this project (only approximately a \$1.3 million issue). This discrete issue is not probative to a determination of whether this project is in the public interest.

Timing Consideration: an Oral Hearing would add Unnecessary Risk to the Proposed Project Construction Schedule

As a practical matter, Enbridge Gas also notes that there is some urgency at this stage to complete these proceedings as expeditiously as reasonably possible, given the timing of proposed construction and the need for timely permanent mitigation to be put in place in respect of this pipeline (all of which is addressed in the evidence).

In its pre-filed evidence, Enbridge Gas filed a project schedule⁸ indicating a planned construction start in April 2025, with a project in-service date of December 2026. This schedule had assumed a regulatory proceeding that would conclude with an OEB decision in about January 2025. Provided leave to construct is granted, this would have allowed for a 2-3 month period for project mobilization following the decision, with construction scheduled to begin in April, 2025.

Enbridge Gas's evidence addresses the urgency and need for appropriate permanent mitigation of the condition of the SLP to be put in place in a timely way. Maintaining the status quo as a permanent mitigation strategy is unacceptable from a risk perspective. The TSSA has similarly concluded that "actions shall be taken by Enbridge to remediate the condition of the St. Laurent pipeline."⁹ If the status quo (temporary measures) were to continue for too long of a period, Enbridge Gas has indicated it would be required to take a number of extraordinary measures to reduce the operating risk, which will result in a significant impact on customers.¹⁰ This makes it all the more important that this proceeding, which has already been extended by virtue of the further technical conference session in November and resulting further round of undertakings, be completed in a timely way.

In a prior Procedural Order, the OEB already noted concern regarding any unnecessary delays in this matter, including that a proposed delay by Environmental Defence to the end of January 2025 (to file some previously proposed evidence) was problematic. The OEB noted Enbridge

⁸ Exhibit D, Tab 1, Schedule 1, Att 1.

⁹ Exhibit I.1-STAFF-12, Att. 2.

¹⁰ Exhibit A, Tab 2, Schedule 2, p. 2, and Exhibit I.1-STAFF-11

Gas's concern that the proposed delay would cause execution risk and harm the timely completion of the project and found Enbridge Gas's explanation regarding the impacts of a delay on the project to be persuasive.¹¹

Enbridge Gas remains concerned with the prospect of unnecessary delays to the completion of these proceedings. We ask that this practical point be taken into account as the OEB considers whether an oral hearing is now required in this proceeding, and as it considers the timing for the next steps in this matter.

For all of the above reasons, Enbridge Gas respectfully submits that the appropriate and efficient way to proceed is by way of written hearing, as the extensive written record will allow the OEB to adjudicate on the issues, and written hearings are customary for most leave to construct applications. Enbridge Gas requests that the OEB establish a timetable for the exchange of written argument by the parties, as the next steps to complete this proceeding.

Sincerely,

A handwritten signature in cursive script that reads "Patricia Squires".

Patricia Squires
Manager, Regulatory Applications – Leave to Construct

Cc: Zora Crnojacki (OEB Staff)
Charles Keizer (Torys)
Arlen Sternberg (Torys)
Intervenors (EB-2024-0200)

¹¹ Procedural Order No. 2.