



Enbridge Gas Inc.

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

PROCEDURAL ORDER NO. 6

January 3, 2025

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.

This Procedural Order addresses the requests of a few parties to this proceeding that the OEB convene an oral hearing. The OEB is denying those requests, and will determine this matter by way of a written hearing, for the reasons that follow. The OEB is providing a lengthy overview of the steps already taken in this proceeding, which include a number of opportunities for discovery, as these steps are relevant to the OEB's decision to proceed by way of a written hearing.

Overview of the Proceeding to Date

To date, the OEB has issued five procedural orders setting the schedule for discovery by written interrogatories (and responses from Enbridge Gas) and a transcribed virtual technical conference, including responses to undertakings given during the technical conference. The procedural orders have also addressed requests for additional information in response to the undertakings; and provided for submissions on the type of hearing (oral or written) the OEB should conduct.

At the outset of the proceeding, in their respective requests for intervenor status, Environmental Defence, Federation of Rental Housing Providers (FRPO), Industrial Gas Users Association (IGUA), Pollution Probe, and School Energy Coalition (SEC) submitted that the OEB should make its determination on the type of hearing after the interrogatory process. In Procedural Order No. 2, the OEB stated that it would make its

determination on the type of hearing after the undertaking responses from the technical conference were filed.

The technical conference was originally scheduled for two days and took place on October 30 and 31, 2024. Following a request by Environmental Defence, the OEB scheduled an additional one-half day 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 two of its consultants. That additional session took place on November 13, 2024. Enbridge Gas gave 63 undertakings during the technical conference and delivered its responses by November 26, 2024.

On November 22, 2024, Community Association for Environmental Sustainability Ottawa (CAFES Ottawa) filed a letter with the OEB expressing support for an oral hearing.

Between November 29, 2024, and December 6, 2024, FRPO and Pollution Probe filed several letters requesting that Enbridge Gas file additional information in response to seven undertakings (six from FRPO and one from Pollution Probe) from the technical conference. On December 6, 2024, and December 13, 2024, Enbridge Gas updated the undertaking responses identified by FRPO and Pollution Probe and provided a rationale for its position.

In Procedural Order No. 5 issued on December 16, 2024, the OEB denied the FRPO and Pollution Probe requests for further information. The OEB found that Enbridge Gas's further responses and clarifications to five technical conference undertakings requested by FRPO, filed December 6 and December 13, were adequate in terms of addressing the gaps that FRPO identified. The OEB also accepted Enbridge Gas's additional explanation for its refusal to address FRPO's undertaking JT 1.20, noting that the requested information related to an eight-year-old project pertaining to a rural setting compared to the urban setting of the proposed project. The OEB denied Pollution Probe's request that Enbridge Gas file a draft version of a report that was provided in its final form by Enbridge Gas in response to a Pollution Probe interrogatory. The OEB indicated that draft technical reports typically evolve in scope and content and releasing a preliminary incomplete early draft may not add much value.

Procedural Order No. 5 also provided an opportunity for parties to file submissions on the need for an oral hearing (versus a written hearing) by December 18, 2024, and for Enbridge Gas to file a response on requests for an oral hearing by December 20, 2024.

Form of Hearing

Pollution Probe and FRPO filed submissions in favor of an oral hearing, on December 17, 2024, and December 18, 2024, respectively. CAFES Ottawa had requested an oral hearing in a letter dated November 22, 2024. None of the other six approved intervenors requested an oral hearing. One of those six intervenors, Energy Probe, filed a letter dated December 18, 2024, stating that it “believes that there is now sufficient evidence on the record, and it will not need further discovery by an oral hearing. Energy Probe supports Enbridge’s request for a written hearing.”

CAFES Ottawa noted that “...In some cases, Enbridge has refused to provide information and documents requested by stakeholders, particularly related to Enbridge third party consultants...”. CAFES Ottawa submitted that “Having the ability to objectively understand all the facts underlying the proposed project and alternatives would help ensure that the OEB has the best available objective information for making a decision.” CAFES Ottawa asserted that decarbonization activities in the City of Ottawa have been proceeding in alignment with the City’s Net Zero by 2050 target and attached a letter from a resident of the City of Ottawa regarding that resident’s adoption of a cold climate heat pump system.

FRPO confirmed its support for an oral hearing. In doing so, FRPO largely re-stated its concerns, expressed in earlier correspondence, about the clarity of Enbridge Gas’s evidence on system design optimization (i.e., consideration of maximum operating pressure to optimize the system) and on aspects of Enbridge Gas’s contract with Gazifère related to the demand Enbridge Gas applied to determine St. Laurent System design (i.e., inclusion of Gazifère’s interruptible rates in determining the system design). FRPO requested an oral hearing based on the need for a clear evidentiary record.

Pollution Probe also confirmed its support for an oral hearing, stating, in part:

It is logical that parties that support approval of the replacement project proposed by Enbridge will not want further exploration of the evidence, including appearances by the experts which did not appear at any of the Technical Conferences and/or did not answer interrogatories directly (i.e. responses were provided by Enbridge rather than the consultants that created the evidence). The oral hearing component was correctly an important element for the same project proposal in EB-2020-0293 and it is unclear why a full and transparent project review is less important now that the project has been refiled. The project is even larger in scope and costs than the original application that was denied by the OEB.

Pollution Probe notes that there is a large body of evidence on the record that indicates that an alternative to Enbridge's preferred full replacement is more cost-effective and prudent.

However, given the importance and significance of this project, ensuring that a complete record is available to support the OEB's review and deliberations. Leaving important gaps in the record has the potential to open potential doubts or challenges in the future regardless of what the OEB's decision is in this proceeding. Enabling those gaps to be closed (including those noted by Pollution Probe in our earlier correspondence) can be accommodated through an oral hearing component as is typically done for Leave to Construct projects of this significance and what was done previously for the same project in EB-2020-0293. Pollution Probe supports that approach in this proceeding.¹

Enbridge Gas filed a response to the FRPO, Pollution Probe and CAFES Ottawa requests for an oral hearing on December 19, 2024. Enbridge Gas maintained its support for a written hearing.

Enbridge Gas confirmed its position that written hearing is an efficient and appropriate way to proceed. Enbridge Gas disagreed with FRPO's, Pollution Probe's and CAFES Ottawa's reasons for proceeding with oral hearing. Enbridge Gas submitted that FRPO, Pollution Probe and CAFES Ottawa "...have not established any need for an oral hearing." Enbridge Gas maintained that the existing written record is extensive, noting a large volume of information acquired by interrogatories, technical conference transcripts and undertakings from the technical conference. Enbridge Gas pointed out that the extensive record addresses key issues such as the need, the current condition of the pipeline, risk assessment and assessment of alternatives, non-facility alternatives, and energy transition modelling related to future energy needs of the City of Ottawa. Enbridge Gas submitted that, while Pollution Probe alleged gaps in the record that an oral hearing could address, the only specific item to which that allegation appeared to relate was Pollution Probe's request that Enbridge Gas file a draft of the DNV report – a request denied by the OEB in Procedural Order No. 5.

Enbridge Gas also noted that, contrary to the Pollution Probe submission, the OEB did not conduct an oral hearing in the previous St. Laurent Replacement Project application (EB-2020-0293). In conclusion, Enbridge Gas stated that "...an oral hearing would add unnecessary risk to the proposed construction schedule" which plans for the construction to start in April 2024 and complete in December 2026.

¹ Pollution Probe submission, December 17, 2024

Findings

The OEB will begin by addressing Pollution Probe's comments about an oral hearing component in Enbridge Gas's previous application for approval of the St. Laurent replacement project (EB-2020-0293). Contrary to Pollution Probe's assertion that the "oral hearing component was correctly an important element for the same project proposal in EB-2020-0293", there was no oral hearing in that proceeding. While not determinative of the requests for an oral hearing in the current proceeding, it is important that the facts around that proceeding are accurately stated. The OEB rejected the oral hearing requests made by Pollution Probe and other intervenors, for the reasons set out in Procedural Order No. 5 in that proceeding. There was an oral component, but it was the transcribed technical conference. As mentioned previously, the OEB convened a transcribed technical conference in the current proceeding and extended that technical conference to allow parties to ask questions of two of Enbridge Gas's external consultants.

As discussed in Procedural Order No. 5 in EB-2020-0293, subsections 5.1(1) and (2) of the *Statutory Powers Procedure Act* (SPPA)² provide that a tribunal whose rules made under section 25.1 of the SPPA deal with written hearings may hold a written hearing in a proceeding, but that the tribunal shall not hold a written hearing if a party satisfies the tribunal that there is good reason for not doing so. The OEB's *Rules of Practice and Procedure* provide that "In any proceeding, the OEB may hold an oral, electronic or written hearing, subject to the [SPPA] and the statute under which the proceeding arises; and that the "format, date and location of a hearing shall be determined by the OEB."³ In that case, the OEB considered whether there was a good reason for holding an oral hearing and determined that there was not.

The OEB finds that the parties requesting an oral hearing have not satisfied it that there is a good reason for requiring an oral hearing in this proceeding. There is an extensive record in this proceeding, and the OEB agrees with Energy Probe that there is sufficient evidence on the record. There has been an extensive discovery process in respect of Enbridge Gas's pre-filed evidence. As Enbridge Gas notes:

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

² R.S.O. 1990, c. S.22

³ See Rules 32.01 and 31.02 of the OEB's *Rules of Practice and Procedure*.

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).

Beyond that, Enbridge Gas provided additional information in response to FRPO's follow-up questions.

While Enbridge Gas mentioned the numbers of pages of its interrogatory and undertaking responses, the OEB is not focused on a page count – rather, the OEB has considered the record, which now includes the pre-filed evidence, interrogatory responses, technical conference transcript, undertaking responses and responses to follow-up questions, and is satisfied that it is extensive and sufficient to enable the OEB to proceed by way of written hearing. No additional evidence is required. The parties have had opportunities, both in writing and orally, to seek clarification of the Enbridge Gas evidence and to obtain further information and have exercised those opportunities.

More particularly, with regard to FRPO's letter of December 18, 2024, requesting an oral hearing, the OEB finds that the concerns raised in FRPO's letter are not of sufficient probative value to the OEB's decision making to warrant an oral hearing. FRPO has alleged a lack of clarity in the evidence. As noted above, the OEB found Enbridge Gas's further responses and clarifications to the five technical conference undertakings requested by FRPO (JTX 1.22, 1.24, 1.26, 1.28 and 1.29), filed December 6 and December 13, to be adequate in terms of addressing the gaps that FRPO had previously identified. The OEB did not require Enbridge Gas to file further evidence in this regard. FRPO may remain dissatisfied with Enbridge Gas's evidence in this proceeding, and if so, it is open to FRPO to take that position in its written submission.

With regard to the Pollution Probe and CAFES Ottawa requests for an oral hearing, those submissions appeared to place a significant weight on the assertion that the previous St. Laurent proceeding (EB-2020-0293) had included an oral hearing. Pollution Probe and CAFES Ottawa requested a similar process. As discussed above, there was no oral hearing in that proceeding. A request for an oral hearing was denied. Disposing of the current proceeding by way of a written hearing would be a similar process to that followed in EB-2020-0293. The mischaracterization of the process followed in EB-2020-0293 is not helpful, but that aside, the OEB is not satisfied that the matters raised by Pollution Probe and CAFES Ottawa warrant an oral hearing. As noted previously, in its letter of December 17, 2024, "Pollution Probe notes that there is a large body of evidence on the record that indicates that an alternative to Enbridge's preferred full replacement is more cost-effective and prudent." Pollution Probe goes on to assert that there are "important gaps in the record" but does not specify those gaps.

As Enbridge Gas discussed in its submission, in the *Dufferin Wind* case (EB-2012-0365), the OEB found 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.”⁴ The OEB went on to state that “To the extent that there are any deficiencies in the applicant’s evidence, CORE (or any other party) will be able to present its views on these matters through written argument. The Board notes that the onus is on the applicant to prove its case. It is open to any party to argue that the application is deficient, and if the Board agrees, then the application may be denied, adjourned, or approved subject to conditions.”⁵

Similarly, in the current proceeding, the onus is on Enbridge Gas to prove its case. It is open to FRPO, Pollution Probe and CAFES Ottawa to argue that the application should be denied, and Pollution Probe already appears to be suggesting that there is information on the record to support a cost-effective and prudent alternative. The OEB is satisfied that the record as it currently stands provides the information necessary for the parties to make their written submissions on the merits of the application. There is insufficient probative value to the OEB’s decision-making in the matters being raised by FRPO, Pollution Probe and CAFES Ottawa, and these parties have not established a good reason for an oral hearing. The OEB will move on to the scheduling of written submissions.

Written Hearing Schedule

The OEB has determined that written submissions by OEB staff and the intervenors on Enbridge Gas application will be due January 24, 2025. Enbridge Gas will have the opportunity to file a written reply submission by February 7, 2025. This will close the record for the proceeding.

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. OEB staff and intervenors shall file their written submissions with the OEB and serve them on all parties by **January 24, 2025**.
2. Enbridge Gas shall file a written reply submission, if any, with the OEB and serve it on all intervenors by **February 7, 2025**.

⁴ EB-2012-0365, Procedural Order No. 4, March 19, 2013, at p.2

⁵ *Ibid.*, at p.3

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

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

DATED at Toronto, **January 3, 2025**

ONTARIO ENERGY BOARD

Nancy Marconi
Registrar