



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

DECISION AND ORDER

EB-2022-0285

ENBRIDGE GAS INC.

Panhandle Regional Expansion Project Early Access Application

BEFORE: Patrick Moran
Presiding Commissioner

Robert Dodds
Commissioner

David Sword
Commissioner

April 2, 2024



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1 OVERVIEW

On June 16, 2023, Enbridge Gas Inc. filed an application with the OEB pursuant to section 98(2) of the *Ontario Energy Board Act, 1998* (OEB Act) for an order to allow Enbridge Gas access to certain parts of the natural gas pipeline that it proposed in the Panhandle Regional Expansion Project proceeding¹, for the purposes of archaeological, environmental and engineering surveys and examinations with respect to the proposed pipeline on these specific parcels of land (Early Access Application).

Access to these lands is required for the proposed Panhandle Regional Expansion Project, currently the subject of an application for leave to construct a natural gas pipeline and associated facilities to reinforce the Enbridge Gas's Panhandle System in southwestern Ontario.

Of the three properties that are the subject of this Early Access Application, one is owned by Middle Road Farms Limited and the other two are owned by Courey Corporation, and both companies (Courey Companies) are under common control.

If leave to construct is granted, Enbridge Gas proposes to start construction of the Panhandle Regional Expansion Project in 2024 to achieve an in-service date of November 1, 2024. To meet this timeline Enbridge Gas requested an OEB order authorizing early access to the three properties by no later than April 1, 2024.

The OEB approves Enbridge Gas's request for early access to the three properties, subject to the Conditions of Approval contained in this Decision and Order.

¹ EB-2022-0157

2 PROCEEDING

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

The Courey Companies were granted intervenor status and cost award eligibility. There are no other intervenors in the Early Access Application.

On August 29, 2023, the Early Access 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.

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 and a written reply submission from Enbridge Gas.

3 DECISION

Summary of Evidence and Submissions

The Courey Companies and OEB staff filed submissions in this proceeding. Enbridge Gas filed a reply to those submissions.

OEB Staff Submission and Enbridge Gas's Reply

OEB staff supported approval of the Early Access Application. In its submission, OEB staff reviewed the relevant statutory provisions and concluded that the OEB is authorized to issue an order granting early access rights to Enbridge Gas under section 98(2) of the OEB Act. Specifically, OEB staff noted that Enbridge Gas satisfied the requirement in section 98(2)(a) of the OEB Act by filing a proposed project location map in the LTC Application.

OEB staff did not identify any concerns with the proposed activities or the timing of the activities to take place if the Early Access Application were to be granted. Moreover, OEB staff acknowledged that these activities were being driven by requirements of various government entities.

OEB staff further acknowledged efforts by Enbridge Gas to negotiate with the Courey Companies including the Courey Companies being offered the same form of Permission, Consent and Access Agreement² that was offered to all other landowners along the proposed route of the Panhandle Regional Expansion Project. With respect to Enbridge Gas's proposed Conditions of Approval, OEB staff proposed three minor edits:

1. delete certain duplicated text set out at the end of the first paragraph of section 3.1
2. replace references to the "Board" with "Ontario Energy Board"
3. revise section 5 "Communication with the Ontario Energy Board" to read as follows:

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.

² Exhibit B, Tab 1, Schedule 1, Attachment 1: Permission, Consent and Access Agreement

In its reply argument, Enbridge Gas stated that it takes no issue with OEB staff's proposed edits to the Conditions of Approval.

Courey Companies' Submission and Enbridge Gas's Reply

In its submission, the Courey Companies argued that Enbridge Gas should only be granted access to its land at such time that leave to construct is granted in the LTC Application. In support of this position, the Courey Companies outlined two outcomes that could flow from the LTC Application: (i) should leave to construct be denied, access becomes a moot point; and (ii) should leave to construct be approved, a basis will be established for the extensive testing proposed in the Early Access Application.

The Courey Companies further stated that due consideration must be given to the considerable impact that the extensive testing and investigation methods would have on farming operations at the properties. The Courey Companies argued that they cannot reasonably plan any farming activities given the absence of particulars including fixed dates (as opposed to windows of time), hours of attendance, and specific activity to be performed in relation to the requested surveys and examinations.

The Courey Companies stated that the three properties in question remain wholly and exclusively within the ownership and control of the Courey Companies and that no steps toward expropriation have been taken. The Courey Companies raised concerns that the Early Access Application, if granted, would deprive the Courey Companies of farming revenue with no assurance that such losses will be offset within the context of an expropriation.

Finally, the Courey Companies suggested in its submission that Enbridge Gas expanded the purpose of the Early Access Application in December 2023.

In its reply submission, Enbridge Gas took issue with several aspects of the Courey Companies' submissions.

First, Enbridge Gas denied that it had expanded the purpose of the Early Access Application in December 2023:

The stated purpose of the Early Access Application as originally filed on June 16, 2023, and as updated on December 8, 2023 was identical, as evidenced by the identical language in Exhibit B-1-1, paragraph 21 of each version of the Early Access Application. The updated version, however, included a footnote regarding timing, indicating that the specific need for early access by April 1,

2024, is for the purpose of addressing certain archaeological requirements from the Ministry of Citizenship and Multiculturalism (MCM).³

On the issue of prematurity, Enbridge Gas stated that the purpose of section 98(2) of the OEB Act is to enable a proponent of a project to obtain authorization from the OEB for early access to a property to complete surveys and examinations on such property that are necessary for fixing the site of a project in respect of which leave to construct is pending. Enbridge Gas maintained that it needed early access rights by April 1, 2024 to ensure that it can place the Panhandle Regional Expansion Project in service by November 1, 2024. Enbridge Gas argued that the Courey Companies assertion, if true, would render section 98(2) meaningless, and is therefore incorrect.

Enbridge Gas also addressed the Courey Companies' concerns about potential impacts on farming operations. Enbridge Gas noted that its land agents began meeting with all landowners along the route of the proposed pipeline in January 2022. While Enbridge Gas would have had greater flexibility in terms of the timing for performing the required surveys and examinations on the Courey Companies' properties if the landowners were willing to provide such early access rights on a negotiated basis, such flexibility in timing is no longer available without materially impacting the schedule for the Panhandle Regional Expansion Project.

Enbridge Gas also did not agree that the Courey Companies would be deprived of the opportunity to be appropriately compensated for reasonable farming losses. Referencing sections 98(6), 99 and 100 of the OEB Act, Enbridge Gas stated that effectively the same rights to compensation apply to the granting of rights for early access as they do to the granting of rights to expropriate.

Finally, in its reply, Enbridge Gas advised that discussions between Enbridge Gas and the Courey Companies were ongoing. Enbridge Gas indicated that it would notify the OEB if an agreement were to be reached.

Findings

The OEB finds that the entry onto land and the activities identified by Enbridge Gas are appropriate activities to be conducted under an order for entry onto land and that the granting of the requested order is in the public interest. The OEB grants to Enbridge Gas the relief requested in the Early Access Application.

³ Enbridge Gas Inc. Reply Submissions, March 12, 2024, page 4

The OEB finds that Enbridge Gas has satisfactorily responded to the concerns expressed by the Courey Companies, as follows:

- a) The only variation in the Early Access Application as originally filed on June 16, 2023, and as updated on December 8, 2023, is the inclusion of a footnote regarding timing, indicating that the specific need for early access by April 1, 2024, is for the purpose of addressing certain archaeological requirements from the MCM. This does not, in the OEB's view, amount to a material change to the application.
- b) In the event that the OEB grants leave to construct, the OEB accepts that not providing the early access rights will compromise Enbridge Gas's ability to place the Panhandle Regional Expansion Project in service by November 1, 2024.
- c) Regarding any impacts on farming operations, the ability to plan farming activities and the risk of farming losses, it is clear that the same rights to compensation apply to the granting of rights for early access as they do to the granting of rights to expropriate. Therefore, in granting the Early Access Application, the Courey Companies are not deprived of the opportunity to be appropriately compensated for reasonable farming losses. A fact which Enbridge Gas acknowledged in its reply is that Enbridge Gas will be required to provide compensation for any damages to properties resulting from entry onto those lands, in accordance with sections 98(6) and 100 of the OEB Act.

The OEB notes that Enbridge Gas accepted the edits to the Conditions of Approval suggested by OEB staff. Therefore, the revised Conditions of Approval attached as Schedule B are approved.

The OEB reminds the Courey Companies that any cost claims must be consistent with and carried out in accordance with section 10 of the OEB's *Practice Direction on Cost Awards*. Enbridge Gas will have an opportunity to object to any aspect of the costs claimed.

4 ORDER

THE ONTARIO ENERGY BOARD ORDERS THAT:

1. Enbridge Gas Inc. and its officers, employees and agents may enter on the land affected by the proposed Panhandle Regional Expansion Project route in the areas as shown in Schedule A to this Decision and Order and may make such surveys and examinations as are necessary for fixing the site of the work.
2. The early access approval in paragraph 1 is subject to the Conditions of Approval attached in Schedule B to this Decision and Order.
3. The Courey Companies shall file with the OEB and forward to Enbridge Gas Inc. their respective cost claims in accordance with the OEB's *Practice Direction on Cost Awards* on or before April 23, 2024.
4. Enbridge Gas Inc. shall file with the OEB and forward to the Courey Companies any objections to the claimed costs on or before May 7, 2024.
5. If Enbridge Gas Inc. objects to the Courey Companies' costs, the Courey Companies shall file with the OEB and forward to Enbridge Gas Inc. any responses to the objections on or before May 21, 2024.
6. Enbridge Gas Inc. shall pay the OEB's costs incidental to this proceeding upon receipt of the OEB's invoice.

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](#).

Parties should quote file number, **EB-2022-0285** 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.

- Parties should use the document naming conventions and document submission standards outlined in the [Regulatory Electronic Submission System \(RESS\) Document Guidelines](#) found at the [Filing Systems 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. Parties may 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 at the address below and be received no later than 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.

E-mail: registrar@oeb.ca

Tel: 1-888-632-6273 (Toll free)

DATED at Toronto, April 2, 2024

ONTARIO ENERGY BOARD

Nancy Marconi
Registrar

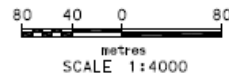
SCHEDULE A
DECISION AND ORDER
ENBRIDGE GAS INC.
EB-2022-0285
APRIL 2, 2024

Enbridge Gas Inc.

Property Sketch
 showing Approximate Location of
 Existing Pipeline Easements and Any Existing Easements Within
 Municipality: Lakeshore, Area: 122.5 ac
 Land Registry Status: ACTIVE, Registration Type: LT, Perimeter: 3397.41m
 Description:
 PT LT 18 CON SMR TILBURY PTS 1 TO 3, 12R14064; S/T R476322; LAKESHORE



OWNER: COUREY CORPORATION



PART	APPROX. SIZE (metres)		APPROX. AREA		PART	APPROX. SIZE (metres)		APPROX. AREA		
	(width)	(length)	(hectares)	(acres)		(width)	(length)	(hectares)	(acres)	
PART 1	100m	100m	1.00	2.47	PART 2	10m	120m	0.12	0.29	
PART 3	20m	100m	0.20	0.49	PART 4	10m	120m	0.12	0.29	
TOTAL EASEMENT APPROX. AREA (acres)				0.00	TIE-IN STATION APPROX. AREA (acres)				2.47	
TOTAL TLU APPROX. AREA (acres)				1.07						

PIN: 750770100 SCALE: 1:4000 *ALL DISTANCES ARE APPROXIMATE. DATE: 2023/06/15

SCHEDULE B
DECISION AND ORDER
ENBRIDGE GAS INC.
EB-2022-0285
APRIL 2, 2024

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

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.