



EB-2011-0391

IN THE MATTER OF the *Ontario Energy Board Act, 1998*,
S.O. 1998, c. 15 (Schedule B);

AND IN THE MATTER OF the *Public Utilities Act*, R.S.O.
1990, c.P-52;

AND IN THE MATTER OF the *Expropriations Act*, R.S.O.
1990, c. E-26;

AND IN THE MATTER OF an application by Enbridge
Gas Distribution Inc. for a declaration and order(s) to
expropriate land for the purposes of a natural gas
distribution main in the City of Welland in the Region of
Niagara.

BEFORE: Ken Quesnelle
Presiding Member

Cathy Spoel
Member

DECISION AND ORDER
June 14, 2012

Background

Enbridge Gas Distribution Inc. ("Enbridge") filed an application, dated November 29, 2011, with the Board for a declaration and order(s) to recognize existing rights and to expropriate certain lands for the purposes of continuing to operate a natural gas distribution main in the City of Welland. The Board assigned File No. EB-2011-0391 to the application.

The application relates to approximately 2800 metres of an existing Nominal Pipe Size ("NPS") 12 Extra High Pressure ("XHP") steel gas main that crosses under the Welland

Canal (the “NPS 12 pipeline”) near Townline Tunnel Road and approximately 365 metres of an existing NPS 8 XHP steel gas main on the west side of the Welland Canal (the “NPS 8 pipeline”) (together the “pipelines”). The NPS 12 pipeline was constructed in 1975 to provide natural gas to the Town of Fort Erie. The NPS 8 pipeline was constructed in 1972 to provide natural gas to the City of Port Colborne.

Enbridge submitted evidence that it has reviewed its distribution system and determined that the NPS 12 pipeline is necessary to continue to serve its existing customers. Enbridge stated that removal of the NPS 12 pipeline would result in 46 distribution stations being below the minimum inlet pressures and approximately 5,600 residential and certain large volume contract customers being without natural gas and a further 1,400 customers with compromised delivery.

Enbridge submitted evidence that the NPS 8 pipeline provides an important link in the movement of natural gas in the area and is an important source of natural gas to the City of Port Colborne. Enbridge stated that eliminating the NPS 8 pipeline would be detrimental to the distribution system and place many customers at risk of loss of service in certain circumstances.

A description of the lands affected by the pipelines and that are the subject of this proceeding (the “subject lands”) is as follows:

- (a) Part of Lots 21, 22 and 23 Concession 5, and part of the allowance for road between Lots 22 and 23 (closed by By-law 414) now in the City of Welland (formerly the geographic Township of Humberstone) in the Regional Municipality of Niagara being Parts 1, 2, 3 and 4 of Reference Plan 59R-14608 (owned by “Party B”);
- (b) Part of Lots 20 and 21, Concession 5, and Part of the allowance for road between Lots 20 and 21 (closed by By-law 4337, Inst. 90236B) now in the City of Welland (formerly the geographic Township of Humberstone) in the Regional Municipality of Niagara being Parts 1, 2, and 3 of Reference Plan 59R-14607 (owned by “Party B”);
- (c) Part of Lots 16, 17, 18 and 19, Concession 5, and part of the Road Allowance between Lots 16 and 17 and Part of the Road Allowance

between lots 18 and 19 (closed by By-law 4350 Inst. R0185603), Concession 5, formerly Geographic Township of Humberstone now in the City of Welland, Regional Municipality of Niagara designated as Parts 1 and 2 on Reference Plan 59R-14643 (owned by "Party C");

- (d) Part of Lot 16, Concession 5, (formerly the geographic Township of Humberstone) now in the City of Welland in the Regional Municipality of Niagara being Part 1 of Reference Plan 59R-14636 (owned by "Party A").

When the pipelines were constructed, the subject lands were owned by the St. Lawrence Seaway Authority. At that time, the St. Lawrence Seaway Authority entered into license agreements with the Consumers' Gas Company (Enbridge's predecessor) giving the gas utility certain rights to install, operate, maintain, and replace the pipelines. The St. Lawrence Seaway Authority was succeeded by the St. Lawrence Seaway Management Corporation, which then transferred the subject lands to the Canada Lands Corporation CLC Limited. The subject lands have since been transferred to private individuals.

Enbridge has requested that the Board recognize its existing legal rights and interest in the subject lands as set out in the *Public Utilities Act*, R.S.O. 1990, c.P-52. More specifically, Enbridge requested that the Board issue an Order:

- 1) For a declaration that Enbridge has certain rights and interest in the subject lands;
- 2) For a declaration that Enbridge is not trespassing on the subject lands;
- 3) Expropriating an easement over the subject lands in favour of Enbridge Gas Distribution Inc. and any successors, assigns, servants or agents thereof, in perpetuity to survey, remove trees, clear, lay, construct, install, operate, use, inspect, remove, renew, replace, alter, enlarge, reconstruct, repair, expand, maintain pipelines and all works, appurtenances, attachments, apparatus, appliances, markers, fixtures and equipment; and
- 4) Convening a settlement conference at the earliest opportunity.

The Proceeding

The Board issued a Notice of Application on January 4, 2012. In the Notice of Application, the Board set out the manner in which interested parties could participate in the proceeding.

Enbridge filed a redacted version of its application on January 10, 2012, to ensure that all the private information of the owners of the subject lands remained confidential.

Enbridge filed updates to its evidence on February 22, 2012, stating that it had entered into an easement agreement with one of the affected landowners (Party B) and on March 21, 2012, providing updated reference plans.

The Board issued Procedural Order No. 1 on March 5, 2012, in which it granted Group IV Solar intervenor status and the Regional Municipality of Niagara observer status in this proceeding. Procedural Order No. 1 also set out the schedule for the filing of interrogatories and intervenor evidence, and established the date for an oral hearing. No interrogatories or intervenor evidence was filed in response to Procedural Order No. 1.

By letter dated March 12, 2012, one of the affected landowners advised the Board that it did not object to the applicant's requested relief and indicated that it would not be attending the oral hearing. Upon receiving this letter, the Board canvassed the other affected parties and was informed that no parties planned to cross-examine witnesses at the oral hearing or make oral argument.

In light of the foregoing, the Board issued Procedural Order No. 2 on April 16, 2012, advising the parties that the oral hearing scheduled for April 20, 2012 would be cancelled and, instead, the Board would proceed by way of a written hearing. Procedural Order No. 2 set the dates for the filing of argument-in-chief, argument of the intervenors (and affected landowners) and Board staff, and reply by the applicant. Enbridge filed its argument-in-chief on April 25, 2012. No intervenors or affected landowners filed submissions in the proceeding. Enbridge filed a letter on May 9, 2012 noting that no submissions have been filed and therefore Enbridge would not be filing reply submissions.

Board Findings

The Board's power to grant an applicant the authority to expropriate is derived from Section 99 of the *Ontario Energy Board Act, 1998*. Specifically, it is section 99(5) that establishes the test for approving an expropriation: "If after the hearing the Board is of the opinion that the expropriation of the land is in the public interest, it may make an order authorizing the applicant to expropriate the land."

The Board will authorize Enbridge to expropriate an easement over the subject lands owned by Party A and Party C for the benefit of Enbridge and any successors, assigns, servants or agents thereof in perpetuity to survey, remove trees, clear, lay, construct, install, operate, use, inspect, remove, renew, replace, alter, enlarge, reconstruct, repair, expand, maintain pipelines and all works, appurtenances, attachments, apparatus, appliances, markers, fixtures and equipment. The Board notes that Enbridge signed an easement agreement with Party B in February 2012 and, as such, the Board will not be issuing an expropriation order for the subject lands owned by Party B.

The Board finds that Enbridge has provided adequate evidence to satisfy the Board that expropriating the subject lands owned by Party A and Party C is in the public interest. The Board notes that the pipelines were installed in the 1970s and provide natural gas service to the Town of Fort Erie and the City of Port Colbourne. The Board notes that eliminating the pipelines could compromise natural gas service for a large number of customers. The Board also notes that no interested party argued that the pipelines do not serve the public interest. For all the above reasons, the Board finds that, in this case, expropriation of the subject lands owned by Party A and Party C is in the public interest.

In addition to an expropriation order, Enbridge has asked that the Board make declarations that it has certain rights and interests in the subject lands and that it is not trespassing on the subject lands. The Board has determined that it will make neither of Enbridge's requested declarations. In regards to the first declaration request, it is inherent in the Board's order granting the expropriation that the applicant will have certain rights and interests in the subject lands and thus, this request for relief is redundant. Second, with regard to the matter of trespass, the Board has no statutory authority to make a declaration that one party is or is not trespassing upon another party. The Board is of the view, however, that it is implicit in the Board's order granting

an expropriation that Enbridge would not be construed as trespassing on the lands at issue in this application.

THE BOARD THEREFORE ORDERS THAT:

1. Enbridge Gas Distribution Inc. is authorized to expropriate the interests sought in the lands listed in Appendix “A” to this Decision and Order.
2. Enbridge Gas Distribution Inc. shall file with the Board, final expropriation plans for Board approval and endorsement as soon as practical.

All filings to the Board must quote file number EB-2011-0391, be made through the Board’s web portal at www.errr.ontarioenergyboard.ca, and consist of two paper copies and one electronic copy in searchable / unrestricted PDF format. Filings must clearly state the sender’s name, postal address and telephone number, fax number and e-mail address. Please use the document naming conventions and document submission standards outlined in the RESS Document Guideline found at www.ontarioenergyboard.ca. If the web portal is not available you may email your document to the BoardSec@ontarioenergyboard.ca. Those who do not have internet access are required to submit all filings on a CD in PDF format, along with two paper copies. Those who do not have computer access are required to file seven paper copies. If you have submitted through the Board’s web portal an e-mail is not required.

All parties must also provide the Case Manager, Lawrie Gluck, Lawrie.gluck@ontarioenergyboard.ca with an electronic copy of all comments and correspondence related to this case.

DATED at Toronto, June 14, 2012

ONTARIO ENERGY BOARD

Original signed by

Kirsten Walli
Board Secretary

Appendix “A”

To

Decision and Order

Board File No. EB-2011-0391

Description of Properties Subject to Expropriation

Description of Land Subject to Expropriation

	Legal Description of Interest to be Expropriated
Party A	Part of Lot 16, Concession 5, (formerly the geographic Township of Humberstone) now in the City of Welland in the Regional Municipality of Niagara being Part 1 of Reference Plan 59R-14636.
Party C	Part of Lots 16, 17, 18 and 19, Concession 5, and part of the Road Allowance between Lots 16 and 17 and Part of the Road Allowance between lots 18 and 19 (closed by By-law 4350 Inst. R0185603), Concession 5, formerly Geographic Township of Humberstone now in the City of Welland, Regional Municipality of Niagara designated as Parts 1 and 2 on Reference Plan 59R-14643.