



uniongas

A Spectra Energy Company

June 18, 2010

Ms. Kirsten Walli
Board Secretary
Ontario Energy Board
2300 Yonge Street, 27th Floor
Toronto, ON M4P 1E4

Dear Ms. Walli:

**Re: Enbridge Gas Distribution Inc. / City of Mississauga
Franchise Renewal and Consolidation of
Certificate of Public Convenience and Necessity
Board File Numbers EB-2010-0188 and EB-2010-0189**

On May 12, 2010, Enbridge Gas Distribution Inc. (“Enbridge”) filed an application with the Ontario Energy Board (the “Board”) for a renewal of its franchise agreement with the City of Mississauga based on the Board’s 2000 Model Franchise Agreement. In its application, Enbridge proposed to amend the Model Franchise Agreement’s definition of “Municipality” to exclude the lands annexed from the Town of Milton in January 2010. The following are Union’s submissions on Enbridge’s Mississauga franchise renewal application.

In paragraph 13 of its Application, Enbridge states:

The Applicant and the Corporation have agreed to seek this modification from the Board, with an expectation that a similar modification will be incorporated into any future Model Franchise Agreement that Union may obtain from the Corporation for the Milton lands. In making this submission, the Applicant is aware that Union may not agree with this proposal and that the Board may be reluctant to bind any future Board panel in respect of any future Union application(s). (Emphasis added)

Contrary to paragraph 13, Union will not be applying to the Board to approve a franchise agreement with the City of Mississauga incorporating the amended definition of “Municipality” as proposed by Enbridge.

On May 30, 2007, the Board approved the renewal of a Model Franchise Agreement between Union and the Town of Milton (EB-2007-0094). The EB-2007-0094 franchise agreement with the Town of Milton expires in 2027. Union also holds a Certificate of Public Convenience and Necessity (EB-2008-0078) for the Town of Milton, including the lands recently annexed by the City of Mississauga. It is Union’s view that when the City of Mississauga annexed a portion of the Town of Milton, the City of Mississauga became a party to the existing Town of Milton franchise agreement. Further, Union continues to

be the beneficiary of the Certificate of Public Convenience and Necessity granted by the Board for the Town of Milton including the annexed lands. Union submits that this is the result for franchise agreements and Certificates when municipalities annex parts of each other.

There is no legal requirement to apply for a new franchise agreement with the City of Mississauga or amend the existing Town of Milton franchise agreement prior to 2027. The Certificate of Public Convenience and Necessity held by Union covers the municipal boundaries of the Town of Milton as it existed prior to the annexation. Accordingly, there is no need to apply for a new certificate or a modification of the existing Certificate. Union has advised the City of Mississauga of its position.

At a more general level, Union does not believe that it is necessary to amend the definition of “Municipality” as requested by Enbridge in its Application. The *Municipal Franchise Act* indicates that both a franchise agreement with the municipality and a Certificate from the Board are necessary in order to build works to supply gas in a municipality. Neither one on its own is sufficient in this regard. Because of this, it is not necessary to amend the definition of “Municipality” in the Model Franchise Agreement to exclude areas covered by a Certificate granted to another distributor for a specific section of the municipality. The control over the building of facilities remains with the Board in the form of a Certificate, which has historically been treated as geographically exclusive.

Union is aware of examples where municipalities have more than one franchise agreement with more than one distributor. In those cases, the definition of “Municipality” was not modified within the Model Franchise Agreement. The most recent example is found in EB-2009-0067 and EB-2008-0068 under which Union renewed its franchise agreement with the City of London and established a single Certificate of Public Convenience and Necessity for the City of London except for those areas covered by the Certificate held by Natural Resource Gas Limited. Natural Resource Gas Limited has a franchise agreement (E.B.A. 368) with the City of London, even though it only serves a small portion of the City of London. This is analogous to the situation with the City of Mississauga which will have franchise agreements with both Union and Enbridge and geographically exclusive Certificates.

Should you have any questions, please do not hesitate to contact me.

Yours truly,

[Original signed by]

Patrick McMahon
Manager, Regulatory Research and Records
pmcmahon@uniongas.com
(519) 436-5325