

ONTARIO ENERGY BOARD

IN THE MATTER OF the *Municipal Franchises Act*, R.S.O. 1990, c.M.55, as amended;

AND IN THE MATTER OF an application by Six Nations Natural Gas Limited for an Order approving the terms and conditions upon which, and the periods for which, the Corporation of the County of Brant is, by by-law, to grant Six Nations Natural Gas Limited the right to construct and operate works for the distribution, transmission and storage of natural gas and the right to extend and add to the works in the County of Brant;

AND IN THE MATTER OF an application by Six Nations Natural Gas Limited for an Order directing and declaring that the assent of the municipal electors of the County of Brant to the by-law is not necessary;

AND IN THE MATTER OF an application by Six Nations Natural Gas for an Order issuing a Certificate of Public Convenience and Necessity to construct works and supply gas to certain areas in the County of Brant;

AND IN THE MATTER OF an application by Six Nations Natural Gas Limited for an Order approving the terms and conditions upon which, and the periods for which, the Corporation of Norfolk County is, by by-law, to grant Six Nations Natural Gas Limited the right to construct and operate works for the distribution, transmission and storage of natural gas and the right to extend and add to the works in the County of Norfolk;

AND IN THE MATTER OF an application by Six Nations Natural Gas Limited for an Order directing and declaring that the assent of the municipal electors of the County of Norfolk to the by-law is not necessary;

AND IN THE MATTER OF an application by Six Nations Natural Gas for an Order issuing a Certificate of Public Convenience and Necessity to construct works and supply gas to certain areas in the County of Norfolk;

**REPLY SUBMISSIONS OF SIX NATIONS NATURAL
GAS LIMITED**

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REPLY SUBMISSIONS OF SIX NATIONS NATURAL GAS LIMITED

I. OVERVIEW

1. Six Nations Natural Gas Limited (“**SNNG**”) is a limited partnership operating under the oversight and jurisdiction of the Chief and Council of Six Nations of the Grand River (the “**Six Nations Government**”). SNNG is the first natural gas utility owned and built by a First Nation community in Canada and provides essential natural gas services to individuals living on the Six Nations Indian Reserve No. 40 (the “**Reserve**”).

2. Because of geographic gaps in distribution system operated by Enbridge Gas Inc. (“**Enbridge**”), individuals living adjacent to the Reserve on Bateman Line (the west side of which is located in Brant County and the east side of which is located on-Reserve) and Indian Line (the south side of which is located in Norfolk County and the north side of which is located on-Reserve) have not had access to natural gas services. SNNG has received requests from community members living on Indian Line and Bateman Line (the “**Off-Reserve Customers**”) for the provision of natural gas services by SNNG to their residences.

3. On August 27, 2021, SNNG brought this application (the “**Application**”)¹ in order to obtain approval of the Ontario Energy Board (the “**Board**” or the “**OEB**”) to provide natural gas services to the Off-Reserve Customers. In order for it to provide natural gas services to Off-Reserve Customers, SNNG requests that the Board make the following orders:²

¹ EB-2021-0238, [Application and Evidence of Six Nations Natural Gas Limited](#), dated August 27, 2021 [Application].

² The terms of the orders requested have been amended to reflect the submissions of OEB Staff.

- (a) an Order pursuant to section 9(1) of the *Municipal Franchises Act* (“**MFA**”)³ approving the terms and conditions upon which, and the period for which, the County of Brant (“**Brant**”) is, by by-law, to grant SNNG the right to construct and operate works for the distribution, transmission and storage of natural gas and the right to extend and add to the works;
- (b) an Order pursuant to section 9(4) of the MFA directing and declaring that the assent of the municipal electors of Brant is not necessary under the circumstances;
- (c) an Order pursuant to section 8 of the MFA issuing a Certificate of Public Convenience and Necessity to construct works and supply gas in the areas located in Brant identified in Appendix A hereto;
- (d) an Order pursuant to section 9(1) of the MFA approving the terms and conditions upon which, and the period for which, Norfolk County (“**Norfolk**”) is, by by-law, to grant SNNG the right to construct and operate works for the distribution, transmission and storage of natural gas and the right to extend and add to the works;
- (e) an Order pursuant to section 9(4) of the MFA directing and declaring that the assent of the municipal electors of Norfolk is not necessary under the circumstances; and
- (f) an Order pursuant to section 8 of the MFA issuing a Certificate of Public Convenience and Necessity to construct works and supply gas in the areas located in Norfolk as identified in Appendix B hereto.

³ *Municipal Franchises Act*, [R.S.O. 1990, c. M.55](#), s. 9(1) [MFA].

4. SNNG submits that certificates of public convenience and necessity (“CPCN”) should be granted in the form attached to these submissions at Appendix A and Appendix B, which defines the proposed geographic service area using metes and bounds as requested by OEB Staff.

5. SNNG further submits that the Norfolk Franchise Agreement (defined below) and the Brant Franchise Agreement (defined below) are properly in the form of the Model Franchise Agreement. The inclusion or exclusion of the explanatory language found in the Model Franchise Agreement that appears to be at issue in the Norfolk Franchise Agreement and the Brant Franchise Agreement will in no way effect the substantive terms of the Norfolk Franchise Agreement or the Brant Franchise Agreement.

6. SNNG submits that, for the reasons below, and pursuant to section 8 of the MFA, public convenience and necessity require that such approval be given. SNNG submits that providing natural gas services to the Off-Reserve Customers is in the public interest, is supported by Brant and Norfolk and has been expressly requested by the Off-Reserve Customers.

II. BACKGROUND

7. Since 1989, SNNG has provided essential natural gas services on-Reserve. SNNG was established by agreement between the Six Nations Government, the (then) federal Department of Indian Affairs and Northern Development, and the Ontario Fuels Safety Branch for the distribution of natural gas services on-Reserve.⁴

⁴ Application at para. 7.

8. SNNG has been operating safely and reliably for over 30 years without major incident.⁵
9. The operations of SNNG are overseen by a Board of Directors, which is comprised of community members and one to two members of the Six Nations Government. SNNG's operations and rates fall under the jurisdiction of the Six Nations Government.⁶
10. Community members living on-Reserve have, for years, been able to benefit from the efficiencies and costs savings of natural gas service. Due to gaps in service of Enbridge and its predecessor, Union Gas Limited ("**Union**"), Off-Reserve Customers do not have access to the same benefits and instead are forced to rely on less efficient and more costly alternatives, such as oil and propane.⁷
11. Beginning in or about 2017 and continuing to present, SNNG has received requests from the following residents of Bateman Line and Indian Line for connection to natural gas service by SNNG:⁸

(a) **Norfolk County:** [REDACTED]
[REDACTED] (collectively,
the "**Indian Line Customers**").

⁵ EB-2021-0238, [Interrogatory Responses of Six Nations Natural Gas Limited](#), dated November 5, 2021 at p. 1 [IRR].

⁶ IRR at p. 3.

⁷ Application at para. 8; IRR at p. 7.

⁸ Application at paras. 9, 12.

(b) **Brant County:** [REDACTED]
[REDACTED]
[REDACTED] (collectively, the “**Bateman Line Customers**”).

12. Upon receiving such requests, SNNG contacted the incumbent utility for Norfolk and Brant, Enbridge (and its predecessor, Union), to confirm whether it opposed SNNG providing service. In all instances Union or Enbridge advised that they had “no concerns” with SNNG providing service to Off-Reserve Customers.⁹ Enbridge is aware that SNNG brought this application and, indeed, in its letter requesting intervenor status in this proceeding, Enbridge noted that “[u]pon review of the costs to extend our existing infrastructure to provide service to these customers, Enbridge Gas believes that, although we would like to connect these customers, it is most likely more economic and practical for Six Nations Natural Gas to attach these specific customers to their system.”¹⁰

13. In order to provide service to the Off-Reserve Customers, SNNG commenced this Application.

14. On June 8, 2021, Council of the County of Norfolk (“**Norfolk Council**”) passed by first and second reading a draft by law (the “**Norfolk By-Law**”) giving approval to the form of a franchise agreement between SNNG and the Corporation of Norfolk County (the “**Norfolk Franchise Agreement**”) and authorizing SNNG to apply to the Board for approval. Also on June

⁹ Application at para 10.

¹⁰ EB-2021-0238, [Request for Intervenor Status of Enbridge Gas Inc.](#), dated September 28, 2021.

8, 2021, Norfolk Council passed a resolution (the “**Norfolk Resolution**”) authorizing SNNG’s application to the Board and disposing with necessity of consent of the municipal electors.¹¹

15. On June 22, 2021, Council of the County of Brant (“**Brant Council**”) passed by first and second reading a draft by law (the “**Brant By-Law**”) giving approval to the form of a franchise agreement between SNNG and the Corporation of the County of Brant (the “**Brant Franchise Agreement**”) and authorizing SNNG to apply to the Board for approval. Also on June 22, 2021, Brant Council passed a resolution (the “**Brant Resolution**”) authorizing SNNG’s application to the Board and disposing with necessity of consent of the municipal electors.¹²

16. On August 27, 2021, SNNG brought this Application in order to obtain the approval of the Board to provide natural gas services to the Off-Reserve Customers.

III. REPLY ARGUMENT

A. The Scope of the Hearing

17. As a preliminary matter, it is necessary to set out the scope of this Application and this hearing.

18. SNNG is an Indigenous corporation subject to the jurisdiction of an Indigenous government. SNNG’s position as an applicant is unique as its operations and rates are subject to the jurisdiction of the Six Nations Government.

¹¹ Application at paras. 18 – 19.

¹² Application at paras. 20 – 21.

19. The Board’s jurisdiction in respect of this Application is found in section 8 of the MFA, and is limited to the construction of works for the supply of natural gas by SNNG in a municipality —i.e., off-Reserve in Norfolk and Brant, but not on-Reserve.¹³ Pursuant to section 8 of the MFA, the question before the Board in this Application is whether “public convenience and necessity appear to require that such approval be given”.¹⁴

20. This factual and jurisdictional context should inform the Board in its review, in particular in respect of SNNG’s operations and rates, which are subject to the jurisdiction and oversight of the Six Nations Government. The suggestion by Enbridge in its written submissions that the Board should review technical or financial evidence related to SNNG’s operations is, therefore, misplaced.

B. Public Convenience and Necessity Require that the Application be Approved

21. Public convenience and necessity require that the Application be approved and the orders sought by SNNG be granted. In particular:

- (a) Community members living on-Reserve have, for years, been able to benefit from the efficiencies and costs savings of natural gas service. Due to gaps in service the geographic service area of Enbridge and its predecessor, Union, Off-Reserve Customers do not have access to the same benefits and instead are forced to rely on less efficient and more costly alternatives, such as oil and propane.¹⁵

¹³ MFA at s. 8.

¹⁴ MFA at s. 8.

¹⁵ Application at para. 8; IRR at p. 7.

- (b) The Off-Reserve Customers have expressly requested that SNNG provide them with natural gas service.¹⁶
- (c) The Counties of Brant and Norfolk support the Application and have passed the Brant By-Law, Brant Resolution, Norfolk By-Law and Norfolk Resolution, as required.¹⁷
- (d) SNNG approached Enbridge prior to making this Application. In response to all connection requests by Off-Reserve Customers, Enbridge or its predecessor Union advised that they had “no concerns” with SNNG providing service to Off-Reserve Customers.¹⁸ In its letter requesting intervenor status in this proceeding Enbridge noted that “although we would like to connect these customers, it is most likely more economic and practical for Six Nations Natural Gas to attach these specific customers to their system”.¹⁹
- (e) SNNG has been operating safely and reliably for over 30 years without major incident. SNNG is compliant with the *Technical Standards and Safety Act, 2000*²⁰ and associated rules, regulations and guidance thereunder. In 2016, SNNG was awarded the Technical Standards and Safety Authority (“TSSA”) Impact Safety Award in recognition of SNNG’s exemplary safety record. SNNG maintains

¹⁶ Application at para. 9.

¹⁷ Application at paras. 17 – 21, 29.

¹⁸ Application at para 10.

¹⁹ EB-2021-0238, [Request for Intervenor Status of Enbridge Gas Inc.](#), dated September 28, 2021.

²⁰ *Technical Standards and Safety Act, 2000*, [S.O. 2000, c. 16](#).

construction, operation, maintenance, and emergency procedures and pipeline integrity management and public awareness plans which are TSSA-compliant and consistent with those of other utilities operating in Ontario.²¹

- (f) SNNG will charge all Off-Reserve customers the same distribution and commodity rates charged to all of its other customers. Such rates are established in accordance with SNNG's policies and procedures and are subject to the jurisdiction and oversight of the Six Nations Government. The rates charged to Off-Reserve customers by SNNG for natural gas will reflect a significant cost savings for customers who, without connection to natural gas service, rely upon propane or oil.²²

22. The fact that Enbridge holds CPCNs in respect of Norfolk and Brant is not relevant to whether SNNG should be granted the certificates requested. SNNG notes that the Board has held that "certificates do not grant exclusive rights to provide future service to an area. Where there is currently no distribution service, another utility can apply for a certificate to serve that area. This view is consistent with the OEB's past practice".²³

²¹ IRR at pp. 1 – 2.

²² IRR at p. 7.

²³ EB-2017-0147, [Decision and Order](#), dated March 1, 2018 at p. 9.

23. SNNG submits that the Board has the information required to find that approving the Application “appears to be required for public convenience and necessity” in accordance with section 8 of the MFA.²⁴

C. Other Matters

24. Three other issues have been raised by Board Staff which the Board is required to consider in this hearing:

- (i) The appropriate method for describing the service territories within the CPCNs;
- (ii) Whether the Norfolk Franchise Agreement and the Brant Franchise Agreement contains amendments to the 2000 Model Franchise Agreement; and
- (iii) The appropriate process for amending the CPCNs in the future.

(i) The Service Territory Description

25. On August 27, 2021, SNNG brought this Application in order to obtain approval of the Board to provide natural gas services to the Off-Reserve Customers. The Application contained draft CPCNs for each of Norfolk and Brant (the “**Original CPCNs**”).

26. The Original CPCNs defined the applicable service areas using the property boundaries of each of the Bateman Line Customers and Indian Line Customers. Given that the Original CPCNs contained personal information as defined in the *Freedom of Information and Protection of Privacy Act*,²⁵ such information was redacted in accordance with section 4.3.1 of the Practice

²⁴ MFA at s. 8.

²⁵ *Freedom of Information and Protection of Privacy Act*, [R.S.O. 1990, c. F.31](#) at s. 2.

Direction on Confidential Filings prior to filing the Application.²⁶ A confidential, un-redacted version of the Application was filed with the Board, but could not be placed on the public record due to these privacy constraints.

27. In its interrogatories to SNNG, OEB Staff requested that SNNG “file a version of the certificates showing the proposed service territories (using metes and bounds or some other suitable method) as well as legible maps illustrating the proposed service territories that can be placed on the public record”.²⁷

28. In its interrogatory responses, SNNG filed two amended CPCNs (the “**Amended CPCNs**”) which responded to OEB Staff’s request. The Amended CPCNs are attached hereto as Appendix A and Appendix B and describe the proposed service territories using metes and bounds as follows:²⁸

- (a) **Brant:** Located on Concession 3 Burch Tract, Lot 37 Brantford Township, for 408 metres west of Bateman Line and for 2020 metres between Sour Springs Road and Burtch Road in Brant County.
- (b) **Norfolk:** Located on Concession 2, Lot 23 & Concession 3, Lot 24 intersecting the Township of Townsend, for 210 metres south of Indian Line and for 1640 metres between Cemetery Road and County Line in Norfolk County.

²⁶ IRR at p. 5.

²⁷ EB-2021-0238, [OEB Staff Interrogatories](#), dated October 22, 2021 at p.

²⁸ A typographical error in the Amended CPCNs as filed in the IRR has been amended.

29. The proposed service territories in the Amended CPCNs using metes and bounds is slightly larger than those contained in the Original CPCN. However, this is necessary because the Amended CPCN contains the most narrow service territory description which uses metes and bounds and which do not contain personal information—that is, the nearest municipal or county roads are used as bounds as opposed to individual property boundaries. The Amended CPCNs therefore strike the appropriate balance between service area specificity and the need to ensure no personal information is placed in the public record.

30. As such, SNNG agrees with OEB Staff that the Amended CPCNs should be approved.²⁹

(ii) The Form of the Franchise Agreements

31. It remains SNNG's position that both the Norfolk Franchise Agreement and the Brant Franchise Agreement are properly in the form of the Model Franchise Agreement.

32. The three sections in which the Franchise Agreements do not precisely match the 2000 Model Franchise Agreement, as identified by Board Staff, are in respect of the inclusion or deletion of explanatory/introductory language used to differentiate between the two choices presented in the Model Franchise Agreement. Specifically:

- (a) At paragraph 2, SNNG included the explanatory introduction used to differentiate between the two choices presented in paragraph 2 of the Model Franchise Agreement.

²⁹ EB-2021-0238, [OEB Staff Submission](#), dated November 19, 2021 at p. 6 [Staff Submissions].

- (b) At paragraph 4, SNNG deleted the explanatory introduction (at issue at paragraph 2 above) used to differentiate between the two choices presented in paragraph 4.
- (c) At paragraph 18, SNNG deleted the explanatory introduction used to determine whether paragraph 18 should be included in a given franchise agreement.

33. None of these inclusions or deletions alter the substantive terms of any provision of the Model Franchise Agreement. Indeed, the objection to both inclusions *and* deletions of explanatory language reflects uncertainty on the part of all parties, including Board Staff, on what constitutes an “amendment” to the Model Franchise Agreement. It is SNNG’s position that the inclusion or removal of non-substantive explanatory language found in a precedent agreement used to inform drafters which portions of the Model Franchise Agreement should be used in any given case *does not* constitute an amendment to the Model Franchise Agreement.

34. SNNG further notes that Enbridge objects to the inclusion of paragraph 18 of the Model Franchise Agreement in the Norfolk Franchise Agreement and the Brant Franchise Agreement on the basis that it is non-applicable. If, substantively, paragraph 18 does not apply, there would be no basis to take action pursuant to that clause.

35. The Brant By-Law and the Norfolk By-Law, which have been passed by first and second reading, give the municipalities’ approval to the form of the franchise agreements as filed by SNNG. Respectfully, to impose an additional administrative burden, cost and delay upon Brant, Norfolk and SNNG in order to make *non-substantive* revisions to the Norfolk Franchise Agreement and the Brant Franchise Agreement because of uncertainty on the part of all parties,

including Board Staff, on what constitutes an “amendment” to the Model Franchise Agreement, is not reasonable.

36. If the Board finds the inclusion or removal of non-substantive explanatory language used to inform drafters which portion of the Model Franchise Agreement should be used in a given case *does* constitute an amendment to the Model Franchise Agreement, SNNG submits that the Board should find that there is a compelling reason for such an amendment and approve the Norfolk Franchise Agreement and the Brant Franchise Agreement in their current form. In this case, the compelling reason for approval is that the benefit of amending the inclusion or exclusion of the non-substantive explanatory/introductory language and/or a non-applicable provision is substantively outweighed by the administrative burden, cost and delay of requiring amendment.

(iii) The Process for Future CPCN Amendments

37. In its application, SNNG proposed that, for the sake of administrative efficiency, the terms of any order issued by the Board issuing CPCNs provide that SNNG may amend such order to permit the connection and service of additional customers on Bateman Line and/or Indian Line within the counties of Brant and Norfolk, respectively, by way of a motion to review and vary.³⁰

38. OEB Staff has taken the position that such a proposal is not appropriate.³¹ SNNG accepts OEB Staff’s submissions in this regard and has amended its requested orders accordingly, as set out at paragraph 3. SNNG no longer requests that the Board’s order provide for the amendment by way of a motion to review and vary.

³⁰ Application at para. 13.

³¹ Staff Submissions at p. 8.

IV. CONCLUSION

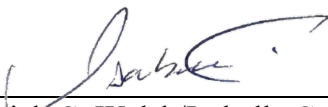
39. The approval of this Application will permit residential customers living off-Reserve, who are forced to rely on less efficient and more costly energy sources such as oil and propane, to benefit from the same efficiencies and costs savings of natural gas service as their on-Reserve neighbours.

40. It is most practical and economical for SNNG to provide natural gas service to these customers. SNNG is fully capable of providing such service—it has been operating safely and reliably for over 30 years under the oversight and jurisdiction of the Six Nations Government.

41. SNNG submits that providing natural gas services to the Off-Reserve Customers represents a reasonable expansion, which is supported by the subject municipalities and has been expressly requested by the Off-Reserve Customers. Pursuant to section 8 of the MFA, public convenience and necessity favours the Application being approved.

ALL OF WHICH IS RESPECTFULLY SUBMITTED.

December 2, 2021



Patrick G. Welsh/Isabelle Crew
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Counsel for Six Nations Natural Gas Limited

**APPENDIX A – AMENDED DRAFT CERTIFICATE OF PUBLIC
CONVENIENCE AND NECESSITY (BRANT)**

Certificate of Public Convenience and Necessity

Ontario Energy Board grants

Six Nations Natural Gas Limited

approval under section 8 of the *Municipal Franchises Act*, R.S.O. 1990, c. M55, as amended, to construct works to supply gas in the

County of Brant

As it is constituted on the date of this Decision and Order in the area:

1. Located on Concession 3, Burch Tract, Lot 37, Brantford Township, for 408 metres west of Bateman Line and for 2020 metres between Sour Springs Road and Burtch Road in Brant County.

DATED at Toronto, _____, 2021

ONTARIO ENERGY BOARD

Original Signed by

Christine Long
Board Secretary

Draft

**APPENDIX B – AMENDED DRAFT CERTIFICATE OF PUBLIC
CONVENIENCE AND NECESSITY (NORFOLK)**

Certificate of Public Convenience and Necessity

Ontario Energy Board grants

Six Nations Natural Gas Limited

approval under section 8 of the *Municipal Franchises Act*, R.S.O. 1990, c. M55, as amended, to construct works to supply gas in the

County of Norfolk

As it is constituted on the date of this Decision and Order in the area:

1. Located on Concession 2, Lot 23 & Concession 3, Lot 24 intersecting the Township of Townsend, for 210 metres south of Indian Line and for 1640 metres between Cemetery Road and County Line in Norfolk County.

DATED at Toronto, _____, 2021

ONTARIO ENERGY BOARD

Original Signed by

Christine Long
Board Secretary

Draft