



DECISION AND ORDER

EB-2021-0279

ENBRIDGE GAS INC.

**Application for the Renewal of a Municipal Franchise Agreement
with, and a new Certificate of Public Convenience and Necessity for,
the County of Peterborough**

By Delegation, before: **Pascale Duguay**
Manager
Natural Gas

February 3, 2022

INTRODUCTION AND SUMMARY

This is a Decision and Order of the Ontario Energy Board (OEB) on an application filed by Enbridge Gas Inc. (Enbridge Gas) for: 1) the renewal of its municipal franchise agreement with the County of Peterborough, and 2) for a certificate of public convenience and necessity (certificate) for the County of Peterborough. Enbridge Gas is also seeking an order directing and declaring that the assent of the municipal electors of the County of Peterborough is not necessary.

The franchise agreement is based on the 2000 Model Franchise Agreement and is for a term of 20 years. The OEB approves the application to renew the franchise agreement. For the reasons set out below, the application for a certificate for the County of Peterborough is denied.

CONTEXT AND PROCESS

Enbridge Gas filed an application with the OEB on October 19, 2021, under sections 8 and 9 of the *Municipal Franchises Act*. The application is for:

- (a) an Order under s.9(3) approving the terms and conditions upon which, and the period for which, the County of Peterborough is, by by-law, to grant Enbridge Gas 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 s.9(4) directing and declaring that the assent of the municipal electors of the County of Peterborough is not necessary for the proposed franchise agreement by-law under the circumstances; and
- (c) an Order pursuant to s.8 approving a Certificate of Public Convenience and Necessity to construct works to supply natural gas in the County of Peterborough.

The OEB held a written hearing. A notice of hearing was published in the local newspaper on November 12, 2021. No persons sought to become intervenors or otherwise participate in the proceeding.

Enbridge Gas is a corporation incorporated under the laws of the Province of Ontario, with its head office in the City of Toronto.

The County of Peterborough is a municipal corporation incorporated under the laws of the Province of Ontario, and is an upper-tier municipality comprised of eight municipalities: the Township of Asphodel-Norwood, the Township of Cavan-Monaghan, the Township of Douro-Dummer, the Township of Havelock-Belmont-Methuen, the

Township of North Kawartha, the Township of Otonabee-South Monaghan, the Township of Selwyn, and the Municipality of Trent Lakes.

Enbridge Gas currently has a franchise agreement with the County of Peterborough that is scheduled to expire on June 5, 2022.

Enbridge Gas currently holds certificates for each of the lower-tier municipalities within the County of Peterborough, except for the Township of North Kawartha and the Municipality of Trent Lakes.¹ It does not, however, currently hold a certificate for the upper-tier County of Peterborough.

Municipal Franchise Agreement

Enbridge Gas applied to the County of Peterborough for approval of a franchise agreement in the form of the 2000 Model Franchise Agreement, with no amendments, for a term of twenty years. On September 22, 2021, the County of Peterborough gave its approval.

With the application, Enbridge Gas filed the County of Peterborough's draft by-law granting the proposed franchise agreement, and a copy of the proposed municipal franchise agreement. Enbridge Gas also filed a copy of the County of Peterborough's resolution, passed on September 22, 2021, approving the form of the draft by-law and franchise agreement, and authorizing Enbridge Gas's request for an order declaring and directing that the assent of the municipal electors to the by-law approving the franchise agreement is not necessary.

Certificate of Public Convenience and Necessity

Enbridge Gas holds certificates for six of the eight lower-tier municipalities within the County of Peterborough. Enbridge Gas stated that it currently does not hold a certificate for the upper-tier County of Peterborough and that it is applying to have one granted as part of its continued efforts to align certificates with current franchise agreements.²

The two lower-tier municipalities in the County of Peterborough for which Enbridge Gas does not hold a certificate are the Township of North Kawartha and the Municipality of Trent Lakes.³

¹ Enbridge Gas certificates EBC 273, RP-2004-0125/EB-2004-0198, RP-2004-0217/EB-2004-0455, EB-2004-0516, RP-2000-0017/EB-2002-0439 and EB-2007-0674

² Application, p. 2

³ Application, p. 1

FINDINGS

I find that it is in the public interest to approve Enbridge Gas's application for the renewal of its franchise agreement with the County of Peterborough. Enbridge Gas filed a complete application and provided notice of the hearing in the manner instructed by the OEB. I note that no party intervened or otherwise objected to the application. The proposed municipal franchise agreement is in the form of the 2000 Model Franchise Agreement, with no amendments, and is for a term of twenty years.

Enbridge Gas also requested a certificate for the County of Peterborough, which is an upper-tier municipality. I find that there is no compelling reason to approve this aspect of the application for the following reasons.

Enbridge Gas already has certificates for six of the eight lower tier municipalities that are within the upper-tier County of Peterborough. The two lower-tier municipalities for which it does not currently have a certificate - The Township of North Kawartha and the Municipality of Trent Lakes - are not currently being served by Enbridge Gas or any other natural gas distributor.

In this regard, I note that the OEB provided guidance on a framework for natural gas expansion in unserved areas, in the Generic Proceeding on Community Expansion. The OEB's decision in that proceeding included guidance on matters relating to potential competition amongst distributors to serve new areas prior to the granting of a certificate or franchise agreement.⁴

I expect Enbridge Gas or any other distributors that wish to construct works and supply gas within the Township of North Kawartha and the Municipality of Trent Lakes, or for any other currently unserved area, to apply for certificates at the lower-tier municipal level when filing future applications.

Also, if Enbridge Gas's request for a certificate for the upper-tier County of Peterborough were approved in this proceeding, and if another gas distributor were, in the future, to receive a certificate from the OEB to serve in the Township of North Kawartha or the Municipality of Trent Lakes, then the result would be overlapping authorizations held by different distributors for the same geographical service area. As the OEB has stated in the past, overlapping certificates can give rise to questions about where each distributor can and cannot operate, safety concerns, and challenges

⁴ EB-2016-0004, Decision with Reasons, Generic Proceeding on Community Expansion, dated November 17, 2016

regarding records management.⁵ In that proceeding, which was intended to address overlaps in lower-tier and upper-tier certificates, the OEB granted new certificates at the lower-tier level limited to the areas covered by the previous certificates.

For the reasons stated above, the approval for an upper-tier certificate for the County of Peterborough is denied.

IT IS ORDERED THAT:

The terms and conditions upon which, and the period for which, the County of Peterborough is, by by-law, to grant to Enbridge Gas Inc. 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 municipality, as set out in the municipal franchise agreement attached as Schedule A, are approved. A current map of the County of Peterborough is attached as Schedule B.

The assent of the municipal electors to the by-law is not necessary.

Enbridge Gas Inc. shall pay the OEB's costs incidental to this proceeding upon receipt of the OEB's invoice.

DATED at Toronto, February 3, 2022

ONTARIO ENERGY BOARD

Pascale Duguay
Manager
Natural Gas

⁵ EB-2017-0108 Union Gas Limited, Application for Certificates of Public Convenience and Necessity for Norfolk County, the County of Elgin and the County of Middlesex. In its decision in this proceeding, the OEB cancelled each of the overlapping upper-tier certificates held by two gas distributors for the County of Elgin and the County of Middlesex, and apportioned certificates to each distributor at the lower-tier municipal level.

SCHEDULE A
MUNICIPAL FRANCHISE AGREEMENT
ENBRIDGE GAS INC.
EB-2021-0279
FEBRUARY 3, 2022

2000 Model Franchise Agreement

THIS AGREEMENT effective this day of , 2021

BETWEEN:

THE CORPORATION OF THE COUNTY OF PETERBOROUGH

hereinafter called the "Corporation"

- and -

ENBRIDGE GAS INC.

hereinafter called the "Gas Company"

WHEREAS the Gas Company desires to distribute, store and transmit gas in the Municipality upon the terms and conditions of this Agreement;

AND WHEREAS by by-law passed by the Council of the Corporation (the "By-law"), the duly authorized officers have been authorized and directed to execute this Agreement on behalf of the Corporation;

THEREFORE the Corporation and the Gas Company agree as follows:

Part I - Definitions

1. In this Agreement

- (a) "decommissioned" and "decommissions" when used in connection with parts of the gas system, mean any parts of the gas system taken out of active use and purged in accordance with the applicable CSA standards and in no way affects the use of the term 'abandoned' pipeline for the purposes of the *Assessment Act*;
- (b) "Engineer/Road Superintendent" means the most senior individual employed by the Corporation with responsibilities for highways within the Municipality or the person designated by such senior employee or such other person as may from time to time be designated by the Council of the Corporation;

- (c) "gas" means natural gas, manufactured gas, synthetic natural gas, liquefied petroleum gas or propane-air gas, or a mixture of any of them, but does not include a liquefied petroleum gas that is distributed by means other than a pipeline;
- (d) "gas system" means such mains, plants, pipes, conduits, services, valves, regulators, curb boxes, stations, drips or such other equipment as the Gas Company may require or deem desirable for the distribution, storage and transmission of gas in or through the Municipality;
- (e) "highway" means all common and public highways and shall include any bridge, viaduct or structure forming part of a highway, and any public square, road allowance or walkway and shall include not only the travelled portion of such highway, but also ditches, driveways, sidewalks, and sodded areas forming part of the road allowance now or at any time during the term hereof under the jurisdiction of the Corporation;
- (f) "Model Franchise Agreement" means the form of agreement which the Ontario Energy Board uses as a standard when considering applications under the *Municipal Franchises Act*. The Model Franchise Agreement may be changed from time to time by the Ontario Energy Board;
- (g) "Municipality" means the territorial limits of the Corporation on the date when this Agreement takes effect, and any territory which may thereafter be brought within the jurisdiction of the Corporation;
- (h) "Plan" means the plan described in Paragraph 5 of this Agreement required to be filed by the Gas Company with the Engineer/Road Superintendent prior to commencement of work on the gas system; and
- (i) whenever the singular, masculine or feminine is used in this Agreement, it shall be considered as if the plural, feminine or masculine has been used where the context of the Agreement so requires.

Part II - Rights Granted

2. To provide gas service

The consent of the Corporation is hereby given and granted to the Gas Company to distribute, store and transmit gas in and through the Corporation and to the inhabitants of those local or lower tier municipalities within the Municipality from which the Gas Company has a valid franchise agreement for that purpose.

3. To Use Highways

Subject to the terms and conditions of this Agreement the consent of the Corporation is hereby given and granted to the Gas Company to enter upon all highways now or at any time hereafter under the jurisdiction of the Corporation and to lay, construct, maintain, replace, remove, operate and repair a gas system for the distribution, storage and transmission of gas in and through the Municipality.

4. Duration of Agreement and Renewal Procedures

- (a) If the Corporation has not previously received gas distribution services, the rights hereby given and granted shall be for a term of 20 years from the date of final passing of the By-law.

or

- (b) If the Corporation has previously received gas distribution services, the rights hereby given and granted shall be for a term of 20 years from the date of final passing of the By-law provided that, if during the 20 year term of this Agreement, the Model Franchise Agreement is changed, then on the 7th anniversary and on the 14th anniversary of the date of the passing of the By-law, this Agreement shall be deemed to be amended to incorporate any changes in the Model Franchise Agreement in effect on such anniversary dates. Such deemed amendments shall not apply to alter the 20 year term.
- (c) At any time within two years prior to the expiration of this Agreement, either party may give notice to the other that it desires to enter into negotiations for a renewed franchise upon such terms and conditions as may be agreed upon. Until such renewal has been settled, the terms and conditions of this Agreement shall continue, notwithstanding the expiration of this Agreement. This shall not preclude either party from applying to the Ontario Energy Board for a renewal of the Agreement pursuant to section 10 of the *Municipal Franchises Act*.

Part III – Conditions

5. Approval of Construction

- (a) The Gas Company shall not undertake any excavation, opening or work which will disturb or interfere with the surface of the travelled portion of any highway unless a permit therefor has first been obtained from the Engineer/Road Superintendent and all work done by the Gas Company shall be to his satisfaction.
- (b) Prior to the commencement of work on the gas system, or any extensions or changes to it (except service laterals which do not interfere with municipal works in the highway), the Gas Company shall file with the Engineer/Road Superintendent a Plan, satisfactory to the Engineer/Road Superintendent, drawn to scale and of sufficient detail considering the complexity of the specific locations involved, showing the highways in which it proposes to lay its gas system and the particular parts thereof it proposes to occupy.
- (c) The Plan filed by the Gas Company shall include geodetic information for a particular location:
 - (i) where circumstances are complex, in order to facilitate known projects, including projects which are reasonably anticipated by the Engineer/Road Superintendent, or
 - (ii) when requested, where the Corporation has geodetic information for its own services and all others at the same location.
- (d) The Engineer/Road Superintendent may require sections of the gas system to be laid at greater depth than required by the latest CSA standard for gas pipeline systems to facilitate known projects or to correct known highway deficiencies.
- (e) Prior to the commencement of work on the gas system, the Engineer/Road Superintendent must approve the location of the work as shown on the Plan filed by the Gas Company, the timing of the work and any terms and conditions relating to the installation of the work.
- (f) In addition to the requirements of this Agreement, if the Gas Company proposes to affix any part of the gas system to a bridge, viaduct or other structure, if the Engineer/Road Superintendent approves this proposal, he may require the Gas Company to comply with special conditions or to enter into a separate agreement as a condition of the approval of this part of the construction of the gas system.

- (g) Where the gas system may affect a municipal drain, the Gas Company shall also file a copy of the Plan with the Corporation's Drainage Superintendent for purposes of the *Drainage Act*, or such other person designated by the Corporation as responsible for the drain.
- (h) The Gas Company shall not deviate from the approved location for any part of the gas system unless the prior approval of the Engineer/Road Superintendent to do so is received.
- (i) The Engineer/Road Superintendent's approval, where required throughout this Paragraph, shall not be unreasonably withheld.
- (j) The approval of the Engineer/Road Superintendent is not a representation or warranty as to the state of repair of the highway or the suitability of the highway for the gas system.

6. As Built Drawings

The Gas Company shall, within six months of completing the installation of any part of the gas system, provide two copies of "as built" drawings to the Engineer/Road Superintendent. These drawings must be sufficient to accurately establish the location, depth (measurement between the top of the gas system and the ground surface at the time of installation) and distance of the gas system. The "as built" drawings shall be of the same quality as the Plan and, if the approved pre-construction plan included elevations that were geodetically referenced, the "as built" drawings shall similarly include elevations that are geodetically referenced. Upon the request of the Engineer/Road Superintendent, the Gas Company shall provide one copy of the drawings in an electronic format and one copy as a hard copy drawing.

7. Emergencies

In the event of an emergency involving the gas system, the Gas Company shall proceed with the work required to deal with the emergency, and in any instance where prior approval of the Engineer/Road Superintendent is normally required for the work, the Gas Company shall use its best efforts to immediately notify the Engineer/Road Superintendent of the location and nature of the emergency and the work being done and, if it deems appropriate, notify the police force, fire or other emergency services having jurisdiction. The Gas Company shall provide the Engineer/Road Superintendent with at least one 24 hour emergency contact for the Gas Company and shall ensure the contacts are current.

8. **Restoration**

The Gas Company shall well and sufficiently restore, to the reasonable satisfaction of the Engineer/Road Superintendent, all highways, municipal works or improvements which it may excavate or interfere with in the course of laying, constructing, repairing or removing its gas system, and shall make good any settling or subsidence thereafter caused by such excavation or interference. If the Gas Company fails at any time to do any work required by this Paragraph within a reasonable period of time, the Corporation may do or cause such work to be done and the Gas Company shall, on demand, pay the Corporation's reasonably incurred costs, as certified by the Engineer/Road Superintendent.

9. **Indemnification**

The Gas Company shall, at all times, indemnify and save harmless the Corporation from and against all claims, including costs related thereto, for all damages or injuries including death to any person or persons and for damage to any property, arising out of the Gas Company operating, constructing, and maintaining its gas system in the Municipality, or utilizing its gas system for the carriage of gas owned by others. Provided that the Gas Company shall not be required to indemnify or save harmless the Corporation from and against claims, including costs related thereto, which it may incur by reason of damages or injuries including death to any person or persons and for damage to any property, resulting from the negligence or wrongful act of the Corporation, its servants, agents or employees.

10. **Insurance**

- (a) The Gas Company shall maintain Comprehensive General Liability Insurance in sufficient amount and description as shall protect the Gas Company and the Corporation from claims for which the Gas Company is obliged to indemnify the Corporation under Paragraph 9. The insurance policy shall identify the Corporation as an additional named insured, but only with respect to the operation of the named insured (the Gas Company). The insurance policy shall not lapse or be cancelled without sixty (60) days' prior written notice to the Corporation by the Gas Company.
- (b) The issuance of an insurance policy as provided in this Paragraph shall not be construed as relieving the Gas Company of liability not covered by such insurance or in excess of the policy limits of such insurance.
- (c) Upon request by the Corporation, the Gas Company shall confirm that premiums for such insurance have been paid and that such insurance is in full force and effect.

11. **Alternative Easement**

The Corporation agrees, in the event of the proposed sale or closing of any highway or any part of a highway where there is a gas line in existence, to give the Gas Company reasonable notice of such proposed sale or closing and, if it is feasible, to provide the Gas Company with easements over that part of the highway proposed to be sold or closed sufficient to allow the Gas Company to preserve any part of the gas system in its then existing location. In the event that such easements cannot be provided, the Corporation and the Gas Company shall share the cost of relocating or altering the gas system to facilitate continuity of gas service, as provided for in Paragraph 12 of this Agreement.

12. **Pipeline Relocation**

- (a) If in the course of constructing, reconstructing, changing, altering or improving any highway or any municipal works, the Corporation deems that it is necessary to take up, remove or change the location of any part of the gas system, the Gas Company shall, upon notice to do so, remove and/or relocate within a reasonable period of time such part of the gas system to a location approved by the Engineer/Road Superintendent.
- (b) Where any part of the gas system relocated in accordance with this Paragraph is located on a bridge, viaduct or structure, the Gas Company shall alter or relocate that part of the gas system at its sole expense.
- (c) Where any part of the gas system relocated in accordance with this Paragraph is located other than on a bridge, viaduct or structure, the costs of relocation shall be shared between the Corporation and the Gas Company on the basis of the total relocation costs, excluding the value of any upgrading of the gas system, and deducting any contribution paid to the Gas Company by others in respect to such relocation; and for these purposes, the total relocation costs shall be the aggregate of the following:
 - (i) the amount paid to Gas Company employees up to and including field supervisors for the hours worked on the project plus the current cost of fringe benefits for these employees,
 - (ii) the amount paid for rental equipment while in use on the project and an amount, charged at the unit rate, for Gas Company equipment while in use on the project,
 - (iii) the amount paid by the Gas Company to contractors for work related to the project,

- (iv) the cost to the Gas Company for materials used in connection with the project, and
 - (v) a reasonable amount for project engineering and project administrative costs which shall be 22.5% of the aggregate of the amounts determined in items (i), (ii), (iii) and (iv) above.
- (d) The total relocation costs as calculated above shall be paid 35% by the Corporation and 65% by the Gas Company, except where the part of the gas system required to be moved is located in an unassumed road or in an unopened road allowance and the Corporation has not approved its location, in which case the Gas Company shall pay 100% of the relocation costs.

Part IV - Procedural And Other Matters

13. Municipal By-laws of General Application

The Agreement is subject to the provisions of all regulating statutes and all municipal by-laws of general application, except by-laws which have the effect of amending this Agreement.

14. Giving Notice

Notices may be delivered to, sent by facsimile or mailed by prepaid registered post to the Gas Company at its head office or to the authorized officers of the Corporation at its municipal offices, as the case may be.

15. Disposition of Gas System

- (a) If the Gas Company decommissions part of its gas system affixed to a bridge, viaduct or structure, the Gas Company shall, at its sole expense, remove the part of its gas system affixed to the bridge, viaduct or structure.
- (b) If the Gas Company decommissions any other part of its gas system, it shall have the right, but is not required, to remove that part of its gas system. It may exercise its right to remove the decommissioned parts of its gas system by giving notice of its intention to do so by filing a Plan as required by Paragraph 5 of this Agreement for approval by the Engineer/Road Superintendent. If the Gas Company does not remove the part of the gas system it has decommissioned and the Corporation requires the removal of all or any part of the decommissioned gas system for the purpose of altering or improving a highway or in order to facilitate the construction of utility or other works in any highway, the Corporation

may remove and dispose of so much of the decommissioned gas system as the Corporation may require for such purposes and neither party shall have recourse against the other for any loss, cost, expense or damage occasioned thereby. If the Gas Company has not removed the part of the gas system it has decommissioned and the Corporation requires the removal of all or any part of the decommissioned gas system for the purpose of altering or improving a highway or in order to facilitate the construction of utility or other works in a highway, the Gas Company may elect to relocate the decommissioned gas system and in that event Paragraph 12 applies to the cost of relocation.

16. Use of Decommissioned Gas System

- (a) The Gas Company shall provide promptly to the Corporation, to the extent such information is known:
 - (i) the names and addresses of all third parties who use decommissioned parts of the gas system for purposes other than the transmission or distribution of gas; and
 - (ii) the location of all proposed and existing decommissioned parts of the gas system used for purposes other than the transmission or distribution of gas.
- (b) The Gas Company may allow a third party to use a decommissioned part of the gas system for purposes other than the transmission or distribution of gas and may charge a fee for that third party use, provided
 - (i) the third party has entered into a municipal access agreement with the Corporation; and
 - (ii) the Gas Company does not charge a fee for the third party's right of access to the highways.
- (c) Decommissioned parts of the gas system used for purposes other than the transmission or distribution of gas are not subject to the provisions of this Agreement. For decommissioned parts of the gas system used for purposes other than the transmission and distribution of gas, issues such as relocation costs will be governed by the relevant municipal access agreement.

17. Franchise Handbook

The Parties acknowledge that operating decisions sometimes require a greater level of detail than that which is appropriately included in this Agreement. The Parties agree to look for guidance on such matters to the Franchise Handbook prepared by the Association of Municipalities of Ontario and the gas utility companies, as may be amended from time to time.

18. **Other Conditions**

None.

19. **Agreement Binding Parties**

This Agreement shall extend to, benefit and bind the parties thereto, their successors and assigns, respectively.

IN WITNESS WHEREOF the parties have executed this Agreement effective from the date written above.

**THE CORPORATION OF THE
COUNTY OF PETERBOROUGH**

Per:

J. Murray Jones, Warden

Per:

Kari Stevenson, Clerk

ENBRIDGE GAS INC.

Per:

Mark Kitchen, Director
Regulatory Affairs

Per:

Steve McGivery, Director
GTA East Operations

SCHEDULE B
MAP OF THE COUNTY OF PETERBOROUGH
ENBRIDGE GAS INC.
EB-2021-0279
FEBRUARY 3, 2022

