



Sent via email – [registrat@oeb.ca](mailto:registrat@oeb.ca)

August 29, 2022

Ontario Energy Board  
2300 Young Street, 27<sup>th</sup> Floor  
Toronto, ON M4P 1E4  
Attn: Nancy Marconi, Registrar

Dear Ms. Marconi:

Re: Enbridge Gas Inc. (“Enbridge”)  
Application for Renewal of Franchise Agreement  
The Corporation of the Municipality of Leamington (“Leamington”)  
**Ontario Energy Board File No. EB-2022-0201**

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I write in response to your letter dated August 23, 2022.

Your letter in essence asks the Municipality to set out, in detail, its complete position with respect its s. 12 argument, without the benefit of first compiling its evidence and completing interrogatories. That places the Municipality at a distinct disadvantage in replying to the Application and the Municipality objects accordingly. However, as directed, the Municipality will attempt to summarize its position:

- s. 12 of the Franchise Agreement and s. 26 of the Drainage Act, interact for the purposes of cost distribution.
- These two sections have been the subject of a recent decision from the Court of Appeal for Ontario; however, there remain numerous outstanding issues that were not addressed by the Court. A brief summary is:
  - Since the 2018 Court of Appeal Decision interpreted the cost sharing provisions to include drainage works, it does not appear that there has been any consideration by the OEB to amend the Model Franchise Agreement to specifically exclude from the cost sharing provisions, projects commenced under the Drainage Act.

- The passage of time means section 18 of the Model Franchise Agreement will have less of an impact and any relocation costs as a result of future drainage projects will more and more often result in the Municipality being responsible for 35% of the costs which would be funded by the general taxpayer.
- Although the cost sharing mechanism in section 12 was developed as a disincentive to municipalities requiring pipeline relocation, section 48 of the Drainage Act indicates that a public utility may appeal the engineer's report to the Drainage Tribunal on the grounds that the drainage works should be modified on grounds to be stated. This provides an opportunity for a gas utility to provide evidence and argument as to why the drainage works should be modified such that there is either less impact or no impact upon any pipeline. Therefore, there is no requirement for any disincentive to be included within the Model Franchise Agreement as the Agriculture, Food and Rural Affairs Tribunal has the authority to decide how drainage works best be constructed in the event of an appeal by the gas utility.
- Leamington is geographically unique with its large number of drains and complex drainage schemes and, as such, it is more likely that this Municipality will be faced the requirement to pay 35% of the costs of pipeline relocation than other municipalities would be, placing an unnecessary burden upon the taxpayer. As a result, an exemption from the cost sharing provisions related to relocations caused as a result of drainage works is reasonable in these circumstances and public policy would dictate such costs should be spread amongst the Enbridge ratepayers, rather than the Municipality's taxpayers.
- Other outstanding issues remain which require consideration and interpretation such as what constitutes "municipal works".

Any evidence supplied by the Municipality will be done through senior staff from Infrastructure / Engineering Services (either the Director of Drainage Superintendent) and if necessary Finance.

Should you have any questions or require additional information, please do not hesitate to contact the undersigned.

*Matthew Todd*

**Matthew Todd, LL.B.**

Lawyer

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Ruth Orton – Director, Legal & Legislative Services  
Brenda Percy - Clerk