

October 4, 2022

Ms. Nancy Marconi  
Registrar  
Ontario Energy Board  
2300 Yonge Street, 27<sup>th</sup> Floor  
Toronto, ON M4P 1E4

Dear Ms. Marconi:

**Re: Enbridge Gas Inc.  
Application for Renewal of Franchise Agreement – County of Essex  
Ontario Energy Board File No. EB-2022-0207**

Pursuant to Procedural Order No. 1 dated September 7, 2022, attached are Enbridge Gas' responses to the information requests submitted by Ontario Energy Board Staff and the County of Essex.

In accordance with the OEB's *Practice Direction on Confidential Filings*, Enbridge Gas is requesting confidential treatment of the attachment to one of the responses. Details of the specific information and reasons for confidential treatment are set out below:

Exhibit	Description of Document	Confidential Information Location	Brief Description	Basis for Confidentiality
Exhibit B.Essex.1 Attachment	Attachment to response to interrogatory question 1 from County of Essex	Attachment	Map of facilities located within County of Essex	Public disclosure of specific locations of existing and proposed gas distribution and transmission facilities poses both a safety and a security risk. Public access to this kind of information may allow third parties to determine gas system configurations and points of sensitivity or vulnerability that may expose Enbridge Gas to security risks. Further, persons planning developments or excavation projects may

				attempt to use the facilities information obtained from other sources in substitution for required facilities locates, notwithstanding the fact that obtaining locates is required by law.
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The unredacted confidential exhibit will be sent separately via email to the OEB. Enbridge Gas has no objection to providing a copy of his exhibit to the County of Essex upon execution of a Declaration and Undertaking by the County as prescribed by the OEB's *Practice Direction on Confidential Filings*.

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

Yours truly,

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Regulatory Research and Records  
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cc (by email): David Sundin, County of Essex ([dsundin@countyofessex.ca](mailto:dsundin@countyofessex.ca))

Encl.

ENBRIDGE GAS INC.

Response to Interrogatory from  
Ontario Energy Board Staff

Reference: Application, page 2, paragraph 4  
Application, page 3, paragraph 15  
Application, page 4, paragraph 17  
Schedule B: By-Law Number 1270, pages 1-2  
Schedule B: 1957 Agreement, pages 1-3  
Schedule D: OEB Decision and Order EB-2019-0172  
Dawn-Euphemia (Township) v. Union Gas Ltd., 2004 Carswell Ont 3909,  
paras 36 and 38.

Preamble:

Enbridge Gas stated that it currently has a “perpetual” franchise agreement with the County of Essex dated December 11, 1957 (1957 franchise agreement). The 1957 franchise agreement is not based on the OEB’s 2000 Model Franchise Agreement (model franchise agreement). Details in respect of processes relating to as-built drawings, terms for completing emergency work, insurance, and alternative easements notifications that are standard components of the model franchise agreement are not also found in the 1957 franchise agreement.

Enbridge Gas stated that a new agreement, based on the model franchise agreement, is required to satisfy the requirements under the *Municipal Franchises Act* for the use of the rights of way of the highways in the County of Essex and would provide updated language regarding insurance and relocations.

Questions:

- a) Please discuss how the model franchise agreement is needed to satisfy the requirements under the *Municipal Franchises Act* for the use of the rights of way of the highways in the County of Essex.
- b) Please describe operational and other challenges, if any, when dealing with matters relating to as-built drawings, terms for completing emergency work, insurance, and alternative easements, for example, that are not detailed in the 1957 franchise agreement (as they are in the model franchise agreement).
- c) Please advise if Enbridge Gas’s use of the right of way of the highways in the County of Essex has been negated or hindered in the absence of there being a model franchise agreement between the parties and, if it has been, explain how.
- d) Please explain why the application was filed pursuant to section 10 of the *Municipal Franchises Act*, given that Enbridge Gas views the 1957 franchise agreement to be “perpetual” (i.e., having no expiry date).
- e) Please explain why Enbridge Gas did not file this application at an earlier time, such as in 2004 following the Ontario Divisional Court’s decision in *Dawn-Euphemia (Township) v. Union Gas*

Ltd., or even more recently in 2019, for example, with Enbridge Gas's EB-2019-0172 leave to construct application?

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Response:

- a) The *Municipal Franchises Act* requires that there be a franchise agreement between the municipal corporation and the gas company serving that municipality. Section 3 of the *Municipal Franchises Act* states:

*3 (1) A municipal corporation shall not grant to any person nor shall any person acquire the right to use or occupy any of the highways of the municipality for a public utility or to construct or operate any part of a public utility in the municipality unless a by-law setting forth the terms and conditions upon which and the period for which such right is to be granted or acquired has been assented to by the municipal electors.*

Section 9 of the *Municipal Franchises Act* states that no by-law granting "the right to construct or operate works for the distribution of gas", amongst other things, "shall be submitted to the municipal electors for their assent unless the terms and conditions upon which and the period for which such right is to be granted, renewed or extended have first been approved by the Ontario Energy Board" (OEB). The 1957 franchise agreement with the County of Essex only applies to the transmission of gas (with specific exceptions). Given the current extent of distribution pipelines within areas under the jurisdiction of the County of Essex (see map filed at Exhibit B.Essex.1), a Model Franchise Agreement needs to be put in place to ensure that the requirements identified in the *Municipal Franchises Act* regarding the distribution of gas are properly and consistently addressed.

The OEB has directed that the current 2000 Model Franchise Agreement be used as the model for such agreements and has reinforced this direction in its decisions and orders associated with franchise agreement renewals.<sup>1</sup> The OEB has also denied proposals to amend the Model Franchise Agreement.<sup>2</sup>

The Model Franchise Agreement outlines the terms that the OEB finds reasonable under the *Municipal Franchises Act*. The OEB has previously advised natural gas distributors that they are expected to follow the form of the Model Franchise Agreement when filing applications for the approval of franchise agreements unless there is a compelling reason for deviation.

The OEB adopted the Model Franchise Agreement following significant input from interested stakeholders, including the Association of Municipalities of Ontario and natural gas distributors,

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<sup>1</sup> For example, EB-2022-0127 - Decision and Order - Fort Erie Franchise Agreement, Decision and Order, June 30, 2022

<sup>2</sup> For example, EB-2017-0232 - EPCOR Natural Gas - Decision and Order, December 13, 2018; EB-2010-0188 – Enbridge Gas Distribution – Decision and Order, July 8, 2010

to provide guidance to applicants and municipalities regarding the standard terms of a franchise agreement and as a tool to efficiently administer the many franchise agreements across the Province.<sup>3</sup> As the OEB indicates in its Natural Gas Facilities Handbook, the Model Franchise Agreement provides a template to guide applicants and municipalities regarding the terms that the OEB finds reasonable under the *Municipal Franchises Act*. The OEB notes in the Natural Gas Facilities Handbook and in past decisions and orders regarding franchise agreements that it expects that franchise agreements will be based on the Model Franchise Agreement, unless there is a compelling reason for deviation.

As noted, the vast majority of the many Enbridge Gas' pipelines located within the County of Essex have been constructed and are operated as distribution pipelines. As has been identified in the review of the Panhandle Expansion project<sup>4</sup>, significant growth is forecast to occur across the entire Panhandle System with concentration in the Leamington-Kingsville and Windsor areas. This growth will require ongoing expansion of the distribution system that currently exists throughout the County of Essex.

Further, the 1957 franchise agreement with the County of Essex is no longer effective according to the reasoning applied by the Divisional Court in its decision on January 12, 2004 in Dawn-Euphemia vs. Union Gas. It concluded that a municipal franchise creates an interest in land similar to an easement and a profit à prendre so a municipal franchise is therefore subject to the rule against perpetuities.<sup>5</sup> The franchise agreement in that case is very similar to the 1957 franchise agreement with the County of Essex in that both confer a future contingent interest in land. For instance, the rights of Enbridge Gas to construct pipelines under the 1957 franchise agreement with the County of Essex are subject to such locations being approved by the Road Superintendent of the County (or such other appointed officer).

- b) Enbridge Gas will always design and build with direct consultation with all municipal groups and stakeholders. If the County of Essex's position is that a relocation project will not allow for or diminish the use of an existing asset in the future, Enbridge Gas agrees to take on cost associated with movement of main. Typically, however, through partnered planning and consultation, concessions are made to take into account known future development. For instance, in the case of the Windsor Line Replacement Project, all concessions were made to include future sidewalks, water main plant, etc.

For the Windsor Line Replacement Project, the significant challenge came in the form of the inability to comply with requested depth of cover as many of the locations the County requested main be moved were at bottoms of municipal drains. To install at deeper depths in these locations, there are operational safety risks as well as the compromise of numerous regulated

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<sup>3</sup> RP-1999-0048

<sup>4</sup> EB-2022-0157 - Exhibit A, Tab 3 and Exhibit I.ED.7

<sup>5</sup> Superior Court of Justice (Divisional Court) Endorsement – Court File No. 1412 – Township of Dawn-Euphemia vs. Union Gas, January 12, 2004

waterways. Ultimately, the OEB was not convinced that the expenditure of an additional \$7.2 million to afford an extra 0.5m of depth of cover was required as a prudent cost to ratepayers.<sup>6</sup>

- c) The operating policies of Enbridge Gas within the County of Essex, including within the lower-tier municipalities that make up the County of Essex, have been influenced by the Model Franchise Agreement that has been put in place with each of the lower-tier municipalities. While the 1957 franchise agreement with the County of Essex does not contain the same terms and conditions as the franchise agreements with the lower-tier municipalities, Enbridge Gas has ensured a consistent application of operational policies throughout the County of Essex.

Issues faced on the Windsor Line Replacement Project did not result from enforcing the Model Franchise Agreement, but rather due to gaps in the 1957 franchise agreement that were amended by using a Road User Agreement and other over and above requirements.

On the matter of implementing a Road User Agreement, specific issues were encountered with regards to pipeline depth to account for future road work. For the Windsor Line Replacement Project, the significant challenge came in the form of the inability to comply with requested depth of cover as many of the locations the County of Essex requested main be moved were at bottoms of municipal drains. To install at deeper depths in these locations, there are operational safety risks as well as the compromise of numerous regulated waterways. In response, Enbridge Gas proposed to construct the pipeline with a minimum depth of cover in the untraveled portion of the ROW of 0.75m. This depth of cover adhered to Enbridge Gas' Construction and Maintenance manual specification and exceeded the requirements of the TSSA regulated CSA Z662 pipeline design and operating code for a pipeline installed under the travelled portion of a roadway (0.6m). The request for a minimum pipeline depth of cover of 1.5m would have created significant impacts to construction including road closures during initial installation of the pipeline and services as well as future installations of services off this line. Furthermore, at this depth, a significant number of existing water services and mains would have been in conflict as well as proposed future water mains. Other issues with this minimum depth of cover would have been increased requirements for trench shoring which would widen the construction and future maintenance footprint and encroachment into County Road 46, which would result in increased traffic interruptions. Significant costs would have been incurred and passed on to ratepayers in having to comply to the additional depth requested by the County of Essex.

- d) In Enbridge Gas' view and past practice, there are two types of applications that can be submitted related to franchise agreements. The first type of application can be filed pursuant to section 9(3) of the *Municipal Franchises Act* where there is an agreement with the municipality to pursue the approval of a franchise agreement. The second type of application can be filed pursuant to section 10 of the *Municipal Franchises Act* when the municipality disagrees with the proposal to put a franchise agreement in place and Enbridge Gas must rely on the jurisdiction of the OEB to approve a franchise agreement despite the position of the municipality.

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<sup>6</sup> EB-2020-0160 – Decision and Order, November 12, 2020, page 15

See also the response to part (a) above related to the Divisional Court determining that a municipal franchise is subject to the rule against perpetuities. As the 1957 franchise agreement with the County of Essex will have expired according to the reasoning applied by the Divisional Court, it is reasonable for Enbridge Gas to have applied to the OEB pursuant to section 10 of the *Municipal Franchises Act* in this case.

Over the years, Enbridge Gas (and its predecessors) have made several attempts to move the County of Essex on to a Model Franchise Agreement as the distribution pipeline network within the County of Essex has continued to expand. Those attempts were consistently met with the County of Essex taking the same position as it has taken in the most recent attempt (i.e., the County of Essex had no desire to discuss the Model Franchise Agreement as an option).<sup>7</sup>

- e) As noted above, over the years, Enbridge Gas (and its predecessors) have made several attempts to move the County of Essex on to a Model Franchise Agreement as the distribution pipeline network within the County of Essex has continued to expand. Those attempts were consistently met with the County of Essex indicating that it had no desire to discuss the Model Franchise Agreement as an option.

At the time of the Divisional Court decision in *Dawn-Euphemia vs. Union Gas* (January 12, 2004), Union Gas was awaiting the OEB's decision on its 2004 cost of service application (RP-2003-0063) and, while ongoing applications for approvals of franchise agreement renewals continued, most issues around franchise agreements were deferred. Addressing perpetual franchise agreements did not get raised until work was initiated in the Windsor Line Replacement Project.

During the review of the Windsor Line Replacement Project<sup>8</sup>, it was decided that franchise agreement discussions with the County of Essex would be deferred until after the OEB approved leave to construct. This current application was filed after discussions initiated with the County of Essex in 2019 were concluded with the written response from the County of Essex on April 6, 2022.<sup>9</sup>

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<sup>7</sup> Application, Schedule F

<sup>8</sup> EB-2019-0172 - Decision and Order - Windsor Line Replacement Leave to Construct (April 1, 2020)

<sup>9</sup> Application, Schedule F

ENBRIDGE GAS INC.

Response to Interrogatory from  
Ontario Energy Board Staff

Reference: 1957 Agreement, page 2, paragraph 3

Preamble:

Section 3 of the 1957 franchise agreement states that “pipelines shall be laid across the said highways in locations approved by the Road Superintendent of the County of Essex.” Section 3 also requires charges to be covered for the Road Superintendent or an officer to approve a pipeline.

Question:

- a) Please describe how any issues pertaining to the conditions under section 3 of the 1957 franchise agreement are negotiated or resolved, and how this compares to Enbridge Gas’s practices in other municipalities.

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Response:

In terms of the Windsor Line Replacement Project, numerous additional costs were taken on to cover gaps in the inability to trust restoration and other practices in the 1957 franchise agreement. These were covered by conditions of permits and the Road Use Agreement which addressed the gaps in the 1957 franchise agreement. Clerical and engineering oversight costs including a consultant hired to represent County interests during construction (inspection of project) were paid on the Windsor Line Replacement Project (a distribution project) that are not typically imposed on local distribution projects.

While the 1957 franchise agreement with the County of Essex does address what needs to be approved by the municipality with respect to location of pipelines, the Model Franchise Agreement contains a much more detailed description under Section 5 (Approval of Construction) of what needs to be approved by the municipality prior to the commencement of work on the gas system as well as during construction.

As is noted in the Gas Franchise Handbook (an explanatory supplement to the 2000 Model Franchise Agreement), to facilitate proper system expansion and maintenance, Enbridge Gas will actively participate in each municipality’s Public Utilities Coordinating Committee (PUCC). One of the mandates of the PUCC will be to develop an approved highway cross-section that outlines a standard pipeline location within the highway for each utility’s plant. Through the Model Franchise Agreement, Enbridge Gas must adhere to the standard line location wherever feasible, and will acquire approval from the Engineer/Road Superintendent prior to deviating from the standard location. In addition, the PUCC will act as a forum to minimize construction conflicts between the road authority and various utilities including cable companies and municipal water and sewer



works. None of these requirements are addressed within the 1957 franchise agreement with the County of Essex.

ENBRIDGE GAS INC.

Response to Interrogatory from  
Ontario Energy Board Staff

Reference: Application, page 2, paragraph 5  
Application, page 3, paragraph 11

Preamble:

Enbridge Gas states that the 1957 franchise agreement only references Enbridge Gas's transmission assets and does not reference the distribution of gas, except for a clause that allows Enbridge Gas to service a customer that abuts the road. Enbridge Gas submits that a model franchise agreement needs to be put in place to cover distribution and transmission assets and associated operations within the County of Essex.

Questions:

- a) Please discuss how the model franchise agreement would better cover Enbridge Gas's distribution and transmission assets in the County of Essex.
- b) Please discuss how the model franchise agreement would better confirm Enbridge Gas's operational obligations in the County of Essex.
- c) Please advise if the absence of a model franchise agreement has been (and/or will be) a challenge to connecting new customers in the County of Essex and, if so, how.

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Response:

- a) The vast majority of the many Enbridge Gas' pipelines located within the County of Essex have been constructed and are operated as distribution pipelines. The 1957 franchise agreement with the County of Essex does not address the distribution of gas in the manner that the Model Franchise Agreement does to protect the interests of Enbridge Gas, the County of Essex and all end-use customers.

Some attributes of the Model Franchise Agreement (as expanded upon in the supplementary Gas Franchise Handbook) that are not addressed in the 1957 franchise agreement with the County of Essex are as follows:

- the Model Franchise Agreement applies to the distribution, storage and transmission of gas in the municipality while the 1957 franchise agreement only pertains to necessary works "for the purpose of passing through the Municipality in the continuation of a line, work or system which is intended to be operated in or for the benefit of another municipality and is not used or operated in the Municipality for any other purpose except that of supplying gas in a township to persons whose land abuts on a highway along or across which gas is carried or conveyed or to persons whose land lies within such limits";

- while the 1957 franchise agreement with the County of Essex gives Enbridge Gas the right “to keep, use, operate, repair, maintain, remove, abandon, replace, reconstruct, alter and extend its existing lines, pipes and works in the highways under the jurisdiction of the Council of the Municipality”, it does not address the process required to be followed pursuant to the Model Franchise Agreement in the areas addressing Approval of Construction (Section 5), the requirement to provide As Built Drawings (Section 6), the details of what needs to be done in the case of an Emergency (Section 7), what needs to be completed upon the Restoration of a work area (Section 8), the requirement for the municipality to provide reasonable notice if an Alternate Easement is required (Section 11), the process to be followed and the allocation of costs associated with Pipeline Relocation (Sections 12 and 18), the process and costs responsibilities associated with the Disposition of Gas System components (Section 15), and the right for Enbridge to alternative Use of Decommissioned Gas System components (Section 16);
- the 1957 franchise agreement with the County of Essex stipulates that the costs of any pipeline relocation deemed by the County of Essex to be necessary are to be allocated 100% to Enbridge Gas and ultimately recovered from all customers; the Model Franchise Agreement stipulates that the cost of relocating the gas system related to road and other municipal works will be shared 65% / 35% between Enbridge and the municipality (unless the part of the gas system altered or relocated was constructed or installed in the Union South operations area prior to January 1, 1981);
- the 1957 franchise agreement with the County of Essex does not define any terms used where the Model Franchise Agreement specifically defines various terms (Section 1) including “highway” which includes any bridge, viaduct or structure forming part of a highway, and any public square, road allowance or walkway and includes not only the travelled portion of such highway, but also ditches, driveways, sidewalks, and sodded areas forming part of the road allowance; the lack of definitions may ultimately lead to interpretation issues;
- the 1957 franchise agreement with the County of Essex does not specifically consent to Enbridge Gas entering upon all highways under the jurisdiction of the County of Essex to construct, maintain, replace, remove, operate and repair any part of the gas system for the distribution, storage and transmission of gas in and through the County of Essex as is specifically stipulated in the Model Franchise Agreement (Section 3);
- the 1957 franchise agreement with the County of Essex has an initial term of 10 years that renews as long as the lines are being used for the transportation of gas as opposed to the specific Duration of Agreement and Renewal Procedures (Section 4) identified in the Model Franchise Agreement; a franchise agreement like this without a termination or expiry date is subject to the rule against perpetuities, according to the Ontario Divisional Court in Dawn-Euphemia (Township) v. Union Gas Ltd.; and

- while the 1957 franchise agreement with the County of Essex contains an indemnification clause similar to the Model Franchise Agreement (Section 9), the 1957 franchise agreement makes no reference to the insurance coverage that Enbridge Gas is required to have in place pursuant to the Model Franchise Agreement (Section 10) nor the assurance that the insurance will be maintained in full force and effect to protect both the County of Essex and Enbridge Gas.
- b) In addition to the specific points made in response to a) above, given that the vast majority of the pipelines located within the County of Essex have been constructed and are operated as distribution pipelines, Enbridge Gas must ensure that they are specifically addressed in any agreement or permit issued for operating within the County of Essex. The Model Franchise Agreement addresses all aspects of Enbridge Gas' operations within the County of Essex and has been put in place for all operations within the jurisdiction of lower-tier municipalities within the County of Essex.
- c) Typically, there are no major issues or challenges to address with respect to connecting new customers in the County of Essex. Enbridge Gas works well with County administration proactively on projects to ensure concessions are made for future development and relocate pipeline mains when requested to do so.

Issues were encountered, however, with respect to the Windsor Line Replacement Project (refer to responses provided at Exhibit B.Staff.1 and Exhibit B.Staff.2) due to the requirement for a Road User Agreement and other provisions which covered off gaps within the 1957 franchise agreement.

ENBRIDGE GAS INC.

Response to Interrogatory from  
Ontario Energy Board Staff

Reference: Application, page 2, paragraph 5  
E.B.O. 125 Report to the Board, section 7.38. (May 21, 1986).

Preamble:

Enbridge Gas advised that it currently has franchise agreements in place with 312 lower and single-tier municipalities as well as with 26 other upper-tier municipalities and all except one are the current model franchise agreement without amendments.

The E.B.O. 125 Report to the Board was issued in 1986. At that time, Union Gas Ltd. (now Enbridge Gas) held over 80 “perpetual” franchise agreements in Ontario.

Questions:

- a) Please advise if Enbridge Gas continues to hold “perpetual” franchise agreements with any municipalities in Ontario other than the County of Essex and, if so, if Enbridge Gas plans to bring similar applications under section 10 of the *Municipal Franchises Act* before the OEB in respect of them. Also, in the past when Enbridge Gas has transitioned from “perpetual” franchise agreements to agreements based on the model franchise agreement, please explain the process by which it has done so.

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Response:

- a) Enbridge Gas currently has one other “perpetual” franchise agreement in place with the former County of Halton (now the Regional Municipality of Halton).

Enbridge Gas currently has an application (pursuant to Section 9(3) of the *Municipal Franchises Act*) being reviewed by the OEB with respect to a franchise agreement with the Regional Municipality of Halton (EB-2022-0238). This application is to replace two franchise agreements – one with the Regional Municipality of Halton related to distribution and storage only and a perpetual agreement with the former County of Halton related to transmission facilities.

When the Regional Municipality of Halton was approached to put a new Model Franchise Agreement in place, there were no issues that needed to be addressed. The Council for the Regional Municipality of Halton approved moving forward with the Model Franchise Agreement (without amendments) at its July 13, 2022 meeting. The Regional Municipality of Halton has already passed its by-law associated with the new Model Franchise Agreement.

Another “perpetual” franchise agreement addressed by Enbridge Gas in recent years was related to the City of Hamilton and an application submitted to the OEB pursuant to Section 9(3) of the *Municipal Franchises Act* (EB-2006-0283).

Within the amalgamated City of Hamilton, there were four franchise agreements expiring in 2006, one in 2009, one in 2012 and one perpetual agreement established in 1904 for the former core City of Hamilton.

Union Gas approached the City of Hamilton with a franchise agreement renewal proposal in August 2005. From an operations perspective and in keeping with the OEB's past practice, Union Gas' proposal was to establish a single franchise agreement and Certificate of Public Convenience and Necessity for the amalgamated municipality.

The agreed upon approach, which resulted in the 2000 Model Franchise Agreement being used, with the exception of a 14-year term, was preferred for the following reasons:

1. There would be one franchise agreement and one set of operating conditions for the entire geographic area of the amalgamated City of Hamilton. This would provide significant efficiencies for both Union and the City and eliminate confusion.
2. Administrative consistency within the municipalities that Union Gas served under the 2000 Model Franchise Agreement. The City of Hamilton was one of the largest municipalities Union served.
3. Consistency with the OEB's past practice of approving one model agreement for amalgamated municipalities and aligning the City of Hamilton with the other municipalities that were on the 2000 Model Franchise Agreement at that time.

Throughout its discussions with the City of Hamilton at that time, Union Gas was very sensitive to arriving at a solution that would maintain the integrity of the 2000 Model Franchise Agreement. Union Gas understood that the OEB only wanted to consider changes to the Model Franchise Agreement under unique and compelling circumstances.

The franchise agreement with the City of Hamilton that was approved by the OEB on February 6, 2007 has since been replaced by a 20-year Model Franchise Agreement (EB-2022-0075) with no amendments. The current Model Franchise Agreement (with no amendments) was approved by the City of Hamilton's council by a unanimous vote on December 15, 2021.

There have been an additional ten perpetual agreements that have been replaced by the current Model Franchise Agreement without the municipalities being confrontational in any way (i.e., each franchise agreement was renewed as a Model Franchise Agreement based on an application pursuant to section 9(3) of the *Municipal Franchises Act*).

RP-2004-0219 / EB-2004-0469 – Town of Lakeshore

- Application addressed amalgamation of several communities. Union had perpetual franchise agreements with 2 of these communities both dating from 1909.
- Section 9 application – approved in January 2005.

EB-2007-0907 – Municipality of Southwest Middlesex

- Application addressed amalgamation of several communities. Union had perpetual franchise agreements with 3 of these communities dating from 1935-1937.
- Section 9 application – approved in February 2008.

EB-2009-0125 – Town of Ingersoll

- Application addressed annexation of neighbouring municipality. Union had perpetual franchise agreement with Ingersoll dating from 1871.
- Section 9 application – approved in July 2009.

EB-2009-0168 – Municipality of Strathroy-Caradoc

- Application addressed amalgamation of 3 communities. Union had perpetual franchise agreements with 2 of these communities dating from 1955 and 1958.
- Section 9 application – approved in July 2009.

EB-2009-0293 – County of Oxford

- Application addressed perpetual franchise agreement with County of Oxford dating from 1954.
- Section 9 application – approved in October 2009.

EB-2009-0296 – Municipality of the Township of Brooke-Alvinston

- Application addressed amalgamation of 2 communities. Union had a perpetual franchise agreement with 1 of these communities dating from 1934.
- Section 9 application – approved in September 2009.

EB-2009-0327 – City of Stratford

- Application addressed perpetual franchise agreement with Stratford dating from 1958.
- Section 9 application – approved in November 2009.

EB-2009-0334 – Municipality of Middlesex Centre

- Application addressed amalgamation of 4 communities. Union had a perpetual franchise agreement with 3 of these communities dating from 1935 to 1964.
- Section 9 application – approved in December 2009.

EB-2009-0342 – City of Woodstock

- Application addressed perpetual franchise agreement with Woodstock dating from 1875.
- Section 9 application – approved in November 2009.

EB-2010-0204 – Municipality of Dutton-Dunwich

- Application addressed amalgamation of 2 communities. Union had a perpetual franchise agreement with 1 of these communities dating from 1913.
- Section 9 application – approved in July 2010.

ENBRIDGE GAS INC.

Response to Interrogatory from  
County of Essex

Reference: Application, Page 1, paragraphs 1 and 2

Preamble:

Enbridge Gas Inc. ("Enbridge") correctly points out that the Corporation of the County of Essex (the "County") is an upper-tier regional municipality comprised of seven (7) lower-tier municipalities. However, Enbridge is being misleading when it states that they serve 70,640 customers in the County. The County's jurisdiction is in rural areas, with Enbridge providing service to the limited number of rural users that front onto County Roads under the jurisdiction of the County. The vast bulk of the 70,640 customers referred to by Enbridge (with only Enbridge knowing the precise breakdown) are in rural areas governed by the lower-tier municipalities and the franchise agreements that are in place between Enbridge and the lower tier municipalities.

Questions:

- a) Does Enbridge acknowledge that it has franchise agreements in place with the lower-tier municipalities of the County and that those franchise agreements govern the supply, transmission, and distribution of gas within urban areas in the County?
- b) Does Enbridge acknowledge that the Existing Franchise Agreement (as defined below) Enbridge has with the County only applies in rural areas under the jurisdiction of the County and not within urban areas under the jurisdiction of the lower-tier municipalities?
- c) Does Enbridge have a precise number of how many of its customers front on to County Roads with gas supply being governed by the terms of the Existing Franchise Agreement? If so, how many? If not, does Enbridge admit that the number of customers that fall under the jurisdiction of the County's Existing Franchise Agreement (as defined below) are a small fraction of the 70,640 customers of Enbridge in the County and its seven (7) lower-tier municipalities?
- d) Does Enbridge agree that the "distribution" to customers under the terms of the Existing Franchise Agreement (as defined below) is limited to those "whose land abuts on a [County Road] along or across which gas is carried"?
- e) Does Enbridge agree that except for the limited number of customers that abut County Roads, that the gas transported in its lines is used for "transmission" to the urban areas of the seven (7) lower tier municipalities and to the City of Windsor?

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Response:

- a) Enbridge Gas disagrees with the preamble that the application is misleading. The application clearly states that Enbridge Gas currently serves approximately 70,640 customers within the



County of Essex<sup>1</sup> and the application includes a customer density map indicating where these customers and Enbridge Gas' facilities are located throughout the County of Essex<sup>2</sup>. There is no evidence on the record of this proceeding supporting the County of Essex's statement that the vast bulk of these 70,640 customers are in rural areas governed by the lower-tier municipalities and the franchise agreements that are in place between Enbridge Gas and these lower-tier municipalities.

As is noted in the application at paragraph 3, Enbridge Gas has franchise agreements with each of the lower-tier municipalities within the County of Essex. These franchise agreements include the terms and conditions upon which, and the period for which, Enbridge Gas has been given the right to construct and operate works for the distribution, transmission and storage of natural gas within these municipalities. There is no distinction in these franchise agreements of the types of areas (i.e., rural, urban) within which Enbridge Gas is allowed to construct and operate its system. The franchise agreements cover all areas of each of these municipalities.

The Model Franchise Agreement outlines the terms that the Ontario Energy Board (OEB) finds reasonable under the *Municipal Franchises Act*. The OEB has previously advised natural gas distributors that they are expected to follow the form of the Model Franchise Agreement when filing applications for the approval of franchise agreements unless there is a compelling reason for deviation.

The OEB adopted the Model Franchise Agreement following significant input from interested stakeholders, including the Association of Municipalities of Ontario and natural gas distributors, to provide applicants and municipalities with the standard terms of a franchise agreement to allow for efficient administration of the many franchise agreements across the Province.<sup>3</sup> As the OEB indicates in its Natural Gas Facilities Handbook, the Model Franchise Agreement provides a template for applicants and municipalities regarding the terms that the OEB finds reasonable under the *Municipal Franchises Act*. The OEB notes in the Natural Gas Facilities Handbook and in past decisions and orders regarding franchise agreements that it expects that franchise agreements will be based on the Model Franchise Agreement, unless there is a compelling reason for deviation.

- b) The 1957 franchise agreement with the County of Essex provides Enbridge Gas the right to construct, operate and maintain pipe for the transmission of gas on, in, under, along or across any highway under the jurisdiction of the County of Essex for the purpose of passing through the County of Essex in the continuation of a line, work or system which is intended to be operated in or for the benefit of another municipality. The 1957 franchise agreement also allows Enbridge Gas to supply gas in a township to persons whose land abuts on a highway along or across which gas is carried.

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<sup>1</sup> Application, paragraph 2

<sup>2</sup> Application, Schedule A

<sup>3</sup> RP-1999-0048

County roads are designated and maintained by the County of Essex and go through rural and urban areas throughout the County. There is nothing within the 1957 franchise agreement with the County of Essex which identifies types of areas (i.e., rural, urban) within which Enbridge Gas is allowed to operate in areas under the jurisdiction of the County of Essex.

- c) Enbridge Gas currently provides gas distribution service to approximately 4,500 customers that live along county roads within the County of Essex.
- d) Paragraph 1 of the 1957 franchise agreement states that the Union Gas Company (now Enbridge Gas) has the right to construct, operate and maintain pipe for the transmission of gas on, in, under, along or across any highway under the jurisdiction of the County of Essex and there is an exception which states that Enbridge Gas is permitted to supply gas in a township to persons whose land abuts on a highway (which isn't defined) along or across which gas is carried.

At the time of the review of the Windsor Line Replacement Project<sup>4</sup>, there were approximately 400 customers provided service directly from the Windsor Line. As can be seen in the map submitted confidentially under separate cover, the vast majority of the many Enbridge Gas' pipelines located within the County of Essex are operated as distribution pipelines.

As has been identified in the review of the Panhandle Expansion project<sup>5</sup>, significant growth is forecast to occur across the entire Panhandle System with concentration in the Leamington-Kingsville and Windsor areas. This growth will require ongoing expansion of the distribution system that currently exists throughout the County of Essex.

- e) Enbridge Gas does not consider approximately 4,500 customers located and served from pipelines located along County roads an insignificant number as is being implied by the County of Essex. The vast majority of the many Enbridge Gas' pipelines located within the County of Essex are operated as distribution pipelines. Please refer to the map submitted confidentially in response to part (d).

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<sup>4</sup> EB-2020-0160

<sup>5</sup> EB-2022-0157 - Exhibit A, Tab 3 and Exhibit I.ED.7

Filed: 2022-10-04  
EB-2022-0207  
Exhibit B.Essex.1  
Attachment

ATTACHMENT

(Map Filed Confidentially Under Separate Cover)

ENBRIDGE GAS INC.

Response to Interrogatory from  
County of Essex

Reference: Application, Pages 1 and 2, paragraphs 4 and 5

Preamble:

Enbridge alleges that its current Franchise Agreement with the County, dated December 11, 1957 (the "Existing Franchise Agreement") only refers to the "transmission" of gas, but attempts to gloss over the fact that the Existing Franchise Agreement is in place for so long as the lines are used for the "transportation" of gas and that the Existing Franchise Agreement may provide gas to property owners abutting the line (i.e., "distribution").

Questions:

- a) Does Enbridge agree that since the adoption of the Existing Franchise Agreement until the present that the line governed by the Existing Franchise Agreement have been used for the "transportation" of gas?
- b) Does Enbridge acknowledge that the "Certificate of Public Convenience and Necessity" issued by the Ontario Fuel Board, dated January 8, 1958 (the "Certificate"), provided permission for both the "transmission and/or distribution" of gas in the County?
- c) Does Enbridge acknowledge that it, and its predecessors, Union Gas Inc. and Union Gas Company of Canada, Limited ("Union Gas"), have been both transmitting (to the lower-tier municipalities and the City of Windsor) and distributing (to those that abut County Roads) natural gas by the authority granted by the Existing Franchise Agreement since in or about 1958 until the present?
- d) Does Enbridge acknowledge that its predecessors, the Union Gas entities, never alleged that the Existing Franchise Agreement was invalidated by failing to specifically reference the term "distribution"?
- e) Does Enbridge agree that since 1958 until the present the lines of Union Gas and now Enbridge within the County have been "in actual use for the transportation of gas"?

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Response:

- a) No. To clarify, the 1957 franchise agreement applies to any and all pipelines constructed, operated and maintained for the transmission of gas on, in, under, along or across any highway under the jurisdiction of the County of Essex for the purpose of passing through the County of Essex in the continuation of a line, work or system which is intended to be operated in or for the benefit of another municipality. It is not related to any one pipeline.

The vast majority of the many Enbridge Gas' pipelines located within areas under the jurisdiction of the County of Essex have been and continue to be operated as distribution

pipelines. Please refer to the map provided confidentially in response to Exhibit B.Essex.1 for an illustration of the pipelines that have been constructed since 1958 that provide distribution services throughout the County of Essex, including on many County roads.

- b) The Certificate of Public Convenience and Necessity FBC 192 allows Enbridge Gas to construct works to supply and/or to supply gas in various municipalities including the County of Essex to any person engaged in the transmission and/or distribution of gas in these municipalities. FBC 192 does not say anything about providing Enbridge Gas with permission to distribute and transmit gas.

The application by Ontario Natural Gas Storage and Pipelines submitted December 24, 1957 to the Ontario Fuel Board related to FBC 192 stated that the applicant did not possess general distribution franchise rights in any of the municipalities referred to in the application (including the County of Essex) but did possess rights to transmit gas therein and supply gas therein to any person engaged in the transmission or distribution of gas.

- c) The 1957 franchise agreement and associated bylaw authorizes Enbridge Gas to “to lay down, maintain and use pipes and other necessary works for the transmission of gas on, in, under, along or across any highway under the jurisdiction of the Council of The Corporation of the County of Essex”. The vast majority of the many Enbridge Gas’ pipelines that have been constructed within the County of Essex are operated as distribution pipelines.
- d) For clarification, the 1957 franchise agreement was not the first franchise agreement between Enbridge Gas’ predecessors and the County of Essex. The first franchise agreement was effective September 4, 1945 and it was put in place because the Union Gas Company was proposing to construct a pipeline to transmit gas brought into Ontario at a point near the Town of Ojibway (now the City of Windsor) and taken from there to Union’s storage facilities in the Township of Dawn. This pipeline was to be constructed across roads under the jurisdiction of the County of Essex and other municipalities.

When the 1957 franchise agreement was being executed, the only pipeline in place that crossed roads under the jurisdiction of the County of Essex was a high-pressure transmission pipeline. Enbridge Gas assumes that the existence of only a transmission line influenced the wording of the 1957 franchise agreement to only refer to transmission of gas.

Over the years, Enbridge Gas (and its predecessors) have made several attempts to move the County of Essex on to a Model Franchise Agreement as the distribution pipeline network within the County of Essex has continued to expand. Those attempts were consistently met with the County of Essex taking the same position as it has taken in the most recent attempt – the County of Essex has no desire to discuss the Model Agreement as an option.<sup>1</sup>

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<sup>1</sup> Application, Schedule F

During the review of the Windsor Line Replacement Project<sup>2</sup>, Enbridge Gas argued that if a municipality cannot pass a by-law that is inconsistent with or supersedes the OEB's jurisdiction then the municipality cannot enter into a contract or agreement that would have such effect. This does not mean the 1957 franchise agreement is invalid, but rather requires the interpretation and application of the 1957 franchise agreement to be consistent with the broader public interest.

- e) No. The vast majority of the many Enbridge Gas' pipelines located within the County of Essex have been constructed and are operated as distribution pipelines.

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<sup>2</sup> EB-2020-0160 – Enbridge Gas Argument-in-Chief, September 22, 2020, paragraph 21

ENBRIDGE GAS INC.

Response to Interrogatory from  
County of Essex

Reference: Application, Page 4, Paragraphs 18 and 19

Preamble:

Enbridge states that the Existing Franchise Agreement requires that Enbridge pay all costs of relocation work requested by the County, which is contrary to the cost sharing mechanism provided for in the Model Franchise Agreement. While this statement is true, Enbridge fails to disclose that despite this language the practice of the County is to share costs in line with industry standards.

Question:

- a) Does Enbridge acknowledge that despite the language in the Existing Franchise Agreement that the County complies with industry standards regarding sharing of costs for relocation requests?

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Response:

- a) Enbridge Gas is not aware of industry standards with which the County of Essex may be complying. The details of the sharing mechanism used by Enbridge Gas throughout Ontario with respect to relocation costs is outlined in detail within the Model Franchise Agreement that has been approved by the Ontario Energy Board as fair and reasonable.

Based on available records since 1958, Enbridge Gas is not aware of any instance where the County of Essex has actually shared responsibility for the costs associated with a pipeline relocation project, except for one project in 2020 where pipe was in an easement and had to be relocated to accommodate a roundabout on a County road. All costs associated with all other pipeline relocation projects undertaken since 1958 within the jurisdiction of the County of Essex have been recovered from all of Enbridge Gas' customers through OEB-approved rates.

All costs associated with pipeline relocation projects within the jurisdiction of the lower-tier municipalities within the County of Essex have been shared between the municipalities and Enbridge Gas pursuant to the terms and conditions of the Model Franchise Agreement.