

October 18, 2022

Ms. Nancy Marconi
Registrar
Ontario Energy Board
2300 Yonge Street, 27th 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, following is Enbridge Gas' response to the letter submitted by the County of Essex (County) on October 13, 2022 regarding plans to submit evidence.

In its letter, the County has neglected to cite or respond to the following OEB directive in Procedural Order No. 1 highlighted in the below excerpt:

Intent to File Evidence

If the County plans to file evidence in this proceeding, the County must file a letter with the OEB describing the nature of the evidence, whether an expert will be retained, and the proposed timing for filing the evidence. The OEB will provide Enbridge Gas the opportunity to respond to the County's evidence letter and for the County to reply to Enbridge Gas. After reviewing this material, the OEB will consider whether the proposed evidence is relevant and material to the proceeding.

While the County has named a County employee, Mr. Botham, that will provide its intended evidence, it has not described the nature of the evidence. Neither has the County indicated upon what matters Mr. Botham may be qualified to provide expert evidence in relation to this proceeding.

The County's failure to provide this information makes it impossible for the OEB to "consider whether the proposed evidence is relevant and material to the proceeding", as the OEB signalled in Procedural Order No. 1 was its intention. It is equally impossible for Enbridge Gas to make submissions on the relevance or materiality of the County's intended evidence without further information about the nature of the evidence, including what expert opinion(s) Mr. Botham might be qualified to speak to.

Regarding the potential for the County to depose Mr. Botham as an expert witness in one or more areas, Enbridge Gas notes that pursuant to Rule 13A of the OEB's *Rules of Practice and Procedure*, any expert is required to "assist the OEB impartially by giving evidence that is fair and objective" and must acknowledge their duty in this regard by executing the OEB's prescribed form. Without knowing anything further about the intended nature of the County's evidence, it is difficult for Enbridge Gas to comment on how Mr. Botham as a County employee may be able to speak impartially to those subject matters. However, Enbridge Gas notes this as a prima facie concern.

Enbridge Gas is also concerned that the County has proposed an additional four weeks for the filing of its evidence. This is excessive, given that the County is proposing to use only internal resources and the County has had Enbridge Gas' application since approximately August 6, 2022 and responses to all interrogatories since October 4, 2022.

In its letter dated August 19, 2022 requesting intervenor status in this proceeding, the County indicated that its position is already clearly outlined in the April 6, 2022 letter that has been attached as Schedule F to Enbridge Gas' application, and that the County already intended at that time to participate actively including presenting witnesses, evidence and argument.

By failing to respond appropriately to Procedural Order No. 1, the County has caused additional delay to the timelines set by the OEB for this proceeding. Enbridge Gas submits that the OEB should reject the County's proposal to provide additional evidence as the County has not made a case for what the nature of that evidence might be. Alternatively, if the OEB sees fit to permit the County to cure its deficient evidence description, the OEB should order the County to do so within no more than two business days in order to avoid any further unnecessary delays in the proceeding.

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

Yours truly,

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cc (by email): David Sundin, County of Essex (dsundin@countyofessex.ca)