

October 25, 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. 2 dated October 19, 2022, the following is Enbridge Gas' response to the letter submitted by the County of Essex (County) on October 21, 2022 regarding a more detailed description of the evidence it intends to file to enable the OEB to determine whether the proposed evidence is relevant and material to the proceeding. The County was also directed to better explain whether it expects that it will seek to qualify Mr. Botham as an expert on any matters.

In its letter, the County has proposed to file evidence that will provide:

- (a) the history of the 1957 franchise agreement from the perspective of the County;
- (b) the history of previous requests to the County to consider the Model Franchise Agreement, and the rationale of the County for refusing same; and
- (c) a response to the evidence of Enbridge provided to date that the County disputes or disagrees with.

It is not clear on the face of the County's description of its proposed evidence how this evidence is directly relevant, material and necessary for the OEB to determine whether to grant Enbridge Gas a new franchise agreement in the form of the Model Franchise Agreement. The 1957 franchise agreement has been filed as part of the record of this proceeding, and the County can argue as part of its final written submissions in this proceeding as to why the OEB should deviate from its practice of recommending that natural gas distributors use the Model Franchise Agreement for franchise agreement approvals. Other than simply stating the nature of its evidence, the County has failed to explain how the inability to file the evidence would result in an unfair proceeding.

Furthermore, given that the 1957 franchise agreement with the County 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 because a municipal franchise is subject to the rule against perpetuities, having background information from the County's perspective on the 1957 franchise agreement would not provide the OEB with information that is relevant to making a determination on an application to approve a Model Franchise Agreement.

For these reasons, Enbridge Gas submits that the OEB should not accept the County's proposal to unnecessarily expand the record of this proceeding by filing evidence as described in its letter of October 21, 2022.

Should the OEB accept the County's proposal to file evidence, then Enbridge Gas requests that the OEB grant Enbridge Gas, if necessary as determined by Enbridge Gas, an opportunity for Enbridge Gas: (i) to ask interrogatories about the evidence; and (ii) to file responding evidence.

In its letter, the County submits that Enbridge has failed to indicate (1) why providing the evidence by the proposed filing date of November 14, 2022 prejudices the position of Enbridge in any way, or (2) why it impacts this proceeding or the immediate provision of natural gas services in the County in any way, given that there is a franchise agreement in place with no pressing need to consider whether the Model Franchise Agreement should be imposed on the County instead.

As has already been submitted by Enbridge Gas<sup>1</sup>, the 1957 franchise agreement with the County 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 because a municipal franchise is subject to the rule against perpetuities. Enbridge Gas has also provided extensive detail on how the Model Franchise Agreement is the appropriate form of agreement to cover Enbridge Gas' distribution and transmission assets in the County and confirm Enbridge Gas' operational obligations in the County<sup>2</sup>.

Enbridge Gas repeats its concern that the County has proposed an excessive extension of the time needed to adequately review Enbridge Gas' application for approval of a Model franchise Agreement that is in place with 337 (i.e., upper and lower tier) municipalities in Ontario served by Enbridge Gas. Enbridge Gas submits that the filing of the proposed additional evidence unnecessarily delays the proceeding with very little value offered in aiding the OEB to make a decision on whether to approve the Model Franchise Agreement as the form of agreement between Enbridge Gas and the County.

---

<sup>1</sup> EB-2022-0207 - Exhibit B.Staff.1

<sup>2</sup> EB-2022-0207 - Exhibit B.Staff.3

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

Yours truly,

Patrick McMahon  
Technical Manager  
Regulatory Research and Records  
[patrick.mcmahon@enbridge.com](mailto:patrick.mcmahon@enbridge.com)  
(519) 436-5325

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