



**Enbridge Gas Inc.**

**Application for approval of a Municipal Franchise  
Agreement with the County of Essex**

**PROCEDURAL ORDER NO. 3**

**November 2, 2022**

Enbridge Gas Inc. (Enbridge Gas) applied to the Ontario Energy Board (OEB) on July 13, 2022, seeking orders under sections 9(4) and 10 of the *Municipal Franchises Act* for approval of a natural gas franchise agreement with the County of Essex (County).

The County and Enbridge Gas filed respective evidence letters in accordance with the dates set in Procedural No.1. The County stated that evidence would be filed by way of an affidavit in the name of the County Engineer Allan Botham and requested until November 14, 2022, to serve and file its evidence. Enbridge Gas submitted that it could not make substantive submissions on the proposed evidence due to the County failing to outline the nature of the evidence that would be filed.

Procedural Order No. 2 established a revised schedule for the filing of evidence letters, directing the County to provide a more detailed description of the evidence it intends to file, and to explain whether it expects to seek to qualify Mr. Botham as an expert on any matters.

In its letter dated October 21, 2022, the County advised that Mr. Botham would not be qualified as an expert and would provide factual assertions on behalf of the County pertaining to the history of the existing franchise agreement, previous requests to consider the Model Franchise Agreement and evidence filed by Enbridge that the County disagrees with. The County reiterated that it should be provided the opportunity to file evidence on or before November 14, 2022, due to internal scheduling issues and other matters in the County that need be addressed. The County argued that the date requested to file its evidence does not prejudice the position of Enbridge Gas, impact the proceeding or the provision of natural gas services in the County as a franchise agreement is currently in place.

By letter dated October 25, 2022, Enbridge Gas submitted that it is unclear if the evidence that will be submitted by the County is directly relevant, material, and necessary, and that the filing of evidence would extend the time required to review the

franchise application. Enbridge Gas argued that the existing franchise agreement is no longer effective and cited the ruling in the *Dawn-Euphemia vs. Union Gas* proceeding and the rule against perpetuities. Enbridge Gas stated that the County has not explained how the inability to file evidence would result in an unfair proceeding and requested that if the OEB allows the proposed evidence, it also allow for discovery and for Enbridge Gas to file reply evidence.

The OEB has considered the information provided by the County and Enbridge Gas in their respective evidence letters. The OEB will provide the County and Enbridge Gas the opportunity to file evidence in accordance with the schedule established in this procedural order.

With respect to the County's evidence, the OEB expects that the County will address the questions of whether or not the existing franchise agreement is valid and should govern and, in the event that the OEB finds that the existing franchise agreement to no longer be valid, why it would not be in the public interest for the OEB to order the implementation of a new agreement based on the Model Franchise Agreement. It is necessary to make provision for the following matters related to this proceeding. Further procedural orders may be issued by the OEB.

**IT IS THEREFORE ORDERED THAT:**

1. The County shall file its written evidence with the OEB and serve it on all parties by **November 14, 2022**.
2. Enbridge Gas shall file its reply evidence, if any, with the OEB and serve it on all parties by, **November 21, 2022**.
3. Enbridge Gas and OEB staff shall request any relevant information and documentation from the County that is in addition to its filed evidence, by written interrogatories filed with the OEB and served on all parties by **November 30, 2022**.
4. The County and OEB staff shall request any relevant information and documentation from Enbridge Gas that is in addition to its filed evidence, by written interrogatories filed with the OEB and served on all parties by **November 30, 2022**.
5. The County shall file with the OEB complete written responses to all interrogatories and deliver those responses to all parties by **December 13, 2022**.
6. Enbridge Gas shall file with the OEB complete written responses to all interrogatories and deliver those responses to all parties by **December 13, 2022**.

Parties are responsible for ensuring that any documents they file with the OEB, such as applicant and intervenor evidence, interrogatories and responses to interrogatories or any other type of document, **do not include personal information** (as that phrase is defined in the *Freedom of Information and Protection of Privacy Act*), unless filed in accordance with rule 9A of the OEB's [Rules of Practice and Procedure](#).

Please quote file number, **EB-2022-0207** for all materials filed and submit them in searchable/unrestricted PDF format with a digital signature through the [OEB's online filing portal](#).

- Filings should clearly state the sender's name, postal address, telephone number and e-mail address.
- Please use the document naming conventions and document submission standards outlined in the [Regulatory Electronic Submission System \(RESS\) Document Guidelines](#) found at the [File documents online page](#) on the OEB's website.
- Parties are encouraged to use RESS. Those who have not yet [set up an account](#), or require assistance using the online filing portal can contact [registrar@oeb.ca](mailto:registrar@oeb.ca) for assistance.
- Cost claims are filed through the OEB's online filing portal. Please visit the [File documents online page](#) of the OEB's website for more information. All participants shall download a copy of their submitted cost claim and serve it on all required parties as per the [Practice Direction on Cost Awards](#).

All communications should be directed to the attention of the Registrar and be received by end of business, 4:45 p.m., on the required date.

With respect to distribution lists for all electronic correspondence and materials related to this proceeding, parties must include the Case Manager, Natalya Plummer at [Natalya.Plummer@oeb.ca](mailto:Natalya.Plummer@oeb.ca) and OEB Counsel, Richard Lanni at [Richard.Lanni@oeb.ca](mailto:Richard.Lanni@oeb.ca).

Email: [registrar@oeb.ca](mailto:registrar@oeb.ca)

Tel: 1-877-632-2727 (Toll free)

**DATED** at Toronto, **November 2, 2022**

**ONTARIO ENERGY BOARD**

Nancy Marconi  
Registrar