



Enbridge Gas Inc.
50 Keil Drive North
Chatham, Ontario, Canada
N7M 5M1

November 30, 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. 4 dated November 25, 2022, attached are Enbridge Gas' information requests with respect to the evidence submitted November 14, 2022 by the County of Essex.

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
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(519) 436-5325

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

Encl.

ENBRIDGE GAS INC.
INFORMATION REQUESTS TO THE COUNTY OF ESSEX

1. **Reference:** County of Essex Evidence, page 4, paragraph 9

"9. It is my understanding that each of the Lower Tier Municipalities have their own respective franchise agreements with Enbridge that governs the supply of gas in the Lower Tier Municipalities."

Question:

Please confirm the County of Essex's understanding that each of the franchise agreements between Enbridge Gas and the lower-tier municipalities within the County of Essex are based on the 2000 Model Franchise Agreement without amendments.

2. **Reference:** County of Essex Evidence, page 4, paragraph 11

"11. Since the signing of the Franchise Agreement in 1957 to the present, it is my understanding that only those whose property abuts rural sections of the County Road network receive gas in accordance with the terms of the Franchise Agreement at issue. Meanwhile anyone whose property does not abut a County Road or whose property abuts a County Road with an urban area having their provision of gas governed pursuant to the terms of franchise agreements between Enbridge and the Lower Tier Municipalities."

Question:

Please confirm the County of Essex's understanding that there are significant differences in the terms and conditions of the franchise agreements under which customers along county roads are provided access to natural gas.

3. **Reference:** County of Essex Evidence, pages 4-5, paragraph 13

"13. From my review of the Application, I note that Enbridge has failed to provide evidence of what has changed between 1957 to the present that would result in the Franchise Agreement expiring. The lines governed by the Franchise Agreement are, to my knowledge, used for "distribution" to those whose property abuts County Roads in rural areas, and is otherwise used for transmission to customers located in the Lower Tier Municipalities. In other words the method of delivering gas to the residents of the County and its Lower Tier Municipalities has not changed since the Franchise Agreement was entered into in 1957."

Questions:

- (a) Please confirm that the County of Essex is aware of the reasoning applied by the Divisional Court in its decision on January 12, 2004 in Dawn-Euphemia vs. Union Gas that 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.
- (b) Please explain why the County of Essex does not believe that the rule against perpetuities applies to the 1957 franchise agreement.
- (c) Please describe what the County of Essex considers to be included under the "distribution" of gas to end-use customers.

- (d) Please confirm the County of Essex's understanding that the vast majority of pipelines located along roads under the County's jurisdiction have been constructed and are operated as distribution pipelines.
- (e) Please confirm that the County of Essex understands that the terms and conditions associated with franchise agreements executed within the County of Essex have changed significantly since 1957 to be more reflective of the processes leading to the installation, maintenance, care and subsequent abandonment activities.

4. **Reference:** County of Essex Evidence, page 6, paragraph 20

"20. Despite the objections of the County, in contravention of the clear language in the Franchise Agreement about the authority of the County Engineer, Enbridge ignored the concerns of the County, and through an Application to the OEB in OEB File No. 2020-0160, forced the installation of the County Road 46 Section into an area from which Enbridge knew it would have to be moved at some point in the not too distant future to allow for road improvements along County Road 46."

Questions:

Please provide details of any work that has been completed since 2020 or planned to be completed within the next 20 years regarding the expansion of County Road 46 which would require the relocation of Enbridge Gas pipe.

5. **Reference:** County of Essex Evidence, pages 6-7, paragraph 21

"21. Given the above behaviour of Enbridge in refusing to accommodate the County's concerns with the County Road 46 Section of the Project, the County is not willing to consider entering into the Model Franchise Agreement. The Model Franchise Agreement will push the relocation costs of the County Road 46 Section of the Project on to the County, despite its prior clear warnings to Enbridge and the OEB. Further, the Model Franchise Agreement will provide even less authority to the County Engineer to control precisely where in the right of way Enbridge is permitted to place its infrastructure."

Questions:

- (a) Please confirm the County of Essex's understanding that 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) and that the Model Franchise Agreement is currently in place for all other municipalities (lower, single and upper-tier) in which Enbridge Gas provides service.
- (b) Please explain why all other ratepayers of Enbridge Gas should pay for the costs of relocations that would be attributable to the County of Essex under a Model Franchise Agreement.