

December 13, 2022

Ontario Energy Board
Attention: Nancy Marconi, Registrar
2300 Yonge Street, 27th Floor
Toronto, Ontario M4P 1E4

Sent Via: Email and RESS

Dear Ms. Marconi,

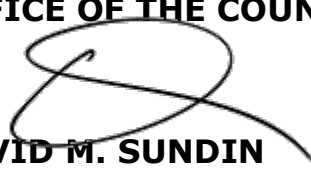
RE: MATTER: County of Essex ats Enbridge Gas
FILING: Responses of County of Essex to the Information Request of
Enbridge Gas
OEB FILE: EB-2022-0207

Further to Procedural Order No. 4 of the Ontario Energy Board (the "**OEB**"), dated November 25, 2022, please find enclosed the Responses of County of Essex to the Information Request of Enbridge Gas (the "**Response**").

I confirm that this letter and the enclosed Response is being served on the individuals noted below and is being uploaded to the OEB's Regulatory Electronic Submission System.

I trust that the foregoing is satisfactory. However, please do not hesitate to contact me if you have any questions or concerns relating to this letter and/or the enclosed Response.

Yours truly,
OFFICE OF THE COUNTY SOLICITOR



DAVID M. SUNDIN
COUNTY SOLICITOR
DMS

Encl.: Responses of County of Essex to the Information Request of Enbridge Gas

c.c. Enbridge via email:

Patrick McMahon – Patrick.McMahon@enbridge.com

c.c. OEB Case Manager via email:

Natalya Plummer – Natalya.Plummer@oeb.ca

c.c. OEB Counsel via email:

Richard Lanni – Richard.Lanni@oeb.ca



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ONTARIO ENERGY BOARD

IN THE MATTER OF the *Municipal Franchises Act*, R.S.O. 1990, c. M.55, as amended;

AND IN THE MATTER OF an application by Enbridge Gas Inc. for an Order approving the terms and conditions upon which, and the period for which, Enbridge Gas Inc. will be given the right to construct and operate works for the distribution, transmission, and storage of natural gas and the right to extend and add to the works in the County of Essex;

AND IN THE MATTER OF an Application by Enbridge Gas Inc. for an Order directing and declaring that the assent of the municipal electors of the County of Essex to the franchise agreement is not necessary.

**RESPONSES OF COUNTY OF ESSEX TO
THE INFORMATION REQUEST OF ENBRIDGE GAS**

Enbridge

Request 1:

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.

County

Response 1:

The County is unaware as to what agreements are in place between the lower tier municipalities and Enbridge, as the County is not a party to those agreements. Enbridge is in the best position to make itself and the OEB aware of what agreements are in place, whether or not they are based on the 2000 Franchise Agreement, and why this request for information is even remotely relevant to the form of the franchise agreement between the County and Enbridge.

**Enbridge
Request 2:**

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.

**County
Response 2:**

The County is not aware of significant differences in the terms and conditions of the franchise agreements under which customers along county roads are provided access to natural gas. The County is aware of the terms and conditions contained in its valid Franchise Agreement from 1957 that Enbridge is, as a successor, a party to. The County remains satisfied that those terms and conditions are sufficient.

Enbridge

Request 3(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.

County

Response 3(a):

The County is not aware of the reasoning of the Divisional Court in the *Dawn-Euphemia v. Union Gas* matter from 2004.

Enbridge

Request 3(b):

Please explain why the County of Essex does not believe that the rule against perpetuities applies to the 1957 franchise agreement.

County

Response 3(b):

Again, the County is not aware of the basis on which Enbridge is taking the position that rule against perpetuities applies. Further, the County is not aware of the grounds, if any, that Enbridge alleges grants the OEB the authority to act as a court of competent jurisdiction to make a ruling on the common law principles of the rule against perpetuities.

That being said, the County's position is that if the rule against perpetuities applies to the franchise agreement in question, that the franchise agreement does not offend the rule. The right for the predecessors of Enbridge to use the land vested in or about 1957 or 1958 when the lands were used by them for the purposes granted, and remain used for that purpose. Further, the modern rule against perpetuities has been referred to as being utilized to prevent lands from being tied up and being incapable of being disposed. Enbridge uses public road allowances under the franchise agreement in question, which road allowances are not going to be conveyed to third parties in any event.

Enbridge

Request 3(c): *Please describe what the County of Essex considers to be included under the "distribution" of gas to end-use customers.*

County

Response 3(c): The County considers "distribution" to be the actual supply of gas to an end user, whereas the County considers "transmission" to be transmitting gas across the County to another municipality for distribution to end users within that other municipality.

Enbridge

Request 3(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.*

County

Response 3(d): This is not the County's understanding. The County's understanding is that the pipelines located along roads under the County's jurisdiction have the primary purpose of transmitting gas to other jurisdictions (i.e. urban areas, lower tier municipalities, the City of Windsor, etc.), with distribution to those properties that front on to County Roads being ancillary to that.

Enbridge

Request 3(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.*

County

Response 3(e): Again, the County is unaware of the contents of the franchise agreements that may be in place between Enbridge and other local municipalities. The County is not a party to those agreements. The County relies on Response 1 above in responding to Request 3(e) of Enbridge.

**Enbridge
Request 4:**

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.

**County
Response 4:**

The County is currently preparing for the following works that will require relocation of the lines installed by Enbridge, over the loud objections of the County, in 2021:

- (a) Construction of a roundabout at County Road 46 and Rochester Townline – expected to be completed in 2023; and
- (b) Widening and improvement of intersections along the section of County Road 46 between County Road 19 and the limits of the City of Windsor (being approximately 10 kilometres of road) – expected to be commenced in 2035, but with final design and timing to be determined based on the outcome of an Environmental Study being formally undertaken in 2023.

Enbridge

Request 5(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.

County

Response 5(a):

The County has reviewed the Model Franchise Agreement, and is aware of its contents. Again, the County is unaware of the form and content of the agreements Enbridge has in place with other municipalities and the County relies on its Response 1 and Response 3(e). The County further notes that the form and content of the agreements Enbridge may have in place with other municipalities has no bearing on the 1957 agreement in place between the County and Enbridge.

Enbridge

Request 5(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.

County

Response 5(b):

The County has not taken the position that all other ratepayers of Enbridge Gas should pay for the costs of relocations. It has taken the position that Enbridge Gas should honour the terms of the 1957 franchise agreement in place between Enbridge and the County. That agreement requires Enbridge Gas to bear the costs of relocations. If Enbridge Gas blatantly ignores the direction of the County not to place its infrastructure in a certain area (as it did in 2020/2021), as it will require relocation in the near future, that is a risk in incurring costs that Enbridge has willingly decided to take. Whether Enbridge bears those costs itself, or seeks to pass the costs on to ratepayers, is up to Enbridge to address.

Dated: December 13, 2022

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LAWYER FOR THE INTERVENOR,
THE CORPORATION OF THE COUNTY
OF ESSEX

ENBRIDGE GAS INC. v. THE CORPORATION OF THE COUNTY OF ESSEX

ONTARIO ENERGY BOARD

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THE INFORMATION REQUEST OF
ENBRIDGE GAS**

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