



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

December 13, 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 - Municipality of Leamington
Ontario Energy Board File No. EB-2022-0201**

Pursuant to Procedural Order No. 2 dated November 18, 2022, attached is Enbridge Gas' reply evidence with respect to the evidence submitted November 8, 2022 and the interrogatory responses submitted November 29, 2022 by the Municipality of Leamington.

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
(519) 436-5325

cc (by email): Matthew Todd, Municipality of Leamington (mtodd@leamington.ca)
Brenda Percy, Municipality of Leamington (clerks@leamington.ca)

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 Municipality of Leamington;

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 Municipality of Leamington to the franchise agreement is not necessary;

AND IN THE MATTER OF an Application by Enbridge Gas Inc. for an Order cancelling and superseding those parts of the existing Certificate of Public Convenience and Necessity held by Enbridge Gas Inc. for the former municipalities within the Municipality of Leamington and replacing them with a Certificate of Public Convenience and Necessity to construct works to supply natural gas in the Municipality of Leamington.

REPLY EVIDENCE OF ENBRIDGE GAS INC.

AFFIDAVIT OF PATRICK MCMAHON

I, Patrick McMahon, of the Municipality of Chatham-Kent, in the Province of Ontario, make oath and say as follows:

1. I have been the Technical Manager, Regulatory Research and Records for Enbridge Gas for approximately 3 years and prior to that I held various management positions within the Regulatory Affairs department since 2001. I therefore have knowledge of franchise agreement and other regulatory matters related to Enbridge Gas and its predecessors.
2. This reply evidence is submitted pursuant to Procedural Order No. 2 dated November 18, 2022, in response to the evidence submitted by the Municipality of Leamington (Leamington) on November 8, 2022 and the interrogatory responses provided by Leamington on November 29, 2022.
3. Enbridge Gas' current franchise agreement with Leamington (effective January 20, 2003) is the current Model Franchise Agreement (without amendment). Enbridge Gas has Model Franchise Agreements (without amendments) in place with all other lower-tier municipalities within the County of Essex as well as with an additional 300+ municipalities within which Enbridge Gas operates.
4. The Model Franchise Agreement outlines the terms that the Ontario Energy Board finds reasonable under the *Municipal Franchises Act*.¹ The Ontario Energy Board has previously advised natural gas distributors that they are expected to follow the form of the Model Franchise Agreement when filing applications for the approval of franchise agreements unless there is a compelling reason for deviation.² Leamington has not provided any evidence to suggest that Enbridge Gas' operations within the municipality would be any different than the operations within any other municipality.

¹ Report of the Ontario Energy Board - Natural Gas Facilities Handbook - EB-2022-0081, March 31, 2022

² EB-2021-0269, Decision and Order, February 17, 2021

5. Leamington has requested that any order of the Ontario Energy Board renewing or extending the term of the rights within the Model Franchise Agreement include an order directing an amendment to section 12(d) of the Model Franchise Agreement as follows:
- The total relocation costs as calculated above shall be paid 35% by the Corporation and 65% by the Gas Company, except where the part of the gas system required to be moved is located in an unassumed road or in an unopened road allowance and the Corporation has not approved its location, or the relocation is required pursuant to the report of an engineer appointed under the Drainage Act, R.S.O. 1990, c. D.17 or the costs have been assessed pursuant to section 26 of the Drainage Act, R.S.O. 1990, c. D.17 in which case the Gas Company shall pay 100% of the relocation costs. [emphasis added]*
6. Leamington asserts³ that its drainage systems are unique, but has failed to provide evidence to support such a claim. This assertion of uniqueness does not support a deviation from the Model Franchise Agreement.
7. In all municipalities in which it provides gas services, Enbridge Gas follows the provisions of the franchise agreement when it comes to sharing the costs incurred to relocate pipeline. With respect to drainage infrastructure, there have been instances where Enbridge Gas has worked with a municipal drainage engineer to re-design drain infrastructure to avoid relocating natural gas infrastructure. There have also been instances where a road is widened and roadside ditches are then moved further from the centre of the road and cover above our pipeline is impacted. In these cases, the cost sharing provisions of the franchise agreement have been followed.
8. From time to time, Enbridge Gas is contacted by a municipality about natural gas infrastructure that appears to have been installed in a manner that impacts drainage infrastructure. In these situations, Enbridge Gas reviews the locates from the time of installation and assesses what further actions are required. If Enbridge Gas is responsible, then we have paid 100% of the cost to relocate our gas main.
9. When asked to identify the specifics of conflicts with various utilities that have been caused by having drains located in rights-of-way and along roadways, Leamington provides a vague response to specific locations⁴. Enbridge Gas would require more specific details to properly assess these references.
10. With respect to the reference to a Mersea Road 7 project, it is difficult for Enbridge Gas to determine the location of this project as no cross street has been provided. In the past 10 years, Enbridge Gas has completed two projects. One project was to connect new customers along this road (i.e., not replacing infrastructure for drainage or other works). Another project, at the intersection of Mersea Rd 7 and Highway 77, was a pipeline relocation at the request of the Ministry of Transportation.
11. With respect to the referenced project at the corner of Point Pelee Drive and Ellis Street, this project was related to replacing a section of main that was damaged when a large truck left the road. It is assumed that the replaced pipeline was within a drain. Enbridge Gas recovered the cost of replacement through insurance.
12. When asked to provide evidence showing that portions of Leamington are located below sea level, the municipality provides an excerpt from a report that has not been put on the record of this proceeding which indicates that dykes within the municipality are “below the Scenario B flood level (+176.5 m IGLD85)”.⁵ Enbridge Gas believes that the reference to the International Great Lakes Datum (IGLD) of 1985 refers to lake levels rather than sea level.

³ Leamington Evidence, paragraph 5

⁴ Leamington Evidence, paragraph 7 and Leamington response to IR 1(c) dated November 29, 2022

⁵ Leamington response to IR 2 dated November 29, 2022

13. The Ontario Topographic Map noted in the information request submitted by Enbridge Gas ([Ontario topographic map, elevation, terrain \(topographic-map.com\)](http://topographic-map.com)) indicates that Lake Erie and Point Pelee are 174 m above sea level. Given this public information, Enbridge Gas submits that Leamington does not appear to have lands below sea level and is confusing IGLD 1985 lake level data with sea levels. Enbridge Gas assumes that lands located near bodies of water in other municipalities would have similar drainage concerns and Leamington is not unique in this respect.
14. Enbridge Gas' position is that the onus is on the municipality to provide compelling evidence to the Ontario Energy Board that an amendment to the Model Franchise Agreement should be considered. From a franchise agreement perspective, Enbridge Gas does not consider Leamington unique from other municipalities in which it operates.
15. I make this affidavit in good faith and for no improper purpose.

SWORN BEFORE ME, at the)
City of Toronto in the Province)
of Ontario this 13th day of)
December, 2022.)

Patrick McMahon

A Commissioner, etc.