



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

February 3, 2023

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 - 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' argument-in-chief in the above-noted proceeding.

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): Matthew Todd, Municipality of Leamington ([mtodd@leamington.ca](mailto:mtodd@leamington.ca))  
Brenda Percy, Municipality of Leamington ([clerks@leamington.ca](mailto:clerks@leamington.ca))

Encl.

**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.

#### **ARGUMENT-IN-CHIEF OF ENBRIDGE GAS INC.**

1. Enbridge Gas' current franchise agreement with the Municipality of Leamington (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.<sup>1</sup>
2. The Model Franchise Agreement outlines the terms that the Ontario Energy Board (OEB) finds reasonable under the *Municipal Franchises Act*.<sup>2</sup> The OEB 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.<sup>3</sup> The OEB has been consistent in this regard<sup>4</sup> and Enbridge Gas submits there is no reason to take a different approach in this case.
3. Leamington has not provided any evidence to demonstrate that Enbridge Gas' operations within the municipality are any different than the operations within any other municipality.
4. Leamington has requested that any order of the OEB 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]*

<sup>1</sup> Exhibit C.Staff.1b)

<sup>2</sup> Report of the Ontario Energy Board - Natural Gas Facilities Handbook - EB-2022-0081, March 31, 2022

<sup>3</sup> EB-2021-0269, Decision and Order, February 17, 2021

<sup>4</sup> See further decision references provided in Exhibit B.Leamington.2(a)

5. Leamington asserts<sup>5</sup> that its drainage systems are unique but has failed to provide evidence to support such a claim. This unsupported assertion of uniqueness does not warrant a deviation from the Model Franchise Agreement.
6. 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 in various municipalities 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.
7. 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. If project redesign results in an avoidance of a pipeline relocation project, then Enbridge Gas has paid certain of the added costs.<sup>6</sup>
8. 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 locations<sup>7</sup>. Enbridge Gas provided evidence that questions the relevance of Leamington's examples as Enbridge Gas' records indicate that Leamington was not requested or required to pay costs related to Enbridge Gas' work at these locations in relation to drainage works.<sup>8</sup>
9. The Gas Franchise Handbook is a supplement to the Model Franchise Agreement and serves as a consolidated guide for dealing with operating issues that sometimes require a greater level of detail than appears in the franchise agreement itself.<sup>9</sup> The Gas Franchise Handbook contemplates that the gas utility will coordinate installation of gas plant with the Drainage Superintendent of the municipality.<sup>10</sup> Enbridge Gas confirmed that Leamington has an active Utility Co-ordinating Committee that meets on a quarterly basis and Enbridge Gas is actively engaged in these meetings.<sup>11</sup> Further, Enbridge Gas notes that it has provided project maps and as-built drawings to Leamington when requested and provides access to base map data and facility information and allows Leamington to extract data from Enbridge Gas' GIS system to create its own maps as needed, at a level that would allow Leamington to address concerns related to the interaction of drainage and natural gas infrastructure.<sup>12</sup>
10. Enbridge Gas' position is that the onus is on the municipality to provide compelling evidence to the OEB 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 and there has been no evidence submitted that supports any amendment to the Model Franchise Agreement. Enbridge Gas has also been operating within Leamington for the past 20 years pursuant to the 2000 Model Franchise Agreement without amendment (and in accordance with forms of franchise agreements that have been consistent with those of other municipalities for decades prior to that).

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<sup>5</sup> Leamington Evidence, paragraph 5

<sup>6</sup> Exhibit C.Staff.1

<sup>7</sup> Leamington Evidence, paragraph 7 and Leamington response to IR 1(c) dated November 29, 2022

<sup>8</sup> Enbridge Gas Reply Evidence, paragraphs 10 and 11

<sup>9</sup> OEB Natural Gas Facilities Handbook, page 12

<sup>10</sup> Gas Franchise Handbook, page 12

<sup>11</sup> Exhibit C.Staff.2

<sup>12</sup> Exhibit C.Staff.3

11. There have been no submissions made by any party regarding the request by Enbridge Gas for an Order cancelling and superseding those parts of the existing Certificate of Public Convenience and Necessity (CPCN) held by Enbridge Gas for the former municipalities within Leamington (FBC 259) and replacing them with a single CPCN to construct works to supply natural gas in Leamington. Enbridge Gas submits that the requested CPCN will not change the area within Leamington to which Enbridge Gas' CPCN rights pertain but will be geographically aligned with the current municipal boundaries of Leamington and avoid any confusion of references to former municipalities.
12. While Enbridge Gas' application requested an Order pursuant to s.9(4) of the *Municipal Franchises Act* directing and declaring that the assent of the municipal electors of the Municipality of Leamington is not necessary for the proposed franchise agreement by-law under the circumstances, section 10(5) of the *Municipal Franchises Act* states that an OEB order under section 10(2) is deemed to be a valid by-law of the municipality assented to by the municipal electors. Therefore, section 9(4) of the *Municipal Franchises Act* does not apply. As a result, an Order pursuant to s.9(4) of the *Municipal Franchises Act* should not be necessary.
13. In conclusion, Enbridge Gas requests that the Ontario Energy Board issue the following:
  - an order pursuant to section 10 of the *Municipal Franchises Act* renewing the existing Enbridge Gas franchise in Leamington in accordance with the terms and conditions of the 2000 Model Franchise Agreement without amendment, for twenty years, as set out in Schedule F of Enbridge Gas' application; and
  - an order pursuant to section 8 of the *Municipal Franchises Act* cancelling those parts of the existing CPCN FBC 259 pertaining to Leamington and replacing them with a single CPCN to construct works to supply natural gas in Leamington.

All of which is respectfully submitted this 3<sup>rd</sup> day of February, 2023.