



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

February 6, 2023

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**

In accordance with Procedural Order No. 4 dated November 25, 2022, enclosed please find the following compendium of documents for the upcoming oral argument day scheduled for February 8, 2023:

Tab 1: EB-2017-0232 - Decision and Order (December 13, 2018), pages 5 and 6
Tab 2: EB-2020-0160 - Decision and Order (November 12, 2020), pages 16-18
Tab 3: RP-1999-0048 - Report to the Board - Model Franchise Agreement (December 29, 2000), pages 25-27

This compendium to Enbridge Gas' argument-in-chief has been provided for reference and is intended to provide easy reference during the presentation of argument-in-chief and to be helpful to the OEB Panel and interested parties.

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

Encl.

TAB 1

EB-2017-0232 - Decision and Order (December 13, 2018) – pages 5 - 6



Ontario Energy Board Commission de l'énergie de l'Ontario

DECISION AND ORDER

EB-2017-0232

EPCOR NATURAL GAS LIMITED PARTNERSHIP

Application for a Municipal Franchise Agreement with the County of Oxford

By Delegation, before: Pascale Duguay

December 13, 2018

either removing or keeping the clause in EPCOR's franchise agreement with the County of Oxford. EPCOR stated that it agreed with the OEB's observation in its Decision on Motion and P.O. 3 in that the *Drainage Act* clause allows the County of Oxford to assign the responsibility for drainage to the Township of South-West Oxford. EPCOR submitted that its position with the municipality has always been that the removal of the *Drainage Act* clause is not necessary. EPCOR added that the removal of the *Drainage Act* clause has not, and would not change EPCOR's practice, as EPCOR would submit a copy of the "Plan" to the applicable person responsible for drainage if there was a risk that the natural gas system would affect a municipal drain.

In summary, EPCOR proposed two paths forward. The OEB could approve the updated franchise agreement with the *Drainage Act* clause struck out. Alternatively, the OEB could approve the updated franchise agreement with the *Drainage Act* clause intact, and give EPCOR 60 days from the date of the order to obtain the County of Oxford's consent and approval to the updated franchise agreement. If the County of Oxford did not consent to the updated franchise agreement, EPCOR would then seek an order pursuant to section 10 of the *Municipal Franchises Act* renewing the updated franchise agreement. EPCOR also agreed with OEB staff in that an order by the OEB pursuant to section 10 would be the most expeditious and efficient means to conclude this franchise renewal process.

OEB FINDINGS

I find that it is in the public interest to renew the municipal franchise agreement between EPCOR and the County of Oxford in the form of the 2000 MFA, with no amendments, and for a term of twenty years.

As the OEB previously determined in its decision with reasons regarding the franchise agreement between Natural Resources Gas and the Town of Aylmer⁴, the OEB can approve a franchise agreement over the objections of the parties, if that agreement, in the OEB's view, meets the test of public convenience and necessity. The 2000 MFA incorporates the standard terms and conditions that the OEB has found in previous cases to meet this test, and has served as the basis for many new and renewed franchise agreements since. In the same decision, the OEB stated:

⁴ EB-2012-0072

The MFA sets out the obligations of the franchise holder in regard to the technical, construction, safety, and operational aspects of the distribution system within the municipality. The Board finds that adherence to the conditions of the 2000 MFA will ensure that these functions are properly carried out.

As noted previously, the purpose of the *Drainage Act* clause contained in the 2000 MFA is for distributors to inform the proper authorities of the works that may affect a municipality's drainage system. I find that there is no compelling reason, on the record of this proceeding, for the OEB to deviate from the standard provisions of the 2000 MFA by removing the *Drainage Act* clause. EPCOR is bound to, and has in fact confirmed that it will continue to, submit a copy of the plan to the applicable person responsible for drainage if there were ever a risk that the natural gas system would affect a municipal drain.

I accept EPCOR's application for a renewal of its existing authorizations within the County of Oxford, under the *Municipal Franchises Act*. Ever since the expiry of the municipal franchise agreement between EPCOR and the County of Oxford in 2009, the parties have continued to carry on business with each other under the same terms.

Pursuant to the authority under section 10 of the *Municipal Franchises Act*, I find that public convenience and necessity require that the OEB issue an order renewing the term of EPCOR's right to to construct and operate works for the distribution, transmission and storage of natural gas, and the right to extend or add to the works, in the County of Oxford. The terms and conditions of the renewal, which also may be prescribed by the OEB under section 10 of the Act, shall be those of the 2000 MFA, for a period of 20 years. Finally, this order is also deemed to be a valid by-law of the County of Oxford, assented to by the municipal electors for the purposes of the *Municipal Franchises Act* and of section 58 of the *Public Utilities Act*.

IT IS ORDERED THAT:

EPCOR Natural Gas Limited Partnership is granted 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, within the County of Oxford, pursuant to the terms and conditions, and the period that is set out in the franchise agreement attached in Schedule A. A map of EPCOR's current service area in the County of Oxford is attached as Schedule B.

TAB 2

EB-2020-0160 - Decision and Order (November 12, 2020), pages 16-18

DECISION AND ORDER

EB-2020-0160

ENBRIDGE GAS INC.

Application under Section 101 of the *Ontario Energy Board Act*,
1998

BEFORE: Michael Janigan
Presiding Commissioner

Robert Dodds
Commissioner

November 12, 2020

5.3 Abandonment of the Existing Pipeline

5.3.1 Submissions of Enbridge Gas and Essex County

Enbridge Gas is seeking the OEB's authority to abandon the NPS 10 pipeline in place consistent with its proposal in the leave to construct application. Essex County argues that Enbridge Gas should be required to remove the existing NPS 10 steel main from the right-of-way rather than permitting it to be abandoned in-place.

In its application, Enbridge Gas stated that the existing pipeline was installed primarily within 1m of the property line offering homeowners, municipalities and the Essex County the ability to establish landscaping and tree coverage. Enbridge Gas argued that removal of the pipeline would require significant excavation and would result in significant long-term remediation for restorations. Enbridge Gas estimated \$5.9 million in additional costs for removal of the pipeline.

Enbridge Gas confirmed that its proposal is in compliance with the requirements of section 12.10.3.4 of the CSA Z662-15 standard for the abandonment of distribution lines.

Essex County submitted that there are numerous infrastructure demands within the right-of-way in which Enbridge Gas intends to construct the new pipeline. Essex County stated that it had requested that the new pipeline be constructed in the same corridor as the existing pipeline, utilizing all available private easements. Essex County submitted that when it became apparent that Enbridge Gas would not agree to this request, it reluctantly agreed to the construction of the new pipeline within the right-of-way on condition that the existing pipeline be removed and not simply abandoned.²⁹

Essex County submitted that the Franchise Agreement provides Essex County with the authority to demand that Enbridge Gas remove the abandoned pipeline at Enbridge Gas' expense. In its AIC, Enbridge Gas submitted that Essex County's rights under the Franchise Agreement are not unfettered but must be exercised within the intent and the express provisions of the Franchise Agreement and in a manner that is consistent with the broad public interest.

²⁹ Essex County evidence, Tab 1, paragraph 33, page 11

5.3.2 Submissions of Other Parties

Energy Probe submitted that the OEB does not have the authority to direct a utility as to how it must dispose of shareholder owned assets no longer in use and not in rate base and can only approve or disapprove the costs of removal or the revenues from disposal of such assets in a rate proceeding.

Energy Probe submitted that if Essex County wants the old NPS10 pipeline removed, it can either negotiate with Enbridge Gas or take it to court.

FRPO argued that Essex County has not provided any specific need which drives the need to remove the pipe at this time stating that Essex County has only expressed concern that it takes up a corridor in a crowded right of way. FRPO stated that Enbridge Gas has acknowledged that with the existing Franchise Agreement, Essex County maintains the right to request removal if there is a specific need. FRPO submitted that these factors weigh in favour of not incurring the cost and environmental impact unless there is a specific need and that if that time comes, Essex County can exercise that right.

Pollution Probe submitted that there is no basis under Section 101 of the OEB Act for consideration of the requested approval for the abandonment of the 30 km stretch of NPS 10 pipeline. Pollution Probe stated that removal of abandoned pipelines is particularly important in congested rights-of-way to provide valuable room for future infrastructure.

OEB staff submitted that Enbridge Gas' proposal for the abandonment in place of the existing NPS 10 pipeline as set out in the leave to construct application is in the public interest.

OEB staff submitted that Essex County has not provided evidence of any concrete plans to expand the road that would necessitate the removal of the pipeline. OEB staff also noted Essex County's response to Enbridge Gas' interrogatory which states that the existing NPS 10 pipeline is "unlikely" to be directly impacted by the purported widening even if it were to occur.³⁰

Findings

Much of the argument with respect to the abandonment in place issue relates to the Franchise Agreement. Unlike the great majority of franchise agreements in Ontario, the Franchise Agreement in this case is not in the form of the OEB's model franchise

³⁰ Essex County IRR – Enbridge 21

agreement. It was executed in 1957 and appears to have no expiry date, and therefore has not come before the OEB since the creation of the model franchise agreement in 2000. The OEB notes that franchise agreements under the *Municipal Franchises Act* are not “enforceable provisions” under the OEB Act, and are therefore not subject to the compliance provisions under Part VII.1 of the OEB Act. The OEB further notes that disputes relating to the terms of a franchise agreement have in some cases been brought to the courts for resolution.³¹

Essex County appears to rely on section 6 of the Franchise Agreement, which states: “In the event that [Essex County] in pursuance of its statutory powers shall deem it expedient to alter the construction of any highway ... and in the course thereof it shall become reasonably necessary that the location of main, line, pipe or works of [Enbridge Gas] ... should be altered at a specific point to facilitate the work of the [Essex County], then upon receipt of a reasonable notice in writing from the Clerk of the [Essex County] specifying the alteration desired, [Enbridge Gas] shall, at its own expense, alter or re-locate its main, pipe, line or works at the point specified.” This is not a general provision related to abandonment, and indeed the section does not mention abandonment at all. The Franchise Agreement requires Enbridge Gas to alter or re-locate its pipeline only as may be reasonably necessary to accommodate some alteration or construction of a highway. As noted above, there do not appear to be any immediate plans to expand County Road 46, nor is the OEB aware of any reason that an alteration or relocation of the (soon to be abandoned) existing pipeline is reasonably necessary.

This relates to a more general observation of the OEB that irrespective of the Franchise Agreement, the Essex County has not provided any compelling reasons why the existing pipeline should be removed. It has not pointed to any specific current or potential future conflicts with other infrastructure projects or uses. It does not dispute the fact that Enbridge Gas's proposal to abandon the pipeline in place is consistent with CSA Z662-15.

The OEB finds that there is insufficient evidence, at least at this time, to justify removal of the NPS 10 pipeline as requested by Essex County. The public interest does not support the expenditure of an additional \$5.9 million in costs for such removal. The OEB notes that the proposed removal would also unnecessarily impact the surrounding environment to meet as yet undefined future needs for that land.

³¹ *Union Gas Ltd. v. Norwich (Township)*, 2018 ONCA 11.

TAB 3

RP-1999-0048 - Report to the Board - Model Franchise Agreement (December 29, 2000)
Pages 25-27

RP-1999-0048

IN THE MATTER OF the *Municipal Franchises Act*;

AND IN THE MATTER OF the 2000 Model Franchise Agreement.

BEFORE: Sheila K. Halladay
Presiding Member

Floyd Laughren
Member and Chair

Judy Simon
Member

A. Catherina Spoel
Member

REPORT TO THE BOARD

December 29, 2000

3. ISSUES NOT AGREED TO BY ALL OF THE PARTIES

3.1 RELOCATION COSTS

3.1.1 Ottawa-Carleton submitted that it was reasonable for the Gas Companies to pay all costs associated with the relocation of gas pipelines since the Gas Companies know when they request the use of rights-of-way for pipelines that relocation is a distinct possibility. Ottawa-Carleton also submitted that relocation costs are no different from other utility related rights-of-way costs, which should be paid by the user, not the taxpayer. Ottawa-Carleton indicated that the Federation of Canadian Municipalities ("FCM") supports the position that telecommunication and private utility companies should pay 100% of relocation costs, where required for bona fide municipal purposes. If the Board decides that municipal taxpayers should share Gas Companies' relocation costs, Ottawa-Carleton requested that consideration be given to the sliding scale presented in its submissions.

3.1.2 The Gas Companies contended that the provisions of the 1987 MFA are reasonable. If Gas Companies were required to pay all of the costs of relocation, the municipality would not be at financial risk for any part of the decision to relocate the pipeline.

- 3.1.3 Ottawa-Carleton responded to this concern by pointing out that serious road management and cost implications for the municipality would preclude a municipality from asking a Gas Company to relocate its lines without due thought.
- 3.1.4 The Township of Hay expressed concern that in some rural municipalities there are recreational developments with dirt or gravelled roadways that have been mainly created by use, and that have not been constructed in the correct location according to a Plan of Subdivision. These roads have not been assumed by nor are they maintained by the municipality. In some of these developments Gas Companies have installed their pipelines along the travelled portion of the roadways. If the municipality assumes liability, the roadways will have to be constructed in the correct location according to a Plan of Subdivision, and that may require relocation of the gas pipelines. The Township of Hay felt that a municipality should not be required to pay any of the costs of relocation of the gas pipelines in these circumstances where the gas pipeline location was not approved by the municipality in the first place.
- 3.1.5 AMO and the Gas Companies ultimately proposed that there should be no changes to the provisions of the 1987 MFA relating to pipeline relocation.

Panel Recommendation

- 3.1.6 The Panel recommends that the Board accept the recommendation of AMO and the Gas Companies that the provisions of the 1987 MFA with respect to relocation costs should not be altered, with the modification requested by the Township of Hay that where the municipality has not originally approved the pipeline location, such as in unassumed road allowances, relocation costs should be paid by the Gas Company.

3.1.7 The Panel recommends that Clause 12 (d) of the 2000 MFA be 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, in which case the Gas Company shall pay 100% of the relocation costs.

3.2 DURATION OF THE AGREEMENT

3.2.1 In E.B.O. 125 the Board stated it was of the opinion that:

... a first time agreement should be of a duration of not less than fifteen and no longer than twenty years. ... In the case of renewals, a ten to fifteen-year term would therefore seem to be adequate.

3.2.2 As discussed above, AMO was originally prepared to accept the ten to fifteen-year renewal term provided the Board accepted its proposal for allowing the franchise agreement to be amended if there is a legislative change. If this is not the case, AMO requested a maximum ten-year term for renewal of franchise agreements.

3.2.3 The Gas Companies felt that franchise agreements and renewals should not be shorter than they are currently (20 and 15 years respectively). The Gas Companies pointed out that they evaluate the economic feasibility for system expansion to recover the costs of an investment in the distribution system to provide service to residential customers over a period of 40 years or more. For a typical expansion project