



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

March 1, 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' reply submission 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.

### **REPLY ARGUMENT OF ENBRIDGE GAS INC.**

1. These are Enbridge Gas' reply submissions in response to the submissions of Ontario Energy Board (OEB) Staff and the Municipality of Leamington (Leamington) in this matter.

#### Response to OEB Staff's Submissions

2. Enbridge Gas brought this application forward to renew the current franchise agreement with Leamington effective January 20, 2003 with the same 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>
3. As OEB Staff recognizes, Section 10 of the *Municipal Franchises Act* gives the OEB the power, if public convenience and necessity require it, to renew or extend the right of a gas company to operate the gas distribution system in a municipality, on "terms and conditions as may be prescribed by the OEB".<sup>2</sup>
4. The Model Franchise Agreement outlines the terms that the Ontario Energy Board (OEB) finds reasonable under the *Municipal Franchises Act*.<sup>3</sup> As was confirmed by OEB Staff, 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>4</sup> The OEB has been consistent in this regard<sup>5</sup> and Enbridge Gas submits there is no reason to take a different approach in this case.

---

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

<sup>2</sup> OEB Staff Submission, February 21, 2023, page 3

<sup>3</sup> Report of the Ontario Energy Board - Natural Gas Facilities Handbook - EB-2022-0081, March 31, 2022

<sup>4</sup> EB-2021-0269, Decision and Order, February 17, 2021

<sup>5</sup> See further decision references provided in Exhibit B.Leamington.2(a)

5. As OEB Staff notes, Leamington has not provided any evidence to demonstrate that its topography presents drainage-related operational challenges that are unique as compared to other municipalities within the province.<sup>6</sup> In fact, the only evidence on the record of this proceeding is that Enbridge Gas must address drainage-related operational challenges in many municipalities throughout the province.
6. OEB Staff rightly argues that the cost-sharing provisions of the Model Franchise Agreement should apply to Leamington<sup>7</sup> as they do in every other municipality in which Enbridge Gas operates. Enbridge Gas agrees with OEB Staff's submission that if the cost-sharing formula in paragraph 12 (d) of the Model Franchise Agreement does not apply in Leamington, then it will likely result in additional costs being passed on to Enbridge Gas' ratepayers.<sup>8</sup>

#### Response to Leamington's Submissions

7. Contrary to Leamington's assertion, Enbridge Gas is not wanting to put a Model Franchise Agreement in place with Leamington because "everyone else in Ontario signed it and so Leamington should do the same".<sup>9</sup> The Model Franchise Agreement outlines the terms that the OEB finds reasonable under the *Municipal Franchises Act* and natural gas distributors are expected to follow the form of the Model Franchise Agreement when filing applications for the approval of franchise agreements.
8. Enbridge Gas completely disagrees with Leamington's submission that the agreement to operate under the existing franchise agreement has always been based upon the understanding that matters involving the *Drainage Act* would be governed by the costs sharing provision of the *Drainage Act*.<sup>10</sup> Enbridge Gas has always maintained that a franchise agreement between the parties operates as an exception to the cost allocation provisions set out in the *Drainage Act* as was confirmed by the Court of Appeal.<sup>11</sup> There is absolutely no evidence on the record of this proceeding to confirm Leamington's assertion.
9. Given the consistent position taken by the OEB that a municipality would need to provide compelling evidence that an amendment to the Model Franchise Agreement should be considered, and the fact that Leamington has not provided any such evidence, Enbridge Gas submits that there is no compelling reason to amend the Model Franchise Agreement for Leamington.
10. Enbridge Gas disagrees with Leamington's assertion that the Court of Appeal for Ontario said that the cost sharing provisions of the Model Franchise Agreement are open to negotiations before a municipality is required to enter into the franchise agreement.<sup>12</sup> What the Court of Appeal clearly stated is that the cost-sharing mechanism in the franchise agreement prevails over any assessment that was or could have been made under the *Drainage Act* against the utility as a result of the relocation of its pipeline to accommodate municipal work.<sup>13</sup> The Court of Appeal also found that the *Drainage Act* is not a public policy statute and there is nothing in the legislative scheme to suggest that the ability to contract for the allocation of relocation costs between a municipality and a utility is contrary to public policy, and the OEB explicitly found that the franchise agreement was "in the public interest".<sup>14</sup>

---

<sup>6</sup> OEB Staff Submission, February 21, 2023, page 3

<sup>7</sup> OEB Staff Submission, February 21, 2023, page 7

<sup>8</sup> OEB Staff Submission, February 21, 2023, page 7

<sup>9</sup> Leamington Submission, February 21, 2023, paragraph 1

<sup>10</sup> Leamington Submission, February 21, 2023, paragraph 2

<sup>11</sup> *Union Gas Limited v. Norwich (Township)*, 2018 ONCA 11

<sup>12</sup> Leamington Submission, February 21, 2023, paragraph 9

<sup>13</sup> *Union Gas Limited v. Norwich (Township)*, 2018 ONCA 11, paragraph 35

<sup>14</sup> *Union Gas Limited v. Norwich (Township)*, 2018 ONCA 11, paragraph 31

11. Indeed, it is the OEB's prerogative to approve the terms of the franchise agreement under the *Municipal Franchises Act* and the effect of the OEB making an order under section 10(2) of that *Municipal Franchises Act* is that the order is deemed to be a valid by-law of the municipality assented to by the municipal electors.<sup>15</sup>
12. Leamington's assertion that it is likely that if other municipalities were aware of the Court of Appeal decision that they would have objected to executing the Model Franchise Agreement<sup>16</sup> is not based on any factual evidence, and is counter to Enbridge Gas' experience that the municipalities currently receiving natural gas service under the Model Franchise Agreement understand the provisions of the franchise agreement and appreciate the opportunities that gas distribution service provides to the residents and businesses within the municipality.
13. Enbridge Gas disagrees with Leamington's assertion that it has met the burden to provide compelling evidence that it is unique with respect to Enbridge Gas' operations within the municipality.<sup>17</sup> To the contrary, the only evidence on the record of this proceeding is that Leamington is not unique in that regard.
14. Enbridge Gas disagrees completely with Leamington's assertion that the OEB has no authority to impose the terms of the Model Franchise Agreement upon Leamington.<sup>18</sup> Section 10 of the *Municipal Franchises Act* gives the OEB the power, if public convenience and necessity require it, to renew or extend the right of a gas company to operate the gas distribution system in a municipality, on "terms and conditions as may be prescribed by the OEB". As was stated in OEB Staff's submission, the OEB may issue an order renewing a franchise under section 10 of the *Municipal Franchises Act* even when there is no agreement between the municipality and the gas company and this position has been held consistently by the courts and the OEB.
15. In conclusion, Enbridge Gas requests that the OEB 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 1<sup>st</sup> day of March, 2023.

---

<sup>15</sup> Municipal Franchises Act, section 10(5)

<sup>16</sup> Leamington Submission, February 21, 2023, paragraph 10

<sup>17</sup> Leamington Submission, February 21, 2023, paragraph 12

<sup>18</sup> Leamington Submission, February 21, 2023, paragraph 10(d)