



Subject:
Date:



FW: Intervention Form: EB-2024-0134 - Concerned Residents
Friday, June 14, 2024 9:49:18 AM

From: Ontario Energy Board <webmaster@oeb.ca>
Sent: Monday, May 13, 2024 1:22 PM
To: Office of the Registrar <Registrar@oeb.ca>
Cc: Kent <kent@elsonadvocacy.ca>
Subject: Intervention Form: EB-2024-0134 - Concerned Residents

Intervention Form

Case Number:

EB-2024-0134

Intervenor Name:

Concerned Residents

Mandate and Objectives:

This intervention is brought by a group of local residents who are concerned about financial and environmental impacts of methane gas distribution and combustion.

Membership of the Intervenor and Constituency Represented:

The intervenor group includes local residents of Lennox and Addington County.

Programs or Activities Carried Out by the Intervenor:

No applicable.

Governance Structure:

Instructions will be provided to counsel by a lead resident representative, Eric DePoe. All resident members will be provided a copy of all materials and will work with the lead representative to formulate instructions.

Representatives:

Kent Elson

kent@elsonadvocacy.ca

Amanda Montgomery

amanda@elsonadvocacy.ca

Other Contacts:

Eric DePoe

ericdepoe@yahoo.ca

Frequent Intervenor Form:

OEB Proceedings:

Not applicable.

Issues:

The Residents wish to raise the following issues:

- Should the Franchise Agreement include a provision allowing the municipality to trigger a renegotiation regarding fees for use of the right-of-way in the event that regulations are changed to allow for such fees, including a right for the municipality to terminate the franchise agreement with sufficient notice or take other appropriate steps if an agreement cannot be reached regarding fees?
- Are the terms of the proposed agreement regarding the allocation of costs to move gas distribution pipelines appropriate in the event of a conflict with future public or private infrastructure fair and appropriate in light of the gas distributor paying no fees to use the right-of-way?
- Are the terms of the proposed agreement regarding the allocation of costs and liability to abandon pipelines appropriate, including appropriateness in light of the possibility of wide-scale abandonments of pipelines due to the energy transition?
- Does the proposed agreement adequately protect the interests of municipal electors vis-à-vis the gas distributor with respect the issues referenced above?

- Overall, are there valid reasons to approve an agreement that differs from the Model Franchise Agreement in light of changing circumstances such as the requests from municipalities to be allowed to charge fees for use of the right-of-way by distributors, impacts of the energy transition, local circumstances, and other factors that have arisen since consultations took place on the current model municipal franchise agreement approximately 25 years ago?
- Overall, does the proposed franchise agreement meet the public convenience and necessity test in light of the above and other issues?
- Overall, should the assent of municipal electors be required in the circumstances?

Policy Interests:

The Residents are concerned about both private interests and policy interests. The policy interests include environmental protection and combating climate change. This policy interest is relevant for a number of reasons, including whether the financial terms of the franchise agreement are unfairly skewed in favour of the gas distribution company and represent a fossil fuel subsidy. The policy interests also include fairness for municipal electors.

Hearings:

A written hearing is sufficient if interrogatories are allowed and if full and adequate responses are provided in accordance with the OEB's Rules of Practice and Procedure. We understand that uncontested municipal franchise agreements are usually approved without interrogatories or other steps typical in other kinds of OEB hearings. This is also true for uncontested orders dispensing with approval from municipal electors. However, interrogatories should be allowed in this case because:

- The Municipal Franchises Act requires that a public hearing be held;
- Unlike almost all other franchise agreement applications, this application is contested;
- The Residents are raising issues that have not been raised previously;
- The model franchise agreement was prepared approximately 25 years ago and circumstances have materially changed since that time; and
- The Residents are at a considerable information disadvantage as the gas distribution company has been involved in hundreds or thousands of municipal franchise agreement proceedings over the decades whereas the Residents first became aware of this proceeding through the public notice posted in local newspapers.

Furthermore, we note that the Model Franchise Agreement is simply a "template" according to the OEB in RP-1999-0048. As noted by the OEB at that time "The Panel notes that the Board does not have the jurisdiction to impose a uniform agreement on the parties. That would be tantamount to a predetermination of the decisions which the Board is required to make under the MFA" (OEB Decision, s. 5.1.10).

The Residents are open to a resolution of this case through a settlement conference and believe that a resolution may be possible. As many of the issues being raised are new, they could benefit from discussions among the parties.

Evidence:

The Residents request the opportunity to file evidence in this proceeding regarding the circumstances that justify agreement terms that do not appear in the model franchise agreement, including some of the circumstances discussed above. The residents request an opportunity to provide details regarding the proposed evidence after interrogatory responses have been filed. If full and adequate interrogatory responses are provided, this may allow the residents to reduce the scope and potential cost of such evidence.

Coordination with Other Intervenor:

The Residents have grouped together as one intervenor with one set of counsel to avoid duplication, effort, and cost.

Cost Awards:

The Residents are applying for costs. The Residents are eligible for costs under s. 3.03(b) and (c) of the OEB Rules of Practice and Procedure, including as follows:

- The Residents represent an interest relevant to the OEB's mandate and to this specific proceeding as the Residents include municipal electors who are impacted by the terms of the proposed municipal franchise agreement and by an order dispensing with approval from the municipal electors.
- The Residents represent a relevant policy interest in environmental protection as they seek a franchise agreement that will not provide payments or land-use benefits from municipal electors to the gas distribution company that could represent a fossil fuel subsidy.
- The Residents include persons with an interest in land that is affected by the process as they own land in the municipality.

Language Preference:

English is preferred.