

Intervention Form

Case Number:

EB-2024-0188

Intervenor Name:

Dr. Anne-Marie Zajdlik and eMERGE Guelph Sustainability

Mandate and Objectives:

Dr. Anne-Marie Zajdlik is a family physician, living in Guelph Eramosa Township. She is a member of the Guelph Family Health Team Green Council which recognises that climate change is the single greatest population health concern today and works to reduce waste and carbon emissions from local healthcare. eMERGE Guelph Sustainability operates in Guelph and its surrounding areas to fight climate change through advocacy, program and policy development.

The proposed intervenors request the opportunity to share their concerns about the proposed franchising agreement.

Membership of the Intervenor and Constituency

Represented:

The intervenor includes a local resident and environmental organization.

Programs or Activities Carried Out by the Intervenor:

eMERGE Guelph Sustainability conducts educational campaigns aimed at assisting local residents of Guelph and surrounding areas to reduce their energy, water use and carbon footprint. They also advocate towards local policy changes and host environmental events.

Governance Structure:

Instructions will be jointly provided to counsel by Dr. Zajdlik and Evan Ferrari, Executive Director of eMERGE Guelph Sustainability.

Representatives:

Kent Elson
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416-906-7305

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416-936-3965

Other Contacts:

Frequent Intervenor Form:

OEB Proceedings:

Although the proposed intervenors have not been involved in OEB proceedings in the past, they are supported by counsel with extensive experience representing clients in over 60 OEB proceedings over the past decade.

Issues:

Dr. Zajdlik and eMERGE Guelph Sustainability 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 to 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:

Dr. Zajdlik and eMERGE Guelph Sustainability are concerned about both private interests and policy interests. The policy interests include financial interests of municipal electors, improved health outcomes for local residents, and environmental protection. 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 at the expense of municipal taxpayers and represent a fossil fuel subsidy.

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 proposed intervenors 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
- Dr. Zajdlik and eMERGE Guelph Sustainability 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 MFAct” (OEB Decision, s. 5.1.10).

The proposed intervenors 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 proposed intervenors 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. They 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 proposed intervenors to reduce the scope and potential cost of such evidence.

Coordination with Other Intervenors:

Dr. Zajdlik and eMERGE Guelph Sustainability have grouped together as one intervenor with one set of counsel to avoid duplication, effort, and cost. They are also represented by counsel who are representing local residents of Lennox and Addington County, who are seeking to raise similar issues. This will allow for coordination between proceedings and avoid duplication. Counsel for the proposed intervenors intend to approach the applicant and OEB staff to determine if they would support greater coordination between the proceedings, including the possibility that they be heard together.

Cost Awards:

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

- As a local resident, Dr. Zajdlik represents an interest relevant to the OEB's mandate and to this specific proceeding as she is a municipal elector, impacted by the terms of the proposed municipal franchise agreement and by an order dispensing with approval from the municipal electors.
- Dr. Zajdlik and eMERGE Guelph Sustainability 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 such that it could represent a fossil fuel subsidy.

Language Preference:

English

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