

Elson Advocacy

August 2, 2024

Nancy Marconi
Registrar
Ontario Energy Board
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Toronto, Ontario M4P 1E4
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Dear Ms. Marconi

**Re: County of Lennox and Addington Franchise Agreement
EB-2024-0134**

I am writing on behalf of the Concerned Residents pursuant to *Procedural Order #1* to answer the questions posed by the OEB in that procedural order. We have answered the questions below in reverse order as the nature of the proposed evidence (question 1) can be explained more efficiently after discussing the outcomes that the Concerned Residents are seeking.

Question 3: What specific outcome(s) is Concerned Residents seeking in this proceeding, including possible impact(s) on the MFA?

At the highest level, the Concerned Residents are seeking a franchise agreement that is fairer for residents and taxpayers in Lennox and Addington County (the “County”). The Concerned Residents currently have two primary concerns with the agreement proposed by the Applicant.

1. **Locking in free use of highway lands:** The proposed agreement appears to lock the County into an arrangement where it cannot charge any fees for use of its highways for pipelines for 20 years. This is concerning because there is an ongoing campaign by some municipalities to be able to charge fees for use of these lands, including requests that the Province of Ontario amend s. 9 of Ontario Regulation 584/06 to allow for such fees. If the campaign is successful and fees are allowed, the County could still be prevented from charging said fees by being locked into this franchise agreement.

This could be addressed in a number of ways in the franchise agreement. For example, a new term could be added to the agreement that would give the County the right to trigger a negotiation for said fees in the event that O. Reg. 584/06 is amended to allow those fees, including remedies that the County can exercise if fees cannot be agreed on within a reasonable timeframe.

2. **Payment for relocation:** The proposed agreement requires taxpayers to bear too large of a burden for relocating gas pipelines where they conflict with public works. It appears

that taxpayers must bear 100% of these costs for public works that do not fit the definition of municipal works and 35% of the cost for conflicts with municipal works. This is unreasonable seeing as the gas distributor pays \$0 for use of these public lands. Requiring that municipalities use taxpayer dollars to support methane gas pipelines is no longer in the public interest at a time where (a) methane gas is no longer the cheapest heating option and (b) methane gas combustion causes one-third of Ontario's greenhouse gas emissions and needs to be eliminated over the span of approximately 25 years (i.e. by 2050).

This could be addressed in a number of ways in the franchise agreement. First, the cost sharing provisions in section 12 should apply to all public works, not only those public works that can be defined as municipal works. Second, the share of relocation costs borne by taxpayers should be reduced to 0%.

The Concerned Residents would prefer to achieve changes to the County's next franchise agreement to address those issues as soon as possible. However, there may be other alternative outcomes which would not provide as much progress but would represent a step forward. We can imagine two examples of alternative outcomes:

1. **Decline s. 9(4) order:** The OEB could decline to order that the assent of municipal electors can be dispensed with under s. 9(4) of the *Municipal Franchises Act*. This would allow the issues regarding fairness to those municipal electors to be voted on by those municipal electors.
2. **Call a generic hearing:** The OEB could initiate a generic hearing into the model franchise agreement seeing as the previous generic hearing resulting in the current model was approximately 25 years ago.

Although we have identified some potential amendments to the franchise agreement, the Concerned Residents enter this proceeding with an open mind and wish to reserve the right to hone and adjust their requests based on the evidence that comes forward and the discussions that may occur through this proceeding.

Question 2: What is Concerned Residents' position with respect to the OEB's authority, in a franchise renewal proceeding, to prescribe terms and conditions of a municipal franchise agreement that vary from those that the two contracting parties, one of which is the elected council of the citizens of the municipality, have agreed on for the continuation of the franchise and that are consistent with the MFA?

As a preliminary matter, there are a number of options to address the issues noted above without prescribing terms and conditions that vary from those proposed by the Applicant. For instance, the OEB could deny approval of the terms and conditions of the agreement under s. 9(1) of the *Municipal Franchises Act* with reasons addressing the issues above and with leave for the Applicant to re-apply. Alternatively, the OEB could decline to order that the assent of municipal electors can be dispensed with under s. 9(4) of the *Municipal Franchises Act*. In both cases, the

issues would be put back to the parties before they are brought back to the OEB again for reconsideration.

Alternatively, the OEB can impose terms of a franchise agreement. That has been done before in the past over the objections of one party and there is no jurisdictional impediment to it occurring over the objections of two parties. However, as a practical matter, the agreement terms sought by the Concerned Residents are for the benefit of the County, and so it is highly unlikely that the County would object to them. As such, any order imposing terms would likely only be over the objections of the gas distributor.

The power to impose terms is most clearly set out in s. 10(2) of the *Municipal Franchises Act*, which reads as follows:

The Ontario Energy Board has and may exercise jurisdiction and power necessary for the purposes of this section and, if public convenience and necessity appear to require it, may make an order renewing or extending the term of the right for such period of time and upon such terms and conditions as may be prescribed by the Board, or if public convenience and necessity do not appear to require a renewal or extension of the term of the right, may make an order refusing a renewal or extension of the right.

In this case, Enbridge has applied under s. 9, which also states that “[t]he Ontario Energy Board has and may exercise jurisdiction and power necessary for the purposes of this section and may give or refuse its approval.” It is not entirely clear based on this wording if specific conditions could be directly imposed in a s. 9 application. We believe they could. However, if we are incorrect, there is no doubt that approval under s. 9 could be denied such that the applicant is required to apply under s. 10, which clearly gives the OEB jurisdiction to impose terms.

In sum, the OEB has the jurisdiction to deny approval and send the matter back to the parties for renegotiation with reasons or, as an alternative, to directly impose terms. Either option could address the issues raised by the Concerned Residents.

Question 1: What is the nature of the evidence that Concerned Residents plans to submit for consideration by the OEB in this proceeding and what is the proposed timing for the filing of such evidence?

The Concerned Residents wish to submit evidence (a) justifying the adjustments to the franchise agreement that they seek as outlined on pages 1 and 2 above and (b) setting out the changes that have occurred since 2000 that would justify deviating from the model franchise agreement. This would include:

1. Evidence in support of the need to allow for a negotiation regarding fees in the event that O. Reg. 584/06 is amended, including evidence that such amendments are a real possibility over the agreement term, such as details of efforts by municipalities to seek those changes;

2. Evidence to justify fees for use of the highways, such as evidence on fees charged in other jurisdictions for use of highways and fees charged to district energy pipelines for use of the highways; and
3. Evidence on why it is no longer in the public interest to require taxpayers to provide free access to highway lands and to pay for pipeline relocations, such as the role of that infrastructure in causing climate change.

The extent of evidence required will depend on the interrogatory responses. We hope to obtain as much of the evidence as possible through interrogatories.

We anticipate that four weeks will be required to prepare the evidence. However, we will work within whatever timelines the OEB may provide. If timing is an issue, the Concerned Residents do not object to an interim extension of the existing franchise agreement to allow the issues in this proceeding to be adequately addressed.

It is not clear to us whether the OEB is currently seeking a fully detailed description, timeline, and budget for the proposed evidence. It appears to us that the OEB is only looking to determine the nature of the evidence at a high level before setting out the next steps in this proceeding and for the purposes of determining whether to grant our request to accept detailed evidence proposals after receiving interrogatory responses. We have therefore provided a high-level response, but we can provide additional details if they are needed at this time and if the OEB declines our request to defer that step until after receipt of the interrogatory responses.

Yours truly,



Kent Elson