



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

September 6, 2024

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 and New CPCN (Application)
Township of Guelph/Eramosa (Township)
Ontario Energy Board (OEB) File No. EB-2024-0188**

Enbridge Gas submits the following comments on the request for intervenor status submitted by Dr. Anne-Marie Zajdlik and eMERGE Guelph Sustainability (collectively, Requesters) on July 15, 2024. Enbridge Gas only became aware of this intervention request through a communication from OEB Staff on August 29, 2024, despite the requirement in Rule 22.01 of the OEB's *Rules of Practice and Procedure* and explained in the OEB's *Intervention Process Guidance Document*¹ that an application for intervenor status shall be served on the applicant.

To be accepted as an intervenor, a party must satisfy the OEB that it has a substantial interest in the matter being adjudicated. That does not appear to be the case from the information set out in the intervention form of the Requesters. Also concerning is the fact that the Requesters appear to be attempting to override the legal authority of the Township to determine matters impacting its residents. That is, the Requesters are asking the OEB to allow them to challenge and question terms of an agreement for utility services that the Township, through its council (Council), has endorsed and supported to be in the interests of its residents, thus attempting to circumvent appropriate municipal governance processes. Enbridge Gas urges the OEB to deny the Requesters' intervention for these reasons, as further explained below.

As far as Enbridge Gas is aware and according to the information set out in the intervention form, neither of the Requesters is an Enbridge Gas customer and only one of the Requesters, Dr. Zajdlik, is a resident of the Township. The Hope Health Centre, for which Dr. Zajdlik is a medical director, and the Guelph Family Health Team to which she belongs are both located in the City of Guelph. According to its web site², eMERGE Guelph's goal is to help people reduce their energy, water use, and carbon footprint and to change public policy within the City of Guelph.

¹ <https://www.oeb.ca/sites/default/files/Intervention-Process-Guidance-Document-20230323-en.pdf>

² <https://emergeguelph.ca>

As is noted in the Application, while the Township is a lower-tier municipality located in the County of Wellington, it is distinct and separate from the City of Guelph. There appears to be no substantial interest connection between the work being done by eMERGE Guelph in the City of Guelph and the provision of gas distribution services within the Township.

It is unclear who exactly constitutes eMERGE Guelph or how this organization has a substantial interest in the review of the renewal of a franchise agreement between Enbridge Gas and the Township. The only contact information made available for the Requesters is for a legal firm in Toronto and an office location within the City of Guelph. For instance, there is no indication if there are additional residents within the Township associated with eMERGE Guelph. The OEB should not accept as sufficient this level of interest or desire of an advocacy group to influence utility services in another community. Neither should the OEB endorse Enbridge Gas' current customers subsidizing such an intervention (and evidence) of non-residents and non-gas customers.

In its intervention form, the Requesters highlight concerns about the Township not being able to charge fees for use of highways under its jurisdiction and taxpayers bearing too large of a burden. The OEB should reject this concern as the Requesters have no authority to speak for the Township regarding municipal taxes or the use of public highways for utility services and neither do we know whether the Requesters have even raised their issues with the Township.

As is well-documented in the Application and supporting evidence, the Township is in full agreement with the terms and conditions of the proposed franchise agreement, which is for the renewal of a long-standing franchise relationship that has been in place with the Township since 1954, today serving over 3500 customers.

Local governments in Ontario are the responsible level of government to make determinations in the best interests of their constituents. The meetings of local governments are, as required by law, open to the public to make deputations and submit delegation on issues of local importance. The issues are then publicly debated by members of Council who make an informed decision on behalf of the community.

Here, the franchise agreement was brought before a local council, supported by a detailed staff report. The public had full rights of participation at that Council meeting and this would have been the appropriate time for citizens actually resident in the local municipality to make submissions to Council for its determination. The Requesters made no submission and no delegation to local Council at the appropriate point in time for the determination of this issue.

Prior to the Township's public meeting on this issue on May 21, 2024, an agenda and supporting staff reports were prepared and posted on the Township's website³. The meeting took place both in person and electronically via Zoom. The Clerk's department prepared and posted a positive staff report recommending the terms and conditions contained in the model franchise agreement. No contrary material was filed by staff or any members of the public. Issues debated at municipal council are often contentious. Tellingly, in this case, there was no ambiguity or dispute. Rather, the vote at Council was carried unanimously in favour of the terms and conditions of the franchise agreement, thereby dispensing with an unnecessary and costly assent of electors referendum.

³ Township Agenda and Council Minutes, May 21, 2024 - <https://www.get.on.ca/township-services/committee/mayor-and-council/meetings>

The resolution passed by council and submitted at Schedule D of the Application attests to Council's agreement with the proposed franchise agreement to ensure that natural gas is made available to the citizens of the Township uninterrupted. As noted, there is no indication in the information filed by the Requesters whether they have communicated with the Township on these matters. And if they have, the Township did not indicate this to Enbridge Gas in any way.

It is respectfully submitted that the OEB ought to defer to the unequivocal and unanimous decision of the local government in this matter. The issue was presented at Council and interested parties were afforded a full opportunity to make whatever submissions they deemed important and necessary. Ultimately, there were no questions or debate on the matter, and it was unanimously supported by Council. The presence of this proposed intervention attempts to take an end-run around this carefully considered, supported, unanimous decision of a responsible local government.

It is also wholly inappropriate for the OEB to accept the Requesters as intervenors with respect to waiving the need for the assent of municipal electors in respect of the Application. Similar to its support for the franchise agreement, the Township has by resolution determined it is appropriate for the OEB to waive the assent of municipal electors and this is clearly a matter for the Township itself to determine (which it has done through its support of the Application). The OEB should heed the Township's determination over the intervention of one potential resident who has not communicated their concerns to Council and who may not be a user of the subject public utility service serving the Township. As far as Enbridge Gas is aware, the OEB has never adjudicated a franchise agreement application without dispensing with the need for the assent of municipal electors. This is not surprising or unexpected as indeed, plebiscites occur only in very rare circumstances in any event.

In any event, the Requesters are under a misapprehension of facts regarding fees as Enbridge Gas pays property taxes in every municipality in which it has facilities based on linear infrastructure and it is misleading to state that municipalities are providing free use of lands. Enbridge Gas is also subject to permit fees in several municipalities to cover the administrative costs of those municipalities issuing permits, as municipalities are entitled to charge under the Fees and Charges O. Reg. 584/06 under the *Municipal Act*.

With respect to the OEB's own policies respecting franchise matters, the OEB adopted the model franchise agreement following significant input from the Association of Municipalities of Ontario (AMO) and the natural gas utilities of the day as a tool to efficiently administer the many franchise agreements across Ontario. This includes terms and conditions such as the 20-year term of the agreement and the allocation of costs associated with pipeline relocation required at the request of the municipality. The OEB's *Natural Gas Facilities Handbook* directs that franchise agreements be based on the model franchise agreement unless there are compelling reasons to deviate from it.⁴

In this case, the Requesters have not raised any issues unique to the Township or its citizens that should lead the OEB to consider such a deviation. As noted in the Requesters' intervention form, the issues raised are identical to those raised by the Concerned Residents in the review of Enbridge Gas' application for approval of the renewal of the franchise agreement with the County of Lennox & Addington⁵ (which is hundreds of miles away from the Township).

⁴ *Natural Gas Facilities Handbook*, page 11

⁵ EB-2024-0134

The Requesters are also represented by the same Toronto legal counsel that represents Environmental Defence and, on occasion, Green Energy Coalition, both frequent intervenors before the OEB in many Enbridge Gas cases raising very similar issues related to energy transition. The Township itself has not raised these issues as a concern, so it is not even apparent that the concerns are valid with respect to the Township, aside from the assertions of the one Township resident, Dr. Zajdlik.

As the OEB is well-aware, Enbridge Gas has franchise agreements in place with 312 single/lower-tier municipalities and 27 upper-tier municipalities throughout Ontario, all in the form of the current model franchise agreement as determined by the OEB in accordance with its longstanding policy and practice.

If the OEB is at all inclined to consider any of the issues raised by the Requesters in the intervention form, Enbridge Gas submits that it would certainly not be appropriate for the OEB to consider changes to the model franchise agreement and other such issues in an ad hoc and narrow manner as is being suggested by the Requesters as part of this Application. Neither would it be appropriate for the OEB to accept the Requesters' suggestion that the Application be combined in any way with the review of the application associated with the renewal of the franchise agreement with the County of Lennox & Addington. Enbridge Gas assumes that neither the Requesters nor the Concerned Residents (in the County of Lennox & Addington) have notified their respective municipalities of their concerns or served their intervention notice on the municipalities (as they failed to do for Enbridge Gas as applicant). The OEB should be concerned about this deficiency in providing notice to the directly impacted municipalities just as the OEB should be concerned about any deficiency in providing notice to the other 339 municipalities throughout Ontario that may be impacted by the OEB considering any of the issues raised by the Requesters and the Concerned Residents.

Enbridge Gas submits the OEB ought to reject the Requesters' intervention outright for the reasons set out above. If the OEB disagrees with Enbridge Gas and wishes to consider any of the issues raised, the OEB must carefully consider whether notice to impacted parties has been provided and if not, must provide for such notice. The OEB should also conduct an analysis and assessment of the issues raised in accordance with its *Generic Hearings Protocol* to determine whether there is a broader applicability, which Enbridge Gas submits there likely would be, depending upon how the OEB decides to scope the issues. If the OEB were to consider such generic issues in relation to the model franchise agreement, such consideration must include an opportunity for other stakeholders to participate, including other municipalities, gas ratepayers and gas distribution utilities at a minimum.

Should you have any questions on this submission, please do not hesitate to contact me.

Yours truly,

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