

EB-2024-0134

County of Lennox and Addington Franchise Agreement

Interrogatory # CR-1

Reference: Proposed Agreement, para. 3;

City of Toronto Staff Report, *Impact of Bill 165 & Gas Utility Use of Public Property in Toronto*, May 13, 2024

Question(s):

- (a) Please confirm if Enbridge agrees or disagrees with the following statements from the above-referenced City of Toronto report. Please explain the response:
- (i) “Municipalities outside Ontario can and do charge gas utilities for use of the right of way (including Edmonton, Calgary and Regina) generating revenue between \$24 and \$97 per capita annually.” (p. 2)
 - (ii) “Were the Province to amend its regulation and City Council decided to apply a land-based charge to Enbridge’s use of the right of way, it could generate between \$73 million and \$293 million in total annual revenue based on the range of currently observed charges elsewhere.” (p. 2)
 - (iii) “Applying a land-based charge could align with the need to transition away from fossil fuels and move toward lower carbon energy like electricity from Ontario’s relatively clean grid and local renewable generation.” (p. 3)
 - (iv) “Space in the right of way is limited, both above ground and below ground as this space is used to convey services like water, telecommunications, electricity, natural gas and for transit infrastructure. A key difference between the use of the right of way for natural gas and all other uses is that natural gas is a fossil fuel that causes climate change.” (p. 8)
 - (v) “If widespread adoption of electric heating occurs in buildings sector and a number of customers disconnect from the natural gas grid, there could be an increase in the number of abandoned pipelines within Toronto.” (p. 9)
 - (vi) “...cities in provinces outside Ontario are charging gas utilities for use of the right of way and gaining significant revenue by doing so.” (p. 10)

Interrogatory # CR-2

Reference: Proposed Agreement, para. 3.

Question(s):

- (a) Please confirm that the City of Toronto passed a motion to “request the Minister of Municipal Affairs and Housing to amend Ontario Regulation 595/06, FEES AND

CHARGES, to allow the City to charge gas utilities for their use of public lands as Edmonton, Calgary, Regina and Winnipeg do, in order to fund infrastructure resilience against the impacts of climate change.” If not, please explain why not.¹

- (b) Please confirm that the City of Ottawa has made a similar request.²
- (c) Please confirm that there is an equivalent regulation under the *Municipal Act* regarding fees for use of public land.³
- (d) Is Enbridge aware of any other similar requests being made?
- (e) Does Enbridge oppose the request by the City of Toronto?
- (f) Does Enbridge have any information to suggest whether or not the City of Toronto’s request will be granted? If yes, please file that information.

Interrogatory # CR-3

Reference: Proposed Agreement, para. 3;

City of Toronto Staff Report, *Impact of Bill 165 & Gas Utility Use of Public Property in Toronto*, May 13, 2024

Question(s):

- (a) Please review the factual statements regarding fees for use of public property for gas infrastructure on pages 2 to 3 and 8 to 12 of the above-reference City of Toronto report and advise if Enbridge disagrees with any such statements. If yes, please provide a table with an excerpt of the statement and an explanation of why Enbridge disagrees.
- (b) Does Enbridge believe that the City of Toronto is a trustworthy source of information on fees for use of municipal highways?
- (c) Does Enbridge believe that the City of Toronto is an authoritative source of information on fees for use of municipal highways?

Interrogatory # CR-4

Reference: Proposed Agreement, para. 3

Preamble: Section 9 of O. Reg. 584/06 reads as follows:

9. A municipality and a local board do not have power under the Act to impose a fee or charge on a generator, transmitter, distributor or retailer, as these terms are defined in section 2 of the Electricity Act, 1998, or on a producer, gas distributor, gas transmitter or storage company, as these terms are defined in section 3 of the Ontario Energy Board Act, 1998, for services or activities, costs payable or the use of property with respect to wires, cables, poles, conduits, pipes, equipment, machinery or other works that,

- (a) are or will be located **on** a municipal highway; and

¹ <https://secure.toronto.ca/council/agenda-item.do?item=2024.IE14.9>

² https://documents.ottawa.ca/sites/documents/files/jimwatsonletter_toddsmith_en.pdf

³ <https://www.ontario.ca/laws/regulation/060584>, s. 9.

- (b) are or will be used as part of the business of the generator, transmitter, distributor, retailer, producer, gas distributor, gas transmitter or storage company, as the case may be.

Question(s):

- (a) The section prohibits fees for works that are or will be located “on” a municipal highway. The section does not prohibit fees for works that are or will be located under a municipal highway. Please provide Enbridge’s position on the meaning of this section and whether it prohibits fees for use of a municipal highway for pipelines under the a municipal higher. Please provide any support for Enbridge’s position, including any case law or documents tracing the development of the section.
- (b) Please file submissions that Enbridge and its predecessor corporations provided to government officials regarding the passage of O. Reg. 584/06.

Interrogatory # CR-5

Reference: Proposed Agreement, para. 3

Question(s):

- (a) Please provide Enbridge’s understanding of paragraph 3 of the proposed Franchise Agreement.
- (b) If the province were to amend s. 9 of O. Reg. 584/06 to remove any potential prohibition on municipalities charging fees to gas distributors for use of a municipal highway during the term of the proposed franchise agreement, would the County be able to charge fees for Enbridge to locate works on a municipal highway despite s. 3 of the proposed agreement.

Interrogatory # CR-6

Reference: Proposed Agreement

Question(s): Proposed Agreement, para. 3

- (a) Please confirm that municipalities are allowed to charge for use of municipal highways for the pipes involved in district energy (e.g. distributed geothermal). If the team responding to this interrogatory is unsure, we ask that they confer with staff involved with the Enbridge Sustain program.
- (b) Please confirm that some municipalities do charge for this.

Interrogatory # CR-7

Reference: Proposed Agreement

Preamble: For each of the questions below, please assume that the County is agreeable to the proposed term.

Question(s):

- (a) Would Enbridge agree to the following term for the County's Franchise Agreement:
 - 3.1 If O. Reg. 584/06 is amended to remove the prohibition on municipalities charging fees to gas distributors for the use of property with respect to pipes or works that are or will be located on a municipal highway, the Corporation may charge fees for the use of highways and may apply to the Ontario Energy Board (or an alternative body if so required by law) to set those fees.
- (b) Would Enbridge agree to the following term for the County's Franchise Agreement:
 - 3.1 If O. Reg. 584/06 is amended to remove the prohibition on municipalities charging fees to gas distributors for the use of property with respect to pipes or works that are or will be located on a municipal highway, the Gas Company shall pay any such fees duly enacted by the Corporation but may terminate its agreement accordingly.
- (c) If Enbridge would not agree to either of the above terms, would it agree to alternative terms that would avoid the possibility that the County be unable to charge fees for use of the highways due to the franchise agreement even if O. Reg. 584/06 was amended? If Enbridge believes that no such term would be warranted, please explain why

Interrogatory # CR-8

Reference: Proposed Agreement, para. 12

Question(s):

- (a) Please explain why the County should pay 35% of the costs to relocate Enbridge pipelines if they conflict with municipal works even though Enbridge pays no land-based fees to use the land under highways?
- (b) Please explain why taxpayers should pay 100% of the costs to relocate Enbridge pipelines if they conflict with public works that are not municipal works even though Enbridge pays no land-based fees to use the land under highways?
- (c) Would Enbridge agree to a term that would make the payment terms set out in the paragraph 12 of the agreement apply to all public works, with the level of government constructing said works paying the 35% contribution? Please explain.
- (d) Would Enbridge agree to a term that would make the payment terms set out in the paragraph 12 of the agreement apply to all public works, with taxpayers not needing to pay any contribution?

Interrogatory # CR-9

Reference: Proposed Agreement, para. 3

Question(s):

- (a) Please confirm that the combustion of natural gas creates approximately one-third of Ontario's greenhouse gas emissions.
- (b) Please confirm that upstream emissions add over 40% in additional emissions on top of the combustion emissions for fossil methane gas based on the default value for the Clean Fuel Standard.⁴
- (c) Please confirm that a tonne of methane is estimated to have 84 times the warming power of carbon dioxide over a 20-year period.⁵

Interrogatory # CR-10

Reference: Proposed Agreement, para. 3

Question(s):

- (a) Please provide a table listing all municipal franchise agreements entered into since 2000 that have any wording that differs from the model agreement. Please include a column showing the difference in redline.
- (b) Does Enbridge believe there would be some benefit to reviewing the model franchise agreement seeing as the generic hearing that set the terms for the current version of the model agreement took place approximately 25 years ago?

Interrogatory # CR-11

Reference: Proposed Agreement, para. 3

Question(s):

- (a) Please provide a copy of all correspondence with the County regarding the Franchise Agreement.
- (b) Did Enbridge discuss the issue of fees for use of the highways with the County? If yes, what was said?
- (c) Did the discussions regarding the proposed agreement address the possibility of future amendments to s. 9 of O. Reg. 584/06 to allow such fees to be charged?
- (d) Was the County aware of efforts by other municipalities to secure those amendments?

⁴ *Clean Fuel Regulations*, SOR/2022-140, Schedule 6, s. 8(d) ([link](#), PDF p. 170); Exhibit L, p. 11 ([link](#)); EB-2020-0066, Exhibit JT1.7 ([link](#), PDF p. 398); The default carbon intensity is 68 gCO₂e/MJ for natural gas, this number can be broken out further to 48 gCO₂e/GJ for emissions from end-use combustion, and 20 gCO₂e/MJ related to upstream extraction, processing, transportation and distribution.

⁵ Environment and Climate Change Canada ([link](#), Ex. K2.2, PDF p. 302).