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**BY EMAIL**

October 18, 2024

Ms. Nancy Marconi  
Registrar  
Ontario Energy Board  
2300 Yonge Street, 27<sup>th</sup> Floor  
Toronto, ON M4P 1E4  
[Registrar@oeb.ca](mailto:Registrar@oeb.ca)

Dear Ms. Marconi:

**Re: Ontario Energy Board (OEB) Staff Submission  
Enbridge Gas Inc.  
Application for the Renewal of a Municipal Franchise Agreement with the  
County of Lennox and Addington  
OEB File Number: EB-2024-0134**

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Please find attached OEB staff's submission in the above referenced proceeding, pursuant to Procedural Order No. 3.

Yours truly,

Natalya Plummer  
Advisor, Natural Gas Applications

Encl.

cc: All parties in EB-2024-0134



# **ONTARIO ENERGY BOARD**

## **OEB Staff Submission**

**Enbridge Gas Inc.**

**Application for the Renewal of a Municipal Franchise Agreement with  
the County of Lennox and Addington**

**EB-2024-0134**

**October 18, 2024**

## Introduction

On October 3, 2024, Concerned Residents of the County of Lennox and Addington (Concerned Residents) filed a Notice of Motion (Motion) with the Ontario Energy Board (OEB) in respect of OEB proceeding EB-2024-0134, in which Concerned Residents is an intervenor.

The Motion is for an order of the OEB, under Rule 27 of the *Rules of Practice and Procedure* (Rules), requiring the applicant, Enbridge Gas Inc. (Enbridge Gas), to provide full and adequate responses to Concerned Residents' interrogatories CR-1 to CR-4 and CR-6 to CR-10, and to a further interrogatory relating to Enbridge Gas's response to interrogatory CR-11.

The following is OEB staff's submission on the Motion. In summary, it is OEB staff's view that, while the Motion is grounded on an overly broad interpretation of Procedural Order No. 2, it should be granted on a limited and partial basis. In this submission, OEB staff also offers its views on the scope of proceedings under section 9 of the *Municipal Franchise Act* generally and on the scope of this proceeding as articulated in Procedural Order No. 2 (PO2) issued on September 6, 2024.

## Scope of Proceeding

### Procedural Order No. 2

In support of its Motion, Concerned Residents notes that the letter issued by the OEB on September 26th, 2024 did not explicitly indicate that its proposed issues are beyond scope, and that if they were out of scope would have indicated so. OEB staff notes that the OEB did not comment directly on the scope of the Concerned Residents' issues, but it did confirm that there was no need to change the procedural steps set out in PO2.

In OEB staff's view, the direction set by the OEB through PO2 in this proceeding is clear. The OEB accepted Concerned Residents' intervention and made provision for the filing of evidence by Concerned Residents on issues within the scope of this proceeding. The OEB explained that the issues within scope include "any proposed amendment(s) to the terms and conditions of the franchise that may be warranted as a result of circumstances specific to the County" [emphasis added]. For additional clarity, the OEB confirmed that "any detailed discussion of generic changes to the Model Franchise Agreement is not within scope" insofar as the application only deals with a single specific agreement renewal.

In its Motion, the Concerned Residents noted that it understood this wording to mean that "generic changes" to the model franchise agreement require a generic hearing.

Further, the OEB did not preclude the Concerned Residents from justifying new terms that are not contained in the Model Franchise Agreement in this specific agreement nor state that any such terms must relate to factors unique to the County of Lennox and Addington (County).

In its October 3, 2024 letter, Enbridge Gas noted that the Concerned Residents admits that its proposed evidence is not unique to the County; rather, the proposed evidence is explicitly going to be about other municipalities and other jurisdictions. Enbridge Gas noted that there is nothing in the Concerned Residents' submission that indicates that any of the proposed evidence will even discuss circumstances specific to the County, as it instead appears the focus will be beyond the County's borders. Enbridge Gas also noted that the Concerned Residents' justification for its proposed evidence relates to the hypothetical repeal of O. Reg. 584/06, which is not only plainly speculative, and is therefore premature, but also further demonstrates how the intervenor is seeking to expand the scope of this proceeding to a realm that is more akin to a generic hearing.

OEB staff agrees with Enbridge Gas that many of the interrogatories are based on the potential for the repeal or amendment of O. Reg. 584/06 along with requests for information pertaining to other municipal jurisdictions on this hypothetical matter and is speculative and should not be within scope of the proceeding. That said, in OEB staff's view, it ultimately remains a question of fact, to be determined by the OEB, as to whether an issue prominently impacts the County specifically (and is therefore within the scope of the proceeding). OEB staff therefore has identified one interrogatory and a sub part of another that may be relevant to any evidence that Concerned Residents may wish to file based on the scope established by the OEB for this proceeding.

#### *The Model Franchise Agreement*

In its Motion, Concerned Residents maintains that the OEB does not have jurisdiction under section 9 of the *Municipal Franchises Act* to impose a uniform agreement on the parties to a gas franchise agreement. Concerned Residents also notes that the Model Franchise Agreement is, in effect, a template and guide for the OEB that cannot be used in a way to predetermine future applications.

OEB staff does not disagree with Concerned Residents that the Model Franchise Agreement provides a template to guide applicants and municipalities regarding the terms that the OEB finds reasonable under the *Municipal Franchises Act*, and that the OEB has discretion to depart from the Model Franchise Agreement where there is a compelling reason to do so (which the OEB has done where warranted). This is clearly articulated in the OEB's *Natural Gas Facilities Handbook*, which also notes that the Model Franchise Agreement was developed as a tool to efficiently administer the many franchise agreements across the Province. OEB staff also notes that virtually all municipal franchises in the Province are currently in the form of the Model Franchise Agreement.

Section 9 of the Municipal Franchises Act

Concerned Residents states in its Motion that the OEB cannot reduce the scope of hearings under section 9 of the *Municipal Franchises Act* to preclude consideration of relevant factors. OEB staff does not disagree, and notes that the OEB has not done so in this case.

Enbridge Gas filed the franchise renewal application under section 9 of the *Municipal Franchises Act*, with consent of the County, both in respect of the terms and conditions of the renewal and in respect of the request that the OEB dispense with electors' assent under section 9 (4). This was noted by the OEB in Procedural Order No. 1:

The County's Resolution CC-24-72, a copy of which is attached at Schedule "C" of the application, approves the form of the draft by-law and the franchise agreement on the same terms and conditions as those set out in the [*Municipal Franchises Act*], without amendment, and authorizes Enbridge Gas's request for an order declaring and directing that the assent of the municipal electors to the by-law and franchise agreement is not necessary. The County has provided first and second readings of its draft by-law.

Section 9 of the *Municipal Franchises Act* contemplates that the OEB will hold a public hearing before making an order approving a franchise and dispensing with the assent of the electors. OEB staff submits that, on an application under section 9 of the *Municipal Franchises Act* where the gas distributor and the municipality have negotiated and agreed to a renewal of their franchise on the terms of the Model Franchise Agreement without deviation, the OEB should place significant weight on the intentions of the two contracting parties and the scope of any intervention in the proceeding should accordingly be narrow. In large part, this is because the Model Franchise Agreement reflects terms and conditions which the OEB has found to meet the public interest by, among other factors, providing fair treatment of both the civic duties of the municipality and the fair treatment of the gas distributor's ratepayers<sup>1</sup> and, moreover, because the OEB has been clear in advising stakeholders of its long-held expectation that that the Model Franchise Agreement be used as a basis for franchise agreements unless there is a compelling reason for deviation.

Given the clear intentions of Enbridge Gas and the County to renew their franchise agreement based on the Model Franchise Agreement without amendment, any evidence from the Concerned Residents to persuade the OEB to deny the application as filed or to refrain from declaring and directing that the assent of the County's electors is not necessary unless revisions are made, must be compelling.

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<sup>1</sup> See OEB Decision and Order EB-2022-0201, 11 March 30, 2023 (appeal to the Divisional Court dismissed (2024 ONSC 867)).

**Full and Adequate Responses to Interrogatories**

In light of the context set out above, OEB staff submits that the majority of Concerned Residents' interrogatories are not within the scope of this proceeding because they pertain to issues that are speculative or do not go to issues that raise questions about the suitability of the MFA provisions in the specific circumstances of the County.

OEB staff submits that Enbridge Gas should be required to provide a full and adequate response to part (a) of CR-10 (EGI-ED-10) but otherwise supports the scope of Enbridge Gas's limited responses to interrogatories CR-1 to CR-4, CR-5(b) and CR-6 to CR-10.

In OEB staff's view, the information sought by Concerned Residents under part (a) of CR-10 falls within the scope of this proceeding because it asks for examples of where the OEB has accepted deviations from the Model Franchise Agreement in the past. This information may provide assistance to the OEB in making a determination on whether a compelling case is made for a deviation from the Model Franchise Agreement in this proceeding.

OEB staff submits that Concerned Residents' additional (incremental) interrogatory relating to Enbridge Gas's response to CR-11 is also within the scope of this proceeding, and that Enbridge Gas should be required to provide a response. In OEB staff's view, information on the status of discussions with the County is relevant. Enbridge Gas's response to CR-11 a) identified certain requests made by the County to Enbridge during the MFA renewal discussions relating to the use of municipal rights of way. The issue of access fees is of primary focus for Concerned Residents as it forms a part of its proposal to file evidence in this proceeding, and depending on that evidence there may be aspects of the issue specific to the County. To the extent that the OEB may find such evidence relevant, a full and adequate response to questions regarding the management of gas utility and municipal infrastructure within municipal rights of way may provide Concerned Residents with an opportunity to develop evidence that Concerned Residents believes may justify a deviation from the Model Franchise Agreement, as well as result in some efficiencies. Previously in this proceeding, Concerned Residents has stated that if full and adequate interrogatory responses are provided, it may allow Concerned Residents to reduce the scope and potential cost of the evidence that it is seeking to introduce.

~All of which is respectfully submitted~