



Enbridge Gas Inc.
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October 18, 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
County of Lennox and Addington
Ontario Energy Board File No. EB-2024-0134**

Pursuant to Procedural Order No. 3, Enbridge Gas submits the following Responding Submissions on the Concerned Residents Motion for Answers to Interrogatories as prepared by Aird & Berlis.

David Stevens and Patrick Copeland from Aird & Berlis are representing Enbridge Gas in this matter and we ask that they be copied on any future correspondence associated with this application.

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

Yours truly,

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ONTARIO ENERGY BOARD

IN THE MATTER OF the *Municipal Franchises Act*, R.S.O. 1990, c.M.55, as amended;

AND IN THE MATTER OF an Application by Enbridge Gas Inc. for an Order approving the terms and conditions upon which, and the period for which, the Corporation of the County of Lennox and Addington is, by by-law, to grant to Enbridge Gas Inc. the right to construct and operate works for the distribution, transmission and storage of natural gas and the right to extend and add to the works in the County of Lennox and Addington;

AND IN THE MATTER OF an Application by Enbridge Gas Inc. for an Order directing and declaring that the assent of the municipal electors of the County of Lennox and Addington to the by-law is not necessary.

ENBRIDGE GAS INC.

Responding Submissions on Motion for Answers to Interrogatories

October 18, 2024

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OVERVIEW

1. Through the answers it seeks in this motion, Concerned Residents (“**CR**”) seek to drastically expand the scope of this proceeding far beyond what was originally ordered by the OEB in Procedural Order No. 2 (“**PO 2**”). The OEB confirmed in PO 2 that only those proposed amendments to the Franchise Agreement for the County of Lennox and Addington (the “**County**”) that “***may be warranted as a result of circumstances specific to the County***” are within scope. Generic changes to the Model Franchise Agreement (the “**MFA**”), on the other hand, are explicitly not in scope pursuant to PO 2.
2. Enbridge Gas answered all of CR’s interrogatories that were within the scope mandated by PO 2. The interrogatories that Enbridge Gas refused were not tethered to any circumstances specific to the County. Rather, many of these interrogatories are explicitly related to matters concerning other municipalities (including some that are not in Ontario) and Enbridge Gas’s knowledge/position on those other municipalities (and their activities).
3. CR relies heavily on the hypothetical repeal of O. Reg. 584/06 (the “**Regulation**”) to manufacture a connection between its requested relief on this motion and the County.¹ This reliance is misplaced. Even if one were to assume that this legislative change will occur at some point in the future, all of the approximately 338 municipalities in Ontario that are subject to the MFA would be affected in the same way as the County. There is inherently *nothing* specific about the County or its circumstances should this, or any other, legislative change occur that would inform what changes, if any, may be appropriate to the proposed Franchise Agreement. CR is instead expressly treating all municipalities as being one and the same for this purpose – a point which is made clear from its frequent references to other municipalities in its interrogatories.
4. Enbridge Gas requests that this motion be dismissed.

¹ CR’s original interrogatories all inadvertently referred to “O. Reg. 548/06” instead of the correct “O. Reg. 584/06”.

THE SCOPE OF THIS PROCEEDING

5. One of the initial (alternative) requests made by CR in this proceeding was for the OEB to convene a generic hearing regarding the MFA.² This request is notable for at least two reasons.
6. First, CR's position on this motion, and this proceeding more generally, relate to considerations that, at best, are more properly the subject matter of a generic hearing regarding the MFA rather than this proceeding that is specific to the County and its specific circumstances.
7. Second, the OEB has specifically rejected the idea that this proceeding is an appropriate forum to raise generic issues relating to the MFA. PO 2 held in this regard that "any detailed discussion of generic changes to the Model Franchise Agreement is not in scope given this application is for one specific franchise agreement renewal".
8. Ultimately, PO 2 is clear as to the appropriate scope of this proceeding: only proposed amendments which may be necessary "as a result of circumstances specific to the County" are within scope.
9. Rather than operate within the confines of the scope ordered by the OEB, CR has positioned this motion as effectively arguing that PO 2 cannot mean what it plainly says about the scope of this proceeding (see in particular paragraphs 3 – 8 of the Notice of Motion/Submissions). In doing so, CR seeks to expand the scope of this proceeding beyond what PO 2 stipulated.
10. CR did not seek to appeal or otherwise review PO 2. CR's attempt to litigate the issue of what scope the OEB should have afforded to this proceeding is not only legally baseless but is an impermissible collateral attack on PO 2. More fundamentally, this issue is wholly irrelevant as to whether Enbridge Gas properly refused to respond to interrogatories that fell outside the scope of PO 2, which is the central point of this motion. CR's submissions regarding the jurisdiction of the OEB in relation to PO 2 ought to be afforded no weight.

² Letter from K. Elson, counsel for CR, to the OEB dated August 2, 2024.

THE REFUSED INTERROGATORIES WERE PROPERLY REFUSED

(a) Overview

11. Out of the 11 interrogatories submitted by CR, Enbridge Gas answered two (being CR-5 and 11) and declined to answer the remaining nine (being CR 1 – 4 and CR 6 – 10) on the basis they were out of scope and/or speculative. CR seeks on this motion, among other things, an answer to the nine refused interrogatories (collectively, the “**Refused Interrogatories**”). For the reasons stated by Enbridge Gas in its responses, and as set out below, none of the Refused Interrogatories are within scope of this proceeding and were properly refused.

(b) The Refused Interrogatories Are Not Specific to the County

12. The questions contained in CR-1, 2 and 3³ each relate to other municipalities, such as the City of Toronto and the City of Ottawa, or issues relating to Province wide (or beyond) activities/considerations. They have no connection whatsoever to the circumstances specific to the County. They do not reference the County because the answers would inevitably not be about the County. Accordingly, any answers provided by Enbridge Gas to these interrogatories will not advance the OEB’s understanding as to what changes may be appropriate to the proposed Franchise Agreement as a result of circumstances specific to the County.
13. CR-1 asks whether Enbridge Gas agrees with various statements contained in a certain City of Toronto Staff report from May 2024, including the following:
- “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”⁴
- “ ...cities in provinces outside Ontario are charging gas utilities for use of the right of way and gaining significant revenue by doing so”⁵
14. CR-2 questions Enbridge Gas’s understanding and/or position regarding certain activities being undertaken by other municipalities potentially charging gas utilities for the use of public land.

³ All interrogatories were originally styled as “ED-#”, but have since been updated (following Enbridge Gas’s responses) to “CR-#”.

⁴ CR-1(a)(i).

⁵ CR-1(a)(vi).

15. CR-3 asks questions such as:

“Does Enbridge believe that the City of Toronto is a trustworthy source of information on fees for use of municipal highways?”⁶

“Does Enbridge believe that the City of Toronto is an authoritative source of information on fees for use of municipal highways?”⁷

16. Similarly, the questions posed in CR-6 relate to other “municipalities” and what they charge, if anything, for “the use of municipal highways for the pipes involved in district energy (e.g., distributed geothermal)”. None of these questions have any connection (stated or implied) to circumstances specific to the County. Instead, these questions are expressly based on matters that are beyond the County’s borders (much like the questions in CR-1 to 3) and are accordingly beyond the scope of this proceeding as well.
17. CR-4, 5(b)⁸, and 7 are premised on the hypothetical repeal of the Regulation, and what Enbridge Gas’s position would be on various matters in that hypothetical situation. As expanded upon in the next section, these interrogatories raise speculative and generic considerations which not only may never occur, but even if the Regulation is repealed, the effect would be equally applicable to all municipalities that are subject to the MFA as much as the County. This point is addressed in the following section of these submissions.
18. CR-8 asks Enbridge Gas to (i) justify certain aspects of the MFA; and (ii) explain its agreement/disagreement with certain hypothetical changes to the MFA. Not only do these questions have no specific relationship to circumstances that are specific to the County, but they are premised on issues that would ordinarily fall within what a generic hearing would seek to accomplish, and matters on which many stakeholders throughout the Province would likely wish to opine.
19. CR-9 contains broad questions about emissions generally, such as whether “natural gas creates approximately one-third of Ontario’s greenhouse gas emissions”⁹ and whether “a tonne of methane is estimated to have 84 times the warming power of carbon dioxide over a

⁶ CR-3(b).

⁷ CR-3(c).

⁸ CR-5(a) asked for Enbridge Gas’s understanding as to paragraph 3 of the proposed Franchise Agreement, which Enbridge Gas provided in its response.

⁹ CR-9(a).

20-year period”.¹⁰ These questions have no connection to any circumstances specific to the County.

20. Finally, CR-10 asks whether any franchise agreements since 2000 have contained different wording than the MFA, and whether Enbridge Gas believes “there would be some benefit to reviewing the [MFA]”. This particular interrogatory not only fails to establish any connection to any circumstances that are specific to the County, but it also seemingly invites Enbridge Gas to provide a position on this matter being addressed by way of a generic hearing, which was expressly prohibited by PO 2.
21. Enbridge Gas submits that none of the Refused Interrogatories were within scope and, as a result, Enbridge Gas was entitled to refuse to respond to them.

(c) CR Has Not Addressed the Relevance of the Refused Interrogatories

22. While this motion is ostensibly about Enbridge Gas providing answers to specific interrogatories, at no time does CR attempt to address how any of the Refused Interrogatories fit within the scope of PO 2. CR makes no specific argument as to why any (let alone each) of the Refused Interrogatories are within scope – they are all treated as one in the same and being equally justified by virtue of the theoretical repeal of the Regulation.
23. Enbridge Gas’s position on these matters has been clearly articulated in its various responses to the Refused Interrogatories. For the majority of the Refused Interrogatories, after citing PO 2, Enbridge Gas responded as follows:

Given the narrow scope of this proceeding, to address the renewal of a franchise agreement with the County of Lennox and Addington (County) that the County is supporting, and the fact that these questions do not relate to “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”, Enbridge Gas declines to answer these questions.

24. Similarly, in its submissions dated October 3, 2024 regarding CR’s proposed evidence, Enbridge Gas reiterated the substance of this argument as well, including submitting as follows:

CR admits that its proposed evidence is not unique to the County of Lennox and Addington. This admission, while revealing in its own right, fails to capture the true nature of the intended evidence.

¹⁰ CR-9(c).

CR's proposed evidence is explicitly going to be about *other* municipalities and *other* jurisdictions. In fact, there is nothing in CR's submission that indicates that any of the proposed evidence will even discuss circumstances specific to the County of Lennox and Addington, as it instead appears the focus will be beyond the County's borders.

25. Despite being fully aware of Enbridge Gas's position, CR has still not made its case plain. CR never meaningfully grapples with, let alone overcomes, the apparent contradiction of the limited scope of this proceeding and CR's reliance on a hypothetical legislative change that has not come into existence, for which there is no reliable indication as to when or if it will ever come into existence, and which, even if comes into existence, would necessarily affect all municipalities that are subject to the MFA equally.

THE REPEAL OF THE REGULATION WOULD NOT BE SPECIFIC TO THE COUNTY

26. CR is seemingly only relying on the hypothetical repeal of the Regulation to ground its position on this motion. CR generally relies on blanket assertions of relevance while neglecting to provide any substantive reason as to why each of the Refused Interrogatories (or even categories of them) are within scope.¹¹
27. In essence, CR asserts that the MFA is merely a "template" and a "guide"¹² that can be varied when "different terms and conditions" are warranted.¹³ This general principle is not necessarily contentious, but the details matter as to when deviations from the MFA may be warranted. The OEB's *Natural Gas Facilities Handbook*, for example, directs that franchise agreements be based on the model franchise agreement unless there are compelling reasons to deviate from it.¹⁴
28. While it references "new factors" since the proceeding that created the MFA as a justification for its position, CR seems to only be concerned with the hypothetical repeal of the Regulation.¹⁵ The underlying (but unstated) logic of CR's position is that if the Regulation is repealed, then the County could be affected, and therefore, this theoretical legislative change

¹¹ Given this, Enbridge Gas is concerned that CR may be trying to 'split their case' by waiting to provide specific justifications about relevance until its reply submissions. Should CR raise any new and important submissions in reply, Enbridge Gas reserves right to respond to same.

¹² Note that terms quoted terms are used by the OEB in its December 29, 2000 Report found in RP-1999-0048, as cited by CR.

¹³ Notice of Motion at para. 6.

¹⁴ Natural Gas Facilities Handbook, page 11.

¹⁵ Notice of Motion at para. 7.

is relevant to circumstances specific to the County. This tortured analysis strips away any of the scope limitations contemplated by PO 2.

29. The OEB specifically held in PO 2 that “generic changes to the Model Franchise Agreement” are out of scope in this proceeding. Only proposed amendments that are the result of “circumstances” that are “specific” to the County are in scope. The repeal of the Regulation (if it ever occurs) would necessarily equally affect all municipalities subject to the MFA, including the County. CR’s logic requires that the County *not* be differently situated than all other municipalities should its speculation about the Regulation prove accurate. This is the antithesis of the scope mandated by PO 2 that requires this proceeding be about the County and its particular context.
30. The generic nature of the Refused Interrogatories, which frequently have no connection to the County, is consistent with Enbridge Gas’s confusion as to who exactly constitutes CR (including whether its membership represents a significant proportion of the County’s residents) and its potential connection with Environmental Defence, an organization that has a much broader mandate that is more in line with the kind of questions contained in the Refused Interrogatories.¹⁶

CR’S POSITION IS PREMATURE AND MORE SUITED TO A GENERIC HEARING

31. In addition to being out of scope, the Refused Interrogatories’ repeated (and frequently explicit) reliance on the possible repeal of the Regulation makes all those questions speculative and, therefore, premature at this stage. The OEB should not and cannot make a decision based on potential legislative changes that have not occurred and may never occur.
32. Further, putting aside the issue of prematurity, the ways in which the possible repeal of the Regulation should inform modifications to the MFA (if at all) can only be properly addressed if all affected stakeholders have an opportunity to participate. The decision should not be made after hearing from only one stakeholder whose constituency is not defined or stated.

¹⁶ Enbridge Gas does not know of any such connection. It is noteworthy, however, that all of CR’s original interrogatories were styled as “ED-#”, as if Environmental Defence had prepared the questions. In addition, the Notice of Motion/Submissions makes multiple references to Environmental Defence seeking relief in this very motion (see, for instance, the preamble and paragraph 12).

33. The OEB's Generic Hearings Protocol (the "**Protocol**") states that a "generic issue is one that applies to multiple regulated entities within the sector".¹⁷ Any modifications to the MFA based on broadly applicable changes to legislation would, in Enbridge Gas's submissions, qualify as a generic issue.
34. The Protocol sets out factors that should be considered when determining whether to convene a generic hearing for a generic issue. Many of those factors are engaged in this case (assuming, again, that the issue is not premature at this stage). While municipalities are not regulated entities, the spirit and intent of the Protocol should still be applicable when the issue relates to an OEB endorsed form of standard form contract that governs Enbridge Gas's relationship with each of the approximately 338 municipalities that are subject to the MFA.
35. For instance, the Protocol asks the following questions (among others) about the potentially broader applicability of the generic issue:
- Is more than one regulated entity likely to submit an application covering the same issue?
- To what extent does the decision on the issue turn on the facts or circumstances that are specific to a regulated entity?
- Is the issue novel? Is the issue within the scope of a typical type of application?¹⁸
36. The Protocol contains further guiding questions about the benefits of stakeholder participation regarding the generic issue, including the following:
- If the issue is part of a live proceeding, would stakeholders that are not parties to that proceeding likely be interested in participating in a generic hearing? To what extent would these stakeholders provide a different perspective that would assist the OEB in determining the issue?¹⁹
37. It is important to recognize that, in this case, the County supports Enbridge Gas's proposed form of Franchise Agreement. CR is standing alone in this matter. There is accordingly no certainty that other stakeholders from across the Province would necessarily support CR's position in this proceeding. By limiting stakeholder involvement to only the parties to this proceeding risks setting a precedent that could have implications for the numerous different

¹⁷ The Protocol at pg. 2.

¹⁸ *Ibid.*

¹⁹ *Ibid.*

municipalities who may fairly question why they had no opportunity to be involved in the process.

THE FOLLOW-UP QUESTION

38. The Notice of Motion/Submission asks a follow-up question to CR-11. Enbridge Gas is prepared to provide further, relevant information to this question if that becomes necessary, in accordance with an OEB order. Enbridge Gas believes that it would be premature and unnecessary to provide an answer to this follow-up question at this point, especially given the tenuous connection between CR's involvement in this matter to date and the County.

CONCLUSION

39. Enbridge Gas declined to answer the Refused Interrogatories on the basis of PO 2. The Refused Interrogatories were out of scope because they are wholly disconnected to circumstances that are specific to the County. CR's allegation that the questions are relevant because of changes that may be made to the Regulation should be dismissed. At best, CR's position is premature.
40. Contrary to what is alleged by CR, Enbridge Gas is not asking the OEB to treat the MFA as "mandatory provisions that must apply in each case".²⁰ Enbridge Gas has never taken that position. Enbridge Gas recognizes, as does the OEB's *Natural Gas Facilities Handbook*, that deviations to the MFA may be appropriate in certain instances. This does not mean, however, that theoretical changes to legislation, that have no specific correlation to the County, must be accounted for in this proceeding and for this particular proposed Franchise Agreement.
41. Even if issues surrounding the potential repeal of the Regulation are not premature, which Enbridge Gas disputes, the within proceeding is not the proper forum to address what changes to the MFA may be appropriate in those circumstances. A generic hearing (discussions of which are explicitly out scope in this proceeding) would be a far more appropriate venue to address the issue, with the involvement of all affected stakeholders, if and when the Regulation is repealed.
42. Enbridge Gas requests that this motion be dismissed.

²⁰ Notice of Motion at para. 6.

All of which is respectfully submitted this 18th day of October, 2024.

A handwritten signature in black ink, appearing to read 'Patrick Copeland', written over a horizontal line.

Patrick Copeland, Aird & Berlis LLP
Counsel to Enbridge Gas