

Elson Advocacy

October 25, 2024

Nancy Marconi
Registrar
Ontario Energy Board
2300 Yonge Street, 27th Floor
Toronto, Ontario M4P 1E4
registrar@oeb.ca

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 #3* to provide reply to the submissions of Enbridge and OEB Staff regarding the motion filed by the Concerned Residents for answers to its interrogatories.

Background

By way of background, the majority of the interrogatories relate to the issue that was described by the Concerned Residents in its previous correspondence, namely the issue of fees for use of municipal highways by the utility. Although those fees are not currently permitted by the relevant regulation (O. Reg. 584/06) there is an ongoing campaign by municipalities to have that changed. There is significant concern that the proposed franchise agreement would lock the County into providing use of the municipal highways for free for the duration of the 20-year franchise agreement even if the regulation is changed to allow for such fees to be charged. To address that issue, the Concerned Residents are seeking a term that would trigger a negotiation or other process to determine the appropriate fees during the term of the agreement should the regulation change.

The concerned residents are not seeking amendments to allow fees to be charged. They are merely seeking a term that would ensure the County is not locked into providing free access to its highways for 20 years even if the regulation changes in the future. The Concerned Residents have provided some examples of wording in its interrogatory responses, and would provide additional proposed details and wording in its final submissions, including detailed submissions on why a deviation from the model agreement is warranted.

Response to Enbridge

Enbridge seems to acknowledge that it is open to an intervener to make a case for deviation from the terms in the model franchise agreement. However, it also argues that such a deviation can

only be justified based on factors that are unique to a specific municipality. There is no legal justification for such a restriction. There are other reasons why deviation may be warranted. For example, deviation may be warranted because of new facts or new considerations that did not apply when the model agreement was developed 25 years ago. Even if those new considerations would apply to many or all municipalities, that should not prevent them from being raised in a proceeding such as this.

In this case, deviation is not warranted due to unique factors relating to the County. Instead, deviation is warranted because of new facts and new considerations that were not present and were not addressed when the model agreement was developed 25 years ago. These new facts include the ongoing campaign to eliminate the prohibition on charging fees for use of highways. Furthermore, the concerned residents also wish to raise rationales that did not exist 25 years ago, such as some of those described in the City of Toronto staff report referenced in the interrogatories.

More fundamentally, whether a deviation is warranted should be decided on the basis of evidence and submissions – not via a preliminary scoping decision. If Enbridge is not required to answer interrogatories and the Concerned Residents are not able to provide evidence, there will be no opportunity to make the case for deviation from the model agreement and the OEB will not have the information in front of it that it needs to decide on whether deviation is appropriate.

Response to OEB Staff

OEB staff appears to agree with many of the propositions put forward by the Concerned Residents. However, it has incorrectly described a number of the interrogatories as being “speculative.” This may be a misunderstanding of the issue that the concerned residents are seeking to raise. Although we agree that an amendment of O. Reg 584/06 may or may not occur, that does not negate the concern that the County would be locked into an agreement that would prevent the charging of fees for use of land should that become allowable.

OEB staff also argues that the scope of a hearing regarding a municipal franchise agreement should be very narrow where municipal consent has been provided. However, that is inconsistent with an order that would avoid the need for consent of municipal electors. The *Municipal Franchises Act* treats residents as having rights and interests in these matters. It does not treat municipalities and utilities as the only relevant parties. There is nothing in the *Municipal Franchises Act* that justifies the OEB declining to consider what would otherwise be relevant points simply because a municipality has consented.

This is even more so the case in the present situation where the municipality was not made aware of the ongoing efforts to allow for fees for the use of highways. The issue that the Concerned Residents are raising was not addressed in the discussions between the municipality and the utility. Indeed, it is obvious that the municipality would benefit from the clause sought by the Concerned Residents as it would raise the possibility that the County could charge fees for the use of public land in the future.

Conclusion

We have not repeated our main arguments regarding this motion, which are contained in the notice of motion. We ask that the OEB refer again to those submissions.

The Concerned Residents should be allowed to make their case that there are reasons to deviate from the model agreement even if those reasons are not unique to the County. The wording in Procedural Order #2 does not prevent this and we hope that the board will confirm as such.

Yours truly,

A handwritten signature in blue ink, appearing to read 'K. Elson', with a stylized, cursive script.

Kent Elson