



Enbridge Gas Inc.

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

**PROCEDURAL ORDER NO. 4
November 19, 2024**

Enbridge Gas Inc. (Enbridge Gas) filed an application with the Ontario Energy Board (OEB) on April 8, 2024, under section 9 of the *Municipal Franchises Act*. The application is for an order approving the terms and conditions of the renewal of Enbridge Gas's natural gas franchise (franchise) with the County of Lennox and Addington (County), based on the OEB's Model Franchise Agreement without amendment, and for an order declaring and directing that the assent of the municipal electors to the by-law approving the renewal is not necessary.

On July 22, 2024, the OEB issued Procedural Order No. 1 which, among other things, granted intervenor status to Concerned Residents of the County of Lennox and Addington (Concerned Residents) in this proceeding. On September 2, 2024, the OEB issued Procedural Order No. 2 which, among other things, established the hearing process related to interrogatories, evidence, and submissions.

In accordance with the dates established in Procedural Order No. 2, Concerned Residents filed its interrogatories on September 16, 2024 and Enbridge Gas responded on September 30, 2024. In its interrogatory responses, Enbridge Gas declined to answer a number of Concerned Residents' inquiries on the basis that they exceeded the scope of the proceeding as established by the OEB.

On October 3, 2024, Concerned Residents filed a Notice of Motion (Motion) under Rule 27 of the OEB's *Rules of Practice and Procedure* seeking an order of the OEB that would require Enbridge Gas to provide full and adequate responses to all of the interrogatories it filed. Through the Motion, Concerned Residents also posed an additional interrogatory.

On October 10, 2024, the OEB issued Procedural Order No. 3, advising that (a) it would hear the Motion and, in the meantime, suspend the remaining procedural steps set out in Procedural Order No. 2 and (b) make its determination on Concerned Residents' proposed evidence request together with its decision on the Motion.

On October 18, 2024, Enbridge Gas and OEB staff filed their respective submissions on the Motion.

Enbridge Gas requested that the Motion be dismissed, submitting that it had answered all of the interrogatories that were within the scope of the proceeding, as established by Procedural Order No. 2. Enbridge Gas further submitted that its refusals were fair and proper in light of the scope of the proceeding, the lack of specificity of the interrogatories to the County, the failure by Concerned Residents to address the relevance of the interrogatories and, the reliance on the potential future repeal of O. Reg 584/06, Fees and Charges, made under the *Municipal Act, 2001*, which Enbridge argued is not merely hypothetical but also fails to raise issues specific to the County. Enbridge Gas stated that it was willing to provide further information in response to the additional interrogatory request, CR-11, “in accordance with an OEB Order”.

OEB staff submitted that the Motion should be granted on a limited and partial basis. OEB staff took the view that, in the light of Procedural Order No. 2, the majority of Concerned Residents’ interrogatories appeared to be out of scope because they raised issues that were speculative or not specific to the circumstances of the County. OEB staff submitted that while Enbridge Gas’s limited responses to interrogatories CR-1 to CR-4, CR-5(b) and CR-6 to CR-10 were appropriate, Enbridge Gas should be required to provide a full and adequate response to part (a) of interrogatory CR-10 and all of interrogatory CR-11 both of which are within scope of the proceeding.

Concerned Residents filed its reply submission on the Motion on October 25, 2024. Concerned Residents stated that it disagreed with Enbridge Gas’s submission that deviation from the Model Franchise Agreement can only be justified based on factors that are unique to a specific municipality and submitted that there is no legal basis to warrant such a restriction. Concerned Residents also submitted that “deviation may be warranted because of new facts or new considerations that did not apply when the model agreement was developed 25 years ago” and that “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”. Concerned Residents argued that the *Municipal Franchises Act* treats residents (and not merely municipalities and utilities) as having rights and interests in franchise renewal proceedings and reiterated its “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 [O. Reg 584/06] is changed to allow for such fees to be charged”.

Having reviewed the submissions of all parties, the OEB sets out its findings below on Concerned Residents’ Motion and request to file evidence, together with the OEB’s determination on the next steps in this proceeding.

The Motion

The OEB grants the Motion filed by Concerned Residents on a partial basis.

The OEB finds Enbridge Gas's limited responses to interrogatories CR-1 to CR-4, CR-5(b) to CR-9, and CR-10(b) appropriate in the light of the scope of this proceeding. The OEB is of the view that these interrogatories either failed to raise issues specific to the County that could justify a deviation from the standard terms of the Model Franchise Agreement or were based on speculation of a legislative change that is not reflective of the current circumstances of the application.

Notwithstanding the OEB's general acceptance of Enbridge Gas's position on the Motion, the OEB agrees with the submissions of Concerned Residents and OEB staff that interrogatory CR-10(a) falls within scope of this proceeding and that Enbridge Gas should also be required to respond to the incremental interrogatory CR-11. CR-10(a) asks for examples where the OEB has previously accepted a deviation from the terms of the Model Franchise Agreement and CR-11 seeks information on the status of discussions between Enbridge Gas and the County. Enbridge Gas shall provide a response to these two interrogatories, in accordance with the timelines set out below. The evidence provided in response to these two interrogatories may be of assistance to the OEB's assessment of issues raised in this proceeding.

Request to File Evidence

The OEB denies Concerned Residents' request to file evidence.

The purpose of Concerned Residents' proposed evidence would be to justify amendments to the terms of the Model Franchise Agreement, namely in respect of issues relating to fees for the use of highways (such as fees charged in other jurisdictions), free highway access no longer being in the public interest (given the role of pipeline infrastructure in climate change), and the need to negotiate fees in the event that O. Reg 584/06 is amended (including evidence on the likelihood that the regulation itself would be amended).

The OEB finds that the evidence proposed is not material to the specific circumstances of the County such that it could justify deviation from the terms of the Model Franchise Agreement. For example, the OEB accepts that right-of-way fees may be paid by utilities to municipalities in other jurisdictions, however, the OEB does not require evidence on this matter for the purposes of this proceeding.

Next Steps

Enbridge Gas shall provide a further response to the interrogatories in accordance with this Procedural Order.

At this time, the OEB is also making provision for a one-day transcribed oral hearing of argument. The hearing shall include the opportunity for Enbridge Gas to present an oral argument-in-chief, oral submissions from Concerned Residents, OEB staff and the County (should it wish to participate), and oral reply submissions from Enbridge Gas. The OEB finds that the presentation of oral argument will provide an opportunity for direct interaction between the parties and the OEB, allowing the Panel to expeditiously explore and question the parties' positions.

The OEB also requires that parties file a written summary of their argument, that is limited to two single-spaced pages, by the date set in this Procedural Order. The OEB intends that the oral hearing of argument will complete the record for this proceeding.

IT IS THEREFORE ORDERED THAT:

1. Enbridge Gas shall file with the OEB complete written responses to part (a) of interrogatory CR-10 and all of interrogatory CR-11 and serve them on all parties by **December 3, 2024**.
2. Enbridge Gas, Concerned Residents, OEB staff and the County (should it choose to participate) shall file with the OEB a maximum two-page (single-spaced) written summary of their oral argument and serve it on all parties by **January 6, 2025**.
3. A transcribed oral hearing shall be convened on **January 13, 2025**. The OEB will communicate additional information on how to participate in the hearing following the issuance of this Procedural Order.

Parties are responsible for ensuring that any documents they file with the OEB, such as applicant and intervenor evidence, interrogatories and responses to interrogatories or any other type of document, **do not include personal information** (as that phrase is defined in the *Freedom of Information and Protection of Privacy Act*), unless filed in accordance with rule 9A of the OEB's [Rules of Practice and Procedure](#).

Please quote file number, **EB-2024-0134** for all materials filed and submit them in searchable/unrestricted PDF format with a digital signature through the [OEB's online filing portal](#).

- Filings should clearly state the sender's name, postal address, telephone number and e-mail address.
- Please use the document naming conventions and document submission standards outlined in the [Regulatory Electronic Submission System \(RESS\) Document Guidelines](#) found at the [File documents online page](#) on the OEB's website.
- Parties are encouraged to use RESS. Those who have not yet [set up an account](#), or require assistance using the online filing portal can contact registrar@oeb.ca for assistance.
- Cost claims are filed through the OEB's online filing portal. Please visit the [File documents online page](#) of the OEB's website for more information. All participants shall download a copy of their submitted cost claim and serve it on all required parties as per the [Practice Direction on Cost Awards](#).

All communications should be directed to the attention of the Registrar and be received by end of business, 4:45 p.m., on the required date.

With respect to distribution lists for all electronic correspondence and materials related to this proceeding, parties must include the Case Manager, Natalya Plummer at Natalya.Plummer@oeb.ca and OEB Counsel, Richard Lanni at Richard.Lanni@oeb.ca.

Email: registrar@oeb.ca

Tel: 1-877-632-2727 (Toll free)

DATED at Toronto, **November 19, 2024**

ONTARIO ENERGY BOARD

Nancy Marconi
Registrar