



Enbridge Gas Inc.
50 Keil Drive North
Chatham, Ontario, Canada
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December 3, 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. 4, Enbridge Gas hereby submits an updated response to part (a) of interrogatory EGI-CR-10 and a response to the supplemental interrogatory related to interrogatory EGI-CR-11.

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

Yours truly,

Patrick McMahon
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Regulatory Research and Records
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(519) 436-5325

cc (email only):

Eric DePoe, Concerned Residents
Kent Elson, Elson Advocacy
Amanda Montgomery, Elson Advocacy
Natalya Plummer, OEB
Richard Lanni, OEB

ENBRIDGE GAS INC.

Response to Interrogatory from
Concerned Residents

Reference: Proposed Agreement, para. 3

Questions:

- 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.

Original Response:

In [Procedural Order No. 2](#), the OEB states:

The issues within the scope of this proceeding 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. The OEB agrees with Enbridge Gas 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.

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.

Updated Response (Part (a)):

Of the hundreds of franchise agreements approved by the OEB since 2000, only five franchise agreements have had any terms approved that differ from the model franchise agreement. These differences are identified below.

1. **City of Hamilton** - a 14-year model franchise agreement with the City of Hamilton effective March 28, 2007 was approved by the OEB on February 6, 2007 (EB-2006-0283). The OEB agreed to the shorter term since the City of Hamilton would not renew for more than 14 years and this was an opportunity to replace seven franchise agreements that had been in place with former municipalities that now make up the City of Hamilton, including a perpetual franchise

agreement, with a single franchise agreement sufficiently similar to the model franchise agreement with an amalgamated municipality.

Amended Clause:

4. Duration of Agreement and Renewal Procedures

(b) If the Corporation has previously received gas distribution services, the rights hereby given and granted shall be for a term of ~~20~~ 14 years from the date of final passing of the By-law provided that, if during the ~~20~~ 14 year term of this Agreement, the Model Franchise Agreement is changed, then on the 7th anniversary and on the 14th anniversary of the date of the passing of the By-law, this Agreement shall be deemed to be amended to incorporate any changes in the Model Franchise Agreement in effect on such anniversary dates. Such deemed amendments shall not apply to alter the ~~20~~ 14 year term.

The Decision and Order dated February 6, 2007 on the amended franchise agreement stated the following:

I am guided in this matter by the Board's policies as established in the 2000 Model Franchise Agreement. Union proposes to modify the model agreement by substituting a term of 14, rather than 20, years. In light of the unique circumstances of this case, the proposed modification does not present a substantive departure from these policies. The public interest is served by the establishment of a single franchise agreement for a term of 14 years. (EB-2006-0283 Decision and Order, page 2)

The franchise agreement with the City of Hamilton has since been renewed for 20 years effective April 27, 2022 using a model franchise agreement without amendments (EB-2022-0075).

2. **City of Timmins** - a 20-year model franchise agreement with the City of Timmins effective March 17, 2000 was approved by the OEB on December 9, 2003 (RP-2000-0008 / EB-2000-0023). While the franchise agreement was back-dated to March 17, 2000 (matching the expiry date of the previous franchise agreement), it also contained other agreed-to amendments related to rights of the municipality accruing upon termination of the agreement, as built drawings and the assignment of rights.

Amended / New Clauses:

4. Duration of Agreement and Renewal Procedures

~~(a) If the Corporation has not previously received gas distribution services, the rights hereby given and granted shall be for a term of 20 years from the date of final passing of the By-law.~~

~~or~~

(a) ~~If the Corporation has previously received gas distribution services, the~~ The rights hereby given and granted shall be for a term of 20 years from ~~the date of final passing of the By-law~~ March 17, 2000 provided that, if during the 20 year term of this Agreement, the Model Franchise Agreement is changed, then on the 7th anniversary and on the 14th anniversary of the date of the passing of the By-law, this Agreement shall be deemed to be amended to incorporate any changes in the Model Franchise Agreement in effect on such anniversary dates. Such deemed amendments shall not apply to alter the 20 year term ~~or the provisions of section 5 hereof.~~

5. Rights Accruing After Termination

~~(a) If the City fails to grant a new franchise on terms agreeable to both parties hereto and the Ontario Energy Board has not made an order for a renewal of or an extension of the term of the right, then the Gas Company may, subject to the provisions of Paragraph 5(b) and to Section 10 of the *Municipal Franchises Act*, at its option, either:~~

- ~~(i) Sell or dispose of the gas distribution system forthwith to any person, firm or corporation and at such price and on such conditions as the Gas Company may deem advisable; or~~
- ~~(ii) Within twelve months following such termination of the term of this franchise remove the gas distribution system or any portion or portions thereof from the public property, provided that failure to effect such removal shall not deprive the Gas Company of title to the gas distribution system or any portion or portions thereof.~~

~~Should the City, at any time after a lapse of one year from termination, require the removal of all or any of the Gas Company's said facilities for the purpose of altering or improving public property or in order to facilitate the construction of utility or other works in the highway, the City may remove or dispose of so much of the Gas Company's said facilities as the City may require for such purposes, and neither party shall have recourse against the other for any loss or expense occasioned thereby.~~

~~(b) At any time following the termination of the franchise, the City may, by notice given to the Gas Company, require the Gas Company to sell the gas system, or such portion or portions thereof as shall not have been removed as provided in paragraph 5(a) to the City~~

or to any person, firm or corporation designated in such notice by the City; and with all reasonable dispatch after the giving of such notice, but subject to Section 10 of the *Municipal Franchises Act*, the Gas Company shall sell such system or such portion thereof accordingly, at such price as may be agreed between the parties hereto or, if the parties hereto shall be unable to agree upon such price and one of them shall refer the determination thereof to arbitration under the provisions of Paragraph 5(c) hereof, at such price as the arbitrator or arbitrators appointed under the said Paragraph 5(c) shall fix as fairly representing the value of such gas distribution system or such portion thereof, as a going concern and as though the Gas Company were still entitled to use the public property for the operation of such system or portion.

(c) The procedure upon an arbitration pursuant to Paragraph 5(b) shall be as follows:

Within twenty days after the written request of either of the parties hereto for arbitration, each of them shall appoint one arbitrator and the two so appointed shall, within twenty days after the expiry of such twenty-day period, select a third. In case either of the parties hereto fails to name an arbitrator within twenty days after the said written request for arbitration, the arbitrator appointed shall be the only arbitrator. In case the two arbitrators so appointed are unable to agree on a third arbitrator within twenty days after the expiry of the first twenty-day period above mentioned, application shall be made as soon as reasonably possible to any Judge of the Superior Court of Justice for the appointment of such third arbitrator. The arbitrator or arbitrators so appointed shall have all the powers accorded arbitrators by the *Arbitrations Act, 1991* as from time to time amended, or any Act in substitution thereof. The decision of the said arbitrator or arbitrators (or a majority of such arbitrators) shall be final and binding on the parties hereto.

~~6.~~ 7. As Built Drawings

The Gas Company shall, within six months of completing the installation of any part of the gas system, provide two copies of "as built" drawings to the Engineer/Road Superintendent. These drawings must be sufficient to accurately establish the location, depth (measurement between the top of the gas system and the ground surface at the time of installation) and distance of the gas system. The "as built" drawings shall be of the same quality as the Plan and, if the approved pre-construction plan included elevations that were geodetically referenced, the "as built" drawings shall similarly include elevations that are geodetically referenced. Upon the request of the Engineer/Road Superintendent, the Gas Company shall provide one copy of the drawings ~~as a hard copy drawing and one copy in an electronic format and one copy as a hard copy drawing.~~ Union shall make reasonable efforts to provide the electronic copy in a format that is compatible with the software system in use by the City, but Union shall not be required to purchase new software to fulfill this requirement.

~~8.~~ 9. Restoration

The Gas Company shall well and sufficiently restore, to the reasonable satisfaction of the Engineer/Road Superintendent, all highways, municipal works or improvements which it

may excavate or interfere with in the course of laying, constructing, repairing or removing its gas system, and shall make good any settling or subsidence thereafter caused by such excavation or interference. If the Gas Company fails at any time to do any work required by this Paragraph within a reasonable period of time, the Corporation may do or cause such work to be done and the Gas Company shall, on demand, pay the Corporation's reasonably incurred costs, as certified by the Engineer/Road Superintendent. **At all times the City reserves the right to undertake final restoration of Gas Company service trenches, after one winter season and within the year of the excavation, and all associated costs shall be billed to the Gas Company.**

~~19.~~ 20. Agreement Binding Parties

This Agreement shall ~~extend~~ **enure** to ~~the~~ **benefit of** and ~~be~~ **binding upon** the parties ~~thereto~~ **hereto**, and their ~~respective~~ successors and assigns, ~~respectively~~. **This agreement may only be assigned by the Gas Company with the consent of the City, provided that the Gas Company may, without the consent of the City, assign, mortgage, pledge or charge this agreement as security for bonds, debentures, or other indebtedness of the Gas Company and on any enforcement of such security.**

The Decision and Order dated December 9, 2003 on the amended franchise agreement stated the following:

Based on the information provided in the application, including the history of the proposed agreements, granting the application is in the public interest. (RP-2000-0008 / EB-2000-0023 Decision and Order, paragraph 17)

The franchise agreement with the City of Timmins has since been renewed for 20 years effective November 5, 2019 using a model franchise agreement without amendments (EB-2019-0228).

3. **Township of Dawn-Euphemia** - On July 22, 2003, the OEB approved a 20-year franchise agreement (RP-2001-0008/EB-2001-0062) between Union Gas and the Township of Dawn-Euphemia for that area of the municipality that was formerly the Township of Dawn. The approved franchise agreement was based on the 2000 Model Franchise Agreement with the addition of a sentence as the third sentence of paragraph 15(b) which required Union Gas to provide as-built drawings to the former Township of Dawn for portions of its gas system that were being decommissioned.

Amended Clause:

15. Disposition of Gas System

- (b) If the Gas Company decommissions any other part of its gas system, it shall have the right, but is not required, to remove that part of its gas system. It may exercise its right to remove the decommissioned parts of its gas system by giving notice of its intention to do so by filing a Plan as required by Paragraph 5 of this Agreement for approval by the Engineer/Road Superintendent. **If the Gas Company chooses to decommission part of its gas system without removing it, it shall provide the Corporation with as-built drawings for the segment that is being decommissioned.** If the Gas Company does not remove the part of the gas system it has decommissioned and the Corporation requires the removal of all or any part of the decommissioned gas system for the purpose of altering or improving a highway or in order to facilitate the construction of utility or other works in any highway, the Corporation may remove and dispose of so much of the decommissioned gas system as the Corporation may require for such purposes and neither party shall have recourse against the other for any loss, cost, expense or damage occasioned thereby. If the Gas Company has not removed the part of the gas system it has decommissioned and the Corporation requires the removal of all or any part of the decommissioned gas system for the purpose of altering or improving a highway or in order to facilitate the construction of utility or other works in a highway, the Gas Company may elect to relocate the decommissioned gas system and in that event Paragraph 12 applies to the cost of relocation.

The Decision and Order dated July 22, 2003 on the amended franchise agreement stated the following:

Dawn-Euphemia requested that Union provide as-built drawings to the Township for portions of its gas system that are being decommissioned. Union has no objections to that request. The Board finds it reasonable that the additional sentence in this respect that is proposed by the Township be incorporated in the franchise agreement.

The Board finds that the terms and conditions of the 2000 Model Franchise Agreement (with one revision in respect of as-built drawings) as proposed by Union, are appropriate for the area of the Township of Dawn-Euphemia that was formerly the Township of Dawn. Therefore, the Board finds that public convenience and necessity appear to require that the right of Union to operate works for the distribution of gas in that portion of the Township of Dawn-Euphemia previously known as the Township of Dawn be renewed on the terms and conditions of the 2000 Model Franchise Agreement, including an additional sentence in respect of the Township's requirement for Union Gas to provide as-built drawings for decommissioned pipe. The Model Agreement grants Union the right to distribute, store and transmit gas in and through the Municipality. The Board finds that granting such rights, including the right to transmit gas through the Municipality, is in the general public interest

of the residents of the Province of Ontario. The renewal shall be for 20 years, as provided for in the Model Agreement. The Board notes that by operation of s. 10(5) of the MFA, this Order of the Board will be deemed a valid by-law of the Municipality assented to by the Municipal electors. (RP-2001-0008 / EB-2001-0062 Decision and Order, pages 9 – 10)

The franchise agreement with the Township of Dawn-Euphemia has since been renewed for 20 years effective October 5, 2009 using a model franchise agreement without amendments (EB-2009-0304).

4. **City of Greater Sudbury** - Prior to the current franchise agreement which is in the form of the model franchise agreement without amendments, Union Gas had a 15-year franchise agreement with the City of Greater Sudbury approved by the OEB on September 26, 2003 (RP-2003-0122 / EB-2003-0164) which was in the form of the model franchise agreement with the following amendments that were agreed to by Union Gas and the City of Greater Sudbury:
- the duration of the agreement was for 15 years from December 31, 1999;
 - certain rights to the municipality accruing upon termination of the Agreement are based on rights found in the existing franchise agreement dated December 1979;
 - Union Gas is to provide compatible electronic copies of “as built” drawings and geodetic information to the city in some circumstances;
 - responsibility for final restoration costs is clarified; and
 - the ability to assign the rights granted in the agreement is restricted.

Amended / New Clauses:

4. Duration of Agreement and Renewal Procedures

~~(e) If the Corporation has not previously received gas distribution services, the rights hereby given and granted shall be for a term of 20 years from the date of final passing of the By-law.~~

~~or~~

~~(a) If the Corporation has previously received gas distribution services, the~~ The rights hereby given and granted shall be for a term of ~~20~~ 15 years from ~~the date of final passing of the By-law December 31, 1999~~ provided that, if during the ~~20~~ 15 year term of this Agreement, the Model Franchise Agreement is changed, then on the 7th anniversary and on the 14th anniversary of the date of the passing of the By-law, this Agreement shall be deemed to be amended to incorporate any changes in the Model Franchise Agreement in effect on such anniversary dates. Such deemed amendments shall not apply to alter the ~~20~~ 15 year term ~~or the provisions of section 5 hereof.~~

5. Rights Accruing After Termination

~~(a) If the City fails to grant a new franchise on terms agreeable to both parties hereto and the Ontario Energy Board has not made an order for a renewal of or an extension of the~~

term of the right, then the Gas Company may, subject to the provisions of Paragraph 5(b) and to Section 10 of the *Municipal Franchises Act*, at its option, either:

- (i) Sell or dispose of the gas distribution system forthwith to any person, firm or corporation and at such price and on such conditions as the Gas Company may deem advisable; or
- (ii) Within twelve months following such termination of the term of this franchise remove the gas distribution system or any portion or portions thereof from the public property, provided that failure to effect such removal shall not deprive the Gas Company of title to the gas distribution system or any portion or portions thereof.

Should the City, at any time after a lapse of one year from termination, require the removal of all or any of the Gas Company's said facilities for the purpose of altering or improving public property or in order to facilitate the construction of utility or other works in the highway, the City may remove or dispose of so much of the Gas Company's said facilities as the City may require for such purposes, and neither party shall have recourse against the other for any loss or expense occasioned thereby.

(b) At any time following the termination of the franchise, the City may, by notice given to the Gas Company, require the Gas Company to sell the gas system, or such portion or portions thereof as shall not have been removed as provided in paragraph 5(a) to the City or to any person, firm or corporation designated in such notice by the City; and with all reasonable dispatch after the giving of such notice, but subject to Section 10 of the *Municipal Franchises Act*, the Gas Company shall sell such system or such portion thereof accordingly, at such price as may be agreed between the parties hereto or, if the parties hereto shall be unable to agree upon such price and one of them shall refer the determination thereof to arbitration under the provisions of Paragraph 5(c) hereof, at such price as the arbitrator or arbitrators appointed under the said Paragraph 5(c) shall fix as fairly representing the value of such gas distribution system or such portion thereof, as a going concern and as though the Gas Company were still entitled to use the public property for the operation of such system or portion.

(c) The procedure upon an arbitration pursuant to Paragraph 5(b) shall be as follows:

Within twenty days after the written request of either of the parties hereto for arbitration, each of them shall appoint one arbitrator and the two so appointed shall, within twenty days after the expiry of such twenty-day period, select a third. In case either of the parties hereto fails to name an arbitrator within twenty days after the said written request for arbitration, the arbitrator appointed shall be the only arbitrator. In case the two arbitrators so appointed are unable to agree on a third arbitrator within twenty days after the expiry of the first twenty-day period above mentioned, application shall be made as soon as reasonably possible to any Judge of the Superior Court of Justice for the appointment of such third

arbitrator. The arbitrator or arbitrators so appointed shall have all the powers accorded arbitrators by the *Arbitrations Act, 1991* as from time to time amended, or any Act in substitution therefore. The decision of the said arbitrator or arbitrators (or a majority of such arbitrators) shall be final and binding on the parties hereto.

6. 7. As Built Drawings

The Gas Company shall, within six months of completing the installation of any part of the gas system, provide two copies of "as built" drawings to the Engineer/Road Superintendent. These drawings must be sufficient to accurately establish the location, depth (measurement between the top of the gas system and the ground surface at the time of installation) and distance of the gas system. The "as built" drawings shall be of the same quality as the Plan and, if the approved pre-construction plan included elevations that were geodetically referenced, the "as built" drawings shall similarly include elevations that are geodetically referenced. Upon the request of the Engineer/Road Superintendent, the Gas Company shall provide one copy of the drawings **as a hard copy drawing and one copy in an electronic format** ~~and one copy as a hard copy drawing~~. Union shall make reasonable efforts to **provide the electronic copy in a format that is compatible with the software system in use by the City, but Union shall not be required to purchase new software to fulfill this requirement.**

~~19.~~ 20. Agreement Binding Parties

This Agreement shall ~~extend~~ **enure** to the benefit **of** and **be binding upon** the parties ~~thereto~~ **hereto**, and their **respective** successors and assigns, ~~respectively~~. This agreement may only be assigned by the Gas Company with the consent of the City, provided that the Gas Company may, without the consent of the City, assign, mortgage, pledge or charge this agreement as security for bonds, debentures, or other indebtedness of the Gas Company and on any enforcement of such security.

The Decision and Order dated September 26, 2003 on the amended franchise agreement stated the following:

Considering the information provided in the application, including the history of the proposed agreement, granting the application is in the public interest. (RP-2003-0122 / EB-2003-0164 Decision and Order, paragraph 17)

The franchise agreement with the City of Greater Sudbury has since been renewed for 20 years effective December 10, 2013 using a model franchise agreement without amendments (EB-2013-0328).

5. **City of Kitchener** - The current franchise agreement with the City of Kitchener approved by the OEB on January 21, 2016 (EB-2015-0296) is in the form of the model franchise agreement with an amendment requested by the City of Kitchener at clause 2 to specifically identify the area within the municipality currently served by Enbridge Gas as stipulated in the associated certificate of public convenience and necessity.

Amended Clause:

2. To provide gas service

The consent of the Corporation is hereby given and granted to the Gas Company to distribute, store and transmit gas in and through the Municipality to the Corporation and to the inhabitants of the Municipality **within the area bounded by the Grand River (north and west boundary), Highway 401 (south boundary) and the municipal boundary of the City of Kitchener (east boundary) pursuant to the Certificate of Public Convenience and Necessity granted by the Ontario Energy Board.**

The Decision and Order dated January 21, 2016 on the amended franchise agreement stated the following:

Union has been providing natural gas services to the residents of the City of Kitchener in the area bounded by the Grand River (north and west boundary), Highway 401 (south boundary) and the municipal boundary of the City of Kitchener (east boundary) since 1959. The number of customers it serves has grown to approximately 1,100. I note that no party intervened to object to, or comment on, the application. The evidence also states that Kitchener Utilities does not have any infrastructure in the area served by Union, and the cost to connect to that area would be extremely expensive. I also note that Union has a Certificate and municipal franchise agreement for the Township of Wellesley, the Township of Woolwich, the City of Waterloo, the City of Cambridge, the Township of North Dumfries, the Township of Blandford-Blenheim and the Township of Wilmot, which are immediately adjacent to the City of Kitchener.

I find that it is in the public interest for Union to continue to provide natural gas service to these affected customers and therefore will approve the proposed Certificate. The Certificate will cover the geographical area bounded by the Grand River (north and west boundary), Highway 401 (south boundary) and the municipal boundary of the City of Kitchener (east boundary).

The Council of the City of Kitchener approved the form of the draft by-law and municipal franchise agreement. The proposed municipal franchise agreement is in the form of the 2000 Model Franchise Agreement, with an amendment to identify, in clause 2, the specific geographical area within the City of Kitchener served by Union, and is for a term of twenty years. While it is the Certificate that defines the geographical boundaries of the distributor's rights as they relate to the construction of works to supply gas, I see no harm in replicating

in the municipal franchise agreement the specific geographical area approved by the OEB in the Certificate. (EB-2015-0296 Decision and Order, pages 2 and 3)

ENBRIDGE GAS INC.

Response to Interrogatory from
Concerned Residents

Reference: Response to EGI-CR-11

Question:

Please explain how the concerns expressed in Attachment 2 of interrogatory #11 have been addressed, including a list of how each example has been resolved (if it has been resolved) and what assurances Enbridge gave the County, and provide any Enbridge notes or documentation regarding these matters and the agreement changes proposed by the County.

Response:

Attachment #2 to the response to EGI-CR-11 was an email dated January 9, 2024 from the County of Lennox and Addington to Enbridge Gas regarding issues with the model franchise agreement.

The Senior Advisor, Municipal & Stakeholder Affairs that was responsible for franchise agreement renewal discussions with the County of Lennox and Addington is no longer working at Enbridge Gas. However, Enbridge Gas personnel spoke to the former Senior Advisor recently to confirm that shortly after the email date, they had conversations with staff from the County of Lennox and Addington on each of the specific points outlined in the email.

The conversations included information from Enbridge Gas field staff to address each of the issues raised, some of which related to historical matters not related to franchise agreement renewal.

Our understanding from the former Senior Advisor and County Staff is that none of the issues identified in the January 9, 2024 email were barriers to the franchise agreement renewal moving forward and all were sufficiently addressed in the verbal conversations.