



Ontario
Energy
Board

Commission
de l'énergie
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BY EMAIL

January 6, 2025

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

Dear Ms. Marconi:

**Re: Enbridge Gas Inc.
Application for the Renewal of a Municipal Franchise Agreement with the
County of Lennox and Addington
Oral Argument Day – Summary of OEB Staff Oral Argument
OEB File Number: EB-2024-0134**

Procedural Order No. 4 designated January 13, 2025, as the date for parties to present oral argument in the above-referenced proceeding. The Order also required each party to file a written two-page summary of their argument by January 6, 2025.

Attached is OEB staff's summary of its oral argument in this proceeding, together with a compendium of related materials. These documents have also been provided to the applicant (Enbridge Gas Inc.) and the intervenor (Concerned Residents) in this proceeding.

Yours truly,

Natalya Plummer
Advisor

Encl.

cc: All parties in EB-2024-0134



ONTARIO ENERGY BOARD

Summary of OEB Staff Oral Argument

Enbridge Gas Inc.

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

EB-2024-0134

January 6, 2025

Overview

1. Enbridge Gas Inc. (Enbridge) and the County of Lennox and Addington (County) are seeking the OEB's approval, under section 9 of the *Municipal Franchises Act (MFA)*, to renew their natural gas franchise agreement, dated December 8, 2004.ⁱ
2. Concerned Residents of the County of Lennox and Addington (Concerned Residents) is the only intervenor to this proceeding. It takes the position that the OEB should "deny approval and send the matter back to the parties for renegotiation with reasons, or as an alternative, to directly impose terms" as proposed by Concerned Residents. In the further alternative, Concerned Residents submits that the OEB could decline to order that the assent of municipal electors can be dispensed with under s. 9(4) of the *MFA*; or call a generic hearing.ⁱⁱ
3. OEB staff is not aware of the OEB having used its authority under section 9 of the *MFA* to directly impose terms and conditions of a franchise renewal on a gas company and a municipality. That section has been interpreted as applying to first-time agreements and to renewals on which the parties have agreed.ⁱⁱⁱ While the OEB does have the express authority to impose an agreement on parties under s. 10 of the *MFA*, it can only do so after having held a hearing under that section.^{iv}
4. Therefore, in accordance with the provisions of the *MFA* and the proceedings before the OEB made thereunder relating to gas franchise renewals and proposed deviations from the Model terms, OEB staff submits that the sole issue for the OEB's determination in this proceeding is whether the OEB should grant the franchise agreement as proposed by Enbridge and the County, or deny the application based on issues raised by Concerned Residents.
5. For the reasons that follow, OEB staff submits that the OEB should issue an order granting the application as filed.

Process and Jurisdiction

6. Enbridge properly brought its application under s. 9 of the *MFA*^v, with the support of the County^{vi}, and in accordance with the guidance set out by the OEB in the *Natural Gas Facilities Handbook*^{vii}.
7. The OEB has broad jurisdiction to regulate the supply and distribution of natural gas in the public interest.^{viii} In exercising its jurisdiction, the direction set by the OEB in this proceeding has been clear and fair. The OEB processed Enbridge's application and issued a Notice of Hearing. The OEB accepted Concerned Residents' intervention, heard and partially granted its motion for full responses to interrogatories from Enbridge, and made provision for it to file evidence on issues within the scope of this proceeding. The OEB did not preclude Concerned Residents from justifying new terms in the agreement between Enbridge and County that are not otherwise contained in the Model. The OEB also provided the County with an opportunity to participate as an intervenor.

Model Franchise Agreement Framework

8. The OEB's long-held view is that the Model best meets the public interest by providing fair treatment of both the civic duties of a municipality and a gas distributor's ratepayers, and has stated that the Model framework "is preferable to a piecemeal approach of negotiating terms specific to a franchise".^{ix}

9. The OEB has also consistently stated its expectation that franchise agreements be based on the Model “unless there is a compelling reason for deviation” so that, ultimately, it is applied fairly and uniformly throughout the province. Virtually all franchise agreements approved by the OEB are in the same form as the Model, and are set for a term of 20 years.^x
10. OEB staff submits that, in the event the OEB wishes to consider amendments to the Model due to the potential repeal or amendment of O. Reg. 584/06 (or based on other similarly generic issues), notice should be provided to all municipalities.

There is no compelling reason to not grant the application as filed.

11. Where the two contracting parties to a franchise agreement are in complete agreement on the terms and conditions of its renewal, and where those terms and conditions are in the form of the Model without amendment, the OEB should as a matter of course grant the application unless it is compelled otherwise.
12. In OEB staff’s view, Concerned Residents has not raised issues or sought to introduce evidence that could be considered as properly falling within the scope of this proceeding and accepted by the OEB as warranting a denial of the application. Concerned Residents’ primary concerns are that the proposed renewal appears to lock the County into an arrangement where it cannot charge any fees for use of its highways for pipelines for 20 years; and requires taxpayers to bear too large of a burden for relocating gas pipelines where they conflict with public works.^{xi} This Panel, in Procedural Order No. 4, denied Concerned Residents’ request to file evidence in support of these concerns, describing the proposed evidence as “not material to the specific circumstances of the County such that it could justify deviation from the terms of the Model”.^{xii}
13. Through its filings in this proceeding, Concerned Residents has tacitly acknowledged that the amendments it proposes to the terms of the franchise renewal do not relate specifically to the County. OEB staff submits that if the municipal access fees and relocation costs issues (or such other generic concerns) raised by Concerned Residents are accepted by the OEB in this specific proceeding, it could potentially result in cost-savings enjoyed by taxpayers residing in the County being borne by all of Enbridge’s ratepayers throughout the province (including those residing in the County).
14. OEB staff submits that it is appropriate for the OEB to grant the application as filed, and issue an order renewing the franchise between Enbridge and the County based on the Model. Such order would preserve the balancing of interests that the OEB sought to achieve when it adopted the current Model. Based on the record of this proceeding, OEB staff is not aware of any compelling reason for the OEB to not proceed this way.
15. As such, OEB staff supports the request by Enbridge and the County that the OEB direct and declare that the assent of the municipal electors of the County to the municipal by-law approving the franchise renewal is not necessary.^{xiii}

~All of which is respectfully submitted~

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- ⁱ Application, April 5, 2024, **OEB Staff Compendium Tab 1.1 (excerpt)**, at p. 6; **OEB Staff Compendium Tab 1.2 (excerpt)** at p. 10, para. 4(c).
- ⁱⁱ Concerned Residents, Submission in response to Procedural Order No. 1, August 2, 2024, **OEB Staff Compendium Tab 2** at p. 22.
- ⁱⁱⁱ *Report of the OEB (Review of Franchise Agreements and Certificates)*, E.B.O. 125, May 21, 1986, **OEB Staff Compendium Tab 3 (excerpts)**, see paras. 2.12 (p. 58), 2.13 (p. 58) and 6.16 (p. 146-147).
- ^{iv} *Municipal Franchises Act*, R.S.O. 1990, c. M.55, as am., **OEB Staff Compendium Tab 4**.
- ^v *Municipal Franchises Act*, R.S.O. 1990, c. M.55, as am., **OEB Staff Compendium Tab 4**.
- ^{vi} Application, April 5, 2024, Schedule C, **OEB Staff Compendium Tab 1.3 (excerpt)**.
- ^{vii} *Natural Gas Facilities Handbook*, EB-2022-0081, March 31, 2022, **OEB Staff Compendium Tab 5 (excerpt)** at pp. 272-273.
- ^{viii} *Sudbury (City) v Union Gas Ltd.*, 2001 CanLII 2886, at paras. 6 and 23 (ONCA), **OEB Staff Compendium Tab 6 (excerpt)** at pp. 279, 286-287.
- ^{ix} Decision and Order, EB-2022-0201, March 30, 2023 **OEB Staff Compendium Tab 7 (excerpt)**. The OEB's decision was upheld on appeal to the Divisional Court, **OEB Staff Compendium Tab 8**, and leave to appeal to the Court of Appeal was denied.
- ^x *Natural Gas Facilities Handbook*, EB-2022-0081, March 31, 2022, **OEB Staff Compendium Tab 5 (excerpt)** at p. 273; *Leamington (Municipality of) v. Enbridge Gas Inc.*, 2024 ONSC 867, **OEB Staff Compendium Tab 8**.
- ^{xi} Concerned Residents, Submission in response to Procedural Order No. 1, August 2, 2024, **OEB Staff Compendium Tab 2** at p. 1.
- ^{xii} Procedural Order No. 4, November 19, 2024, **OEB Staff Compendium Tab 9** at p. 321.
- ^{xiii} *Report to the OEB (MFA and Model Franchise Agreement)*, RP-1999-0048, December 29, 2000. **OEB Staff Compendium Tab 10 (excerpt)**.