

Elson Advocacy

January 6, 2025

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 regarding the next steps in this proceeding. Based on the latest OEB order clarifying the scope of this proceeding, the Concerned Residents do not seek deviations from the model franchise agreement in this proceeding and do not seek to participate in the upcoming hearing, which may make the hearing unnecessary.

Background

By way of background, the Concerned Residents originally sought two deviations from the template agreement. The first deviation would ensure that the County is not locked into providing free access to and use of its highway lands for gas pipelines in the event that the prohibition on fees for the use of the highway lands set out in O. Reg. 584/06 is removed by the provincial government. There is at least a material possibility that the prohibition will be lifted prior to the end of the proposed 20-year agreement due to the ongoing campaign by municipalities to have the prohibition removed. The proposed deviation from the model agreement would have triggered a process to determine appropriate fees if the prohibition was removed in the future.

The second deviation would ensure that taxpayers are not required to contribute to the cost of relocating gas pipelines that conflict with public works. The Concerned Residents do not believe it is fair or appropriate for taxpayers to pay towards relocations of gas pipelines under highways when the utility pays no land-based fees for use of said lands

These deviations are justified on several grounds, including changed circumstances since the model agreement was developed 25 years ago. Those changed circumstances include the ongoing campaign to remove the prohibition on charging land-based fees for the use of highway lands by gas pipelines as well as changed circumstances due to the energy transition. Free access

to highways lands is a fossil fuel subsidy from taxpayers that is no longer justified in light of the move away from fossil fuels that is driving the energy transition. Municipal interests and policy towards methane gas pipelines have also changed in relevant ways due to the energy transition. It is particularly incongruous in light of the energy transition that municipalities can charge land-based fees to carbon-neutral district energy providers who wish to place pipelines under public roads but cannot charge the same fees to methane gas distribution utilities.

Change in Relief Sought by the Concerned Residents

The Concerned Residents are no longer seeking to secure those deviations from the model agreement because it is clear from the latest OEB order that the arguments and evidence in support of those deviations are out of the scope of this proceeding. Those deviations are justified by circumstances that apply to municipalities across Ontario; they are not justified by circumstances that are unique to the County. Considering the latest OEB order, it would not be an effective use of time and regulatory resources to address these issues at the hearing.

The Concerned Residents ask that the OEB not make decisions on the issues that they originally raised in this proceeding. Full consideration of those issues would require evidence and argument on points that are outside the scope of this proceeding. A ruling on those issues in this proceeding would therefore be inherently incomplete and could negatively impact consideration of similar issues in future OEB proceedings or otherwise.

Compliance with Procedural Order #4

The Concerned Residents wish to flag for the OEB that the applicant has not fulfilled the OEB's order set out in *Procedural Order #4* regarding interrogatory #11. The question read as follows:

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.

The applicant merely stated that conversations took place and that none of the issues were barriers to entering into the franchise agreement. That is a far cry from the level of detail that was required. For instance, the response did not include a list of how each item has been addressed nor indicated the assurances given by Enbridge to the County. For ease of reference, we have set out those concerns from the prior County correspondence below.

I would like to confirm or expand on the wording of the agreement to cover examples that have been encountered with the Gas Company's plant over the past several years.

Examples:

1. Gas main was to be installed 1.0m behind the curb on an urban road. When reconstructing this road, including watermain (0.3m in front of the curb), the gas main

was encountered directly over the watermain for the entire length of the reconstruction and only 6" below curb. This resulted in an additional cost to the municipality to support the gas main for the duration of the watermain replacement as only Enbridge/Union Gas would pay for 50% of the works.

2. Gas main was installed by directional boring along and across an urban road. During reconstruction of the road, the gas main was encountered above the approved installation depths and had been bored directly through our storm system at various locations. This resulted in an additional cost to the municipality to support the gas main and relocate our infrastructure to remove the conflict with no compensation from Enbridge/Union Gas.

3. Gas main was installed in 2018 on a County Road by means of directional boring. The gas main was not installed at the design/approved depths resulting in a hump across the entire pavement section similar to a small speed bump. We have asked that this section be regraded and repaved. Nothing has been completed to date.

4. Gas main was installed in 2023 on a County Road by means of a directional bore. This road had newer pavement and our permit stated that no road cuts were permitted. The gas main was not installed at the design/approved depths and they completed an excavation/cut to install in our new road. County staff asked that this main be lowered to design/approved depths. Enbridge now wants to abandon this service line and connect at a different location thus not requiring the excavation. We have been left with a road cut that has not been properly repaired. It was repaired with cold patch instead of asphalt and at a time when asphalt was readily available.

Can Enbridge revise or add wording to reflect the scenario in example 1? We believe that all of this expense should have been the responsibility of the Gas Company. Section 5 (h) can be enhanced by adding "should the gas plant deviate from the approved location, the Gas Company shall be responsible for 100% of all associated costs including the relocation of the gas plant (if needed) and rehabilitation to existing infrastructure. Additionally, can you please confirm that Section 8 Restoration would apply to examples 2, 3, and 4. Thus allowing the County to have a contractor repair these sections to the satisfaction of the County? If so, why are we at this stage with little to no co-operation from the Gas Company.

In an effort to increase communication and co-operation between the parties, staff would like to see wording in the agreement that the Gas Company shall meet with the Corporation at least once per calendar year to review/discuss short and long term capital plans. This will help with reducing costs for both parties and mitigate delays and inconveniences during the construction phase.

The Concerned Residents merely bring this to the attention of the OEB and do not seek specific relief. Although these kinds of concerns are relevant to the relief initially sought by the Concerned Residents, they are not ones that the Concerned Residents seek to pursue in isolation.

Next Steps

If the OEB cancels the hearing in this matter but provides for written submissions, the Concerned Residents request an opportunity to respond to submissions from Enbridge. Although that may not be necessary, we wish to retain that opportunity in the event that Enbridge speaks to the relief initially sought by the Concerned Residents or another connected matter.

Yours truly,

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

Kent Elson

cc: Parties in the Above Proceeding