

RE: ENBRIDGE GAS INC.

APPLICATION FOR RENEWAL OF FRANCHISE AGREEMENT WITH THE CORPORATION
OF THE COUNTY OF SIMCOE

ONTARIO ENERGY BOARD FILE NO. **EB-2024-0280**

IN THE MATTER OF the Municipal Franchise Act, R.S.O. 1990 c. M. 55, as amended

AND IN THE MATTER OF an Application by Enbridge Gas Inc. for an Order approving the terms and conditions upon which, and the period for which, the Corporation of the County of Simcoe is, by by-law, to grant to Enbridge Gas Inc. the right to construct and operate works for the distribution, transmission and storage of natural gas and the right to extend and add to the works in the County of Simcoe;

ARGUMENT OF THE COUNTY OF SIMCOE (the “County”)

1. Enbridge Gas Inc. (“Enbridge”) is a regulated public utility, and a corporation incorporated under the laws of the Province of Ontario, with its offices in the City of Toronto and the Municipality of Chatham-Kent.
2. The County is a municipal corporation incorporated under the laws of the Province of Ontario. The County is located in the Central region of Ontario, to the North of the Greater Toronto Area and is comprised of 16 member municipalities: the Townships of Adjala-Tosorontio, Clearview, Essa, Oro-Medonte, Ramara, Severn, Springwater, Tay, and Tiny, and the Towns of Bradford West Gwillimbury, Collingwood, Innisfil, Midland, New Tecumseth, Penetanguishene, and Wasaga Beach. It is the largest county in Ontario by residency, with a population of 351,929.
3. Enbridge brings this application to seek an order compelling the County to renew its Franchise Agreement (“the Agreement”) with Enbridge on the existing terms of the Model Franchise Agreement (“MFA”). The County objects to the renewal without its requested amendments.
4. Enbridge seeks this order on the following grounds:
 - The MFA was approved by the OEB after extensive consultation with relevant stakeholders and there are no compelling reasons to deviate from the MFA.
 - The County’s lower-tier member municipalities are party to franchise agreements without amendments and all but two municipalities with

whom Enbridge have a Franchise Agreement are party to a franchise agreement without amendments.

5. The County admits paragraphs 1-10 of Enbridge's Application.
6. The County denies that it had ongoing discussions with Enbridge in order to come to an agreement. The County repeatedly tried to engage Enbridge in negotiations, but Enbridge ignored the County's attempts to do so.

The Board Has Jurisdiction to Support the County's Amendments

7. The County submits that Section 2 of the *Ontario Energy Board Act*, S.O. 1998 c. 15, Sch B ("*OEB Act*") empowers the OEB to make the revisions requested by the County.
8. Section 2(1) of the *OEB Act* requires that the Board facilitate competition in the sale of gas to users. Enbridge's monopoly over gas distribution in the County of Simcoe puts it in a strong position to outright refuse to negotiate the terms of its franchise agreement with the County. The Board should therefore be mindful of how its decision in this Application could serve to reinforce Enbridge's monopoly and its position that the terms of its Franchise Agreements are non-negotiable.
9. Enbridge places heavy reliance on the *Natural Gas Facilities Handbook* (the "Handbook"). The Handbook notes that the MFA is a template, not a binding document. The County submits that its requested amendments are sufficiently minor that the key terms of the MFA, alongside its underlying principles, are not undermined and continue to serve as the template for the future agreement.
10. Section 10(2) of the *Municipal Franchises Act*, R.S.O. 1990, c. M.55 ("*MF Act*") grants the OEB the power to change the terms and conditions on which a franchise agreement is renewed where "public convenience and necessity appear to require it". The Ontario Court of Appeal confirmed this in the case of *Sudbury (City) v. Union Gas Ltd.*, 2001 CanLII 2886 (ON CA) at paragraph 23. Enbridge has not submitted, nor evidenced, that the County's requested amendments would have negative consequences for public convenience and necessity. Enbridge has simply refused to consider the County's amendments or engage in negotiations.
11. The OEB is not bound to the existing terms of the MFA. The Divisional Court stated in *Peterborough (City) v. Consumers Gas*, 1980 CanLII 1724 (ON SC) that

[t]here is nothing in the statutory provisions to require that the terms and conditions found in the expiring agreement must be continued or that what is

prescribed by the Board as a result of its adjudication be agreeable to either or both of the parties [...]. [I]t is immaterial that the terms and conditions imposed are not those either in the expiring agreement or in a new agreement or are acceptable to the contending parties”.

The OEB adopted this approach in *Natural Resource Gas Ltd. (Re)*, 2009 LNONOEB 70 at paragraph 9.

12. Enbridge cannot rely on the fact that most municipalities have signed franchise agreements without amendments. In *Centra and City of Kingston* (E.B.A 825) June 23, 2000, at paragraph 4.0.6., the OEB stated “the mere fact that most franchises are renewed without dispute is not sufficient to justify an assumption of automatic renewal of the franchise”.
13. The OEB held in *Epcor Natural Gas Limited Partnership, Decision and Order* EB-2021-0269, February 17, 2022, at page 8, that it is proper to depart from the MFA where “there is a compelling reason for deviation”. The County submits that the expiry of the twenty-year term of the MFA is a compelling reason that warrants reconsideration of the terms. The MFA was drafted and approved nearly a quarter-century ago. In that period, the County, as a municipal stakeholder, has had an opportunity to evaluate the parts of the MFA that work well, and the parts that need further revision. In its twenty years operating under the MFA, the County has identified four small revisions to bring efficiency and cost-effectiveness to its residents. The County has tried to engage Enbridge about these revisions, but Enbridge has ignored the County’s requests, instead choosing to use OEB time and resources to resolve the dispute.

Amendment to Paragraph 11

14. Paragraph 11 of the Agreement identifies that, in the event of a proposed sale or closure of a highway where there is a gas line located, the County will grant Enbridge an easement over the highway and that if the County is unable to grant an easement, it will share the cost to relocate or alter the gas system.
15. The County requests that paragraph 11 of the Agreement be amended to read as follows: *The Corporation agrees, in the event of the proposed sale or closing of any highway or any part of a highway where there is a gas line in existence, to give the Gas Company reasonable notice of such proposed sale or closing and, if it is feasible, to provide the Gas Company with easements over that part of the highway proposed to be sold or closed sufficient to allow the Gas Company to preserve any part of the gas system in its then existing location. In the event that such easements cannot be provided, **the Gas Company shall bear the cost** of relocating or altering*

the gas system to facilitate continuity of gas service, as provided for in Paragraph 12 of this Agreement.

16. The County agrees to grant the necessary easement in circumstances where it has jurisdiction to do so. Although the County seldom closes roads permanently, third-party development very occasionally requires the permanent closure of part of a County road and structures built in place of the closed road, thus inhibiting the County from granting an easement in favour of Enbridge. Since signing its Agreement with Enbridge in 2003, there has only been one closure of a County road where an easement could not be provided, and the cost of relocation was resolved with the third-party purchaser, without reliance on paragraph 11 of the Agreement.
17. Although closure and sale of County roads is infrequent, in the unlikely circumstance where the County, due to third-party development outside of its control, could not grant the easement, it would be unduly burdensome to its residents to share relocation costs with Enbridge. This minor amendment reflects a more equitable division of costs.

Amendments to Paragraph 12(a)

18. The language in the existing agreement identifies that when the County deems that it is necessary to take up, remove or change the location of any part of the gas system, the gas company shall remove or relocate the system within a reasonable period of time. The absence of a defined period of time as “reasonable” creates uncertainty and should be defined.
19. In addition to a defined period of time, the County is also requesting an amendment which specifies that where Enbridge fails to relocate within the defined period of time without an agreed extension, it shall compensate the County for the losses that flow from the delay.
20. The County requests that paragraph 12(a) of the Franchise Agreement it has with Enbridge be amended to read as follows: *If in the course of constructing, reconstructing, changing, altering or improving any highway or any municipal works, the Corporation deems that it is necessary to take up, remove or change the location of any part of the gas system, the Gas Company shall, upon notice to do so, remove and/or relocate within **12 months, or such longer period as agreed upon by the parties**, such part of the gas system to a location approved by the Engineer/Road Superintendent. **Where the Gas Company fails to remove and/or relocate within 12 months, it shall compensate the Corporation for the losses that flow from such delay.***

21. In its written response to OEB Staff interrogatories, Enbridge notes that it requires eight to twelve months to relocate its gas system (EGI-OEB-3, page 2). The County had proposed 60 days as a starting point to negotiate with Enbridge but is satisfied that twelve months is reasonable.
22. The County recognizes that in some circumstances a complicated relocation may require additional time. The County does not wish to impose unrealistic or overly burdensome requirements on Enbridge. The County's request is simply to negotiate more definite language to be able to better plan County projects and understand the impacts and potential costs. This minor amendment will facilitate certainty and efficiency.

Amendment to Paragraph 15(b)

23. Paragraph 15(b) of the Franchise Agreement establishes an option, but not an obligation, for Enbridge to remove decommissioned parts of its gas system. The County seeks an amendment to this paragraph which would require Enbridge to remove any part of its decommissioned gas system that is within a County Road allowance where the County has identified a strong potential for future conflicts with anticipated maintenance projects.
24. At paragraph b) on Page 3 of its written response to interrogatories, EGI-OEB-4, Enbridge relies on the Windsor Line Replacement OEB Decision and Order, dated November 12, 2020, EB-2020-0160 to suggest that abandonment better serves the public interest. However, in this decision the OEB's finding at page 18 that the public interest favoured abandonment, was contingent on its finding that Essex County had not provided any compelling reason why the pipeline should be removed and was unable to point to any specific current **or future** conflicts with infrastructure projects. Without proof of the necessity of removal, the OEB was unable to support the expenditure of \$5.9 million to remove the system. In contrast, the County is requesting amended language only in circumstances where it has identified a specific future conflict. These future conflicts are usually minor, only affecting small sections of the gas system, therefore minimizing the cost to Enbridge.
25. The County requests that a new paragraph be added between paragraphs 15(a) and 15(b) to read as follows: *If the Gas Company decommissions part of its gas system located within a highway owned by the Corporation, and where the Corporation has identified a future need for infrastructure within same, the Gas Company shall, at the request of the Corporation and at the Gas Company's sole*

expense, remove the part of its gas system predicted to be in conflict with the anticipated infrastructure.

26. The County is growing at a fast pace, with increasing demand for drainage, sewer, and water infrastructure. The County must treat decommissioned lines as active gas lines, creating delay and expense to infrastructure projects that is ultimately borne by County residents. The requested amendments to paragraph 15 retain the original intention and language of the provision, leaving a small exception that will help to streamline new infrastructure projects in the County, create efficiencies, and reduce costs.

Conclusion

27. The County is seeking these amendments to minimize and recover the cost of Enbridge infrastructure for its residents.
28. It is respectfully submitted that none of the requested amendments depart from the substance of the Model Franchise Agreement so as to require consultation with stakeholders.
29. It is further submitted that such minor amendments are within the jurisdiction of the of the Board to approve.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 5th day of February 2025.