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BY EMAIL

February 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: Ontario Energy Board (OEB) Staff Submission
Enbridge Gas Inc.
Application for Approval of a Franchise Agreement with the County of
Simcoe
OEB File Number: EB-2024-0280**

Please find attached OEB staff's submission in the above referenced proceeding, pursuant to Procedural Order No. 1.

Yours truly,

Natalya Plummer
Advisor, Natural Gas

Encl.

cc: All parties in EB-2024-0280



ONTARIO ENERGY BOARD

OEB Staff Submission

ENBRIDGE GAS INC.

**Application for the Renewal of a Franchise Agreement with the
County of Simcoe**

EB-2024-0280

February 6, 2025

OEB Staff Submission

Overview

On September 24, 2024, Enbridge Gas Inc. (Enbridge Gas) filed an application seeking an order from the OEB for a franchise renewal with the County of Simcoe. The application was filed under sections 9(4) and 10 of the *Municipal Franchises Act (MFA)*.¹

Enbridge Gas operates in the County of Simcoe under two franchise agreements, each based on the terms and conditions of the OEB's Model Franchise Agreement (Model), for a term of 20 years. One agreement is between the County of Simcoe and the former Enbridge Gas Distribution Inc. and, given its effective date of August 26, 2003, is currently expired. The other agreement is between the County of Simcoe and the former Union Gas Limited, with an effective date of February 28, 2008, and is set to expire on or about February 28, 2028.

Through the application, Enbridge Gas seeks to replace its two franchise agreements with the County of Simcoe with a single franchise agreement, based on the terms and conditions of the Model, without amendment. Enbridge Gas applied for a renewal under section 10 of the *MFA*, which operates where a franchise agreement reaches the end of its term and the parties to the agreement have been unable to agree on the terms and conditions for renewing or extending it. Section 10 gives the OEB the power, "if public convenience and necessity appear to require it", to renew the right of a gas company to operate the gas distribution system in a municipality, "upon such terms and conditions as may be prescribed by the OEB".

The County of Simcoe, taking objection with the application, has intervened in the proceeding and is asking the OEB to consider four specific amendments to the terms and conditions of the Model as proposed by Enbridge Gas. The County's intervention request letter frames the amendments (i.e. the deviations from the Model) that it seeks as follows:

- Paragraph 11 (Alternative Easement) such that the County would not be responsible to share the cost of relocating gas lines if the property is no longer available to the County;
- Paragraph 12(a) (Pipeline Relocation) such that "a reasonable period of time" to complete a requested relocation of a pipeline would be defined as per the *Public Service Works on Highways Act* to be 60 days from the notice date;

¹ In response to an interrogatory from OEB staff, Enbridge Gas confirmed that an order under section 9(4) of the *MFA* "is not necessary in these circumstances, given the request for the OEB to issue an order pursuant to section 10 and the operation of section 10(5) of the *Municipal Franchises Act* [and that applying under this section] was an oversight by Enbridge Gas".

- Paragraph 12 to add a clause to address where the road authority incurs a loss or expense by reason of the utility not taking up or relocating utility infrastructure by the date specified in a notice given, the utility company shall compensate the road authority for such loss or expense; and
- Paragraph 15(b) (Disposition of Gas System) such that where the gas company decommissions any part of its gas system in a County road allowance, the gas company shall remove the decommissioned line at the County's request.

In its intervention letter, the County further states that it “represents the best interests of its residents and the amendments it seeks are to reduce expenses and increase certainty in circumstances where utilities need to be relocated or removed...The County intends to make policy submissions as to why [Enbridge Gas's] requested order is not in the best interest of the public.”

Process

The OEB issued a notice of hearing on October 31, 2024. The County of Simcoe applied for and was granted intervenor status.

Enbridge Gas filed a submission in response to the intervention request on November 19, 2024. On November 25, the County of Simcoe filed a further letter in response to Enbridge Gas's submission.

On November 27, 2024, the OEB issued Procedural Order No. 1 which set deadlines for filing and responding to interrogatories, and for the filing of written submissions by OEB staff and intervenors, and the filing of a reply submission by Enbridge Gas. The OEB accepted Simcoe County's request for intervenor status, finding the request relevant to section 10 of the *MFA*. Procedural Order No. 1 also acknowledged the substantive issues raised by the above-mentioned correspondence between Enbridge Gas and the County.

OEB staff filed interrogatories and Enbridge Gas filed interrogatory responses in accordance with the timelines established in Procedural Order No. 1.

On December 20, 2024, the County of Simcoe filed a letter stating that it wished to reserve its right to file evidence until after it had a chance to review Enbridge Gas's response to interrogatories.

Background

In Procedural Order No. 1, the OEB summarized the main substantive contentions between Enbridge Gas and the County of Simcoe with respect to the interests and issues appropriate to this proceeding.

With respect to Enbridge Gas's position, Procedural Order No.1 stated that while

Enbridge Gas did not object to the County's intervention, it took the view that this proceeding is not the appropriate forum for the OEB to consider changes to the Model. The Procedural Order further noted that Enbridge Gas submitted that: the scope of the proceeding should be limited to the renewal of the specific franchise agreement at issue between the County and Enbridge Gas; the scope of the proceeding should be limited to the renewal of the franchise agreement including circumstances specific to the County of Simcoe; and, if the OEB is inclined to consider any of the issues raised by the County of Simcoe, then the OEB should assess the issues raised in accordance with the OEB's Generic Hearings Protocol and determine whether to convene a generic hearing.

The Procedural Order also set out the County's response to the submissions of Enbridge Gas, summarizing the County's position that: its proposed amendments fall squarely within the OEB's statutory power; that a generic hearing is not required; and that the County "is not seeking an amendment to the Model Franchise Agreement at large, but rather an amendment to its specific agreement with Enbridge, which is currently based on the Model Franchise Agreement."

OEB Staff Submission

In OEB staff's respectful view, the renewal application should be granted, and the agreement should be based on the standard terms and conditions of the Model, without amendment.

Section 10 of the *MFA* generally applies where a franchise agreement reaches the end of its term and the parties to the agreement have been unable to agree on the terms and conditions for renewing or extending it. Section 10 gives the OEB the power, "if public convenience and necessity appear to require it", to renew the right of a gas company to operate the gas distribution system in a municipality, "upon such terms and conditions as may be prescribed by the OEB".

Specifically, sections 10(1), (2) and (5) of the *Municipal Franchises Act* provide as follows:

- (1) Where the term of a right [...] to operate works for the distribution of gas has expired or will expire within one year, either the municipality or the party having the right may apply to the Board for an order for a renewal of or an extension of the term of the right.
- (2) The Board has and may exercise jurisdiction and power necessary for the purposes of this section and, if public convenience and necessity appear to require it, may make an order renewing or extending the term of the right for such period of time and upon such terms and conditions as may be prescribed by the Board, or if public convenience and necessity do not appear to require a renewal or extension of the term of the right, may make an order refusing a renewal or

extension of the right.

(5) An order of the Board heretofore or hereafter made under subsection (2) renewing or extending the term of the right or an order of the Board under subsection (4) shall be deemed to be a valid by-law of the municipality concerned assented to by the municipal electors for the purposes of this Act and of section 58 of the *Public Utilities Act*.

That the OEB may issue an order renewing a franchise under section 10 of the *MFA* even when there is no agreement between the municipality and the gas company is a view that has also been held consistently by the OEB, and confirmed by the Courts.

Despite the power of the OEB to impose terms on parties under section 10 of the *MFA*, the OEB has 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.²

As noted in the OEB’s *Natural Gas Facilities Handbook*, the OEB adopted the Model following significant input from interested stakeholders (including municipalities) and has applied it consistently in efficiently administering the many franchise agreements across the Province. 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 the OEB has stated that the Model framework “is preferable to a piecemeal approach of negotiating terms specific to a franchise”.

Enbridge Gas and its predecessor companies have been supplying gas in the County of Simcoe for many years, pursuant to municipal franchise agreements in the form of Model. The County filed no evidence to support its argument that the deviations from the Model are warranted in this specific proceeding.

In light of the foregoing, OEB staff respectfully submits that the proposed amendments, as articulated by the intervenor thus far in the proceeding, are not clear and not consistent with the OEB’s general approach of adhering to the Model in gas franchise renewal applications. As such, while the OEB should grant the renewal, it should not adopt the County’s proposed amendments.

In respect of the proposed deviation from Paragraph 11 of the Model, the County states in its intervention letter that it should not be responsible to share the cost of relocating gas lines if the property is no longer available. While it is not entirely clear what is meant by “if the property is no longer available” OEB staff nevertheless notes that the cost sharing provisions this part of Model apply uniformly throughout the province. Moreover, Enbridge Gas has stated that there were a total of 11 pipeline relocations in the County for 2024, which is a number that appears to be on average with other municipalities.³ It

²Report of the Ontario Energy Board, “Natural Gas Facilities Handbook”, EB-2022-0081, March 31, 2022

³ Enbridge Gas Response to OEB Staff 3b), January 16, 2025

is OEB staff's view that there is no compelling reason to deviate from this term of the Model.

The County seeks an amendment to Paragraph 12 of the Model that states that "a reasonable period of time" to complete a requested relocation of a pipeline would be defined as per the *Public Service Works on Highways Act* to be 60 days from the notice date. The County also appears to seek to add a clause to Paragraph 12 of the Model to address circumstances where the road authority incurs a loss or expense by reason of the utility not taking up or relocating utility infrastructure by the date specified in the provided notice. The clause would require the utility company to compensate the road authority for such loss or expense. OEB staff is of the view that the County has not demonstrated a compelling reason for these proposed deviations from the Model.

OEB staff notes, in particular, a response to an OEB staff interrogatory about the general timeframe required to relocate a pipeline and whether 60 days is adequate. In its response, Enbridge Gas stated that "Pipeline relocations will typically take 8 to 12 months to complete after the design stage for a municipal roadwork project." Enbridge Gas also stated that "because pipeline relocation projects require significant coordination with the municipality and other parties, Enbridge Gas would not have enough control over these parties or processes to complete pipeline relocation projects within 60 days from receiving notice from the municipality."⁴

The County also seeks an amendment to paragraph 15 of the Model such that requirements would be added regarding the removal of decommissioned systems within a road right-of-way when needed. The County has suggested that if a gas system is relocated as part of a road reconstruction project, the decommissioned pipeline should be removed at no extra cost. In response to OEB staff interrogatories about the occurrence, general costs and procedure for removing a pipeline, Enbridge Gas stated that "physical removal of abandoned pipe is not typical unless it is required as part of a project's scope of work and that pipeline removal costs depend on several factors".⁵ Enbridge Gas provided examples of leave to construct applications where the estimated cost to remove a pipeline as opposed to abandoning the pipeline totaled millions in additional project costs.⁶ Enbridge Gas also stated that there are cases where an abandoned Enbridge Gas asset could be used as a telecommunications conduit or some other use and that ratepayers should have the opportunity to benefit from the revenue stream.⁷ It is OEB staff's view that the County has not demonstrated a compelling reason or adduced evidence sufficient to conclude that a deviation from paragraph 15(b) of the Model is warranted.

In OEB staff's respectful submission, there is no evidence on the record of this

⁴ Enbridge Gas Response to OEB Staff 3c), January 16, 2025

⁵ Enbridge Gas Response to OEB Staff 4b), January 16, 2025

⁶ Ibid

⁷ Enbridge Gas Response to OEB Staff 4c), January 16, 2025

proceeding that supports the conclusion that the OEB should deviate from the standard terms of the Model should it decide to approve the application and issue an order renewing the natural gas franchise between Enbridge Gas and the County of Simcoe.

~All of which is respectfully submitted~