

February 14, 2025

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 Certificate of Public Convenience and Necessity
Township of Tay Valley
Ontario Energy Board File No. EB-2024-0342**

Enbridge Gas submits the following comments on how the issues set out in the February 11, 2025 submission of Environmental Defence (ED) and its request for late intervenor status are not appropriate for consideration in this proceeding.

To be clear, this application is to address Enbridge Gas' current Certificate of Public Convenience and Necessity (CPCN) issued on August 25, 1960 for the former Township of Bathurst which represents approximately half the area that makes up the current Township of Tay Valley. The requested new CPCN for the Township of Tay Valley will expand the overall CPCN rights held by Enbridge Gas to include the former townships of South Sherbrooke and North Burgess (now part of the Township of Tay Valley). This is consistent with recent CPCN decisions in which the Ontario Energy Board (OEB) has noted that issuing new CPCNs that are geographically aligned with municipal borders is consistent with the intent of the OEB that the certificate holders update service areas if boundaries of their existing CPCNs are affected by municipal amalgamations, annexations or name changes¹. This position is supported by the guidance in the Natural Gas Facilities Handbook² to notify the OEB of any change to municipal boundaries in order to have CPCNs amended to reflect any change.

As noted in our application, the Township of Tay Valley is a lower-tier municipality located in the County of Lanark within which Enbridge Gas provides service to approximately 30 customers pursuant to franchise agreements and CPCNs that have been in place since approximately 1959. A community expansion project was included in the proposals to Phase 2 of the Natural Gas Expansion Program³.

The deadline for intervention requests and comments on hearing type in this proceeding was January 9, 2025 which was the date the Township of Tay Valley submitted its letter of comment to the OEB. The OEB arranged for publication of the Notice of Hearing in the *Frontenac News* newspaper on Thursday, December 19, 2024 and on the www.insideottawavalley.com web site from Thursday, December 19, 2024 through Monday, December 30, 2024. The Notice of

¹ For example, OEB Decisions and Orders issued in EB-2024-0294, EB-2023-0239 and EB-2023-0146.

² [Natural Gas Facilities Handbook | Ontario Energy Board](#)

³ [EB-2019-0255](#)

Hearing was also delivered to the Township of Tay Valley by courier and posted on the Enbridge Gas and OEB web sites. For anyone directly impacted by the application, there was ample notice and opportunity to submit comments or concerns to the OEB by the January 9, 2025 deadline. ED is well beyond the deadline for filing a request to become an intervenor. In fact, contrary to ED's assertion that the timing of its request causes no delay or prejudice to any party, allowing ED to intervene will delay this proceeding since they are seeking to file evidence and greatly expand the scope of what is intended to be a straightforward administrative request to align the existing CPCN with current municipal boundaries.

When determining whether to grant intervenor status to a person in a given proceeding, the OEB considers whether the person has a substantial interest in the matter being heard and whether the person's concern will be addressed within the scope of the proceeding. In accordance with Rule 22 of the OEB's Rules of Practice and Procedure, a person has a substantial interest if they have a material interest that is within the scope of the proceeding; for example, a person that: (i) primarily represents the direct interests of consumers (e.g., ratepayers) in relation to services that are regulated by the OEB; (ii) primarily represents an interest or policy perspective relevant to the OEB's mandate and to the proceeding; or (iii) has an interest in land that is affected by the proceeding.

It is unclear how ED has any substantial interest in the proceeding. There is no indication that ED has any authority to speak for the residents of the Township of Tay Valley and there is no indication that there are residents within the Township of Tay Valley associated with ED. Enbridge Gas submits that there has not been any information provided to justify the suitability of ED as an intervenor, including whether Enbridge Gas' current customers should be required to subsidize the intervention (and evidence) of potential non-gas customers. Enbridge Gas submits that the OEB should be cautious about admitting funded intervenors into limited scope proceedings, particularly where there is no indication the proposed intervenor has constituents who are directly impacted by the relief sought in the case. It is not appropriate for prospective intervenors to seek to turn a proceeding into a "test case", especially where there is no demonstrable link between the intervenor and the impacted community. Generic concerns should be addressed in generic proceedings.

In its February 11, 2025 submission, ED states that it wishes to explore and address the question of what factors should be considered in CPCN applications. ED appears to be challenging the CPCN provisions of the *Municipal Franchises Act* because ED also wishes to explore the following issues:

1. Whether approval to construct gas works is required by public convenience and necessity;
2. How municipal opposition should be considered when assessing public convenience and necessity;
3. Whether the existence of less expensive alternatives to methane gas mean that public convenience and necessity do not "require" that approval be given within the meaning of those terms in s. 8;
4. Whether factors relating to the energy transition, including the financial risks associated with gas infrastructure spending, mean that approval is not required by public convenience and necessary; and
5. Other issues that may become apparent after reviewing interrogatory responses from Enbridge.

ED seeks to file evidence on the question of whether the test for granting approval to construct gas works as set out in the *Municipal Franchises Act* has been met, namely whether "public convenience and necessity appear to require that such approval be given". According to its intervention form, this would include evidence relevant to whether the approval is in the public interest and in ratepayers' interests in light of the financial risks and climate risks arising from the approval. ED proposes to file evidence that it submitted in the Enbridge Gas rebasing proceeding (EB-2022-0200) in this current proceeding, including expert testimony addressing the risks associated with gas expansion approvals.

As far as Enbridge Gas knows, the evidence associated with ED that was submitted during the EB-2022-0200 proceeding addressed perceived risks associated with expansion of gas systems, particularly in the context of decarbonization efforts and the potential for declining gas demand. ED's expert evidence addressed issues such as the risk of underutilized or stranded assets, potential inter-generational inequities, the economic implications of electrification and regulatory steps to mitigate risks. Enbridge Gas has no idea how any of this evidence is remotely relevant to an application to ensure that the boundaries of an existing CPCN accurately reflects the result of a municipal amalgamation in an area of the province where no other gas distributor operates. What is clear is that, contrary to ED's assertions, filing this broad-ranging evidence prepared for a totally different purpose is not "efficient". It will greatly broaden the scope of this narrow case. It will implicitly bring in the record from the largest case the OEB has recently adjudicated. It will confuse what is being determined in this proceeding.

The OEB's mandate is to regulate Ontario's energy sector as required under provincial legislation. The OEB's objectives, responsibilities and powers are set out in legislation, regulations and directives issued by the provincial government. Enbridge Gas submits that it would certainly not be appropriate for the OEB to consider proposed changes to the provisions of the *Municipal Franchises Act* or their general applicability in an ad hoc and narrow manner for one lower-tier municipality as is being suggested by ED. This proceeding cannot result in different legislative provisions because that is not within the jurisdiction of the OEB.

It is clear that ED is seeking to turn the simple request in this proceeding into a broad examination of complex and wide-ranging questions. ED is seeking to re-frame how the OEB considers and approves CPCNs. ED is clearly looking at this as a "test case" that would have broader implications beyond the Township of Tay Valley, which has around 6,000 residents and only 30 current gas customers. ED is planning to bring forward expert evidence and re-engage in debate and discussion that has been considered at great length in Enbridge Gas' 2024 rebasing proceeding. None of ED's apparent concerns are specific to the Township of Tay Valley. ED is seeking outcomes that could have broad implications on Enbridge Gas and on communities and customers across Ontario. Presumably there could be a wide range of interested parties who would want to participate in such a debate or should at least be given the opportunity to do so. All of this would turn the simple administrative request to align a CPCN with municipal boundaries into a very complex proceeding.

In the Minister of Energy and Electrification's December 19, 2024 Renewed Letter of Direction (the Renewed Directive) to the OEB, the Minister highlighted his expectation that the OEB ensure intervenors are cost effective, efficient and in the public interest⁴. The Minister expressed his expectations in this regard at page 8 of the Renewed Directive:

⁴ [Steven Lecce, Minister of Energy and Electrification, December 19, 2024](#), p. 8.

*Keep my office and ministry informed on the progress of implementing the 10-point action plan outlined in the OEB's Report Back dated September 27, 2024 on Intervenor and Regulatory Efficiency. I also expect that OEB management and staff will provide assistance, as appropriate, to Commissioners **by being proactive and diligent in ensuring that such report recommendations – and other good practices for ensuring intervenors are cost effective, efficient and in the public interest – are followed**, and that Commissioners are transparently advised, as appropriate given the independence of their adjudicative role, where staff believe improvements are required, **or intervenors need to be limited or directed.** (emphasis added)*

It is clear from the Renewed Directive that it should not be business as usual when it comes to the OEB accepting intervention requests without giving due consideration to how the intervenor process can be rendered more efficient. More specifically, this requires the OEB to consider whether an intervenor is appropriately representing ratepayers and issues that are properly within the scope of a given proceeding.

Also, in the recent franchise agreement renewal proceeding for Lennox and Addington County (EB-2024-0134), the OEB was forced to cancel a scheduled hearing date, for which other parties had prepared, at the eleventh hour because the Concerned Residents (vaguely described as a group of concerned residents represented by ED's counsel) ultimately determined their issues were out of scope for the hearing. It was open for the OEB to determine these intervenors did not have a "substantial interest" in the issues in scope for the proceeding at the stage of considering the intervention request, rather than allow for out-of-scope discovery and final submissions. Intervenor represented by ED's counsel similarly withdrew their interventions in another recent Enbridge Gas franchise agreement renewal proceeding for the Township of Guelph-Eramosa (EB-2024-0188) rather than providing the OEB with clear information about how they had a substantial interest in the matters in scope for that proceeding. The OEB should not allow such regulatory inefficiencies to repeat and proliferate.

In summary, Enbridge Gas submits that ED should not be granted intervenor status as it has no substantial interest in this proceeding. Enbridge Gas objects to ED's proposal to file evidence as what is proposed is neither relevant nor necessary, and it will add to the time, scope, cost and complexity of this proceeding. In any event, the scope of the proceeding for this application should be limited to local issues relevant to this CPCN request. The issues identified by ED for debate are redundant to issues recently considered by the OEB in the Enbridge Gas 2024 Rebasing proceeding and if the OEB is still inclined to consider further, are more suited to discussions within a generic or consultation proceeding.

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

Yours truly,

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