

February 28, 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 Renewal of Franchise Agreement - City of Guelph
Ontario Energy Board (OEB) File No. EB-2025-0058**

Enbridge Gas submits the following comments on the requests for intervenor status submitted by the City of Guelph and eMERGE Guelph Sustainability (eMERGE Guelph) on February 24, 2025. Enbridge Gas only became aware of eMERGE Guelph's request for intervenor status through checking the Ontario Energy Board's Regulatory Document System, despite the requirement in Rule 22.01 of the OEB's *Rules of Practice and Procedure* (Rules) and explained in the OEB's *Intervention Process Guidance Document*¹ that an application for intervenor status shall be served on the applicant.

For the reasons set out below, Enbridge Gas urges the OEB to reject eMERGE Guelph's request for intervenor status and to limit the intervention of the City of Guelph only as it relates to issues within the limited scope of this proceeding.

Summary of Enbridge Gas' Position re: Requests for Intervenor Status

When determining whether to grant intervenor status to a person in a 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, 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 eMERGE Guelph has any substantial interest in this proceeding. There is no indication that eMERGE Guelph has any authority to speak for the City of Guelph and the City's residents or that there are even residents within the City of Guelph associated with eMERGE Guelph who would have a material interest impacted by this proceeding.

¹ <https://www.oeb.ca/sites/default/files/Intervention-Process-Guidance-Document-20230323-en.pdf>

Enbridge Gas submits that the information provided fails to justify the suitability of eMERGE Guelph as an intervenor, including whether Enbridge Gas' current customers should be required to subsidize the intervention (and evidence) of a group potentially representing non-residents or non-gas customers. Enbridge Gas urges the OEB to 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.

Moreover, eMERGE Guelph appears to be attempting to override the legal authority of the municipality to determine matters impacting its residents. That is, eMERGE Guelph is asking the OEB to allow them to challenge and question terms of an agreement for utility services that the municipality, through its duly elected council, is addressing in the interests of its residents. This is in effect an attempt to circumvent appropriate municipal governance processes. Enbridge Gas urges the OEB to deny eMERGE Guelph's intervention for these reasons, as further explained below.

While not entitled to a cost award, Enbridge Gas acknowledges that the City of Guelph has a substantial interest in the renewal of the franchise agreement as a counterparty to the franchise agreement. However, we urge the OEB to carefully consider the scope of issues raised in the municipality's request for intervenor status relative to the limited scope of this proceeding, as further explained below.

Further Discussion re: City of Guelph's Request for Intervenor Status

The OEB recently confirmed its longstanding policy position that any detailed discussion of generic changes to the Model Franchise Agreement is not in scope within the review of an application for the renewal of one specific franchise agreement.²

In its intervention form, the City of Guelph identifies three revisions that it would like to make to the Model Franchise Agreement related to: providing for flexibility in the event of change in law, including to allow the City of Guelph to charge fees for use of public property if and when Ontario Regulation 584/06 (Fees and Charges) under the *Municipal Act, 2001* is amended to allow such charges; ensuring that the City of Guelph is not liable to pay for any gas infrastructure relocations needed due to conflicts with municipal infrastructure; and not having any future charges for use of municipal property (i.e., franchise fees) passed on to customers of Enbridge Gas located within the City of Guelph.

When Ontario Regulation 584/06 was passed in December 2006, it was put in place to provide clarity about what municipalities could or could not do with respect to fees and charges within the context of the *Municipal Statute Law Amendment Act* (i.e., restrictions placed on the ability of a municipality to impose fees or charges through provisions of the *Electricity Act* and the *Ontario Energy Board Act*). There has been no indication from the Ontario government that they are even thinking of looking at changes to Ontario Regulation 584/06. The government would typically undertake broad consultations prior to considering making any such changes to existing regulations. The OEB has not historically made determinations on policy based on speculation that legislation may change.

² EB-2024-0134 - Procedural Order No. 2, September 6, 2024, page 2

With respect to the terms and conditions of the proposed franchise agreement, the OEB adopted the Model Franchise Agreement following significant input from the Association of Municipalities of Ontario (AMO) and the natural gas utilities of the day as a tool to efficiently administer the many franchise agreements across Ontario. This includes terms and conditions such as the 20-year term of the agreement and the allocation of costs associated with pipeline relocation required at the request of the municipality.

As the OEB is well-aware, Enbridge Gas has franchise agreements in place with 315 single/lower-tier municipalities and 28 upper-tier municipalities throughout Ontario, all in the form of the current Model Franchise Agreement as determined by the OEB in accordance with its longstanding policy and practice, and all of which contain the relocation cost provisions that have been previously determined by the OEB to be fair and equitable.

The OEB determines the costs that Enbridge Gas is allowed to recover from its customers. The OEB's longstanding policy is to allow all prudently incurred costs to be recovered through rates charged to Enbridge Gas customers. The suggestion that the OEB should allow an exemption to this practice for costs incurred by Enbridge Gas within the City of Guelph for the use of municipal property is inconsistent with utility ratemaking principles and practices. Under the current ratemaking framework, if additional fees for the use of municipal property are ever allowed by law, all customers of Enbridge Gas would be charged for their recovery unless the OEB decides that cost recovery should be directly assigned to customer groups causing Enbridge Gas to incur the costs. More importantly, for the immediate purposes of assessing intervenor standing, such suggestions should not be entertained within the confined scope of this application, and any findings made by the OEB panel in this proceeding should not (and cannot) fetter the discretion of future panels in Enbridge Gas' rate cases. If the City of Guelph's request for intervenor status is granted, we urge the OEB to limit the City's intervention to issues that are in-scope of this proceeding.

Further Discussion re: eMERGE Guelph's Request for Intervenor Status

Turning to eMERGE Guelph's request for intervenor status, it is unclear who exactly constitutes this organization or how it has a substantial interest in the review of the renewal of a franchise agreement between Enbridge Gas and the City of Guelph. For instance, there is no indication if there are any residents within the City of Guelph associated with eMERGE Guelph who would have a material interest impacted by this proceeding. The OEB should not accept as sufficient, at face value, the asserted level of interest or desire of an advocacy group to influence utility services in a community. Neither should the OEB endorse Enbridge Gas' current customers subsidizing such an intervention (and evidence) of an organization potentially representing non-residents and non-gas customers.

In its intervention form, eMERGE Guelph highlights concerns about the terms and conditions of a franchise agreement that pertain to issues that are rightfully to be determined by the municipal government:

- Do the circumstances before the OEB warrant an order that the Applicant continue good faith negotiations with the municipality over individual terms of the franchise agreement before seeking to impose an involuntary agreement?
- Do new circumstances since the Model Franchise Agreement was developed approximately 25 years ago warrant deviating from the Model Franchise Agreement, including circumstances relating to the energy transition or the municipality's climate targets?
- Should an imposed agreement include a term allowing the municipality to re-open the agreement for negotiations in the event that the prohibition on charging fees for use of

the right-of-way is removed?

- Should an imposed agreement require Enbridge Gas to incur relocation costs when a conflict arises with public works in any instances where Enbridge Gas has not paid land-based fees for use of the land in question?
- Should the agreement terms be allowed to continue under s. 4(c) of the agreement without requiring those terms to be locked in with a new 20-year agreement?
- Does the proposed 20-year term for the Franchise Agreement meet the public convenience and necessity test in light of the City of Guelph's stated mandate to become net carbon zero by 2050?

The OEB's *Natural Gas Facilities Handbook* directs that franchise agreements be based on the Model Franchise Agreement unless there are compelling reasons to deviate from it.³ There are no provisions for "negotiations" given that the City of Guelph has not raised any issues unique to the municipality or its citizens that should lead the OEB to consider any deviation from the Model Franchise Agreement. Even if this is a question that warrants consideration in this case, the intervention and evidence of eMERGE Guelph – based on its thinly substantiated mandate and nexus to the application – are unlikely to add any real probative value and would in fact introduce unnecessary burdens and delays to the regulatory process.

The OEB should reject eMERGE Guelph's suggestion that they have any position or mandate to advance arguments related to the municipality's climate targets or the use of energy within the municipality, since this group has no authority to speak for the municipality regarding its policies and positions. Local governments in Ontario are the responsible level of government to make determinations in the best interests of their constituents.

In addition, eMERGE Guelph raises the issue of including terms within the franchise agreement to allow the municipality to re-open the franchise agreement for negotiations in the event that the prohibition on charging fees for use of the right-of-way is removed. As noted above, there has been no indication from the Ontario government that they are even thinking of any changes to Ontario Regulation 584/06 and the OEB has not historically made (and should not make) determinations on policy based on speculation that legislation may change.

In any event, eMERGE Guelph appears to misapprehend the facts regarding fees, as Enbridge Gas pays property taxes in every municipality in which it has facilities based on linear infrastructure and it is misleading to state that municipalities are providing free use of lands. Enbridge Gas is also subject to permit fees in several municipalities to cover the administrative costs of those municipalities issuing permits, as municipalities are entitled to charge under Ontario Regulation 584/06.

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:

*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***

³ *Natural Gas Facilities Handbook*, page 11

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

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)

As clearly seen from the Renewed Directive, 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.

Notably, in the recent franchise agreement renewal proceeding for the County of Lennox and Addington (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 group (vaguely described as a group of concerned residents represented by the same counsel as eMERGE Guelph's) 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 request for intervenor status, rather than allow for out-of-scope discovery and final submissions. In another recent Enbridge Gas franchise agreement renewal proceeding for the Township of Guelph / Eramosa (EB-2024-0188), intervenors represented by eMERGE Guelph's counsel similarly withdrew their interventions 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.

Conclusion

In Enbridge Gas' submission, the OEB ought to reject the eMERGE Guelph request for intervenor status for the reasons set out above. While Enbridge Gas does not object to the City of Guelph's request for intervenor status, we urge the OEB to allow the intervention only as it relates to issues within the limited scope of this proceeding, which is to review an application to renew a franchise agreement on the same terms and conditions that are currently in place in the City of Guelph and 300+ municipalities throughout Ontario.

If the OEB disagrees with Enbridge Gas and wishes to consider any of the issues raised that implicate more than just this application, the OEB must carefully consider whether notice to impacted parties has been provided and if not, must provide for such notice. In that care, the OEB should also conduct an analysis and assessment of the issues raised in accordance with its *Generic Hearings Protocol* to determine whether there is a broader applicability, which Enbridge Gas submits there likely would be, depending upon how the OEB decides to scope the issues. If the OEB were to consider such generic issues in relation to the Model Franchise Agreement, such consideration must include an opportunity for other stakeholders to participate, including other municipalities, gas ratepayers and gas distribution utilities at a minimum.

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

Yours truly,

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