

Elson Advocacy

March 5, 2025

BY RESS

Ms. Nancy Marconi

Registrar

Ontario Energy Board

2300 Yonge Street, Suite 2700, P.O. Box 2319

Toronto, Ontario M4P 1E4

Dear Ms. Marconi:

**Re: Enbridge – Application for Renewal of Franchise Agreement – City of
Guelph Ontario Energy Board (OEB) File No. EB-2025-0058**

I am writing in response to the letter of Enbridge Gas dated February 28, 2025, requesting that eMERGE Guelph Sustainability (eMERGE Guelph) be denied intervenor status in the above-referenced proceeding.

The applicant raises several grounds of objection, which I have addressed as follows:

- eMERGE Guelph has a substantial interest in the proceeding
- eMERGE Guelph's interest and perspective is distinct from the municipality
- Enbridge's submissions on the scope and substance of this proceeding are premature and baseless
- eMERGE Guelph will be a responsible intervenor and support regulatory efficiency

As discussed in further detail below, eMERGE Guelph submits that Enbridge's objections regarding its intervention are baseless and should be rejected by the Board. Enbridge's submissions regarding the scope of the hearing should also be rejected as both premature and baseless.

Substantial Interest in the Proceedings

Enbridge argues that eMERGE Guelph has insufficient interest in the proceeding to be granted intervenor status. This is palpably untrue.

As required by Rule 22 of the OEB's Rules of Practice and Procedure, eMERGE Guelph has an interest or policy perspective relevant to the OEB's mandate in this proceeding, namely: (a) determine whether "public convenience and necessity" require the imposition of Enbridge's proposed franchise renewal agreement on the City of Guelph under the *Municipal Franchises Act* (the Act) and (b) determine what terms and conditions should apply.

The relevant interests and policy perspectives are: environmental protection and promoting the interests of its supporters and other Guelph residents.

First, eMERGE has an interest in environmental protection that is relevant to the OEB's mandate and the issues in this proceeding. The OEB has confirmed on numerous occasions that environmental interests are relevant to its mandate, including in a procedural order issued yesterday which granted intervenor status to three environmental groups in an Enbridge proceeding and explicitly confirmed that they "represent a policy interest relevant to the OEB's mandate and therefore have a substantial interest in this proceeding."¹

Environmental protection is relevant to the issues in this specific proceeding because the proposed franchise agreement would constitute a fossil fuel subsidy by providing access and use of Guelph's land (i.e. its roads) without payment of any fees. It also constitutes a fossil fuel subsidy by requiring the municipality to contribute towards the cost of relocating pipelines even though Enbridge does not pay for the use of land. The combustion of methane gas causes one-third of Ontario's greenhouse gas emissions, and fossil fuel subsidies skew behaviour in favour of greater climate pollution. Fossil fuel subsidies greatly hinder efforts to avoid catastrophic climate change and make the energy transition more expensive. eMERGE has a clear and direct interest in opposing an agreement that would lock in this fossil fuel subsidy for the duration of the agreement.

Enbridge argues that there is no fossil fuel subsidy because it pays taxes. This is a red herring. Municipal taxes are entirely different from payments for the use of lands owned by a municipality. Furthermore, this argument is premature as it relates to the substance of the proceeding, not whether intervention status should be granted. The view of eMERGE that the proposed agreement constitutes an inappropriate fossil fuel subsidy is shared by the City of Guelph, other municipalities, and the local Member of Provincial Parliament. eMERGE has a strong interest in opposing Enbridge's arguments and the fossil fuel subsidy itself.

eMERGE's interest in environmental protection is sufficient for it to be granted intervenor status, as have other environmental groups in the past. However, in addition, eMERGE also represents the financial and ethical interests of its supporters and other Guelph residents that do not wish to provide free access to public property for pipelines. Municipalities in other jurisdictions raise millions of dollars in revenue through fees charged to pipeline companies for the use of public land. The supporters of eMERGE and other Guelph residents have an interest in opposing an agreement that would lock them out of that revenue for twenty years (even if the prohibition on these fees is removed). The supporters of eMERGE and other Guelph residents also have an ethical interest opposing fossil fuel subsidies provided via free access to its public lands. Many want to know that they have done everything they can to avoid supporting fossil fuels, as they contemplate their children's futures in a world potentially devastated by climate change impacts.

Enbridge baldly alleges that eMERGE represents "non-residents" and individuals who are not impacted by the proposed agreement. Enbridge has no basis for this assertion and appears to simply disregard the clear information to the contrary provided in the intervention request. As stated previously, eMERGE is a local Guelph non-profit with local Guelph supporters. In fact, it

¹ EB-2024-0198, *Procedural Order No. 1*, March 4, 2025, ([Link](#)), p. 6.

is our understanding that a number of community members have sent letters to the OEB, voicing their support for eMERGE's request to intervene.

Originally incorporated as Guelph Environmental Leadership in 2002, the not-for-profit officially changed its name to eMERGE Guelph Sustainability in 2014. This signified a renewed focus on fighting climate change by helping people reduce energy use and advocating for better climate policy.

Since then, the organization has advanced these goals through local political advocacy, direct consumer education and community organizing. Led by a Board of Directors consisting of seven local residents and over two thousand supporters, eMERGE Guelph has actively participated in local dialogue on municipal gas franchise agreements. Its Executive Director previously deposed to City Council on Enbridge's franchise renewal proposal and has participated in related consultations with Guelph's Member of Provincial Parliament, Mike Schreiner.

Among the organization's successes: playing a major role in the City adopting targets of Net Zero by 2050 for the broader community and 100% Renewable Energy for the Corporation of the City of Guelph; pushing City Council to officially acknowledge that Guelph is in a climate emergency; and operating a low-income energy efficiency program on behalf of Enbridge's predecessor, Union Gas.²

As such, eMERGE Guelph is well placed to speak to the policy and other interests outlined above.

Distinct interests vis-à-vis the municipality

Enbridge argues that eMERGE should be denied intervenor status "since this group has no authority to speak for the municipality." eMERGE Guelph does not seek to speak on behalf of the City of Guelph or on behalf of the local electorate writ large. Their proposed intervention is on behalf of the organization's constituency: residents of Guelph who are concerned about climate change and the financial and environmental impacts of the proposed franchise agreement. This interest and perspective is distinct from the interests and perspective of the municipality. eMERGE brings a focus on environmental protection and the concerns of its supporters, who are particularly engaged in this specific matter and have been involved in campaigns to attempt to bring about an end to the fossil fuel subsidy in question.

Further, while there may be overlap in the arguments raised by eMERGE Guelph and the municipality, they represent fundamentally different parties: one a signatory to the agreement with specific legal rights and obligation; the other a public interest organization with the stated policy mandate to combat climate change.

These related but different voices are both critical to the integrity of the Board's public hearing process – especially where the municipality objects to the proposed franchise terms and conditions. In these circumstances, the Board must adjudicate between the interests of Enbridge

² Contract with Union Gas terminated in 2017 when the gas supplier ceased using external contractors.

and the City of Guelph, such that its quasi-judicial role is amplified. As the OEB noted in its September 27, 2024 Report to the Minister on Intervenor and Regulatory Efficiency:

The OEB is an adjudicative tribunal founded on a quasi-judicial adversarial model. Therefore, external participation in OEB adjudicative proceedings, including those by regular intervenors, is an important part of how the OEB hears applications and makes its decisions. While OEB staff represent and advocate in the broad public interest, persons with a “substantial interest” in an application are also entitled to participate.³

The need for a variety of perspectives is further heightened this case, given the fact that an Order under s. 10 of the Act is deemed a by-law assented to by the relevant electorate. A decision to limit the voices of local interested parties so early in the process would run counter to the clear intention behind the legislative requirement for a public hearing.

Scope of Proceeding

Enbridge further asks the Board to refuse eMERGE Guelph’s request to intervene on the basis that the issues raised in its intervention form are out of scope for this proceeding. This should be rejected for two reasons.

Firstly, it would be inappropriate for the Board to make such a determination prior to allowing the parties to make submissions on scope, including on the relevant considerations as outlined in previous cases. Enbridge’s objection is essentially attempting to conflate and reduce two of the Board’s distinct and equally important gatekeeping functions: assessing intervention requests on the basis of substantial interest and identifying the proper scope of proceedings.

Although Enbridge’s objections in this regard were raised under the guise of efficiency, they actually create procedural chaos and obscure the considerations relevant to each stage of the proceeding. The intervenor approval process is no place to argue substantive issues, more properly dealt with through interrogatories, filing of evidence and submissions (e.g. the relevance of property taxes and potential legislative amendments to Ontario Regulation 584/06).

This line of objection is also based on an inaccurate characterization of the proceeding as being of “limited scope.” Unlike previous hearings under the *Municipal Franchises Act*, in which the Board circumscribed the scope of proceedings, this application is opposed by the relevant municipal government on multiple grounds. Its scope will therefore inevitably be broader than in other similar applications that have come before it. In particular, the Board will need to determine whether the specific circumstances of this case warrant deviation from the Model Franchise Agreement, such that the application should be rejected as not meeting the test for public convenience and necessity. eMERGE submits that this requires a more fulsome evidentiary record than in applications to approve agreements, which a municipality has consented to.

³ Ontario Energy Board, Report Back to the Ministry – Intervenor and Regulatory Efficiency, September 27, 2024 ([Link](#)), p. 2.

Most importantly, Enbridge argues that the scope of this hearing is narrow because any deviations from the Model Franchise Agreement must be based on “issues unique to the municipality or its citizens.” eMERGE seeks deviations based both on factors that are and *are not* unique to this municipality. This includes factors that were not considered when the Model Franchise Agreement was first developed 25 years ago, such as the energy transition, the imperative to avoid fossil fuel subsidies, and an ongoing provincial campaign to end the subsidy. Enbridge’s attempt to seek to narrow the proceeding at this early stage is inappropriate, unfair, and contrary to the requirement in the *Municipal Franchises Act* to hold a hearing and consider factors relevant to “public convenience and necessity.”

This does not mean, however, that a generic hearing is required or that broader notice is needed, as suggested in Enbridge’s objection letter. eMERGE Guelph does not seek to modify or amend the Model Franchise Agreement for all municipalities going forward. Instead, it seeks to intervene on the question of whether the circumstances before the Board warrant a deviation from the terms of the Model Franchise Agreement such that Enbridge’s current application should be rejected. This fits squarely within the considerations and determinations required of the Board under s. 10 of the *Municipal Franchises Act*.

Procedural Efficiency

Enbridge argues that eMERGE should be denied intervenor status in part because it withdrew its intervention request in the Guelph-Eramosa franchise agreement proceeding. There is no basis for this. Enbridge states that the withdrawal was motivated by an attempt to avoid “providing the OEB with clear information about how they had a substantial interest” as if eMERGE was somehow acting improperly or attempting to hide something. That is false. The actual rationale for the withdrawal was acknowledged by the OEB in its decision in that case:

By letter to the OEB dated January 8, 2025, Zajdlik-eMerge advised that, in light of the scoping of issues by the OEB in a parallel proceeding filed under s. 9 of the *Municipal Franchises Act*, they wished to withdraw their request to intervene in this proceeding, noting that it “appears likely that a similar scoping decision would be made in this proceeding as it also involves a municipality that agreed to the model franchise agreement. This would render the key issues and arguments that Dr. Zajdlik and eMerge wish to raise as out of scope.”⁴

eMERGE Guelph acted responsibly and in the interests of procedural efficiency by choosing to withdraw at an early stage.

Regardless, Enbridge’s argument is irrelevant to the case at hand, which is fundamentally distinct from the cases of EB-2024-0188 and EB-2024-0134 because, unlike in those past cases, Guelph opposes the franchise renewal terms and Enbridge is seeking to have it imposed under s. 10 of the Act.

⁴ EB-2024-0188, Decision and Order, January 23, 2025 ([Link](#)), p. 3.

Enbridge also makes incorrect accusations about another party represented by counsel for eMERGE in other proceedings. Although these accusations are improper and irrelevant to whether eMERGE should be granted intervenor status, a response is required.

Enbridge accuses a local resident's group that intervened in EB-2024-0134 of acting inappropriately. Enbridge inaccurately describes the group as being "vaguely described as a group of concerned residents" and implies that they were not *bona fide*. Details were provided regarding the resident group and their connection with the County in question, including that the group included members of the local chapter of Seniors for Climate Change Now (SCAN!) who are Lennox and Addington County residents, as well as the name, address, and phone number of the group's community leader.

Enbridge criticizes the group for withdrawing their objections in that case. This is backwards. The resident group was acting responsibly and efficiently by withdrawing its objections. First, the withdrawal occurred soon after the holiday break and one week prior to the hearing, not at the "eleventh hour" as suggested by Enbridge. Furthermore, this was not simply a change of heart as Enbridge suggests, but in response to the OEB's clarification on scope. Enbridge is well aware of this as it is clearly described in the OEB's decision in that case.⁵ The resident group was acting responsibly and there is no basis for criticism, particularly in the context of another proceeding in which they are not parties.

It is not clear why Enbridge is arguing that eMERGE should be denied intervenor status based on accusations against an entirely different party. It may be that Enbridge is implying that we, as counsel, are irresponsible. However, we have acted responsibly for a variety of parties in over 70 OEB proceedings for approximately 15 years. Through that long period, our costs have never been disallowed by the OEB (e.g. as duplicative, unnecessary, etc.). In many cases, our legal costs are lower than other intervenors that have contributed less. In a 2021 Enbridge costs decision, the OEB specifically highlighted the contribution of our client, stating as follows: "Among the intervenors, the OEB found Environmental Defence's expert witness supported intervention particularly efficient and responsive to the objective of the proceeding."⁶ As in the past, counsel for eMERGE Guelph will support an efficient contribution that is responsive to the objectives of this proceeding.

Finally, Enbridge incorrectly asserts that wording in the Minister's Letter of Direction, dated December 19, 2024, supports denying intervenor status in this case. While eMERGE recognizes the OEB's responsibility to ensure efficiency and cost-effectiveness in utility applications, the Board has clearly stated that it should not take place at the cost of allowing all relevant voices to be heard.

Efforts to find efficiencies in the adjudicative process must be balanced with the OEB's obligation to ensure procedural fairness and the right to be heard. Failure to find this

⁵EB-2024-0134, Decision and Order, February 11, 2025: "By letter to the OEB dated January 6, 2025, Concerned Residents advised that, based on the further clarification of the scope of proceeding in Procedural Order No. 4, it no longer sought deviations from the Model and did not seek to participate in the upcoming hearing" (emphasis added), ([Link](#)).

⁶EB-2021-0002, Decision and Order on Cost Awards, January 31, 2023, ([Link](#)), p. 3.

balance correctly heightens the risk of appeal or judicial review, which can add time and cost to all parties to resolve matters within the OEB's jurisdiction.⁷

Furthermore, the Minister's letter specifically noted the importance of issues that are aligned with eMERGE's clean energy interests, stating as follows:

Electrification and the transition to cleaner energy sources requires strong, proactive thought leadership from the OEB, in consultation with the sector. As we build new homes, attract new investments and electrify industry and transportation, the OEB is going to play a crucial role in advancing the government's policies, including ensuring every family and business have access to clean, affordable and reliable energy (emphasis added).⁸

This direction supports robust consideration of important issues around the energy transition, such as whether fossil fuel subsidies are inconsistent with a cost-effective energy transition.

Finally, the main request of eMERGE Guelph is a term allowing the municipality to re-open the agreement for negotiations in the event that the current prohibition on municipal fees for use of the right-of-way is removed. This appears to us to be entirely reasonable and an issue that can be addressed efficiently. Enbridge is attempting to narrow the justifications that can be put forward in support of this simple request contrary to the wording of s. 10 of the *Municipal Franchises Act*. Regulatory efficiency would be best served by rejecting these premature arguments, granting intervenor status to eMERGE, and getting on with the substance of this case.

Conclusion

We believe it is important to highlight Enbridge's recent practice of pulling out all the stops when opposing interventions and making arguments that are obviously premature. Although this is purportedly done in the name of regulatory efficiency, its result is the opposite. Our responding submissions are far longer than one would expect in a case like this because we have needed to respond to extensive objections from Enbridge, including premature submissions on scope and on the substance of the case. This is contrary to regulatory efficiency and not a good use of our time or the OEB's resources.

In light of the above, we ask that eMERGE Guelph be granted intervenor status in this proceeding.

Yours truly,



Kate Rose Siemiatycki

cc: Parties in the above proceeding

⁷Ontario Energy Board, Report Back to the Ministry – Intervenors and Regulatory Efficiency, September 27, 2024 ([Link](#)), p. 3.

⁸ Minister Stephen Lecce, Letter to the Chair of the OEB, December 19, 2024 ([Link](#)), p. 2.