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BY EMAIL

March 25, 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 Town of Essex
OEB File Number: EB-2024-0351**

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-2024-0351



ONTARIO ENERGY BOARD

OEB Staff Submission

ENBRIDGE GAS INC.

**Application for the Renewal of a Franchise Agreement
with the Town of Essex**

EB-2024-0351

March 25, 2025

OEB Staff Submission

Overview

Enbridge Gas Inc. (Enbridge Gas) is seeking an order of the OEB, under section 10 of the *Municipal Franchises Act*, renewing the utility's natural gas franchise agreement with the Town of Essex, based on the terms and conditions of the OEB's Model Franchise Agreement (Model) without amendment.

The Town of Essex filed a letter of comment, through which it is asking the OEB to consider certain amendments to the terms and conditions of the renewal as proposed by Enbridge Gas. Enbridge Gas objects to the Town's proposed amendments.

In OEB staff's view, given the large number of natural gas consumers in the Town of Essex, it is clear that public convenience and necessity require a renewal of the franchise. Moreover, in OEB staff's respectful submission, the application should be approved as filed, as there is no evidence on the record of this proceeding which should compel the OEB to order a renewal of the franchise based on terms and conditions that depart from the Model.

In summary, it is OEB staff's position that the amendments sought by the Town of Essex in this proceeding are not supported by evidence and do not appear to specifically relate to local concerns and, accordingly, would be more appropriately addressed in a generic manner. The deviations requested by the Town would likely ultimately result in broader implications for multiple municipalities and regulated entities, and the OEB should not adopt them at this time. OEB staff also notes that, in recent proceedings, the OEB has indicated that it "may make a determination on the need for a generic proceeding at a later date".¹

¹ EB-2024-0280, Procedural Order No. 1, issued November 27, 2024; see also: EB-2025-0058, where, in an another contested application heard by the OEB under the *Municipal Franchises Act*, the OEB stated (**emphasis added**):

... this is not a generic hearing. The scope of this proceeding will be focused on the OEB's consideration of Enbridge Gas's request for a new certificate for the City of Guelph, and Enbridge Gas's request for the renewal of its franchise agreement with the City based on the terms and conditions of the Model Franchise Agreement. This proceeding will consider the views of the City and local residents as to whether there are compelling reasons to deviate from the terms and conditions of the Model Franchise Agreement in this City. Broad issues that may have implications for communities and natural gas consumers across Ontario, which are not specific to the City of Guelph, will not be within the scope of this proceeding. **The OEB is separately considering whether there is a need for a review of generic issues related to the Model Franchise Agreement**, and if so, the scope and appropriate timing of any such review.

Process

On December 9, 2024, Enbridge Gas filed an application seeking an order from the OEB for a franchise renewal with the Town of Essex. The application was filed under sections 9(4) and 10 of the *Municipal Franchises Act*.

The OEB issued a notice of hearing on January 23, 2025. No persons sought to intervene.

On February 7, 2025, the Town of Essex filed a letter of comment with the OEB, requesting changes to several of the terms and conditions of the proposed franchise renewal. In the letter, the Town submitted that “most of its suggested amendments to the proposed agreement are for the purposes of clarification, updating wording to reflect the current titles of the representatives of the Town and other amendments required to update a twenty-year old agreement.”

Enbridge Gas filed a letter in response to the Town on February 21, 2025, in which it stated that the proposed amendments address more than just phrasing or updating titles and that the proposed changes “shift the responsibility for costs associated with removing decommissioned pipe to all ratepayers and ignore OEB and court rulings with respect to the provisions of the franchise agreement taking preference over the provisions of the *Drainage Act*.”

On February 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, and the filing of a reply submission by Enbridge Gas.

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

OEB Staff Submission

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

The Model is the product of two lengthy generic proceedings held by the OEB (first in 1985 and again in 1999). In 2016, in the Generic Proceeding on Community Expansion, the OEB stated “that no changes are required to the existing [Model] as it has been developed after negotiations between municipalities and gas distributors and has worked well for both parties over the years.”² And, in numerous instances since then, the OEB has found the standard terms and conditions of the Model to be in the public

² EB-2016-0004, Decision with Reasons, November 17, 2016

interest.

Enbridge Gas currently operates in the Town of Essex under a franchise agreement based on the terms and conditions of the Model, effective December 20, 2004.

Enbridge Gas applied for the renewal under section 10 of the *Municipal Franchises Act*. This section applies where a franchise agreement is about to reach (or has reached) 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 *Municipal Franchises Act*, 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.³

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.⁴ The OEB also recently found as

³*Leamington (Municipality of) v. Enbridge Gas Inc.*, 2024 ONSC 867

⁴Report of the Ontario Energy Board, “Natural Gas Facilities Handbook”, EB-2022-0081, March 31, 2022

follows:

The OEB notes that through the adoption and consistent application of the Model, the key provisions therein have been applied fairly and uniformly throughout the province, and virtually all natural gas franchise agreements currently in use in the province are in the same form as the Model and set for a standard term of 20 years. As stated in the *Natural Gas Facilities Handbook*, the OEB expects that franchise agreements will be based on the Model “unless there is a compelling reason for deviation”. The Model provides a template to guide the sector regarding the key terms and conditions of a natural gas franchise agreement that the OEB finds reasonable under the *Municipal Franchises Act*.

As also recently explained in its *Leamington* decision, 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.⁵ In that decision, the OEB stated that “this is preferable to a piecemeal approach of negotiating terms specific to a franchise”.⁶

Enbridge Gas and its predecessor companies have been supplying gas in the Town of Essex for many years, pursuant to a municipal franchise agreement in the form of Model. The Town of Essex 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 Town 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.

Should the OEB wish to undertake an assessment of the Town of Essex’s letter of comment (even in the absence of it having filed any evidence in support of its requested deviations from the Model), then OEB staff notes that the Town’s proposed deviations are summarized in the application and relate to: i) the removal of paragraph 5(i) of the Model, which deals with permitting for construction approvals; ii) a deviation from paragraph 12 of the Model that would result in the inclusion of a condition for approval from the *Director of Infrastructure* related to the method of costs for relocation work, and the inclusion of the terms: replacement work, pro-rated, and reasonable; iii) a deviation from paragraph 15 of the Model that would result in Enbridge Gas bearing all the costs relating to the removal of parts of its gas system if required; iv) a deviation from the Model to include a “Pavement Cuts” clause and a *Drainage Act* clause that would confirm that the franchise agreement is subject to the *Drainage Act*; and v) a deviation from the Model to include new definitions for “Insurance Policy”, “Plan Relocations”, “Relocation Work”, and deviations from several paragraphs in the Model to update the current titles of the representatives of the Town and a reference change to correspond

⁵ EB-2022-0201, Decision and Order, March 30, 2023

⁶ EB-2024-0130, Decision and Order, February 11, 2025

to its proposed paragraph numbering.

In its letter of comment, the Town of Essex submitted that its suggested amendments to “the proposed agreement are for the purposes of clarification, updating wording to reflect the current titles of the representatives of the Town and other amendments required to update a twenty-year old agreement.” The Town of Essex stated that its proposed amendments to paragraph 12 of the Model were suggested to require reasonable spending and pro-rated costing and its proposed changes to paragraph 15 of the Model “were suggested to reflect that there is a disproportionate balance of power with regard to the control over abandoned mains within Town owned property and the costs of removal and disposal of such mains.” The Town of Essex also stated that the changes to (the inclusion of) paragraph 21 of the proposed agreement were to “confirm the terms of the Drainage Act over the franchise” and to “ensure residents do not bear any more costs of drainage relocation than those set out in the *Drainage Act*.”

In its reply letter, Enbridge Gas stated that “adding a “reasonable” determination and pro-ratio factor to costs associated with pipeline relocations goes well beyond the agreed-upon terms and conditions that the OEB has determined reasonable for 340 other municipalities throughout the province” and that the proposed amendments “shift the responsibility for costs associated with removing decommissioned pipe to all ratepayers and ignore OEB and court rulings with respect to the provisions of the franchise agreement taking preference over the provisions of the *Drainage Act*.”

In reference to the *Drainage Act*, Enbridge Gas also stated that:

... the Model Franchise Agreement, by contrast, keeps the municipality engaged financially in the decision, thereby ensuring works which would impact the gas utility, and by extension, their customers, are not arbitrarily or capriciously undertaken ... [and that] ...the Town of Essex seeks essentially the same relief as was sought by Leamington (and Norwich before), namely the inclusion of a provision which would permit the mechanisms of the *Drainage Act* to override the otherwise standardized provisions of the Model Franchise Agreement. The conclusions of the OEB, the Divisional Court and the Court of Appeal ought to continue to apply and the Town of Essex’s request to amend the Model Franchise Agreement to permit the *Drainage Act* to take precedence should be dismissed.⁷

Enbridge Gas also submitted that while some of the proposed amendments are administrative, other changes are fundamental changes that conflict with determinations by the OEB and the courts and appear to be direct conflicts with the public interest. Enbridge Gas further submits that it does not accept any of the proposed amendments by the Town.

In light of the OEB’s prior determinations, it is OEB staff’s respectful view that deviations

⁷ Enbridge Gas Response to OEB Staff 2-c), March 13, 2025.

from the above-referenced paragraphs of the Model in this specific proceeding are unwarranted and would risk creating inconsistencies across the natural gas sector and undermining the broader regulatory framework. Accordingly, such requests – where they are not substantively based on concerns specific to the affected municipality - should be deferred to a more appropriate forum, such as a generic proceeding or policy consultation, where all impacted stakeholders can participate and a consistent, sector-wide approach can be developed. The OEB has already stated that it is considering such a review.⁸

Conclusion

Given the large number of natural gas consumers in the Town of Essex, it is clear that public convenience and necessity require a renewal of the franchise. In OEB staff's respectful submission, the application should be approved as filed, as there is no evidence on the record to support a renewal of the franchise agreement between Enbridge Gas and the Town of Essex based on the modified terms and conditions requested by the Town.

~All of which is respectfully submitted~

⁸ EB-2024-0280 and EB-2025-0058, *supra*, note 2.