

Elson Advocacy

April 17, 2025

Nancy Marconi

Registrar

Ontario Energy Board

2300 Yonge Street, 27th Floor

Toronto, Ontario M4P 1E4

registrar@oeb.ca

Dear Ms. Marconi

**Re: City of Guelph Franchise Agreement
EB-2025-0058**

I am writing to provide an evidence proposal on behalf of eMERGE Guelph (the “Intervenor” or “eMERGE”), in accordance with Procedural Order No. 1 in the above-noted matter.

eMERGE Guelph proposes to file three categories of evidence, each of which is directly relevant to the central questions at issue in the proceeding, namely:

- Whether public convenience and necessity appear to require that the OEB impose a franchise agreement with Enbridge Gas Inc. (the “Applicant”) on the City of Guelph; and if so
- What terms should be imposed, including whether compelling reasons exist to deviate from the terms of the Model Franchise Agreement.

The proposed evidence includes:

1. The direct views of local residents;
2. Evidence regarding the City of Guelph’s climate targets and energy transition; and
3. Evidence regarding efforts to amend O. Reg. 548/06 and a jurisdictional scan of fees charged by municipalities to gas distributors for use of highways (i.e. road allowances).

1. Resident input

The Intervenor proposes to file direct input from local residents regarding the Applicant’s proposed franchise renewal and the terms it seeks to impose on the municipality. It is appropriate for the Board to hear directly from those who are impacted by the issues at stake in this proceeding, including whether a renewed franchise agreement should include terms requested by their elected officials. In particular, the Board’s consideration in this Application should include local voices regarding the connection between electors’ goals and the City’s proposed inclusion of terms that would permit potential future fees for use of municipal highways. This evidence

would include affidavits on behalf of one or more local residents that directly communicates their views to the OEB.

This input is not only appropriate but specifically contemplated within the public notice and hearing requirements under Sections 9 and 10 of the *Municipal Franchises Act*. However, it is particularly important in the context of an application under Section 10 in which the municipality has rejected the proposed franchise agreement, as there is no substituted assent by either residents or their elected officials.

2. City of Guelph – Climate Targets and Energy Transition

In order to determine the appropriate terms to impose and whether compelling reasons exist for deviation from the Model Franchise Agreement, the Board will need to consider both local and regional contextual factors. This includes local factors that underlie Guelph City Council's rejection of the Applicant's proposed franchise agreement.

The Intervenor proposes to file evidence from Evan Ferrari, Executive Director of eMERGE Guelph, regarding the City of Guelph's climate goals and energy transition plans. Mr. Ferrari has over 20 years of experience advocating for and supporting the City's climate planning. As such, he is well placed to provide a reliable and comprehensive overview of the particular local priorities that support deviation from the Model Franchise Agreement.

For instance, eMERGE seeks to file evidence from Mr. Ferrari regarding:

- City of Guelph's Race to Zero climate pledge
- Community Energy Plan
- History of local climate advocacy
- Commitment for the Corporation of the City of Guelph to achieve 100% Renewable Energy by 2050

3. Efforts to Amend O. Reg 548/06 and Jurisdictional Scan

eMERGE proposes to file evidence to show that it is reasonably possible or even likely that the prohibition on charging fees for the use of highway lands by fossil fuel pipelines will be removed. This evidence regarding potential changes to the relevant legislative and regulatory landscape over the course of the proposed franchise term is relevant to the Board's assessment of Guelph's and eMERGE's positions in this proceeding.

In particular, the proposed evidence is relevant to the issue of fees for use of municipal highways by the utility. Although those fees are not currently permitted by the relevant regulation (O. Reg. 548/06) there is an ongoing campaign by municipalities to have that changed. There is significant concern that the proposed franchise agreement would lock the City into providing use of the municipal highways for free for the duration of the 20-year franchise agreement even if the regulation is changed to allow for such fees to be charged. To address that issue, the City of Guelph, with support from eMERGE Guelph is seeking a term that would trigger a negotiation or

other process to determine the appropriate fees during the term of the agreement should the regulation change.

The proposed evidence would support the need for and importance of such a provision in the franchise agreement. The evidence would support the contention that a change in the regulation is a reasonable possibility (if not a likelihood) within the 20-year franchise agreement term. In specific, the evidence would include:

- A jurisdictional review regarding fees charged by municipalities to gas distributors for use of highways (i.e. road allowances) for gas infrastructure;
- A description of efforts by municipalities in Ontario to secure fees for use of highways by gas distributors; and
- A description of whether and how municipalities can charge fees for third party infrastructure in municipal rights of way.

In other words, the evidence is relevant to the appropriate terms for the proposed franchise agreement.

The Intervenor proposes two alternative methods for filing the above-described evidence.

Option a: Consultant

eMERGE Guelph can retain an energy consultant to compile this information into a report. We anticipate that the cost would be in the range of \$6,000.

Option b: Documentary Evidence

eMERGE Guelph recognizes the Board's goal of regulatory efficiency in these proceedings and believes there is an alternative pathway that would avoid the costs and time associated with retaining a consultant. eMERGE Guelph would forgo its request to file a consultant report if the OEB were to accept evidence from eMERGE staff that provides these facts based on the following reports:

- City of Ottawa Letter and Report, Model Franchise Agreement Review, January 26, 2022¹
 - Letter and Report: admissible as evidence of Ottawa's point-in-time request for amendments to O. Reg. 548/06
 - "Jurisdictional Scan" (pages 10-11): admissible for the truth of its content
- City of Toronto Staff Report, Impact of Bill 165 & Gas Utility Use of Public Property in Toronto, May 13, 2024²

¹ [Link](#).

² [Link](#).

- Report: admissible as evidence of Toronto's point-in-time interest in amendments to O. Reg. 548/06

Although this would amount to accepting these reports for the truth of their contents, we believe that would be acceptable in this administrative law process and in the relevant context. This is our preferred approach as it would ensure that all relevant information is before the Board, while reducing the costs and time associated with a consultant witness.

Budget

If the preferred approach of eMERGE is accepted, there would be no cost to prepare the proposed evidence aside from incremental legal costs as the evidence would be provided by eMERGE staff and members of the public as opposed to energy consultants. If this approach is accepted, the incremental legal costs involved in the preparation of the evidence would likely be in the range of \$4,000 to \$6,000. This would primarily involve working with the potential witnesses on the relevant affidavit wording.

If an external consultant is required, the additional external costs would be approximately \$6,000, as noted above.

Conclusion

In *Procedural Order #1*, the OEB stated that “[t]his 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.” The proposed evidence is relevant and important to fulfilling that function of this hearing.

Thank you for considering this request.

Yours truly,



Kent Elson

cc: Parties in the above proceeding