

April 24, 2025

Ms. Nancy Marconi  
Registrar  
Ontario Energy Board  
2300 Yonge Street, 27<sup>th</sup> Floor  
Toronto, ON M4P 1E4

Dear Ms. Marconi:

**Re: Enbridge Gas Inc.  
Application for Approval of Franchise Agreement and New CPCN - City of Guelph  
Ontario Energy Board (OEB) File No. EB-2025-0058**

Enbridge Gas submits the following comments on the evidence proposals submitted by the [City of Guelph](#) and [eMERGE Guelph Sustainability](#) (eMERGE Guelph) on April 17, 2025 in respect of the above-noted application (Application).

### **Summary of Enbridge Gas' Position**

For the reasons set out below, Enbridge Gas urges the OEB to reject the requests by the City of Guelph and eMERGE Guelph to file any of the proposed evidence because such requests are either duplicative of evidence already on the record, or irrelevant based on the OEB's clearly limited scoping of this proceeding as set out in [Procedural Order No. 1](#):

*Both the City of Guelph and eMERGE Guelph are reminded that 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.*

Further, it is important for the OEB to consistently be mindful of the Minister of Energy and Electrification's December 19, 2024 Renewed Letter of Direction (the Renewed Directive) in which the Minister highlighted his expectation that the OEB ensure intervenors are cost effective, efficient and in the public interest<sup>1</sup>. 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 Intervenors and Regulatory*

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<sup>1</sup> [Stephen Lecce, Minister of Energy and Electrification, December 19, 2024](#), p. 8.

*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)*

As clearly seen from the Renewed Directive, the OEB must consider whether an intervenor is appropriately representing ratepayers and issues that are properly within the scope of a given proceeding. This consideration extends to the intervenor evidence requests before the OEB in this proceeding.

The OEB has recently confirmed, in reviewing its decision on whether certain intervenors should be permitted to file evidence in a proceeding, the OEB must strike a balance between the need for fairness, efficiency and predictability of outcome.<sup>2</sup>

Earlier in this same decision, the OEB noted there is no “right” to submit evidence, as supported by the following:

- The Supreme Court of Canada has made clear that the concept of procedural fairness is “eminently variable” and that its content is context specific.
- The aim, as explained by the Supreme Court, is not to create “procedural perfection” but to achieve a certain balance between the need for fairness, efficiency and predictability of outcome.
- For the purposes of administrative tribunal proceedings, the Statutory Powers Procedures Act states that tribunal rules shall be liberally construed to secure the just, most expeditious and cost-effective determination of every proceeding on its merits.
- Similarly, section 2.01 of the OEB’s Rules of Practice and Procedure state they shall be liberally construed in the public interest to secure the most just, expeditious and efficient determination on the merits of every proceeding before the OEB.<sup>3</sup>

In this case, where the OEB has confirmed the limited scope of this proceeding, the balance favours limiting evidence to matters clearly within scope and avoiding any evidence duplication.

### **City of Guelph Evidence Proposal**

The City of Guelph submitted a list of items that they would like to submit as evidence as part of this proceeding. Many of the items identified are already on the record of this proceeding and need not be refiled. Other items are not relevant to the limited scope of this proceeding.

Enbridge Gas provides the following specific comments on the City of Guelph’s proposed evidence:

1. Customer Density Map for Areas Served within the City of Guelph.
  - Enbridge Gas assumes that the City of Guelph is referring to a customer density map of the areas currently served by Enbridge Gas within the City of Guelph. This map is already included in evidence as Schedule A to the Application and has been part of the evidentiary record that has been subject to the interrogatory process.

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<sup>2</sup> [EB-2024-0186 / EB-2024-0197](#) - Decision and Order, April 1, 2025, page 24.

<sup>3</sup> *Ibid.*, pages 23-24.

2. Minutes of Committee of the Whole Meeting – November 5, 2024.
  - These minutes are already included in evidence as Schedule D2 to the Application and have been part of the evidentiary record that has been subject to the interrogatory process.
3. Minutes of Guelph City Council – November 26, 2024.
  - These minutes are already included in evidence as Schedule D3 to the Application and have been part of the evidentiary record that has been subject to the interrogatory process.
4. A copy of Bill 219 “No Free Ride for Fossil Fuels Act, 2024”.
  - As noted in the letter of comment submitted by MPP Mike Schreiner on March 13, 2025 to the record of this proceeding, the former Bill 219 no longer exists given the provincial election. As such, the former Bill 219 is no longer relevant and Enbridge Gas opposes having proposed legislation that never proceeded past its initial reading and is no longer existing introduced as evidence in this proceeding. It is also irrelevant given the OEB’s determination that 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.<sup>4</sup>
5. Correspondence from Mike Schreiner dated March 13, 2025 - Re: Intention to Reintroduce Bill 219.
  - The letter of comment submitted by MPP Mike Schreiner on March 13, 2025 is already part of the record of this proceeding (see [EB-2025-0058](#)) and has been part of the evidentiary record that has been subject to the interrogatory process<sup>5</sup>.
6. Copies of all correspondence between Enbridge and the City of Guelph from May 10, 2024 to January 31, 2025.
  - To the best of our knowledge, all of the correspondence between Enbridge Gas and the City of Guelph has already been submitted on the record of this proceeding (Exhibit EGI-EMG-4, Attachments 1 and 2).
7. Additional evidence regarding the City of Guelph’s climate targets and energy transition commitments. Including but not limited to: (a) the City’s Race to Zero climate pledge; (b) the City’s Community Energy Plan; and (c) the City’s Commitment to Achieve 100% Renewable Energy by 2050.
  - The OEB has repeatedly 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.<sup>6</sup>
  - The referenced material is irrelevant given the OEB’s determination that 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.<sup>7</sup> While a number of municipalities throughout Ontario have climate action plans, these plans do not supplant the need to have a franchise agreement in place to serve residents of the municipality and the OEB has consistently held that the Model Franchise Agreement is the appropriate form.

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<sup>4</sup> EB-2025-0058 - Procedural Order No. 1, March 13, 2025.

<sup>5</sup> EB-2025-0058 - Exhibit EGI-EMG-7

<sup>6</sup> EB-2024-0134 - Procedural Order No. 2, September 6, 2024; EB-2025-0058 - Procedural Order No. 1, March 13, 2025.

<sup>7</sup> EB-2025-0058 - Procedural Order No. 1, March 13, 2025.

8. Additional evidence regarding the City's Economic Policies, Indigenous Policies, and the City's Provincial Policy Statement.
  - Similar to the above point, Enbridge Gas submits that this material on its face, without any further explanation, is irrelevant given the OEB's determination that 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.<sup>8</sup>
9. Additional records relating to costs incurred by the City regarding previous relocations of gas lines and/or decommissioning etc. and City Budgetary records with respect to the same.
  - This proposed evidence appears to be intended to address the pipeline relocation cost allocation provisions of the Model Franchise Agreement which consistently apply to each municipality with which Enbridge Gas has a franchise agreement. Given the OEB's determination about the limited scope of this proceeding, it is not clear how reviewing and debating details of pipeline relocation projects within the City of Guelph would be an issue unique to the City relative to other Ontario municipalities. As Enbridge Gas noted in Exhibit EGI-OEB-2, Guelph averages approximately the same number of pipeline relocation projects as other similar sized municipalities in Ontario.

The City of Guelph asks in its concluding paragraph to reserve its right to file additional evidence once it has had sufficient opportunity to fully review Enbridge Gas' interrogatory responses (filed April 11, 2025). With respect, the OEB's Procedural Order No. 1 established April 17, 2025 as the applicable timeline for submission of evidence requests in this proceeding and there should be no allowance for further intervenor evidence requests, as it is important that the OEB maintain an efficient process.

### **eMERGE Guelph Evidence Proposal**

In its outline of proposed evidence, eMERGE Guelph identifies three revisions that it would like to make to the Model Franchise Agreement that are identical to the issues raised by the City of Guelph:

- 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.

eMERGE Guelph proposes to file evidence covering three categories of issues:

1. The direct views of local residents – affidavits on behalf of one or more local residents that directly communicates their views to the OEB regarding the proposed franchise agreement renewal and the terms proposed to be imposed on the municipality.
2. Evidence regarding the City of Guelph's climate targets and energy transition – evidence from Evan Ferrari, Executive Director of eMERGE Guelph, regarding the City of Guelph's climate goals and energy transition plans.

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<sup>8</sup> EB-2025-0058 - Procedural Order No. 1, March 13, 2025.

3. Evidence regarding efforts to amend O. Reg. 584/06 and a jurisdictional scan of fees charged by municipalities to gas distributors for use of highways (i.e., road allowances) - 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

### **Direct Views of Local Residents**

eMERGE Guelph notes in its April 17, 2025 submission that it is appropriate for the OEB 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. eMERGE Guelph proposes to file one or more affidavits setting out the views of residents.

Pursuant to Procedural Order No.1, the City of Guelph was approved as an intervenor in this proceeding. In its request for intervenor status, the City of Guelph identified itself as the representative of the residents of the City of Guelph.

There are currently nearly 500 letters of comment on the record of this proceeding from people who identify as residents of the City of Guelph. Those form letters speak for themselves and it would be duplicative to allow eMERGE Guelph to commission affidavits from local residents regarding the same issues that the City of Guelph is already addressing. Furthermore, eMERGE Guelph is non-specific about what views such unidentified residents would provide that would be incremental and within the limited scope of this proceeding.

Enbridge Gas disputes eMERGE Guelph's contention that sections 9 and 10 of the *Municipal Franchises Act* specifically contemplate evidence from residents. This legislation simply says that a public hearing shall be held. As the OEB has recently confirmed, parties in a hearing (proceeding) do not have a "right" to provide evidence. The OEB is entitled to control its own procedure, and to determine what evidence is relevant, necessary and/or appropriate.<sup>9</sup>

### **Evidence Regarding the City of Guelph's Climate Targets and Energy Transition**

eMERGE Guelph proposes to have its Executive Director file evidence about the City of Guelph's climate goals and energy transition plans. As already stated, Enbridge Gas submits that evidence about the City of Guelph's climate targets and energy transition plans is not relevant to this limited-scope application. However, if the OEB does not agree then the proper party to submit any such evidence is the City of Guelph itself, not the executive director of a third party who purports to provide an overview of the City of Guelph's own plans and policies.

With representation from the municipality already in place, it would be improper for a third party such as eMERGE Guelph to purport to speak on behalf of the municipality without a clear mandate to this effect. Given Guelph is seeking to file the same evidence regarding its own climate targets and energy transition commitments, eMERGE Guelph's request to file evidence on the same topic is completely duplicative, misplaced and inappropriate. Further, Enbridge Gas' submissions above on relevance regarding the City of Guelph's request to file this type of evidence also apply to the eMERGE Guelph request.

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<sup>9</sup> [EB-2024-0186 / EB-2024-0197](#) - Decision and Order, April 1, 2025, page 23

## **Evidence Regarding Efforts to Amend O. Reg. 584/06 and a Jurisdictional Scan of Fees**

eMERGE Guelph proposes to file evidence to show that it is reasonably possible that the prohibition against charging fees for the use of highways by gas utilities may be lifted. This includes a wide range of proposed evidence including a consultant report, reports from other municipalities and jurisdictional review. As set out below, this evidence will be speculative and is not relevant to the narrow questions in this proceeding.

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 have any intentions to change Ontario Regulation 584/06, despite the fact that some municipalities may have been lobbying for such a change. The nature of this requested evidence is speculative and is therefore irrelevant to the OEB's determination of the Application. Further, it is not within the OEB's jurisdiction to consider or attempt to determine legislative changes that the Ontario government has not endorsed. The legislative function rests squarely with the government itself.

It is irrelevant whether other jurisdictions outside of Ontario allow for recovery of franchise-related fees. Such information is not within the scope of this proceeding and the practices in other jurisdictions are based on the circumstances in those jurisdictions. It would be inappropriate for eMERGE Guelph to speak to such matters. Similarly, it is not appropriate for eMERGE Guelph to introduce reports prepared by other Ontario municipalities for their own purposes. Without witnesses from those other municipalities, these reports are not "evidence" to be relied upon in this proceeding.

Enbridge Gas also notes that section 13 of the Model Franchise Agreement already acknowledges applicable laws, and this would include laws that the government issues or changes during the term of a Model Franchise Agreement. Specifically, this section makes the Model Franchise Agreement subject to the provisions of all regulating statutes and all municipal by-laws of general application, except by-laws which have the effect of amending the Model Franchise Agreement. Therefore, municipalities are free to exercise their by-law powers pursuant to valid legislative authority at any time, as many municipalities do with respect to permit fees, provided such by-laws do not have the effect of amending the Model Franchise Agreement.

## **Conclusion**

As explained above, the OEB ought to reject the proposed evidence of both the City of Guelph and eMERGE Guelph as irrelevant, duplicative and out of scope for this proceeding.

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

Yours truly,

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