

# Elson Advocacy

April 29, 2025

**Nancy Marconi**

Registrar

Ontario Energy Board

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Dear Ms. Marconi

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

I am writing in response to the submissions of Enbridge Gas Inc. (“Enbridge” or the “Applicant”) and OEB Staff regarding intervenor evidence in EB-2025-0058. Responses are provided below in relation to the three proposed areas of evidence:

1. Views of local residents
2. City of Guelph climate targets
3. Jurisdictional Scan and potential amendments to O. Reg. 584/06

Before turning to the specific evidence proposals, it is important to address the scope and sequence of determinations before the Board under s. 10 of the *Municipal Franchises Act*.

## **Franchise Renewal Applications: Scope and Sequence**

Enbridge opposes the admission of any intervenor evidence on the basis that the rationales for deviating from the Model Franchise Agreement must be “unique to the City.” In so doing, Enbridge seeks to prematurely fetter the Board’s determination and limit the meaningful participation of the City of Guelph and local residents in this proceeding. That is contrary to clear wording in the *Municipal Franchises Act* (the “Act”), OEB guidelines, and *Procedural Order #1* in this case.

Enbridge’s position on the scope of this proceeding conflicts with the Act which requires that the OEB hold a hearing to examine the public convenience and necessity test. It does not permit the OEB to decline to consider factors relevant to that test, such as rationales for agreement wording that may not be unique to the municipality. It also circumvents the Board’s guidelines and procedures, which require the OEB to consider whether there are compelling reasons to deviate from the terms of the Model Franchise Agreement – regardless of whether those reasons are unique to the municipality.

Although *Procedural Order #1* stated that the OEB will not consider “broad issues” that are not specific to the municipality, it did not say that it was excluding all rationales for agreement wording that are not *unique* to the municipality. Furthermore, the OEB also stated that the “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.” Enbridge’s interpretation of the scope is clearly contrary to this wording.

As the Board knows, the Model Franchise Agreement was adopted as “guidance to applicants and municipalities regarding the standard terms of a franchise agreement and as a tool to efficiently administer the many franchise agreements across the Province.”<sup>1</sup> The expectation from the Board is that franchise agreements will be “based on the Model Franchise Agreement unless there is a compelling reason for deviation” [emphasis added].<sup>2</sup> It is a “template [emphasis added]” as to “the terms that the OEB finds reasonable under the *Municipal Franchises Act*.”

It is not, in other words, a statutorily mandated set of provisions (such as exist in other regulatory contexts).<sup>3</sup> Instead, it is the basis for a procedure, through which parties to a franchise agreement can:

- Negotiate appropriate terms
- Apply for relief from the Board based on compelling reasons for deviation

This is clear in the Board’s own Natural Gas Facilities Handbook, which requires that Applicants provide “a description of any proposed variance from the Model Franchise Agreement and the supporting rationale outlining the circumstances that would warrant such consideration.”<sup>4</sup> It is also echoed in the Board’s direction that “most franchise agreements are for a term of 20 years” – not all [emphasis added].

Finally, Enbridge’s position also runs contrary to the Board’s statement that a “complete and accurate evidentiary record is essential” in natural gas facilities applications.<sup>5</sup> As such, it is critical that all parties to the proceedings be permitted to file evidence that goes to their position on the appropriate terms of a renewed franchise agreement and any compelling reasons that may exist for deviation from the Model Franchise Agreement. Only after hearing the evidence, will it be appropriate for the Board to decide whether the parties have met their requirements under the Act.

## Views of Local Residents

Enbridge Gas and OEB staff raise potential concerns regarding duplication of evidence between the proposed affidavit evidence of local residents and the letters of comment from community members already received by the Board.

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<sup>1</sup> Ibid at p. 11.

<sup>2</sup> Ibid at p. 11.

<sup>3</sup> See for example mandated contractual regulatory provisions under *Farm Implements Act*, [R.S.O. 1990, c. F.4](#), the *Insurance Act*, [R.S.O. 1990, c. I.8](#) or the minimum contractual standards required by the *Employment Standards Act*, 2000, S.O. 2000, c. 41.

<sup>4</sup> Natural Gas Facilities Handbook, *supra* at p. 13.

<sup>5</sup> EB-2022-0081, OEB Natural Gas Facilities Handbook at p. 5 ([link](#)).

These concerns are unwarranted. While the letters of comment offer evidence of the scope of local objection to Enbridge's proposed franchise renewal terms, the proposed affidavit evidence will provide specific and personal views from local residents. This evidence is relevant and necessary to support the Board's determination of whether compelling reasons exist to deviate from the terms of the Model Franchise Agreement in the City of Guelph.

In particular, eMERGE proposes to file evidence from one or more young people from the City of Guelph, who oppose the Applicant's proposed renewal terms. Their voices and views are unique and provide insight into the long-term policy goals of local residents.

In compiling the proposed individual evidence, eMERGE will ensure that there is no unnecessary duplication with the evidence filed by the City of Guelph. The focus will remain on ensuring that the Board has a complete understanding of the specific interests of local residents.

### **City of Guelph Climate Targets**

The Applicant opposes the admission of evidence from the City of Guelph and/or eMERGE on the municipality's climate targets and energy transition plans. Their position is an attempt to prematurely narrow and answer the ultimate questions before the Board. While Enbridge may take the position that this evidence does not constitute compelling reasons to deviate from the terms of the Model Franchise Agreement, refusing to admit the evidence at this stage would amount to a denial of procedural fairness for the municipality and the local residents represented by eMERGE.

Given that the potential outcome of this proceeding is the imposition of a twenty-year franchise agreement on a municipality of roughly 145,000 residents, it is reasonable that the parties would expect to be able to provide evidence on what they view as compelling reasons to modify a small number of terms of the agreement. Moreover, the costs and time required for this evidence is modest.

In any event, it may not ultimately be necessary for eMERGE to submit this evidence if all the relevant materials are submitted by the City of Guelph. eMERGE will endeavour to avoid any duplication with respect to this evidence.

### **Jurisdictional Scan and Potential Amendments to O. Reg. 584/06**

This evidence is necessary to understand the specific views of the City and local residents regarding the need for:

- Modification to the duration of the agreement;
- Modification to relocation provisions of the agreement; and
- Inclusion of terms contemplating potential amendments to municipal fee powers.

Enbridge's objection to the inclusion of this evidence is based on a misreading of its intended purpose and of Procedural Order #1.

The Board has directed that it will consider the specific views of the municipality and local residents regarding compelling reasons to deviate from the Model Franchise Agreement. These views, while specific to the City, are informed by complex policy and economic considerations – involving both local and general trends. It would be illogical to assume otherwise, given the long-term interests at stake in a natural gas franchise agreement. Although Enbridge states that “practices in other jurisdictions are based on the circumstances in those jurisdictions”, municipal policy and economic planning are regularly based on cross-jurisdictional analyses and developments.

The Board should have the same information before it as the municipality. Otherwise, the Board is liable to misapprehend the position of the municipality and residents, such that it fails to identify the compelling reasons for deviation from the Model Franchise Agreement.

Enbridge raises s. 13 of the Model Franchise Agreement in support of its objections. However, this represents another attempt to prematurely address the ultimate question of whether compelling reasons exist to deviate from the model terms. It is inappropriate to make this determination before hearing evidence and submissions on the potential amendments to O. Reg. 584/06 and the proper contractual interpretation of s. 13. This is also true of the potential implications if the Board decides to hold a generic hearing on the Model Franchise Agreement and the impact of any potential changes on a locked-in twenty-year agreement.

Regarding the format of this evidence, Enbridge states that it is inappropriate for eMERGE to “speak to such matters.” It is unclear what Enbridge means, though eMERGE agrees that third party evidence could be provided to ensure that this critical information is properly included on the record.

As stated in the original evidence proposal, eMERGE submits that this can be achieved through retaining a consultant or through admission of two reports previously prepared by the City of Ottawa and City of Toronto.

## **Conclusion**

There are currently nineteen provisions in the Model Franchise Agreement and the City of Guelph, with support from eMERGE is seeking modifications in respect of three. The intervenors have made reasonable and modest evidence proposals that balance the need for regulatory efficiency and procedural fairness.

eMERGE respectfully requests that the Board reject the Applicant’s arguments and admit evidence as proposed above.

Yours truly,



Kent Elson

cc: Parties in the above proceeding