

ONTARIO ENERGY BOARD

EB-2024-0342

IN THE MATTER OF the *Ontario Energy Board Act*, 1998, S. O. 1998, c. 15, Schedule B;

AND IN THE MATTER OF an application by Enbridge Gas Ins. for approval to construct gas works in an expanded area in Tay Valley Township

Submissions of Climate Network Lanark

September 5, 2025

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Introduction

Enbridge is seeking to approximately double the area in which it has approval to construct gas works in Tay Valley Township. This expansion is sought over the strenuous objections of the municipality and local residents. The requested expansion should not be granted because there is no reasonably foreseeable need for the expanded approval. Also, the requested approval is not in the public interest because it conflicts with municipal policy, climate protection, OEB policy, regulatory efficiency, choice, and competition in the gas distribution sector. The Climate Network Lanark therefore requests that the OEB reject Enbridge's application and instead approve an amendment of Enbridge's certificate to describe the area covered by its existing certificate in an updated and legally accurate manner.

The Legal Test

The relevant legal test that must be applied by the OEB in this case is set out in s. 8 of the *Municipal Franchises Act*, which reads as follows:

Approval for construction of gas works or supply of gas in municipality

8 (1) Despite any other provision in this Act or any other general or special Act, no person shall construct any works to supply,

- (a) natural gas in any municipality in which such person was not on the 1st day of April, 1933, supplying gas; or
- (b) gas in any municipality in which such person was not on the 1st day of April, 1933, supplying gas and in which gas was then being supplied,

without the approval of the Ontario Energy Board, and such approval shall not be given unless public convenience and necessity appear to require that such approval be given.

Form of approval

(2) The approval of the Ontario Energy Board shall be in the form of a certificate.

Jurisdiction of Energy Board

(3) The Ontario Energy Board has and may exercise jurisdiction and power necessary for the purposes of this section and to grant or refuse to grant any certificate of public convenience and necessity, but no such certificate shall be granted or refused until after the Board has held a public hearing to deal with the matter upon application made to it therefor, and of which hearing such notice shall be given to such persons and municipalities as the Board may consider to be interested or affected and otherwise as the Board may direct.

Based on the wording of s. 8 and the relevant case law, the public convenience and necessity test under s. 8 requires that the OEB consider (a) whether the approval is in the public interest and (b) whether the need for gas works in the relevant area is reasonably foreseeable. Although almost all proceedings under s. 8 are uncontested, when they are contested, they are not merely "administrative proceedings" as Enbridge asserts. Instead, they require careful consideration of the relevant public interest factors.

Public interest

The term “public convenience and necessity” has been used in a variety of legislation regulating utilities and other monopolies and has been considered by many courts and tribunals. The case law is clear that an adjudicator applying this test must consider whether the approval is in the public interest.¹ This includes a balancing of the various interests at stake.² When considering this test in the context of another section of the *Municipal Franchises Act*, the OEB has confirmed that this includes consideration of the interests of the municipality and the broader public interest.³

Courts have confirmed that the OEB’s jurisdiction when considering what is in the public interest is very broad.⁴ This jurisdiction extends to all matters incidental to the production, distribution, transmission, and storage of gas and includes consideration of environmental impacts.⁵ Overall, the OEB is mandated to examine what is in the “broad public interest” when fulfilling its mandate and is not limited, for example, to protecting only the interests of gas ratepayers.⁶

Reasonably foreseeable need

To meet the test in s. 8, Enbridge must show that there is at least a reasonably foreseeable need for gas works in the relevant area. This arises from the stipulation in s. 8 that “approval shall not be given unless public convenience and necessity appear to require that such approval be given” (emphasis added). Courts have held that the term necessity need not be interpreted in accordance with a “strict” dictionary definition and that it is sufficient for the need to be forecast to materialize in the future.⁷ However, the term “necessity” cannot be interpreted so loosely for it to be devoid of meaning. In the very least, the need must be reasonably foreseeable.⁸ The necessity criterion cannot be met if no forecast need has been identified or it is merely speculative.⁹

Consideration of relevant factors

The process under s. 8 is not merely a rubber stamp or purely administrative process as Enbridge has suggested. This is clear from the requirement in s. 8(3) that notice be provided and that the OEB conduct a “public hearing.” Furthermore, courts have repeatedly confirmed that administrative bodies are required to consider all relevant factors when deciding whether an

¹ *Sunshine Transit Service v. The Taxicab Board*, 2014 MBCA 33 at [para 39](#); *Sincennes v. Alberta (Energy and Utilities Board)*, 2009 ABCA 167 at [para 67](#).

² *ATCO Gas and Pipelines Ltd v. Alberta*, 2006 SCC 4 at [para. 7](#).

³ *Centra and City of Kingston (Re)*, E.B.A. 825 (June 22, 2000) at para. 4.0.4.

⁴ *Garland v Consumers’ Gas Co.*, 185 DLR (4th) 536 at [para. 31](#); *Sudbury (City) v. Union Gas Ltd.* (2001) 54 O.R. (3d) 439 (C.A.) at [para. 6](#).

⁵ *Ibid*; For example, environmental impacts are included as a relevant issue in the OEB’s template [Section 90 and 91 Leave to Construct Issues List](#) and are captured in gas sector leave-to-construct filing requirements.

⁶ *Centra*, supra note 3 at paras. 4.03-4.05. [EBO 134](#), para. 5.13.

⁷ *Memorial Gardens Association (Canada) Limited v. Colwood Cemetery Company*, [1958] SCR 353 at p. 356.

⁸ *Sincennes*, supra note 1 at [para. 68](#).

⁹ In *Memorial Gardens*, supra note 7, the need for additional cemeteries was expressly forecast to arise in the future and was not merely speculative, see p. 358.

approval is in the public interest.¹⁰ This requirement to carefully consider all relevant factors is particularly apparent here from the clear and mandatory wording of s. 8(1) that “approval **shall not** be given unless public convenience and necessity appear to require that such approval be given.”

No reasonably foreseeable need

Public convenience and necessity do not require approval to approximately double the area in which Enbridge has approval to construct gas works as there is no reasonably foreseeable demand for the construction of gas pipelines in any portion of the expanded area in question. On the contrary, it is clear from Enbridge’s evidence that it is unlikely that there will be any requests for gas service in the expanded area that Enbridge seeks to include in its certificate in the foreseeable future.

Enbridge does not even foresee service requests within the territory that *is* currently covered by its existing certificate, let alone in the area that it proposes to add to its certificate. There are only 31 structures along the existing pipelines within the municipality and all of those are within the current certificate.¹¹ The proposed Lanark and Balderson Community Expansion would extend north and away from the areas that Enbridge seeks to add to its certificate.¹² Enbridge states that it “does not currently have any service requests from any resident or business within Tay Valley Township and we are not able to predict when any such request may be submitted.”¹³

Enbridge does not plan to build any pipelines in the area it is seeking to add to its certificate and has not forecast any new customers in that area.¹⁴ It is very likely that expansion into this expanded area would be cost prohibitive in light of the distances involved and low density. The below figure was provided by Enbridge pursuant to an order of the OEB. It shows that even the closest portion of the expanded area (i.e. the former townships of South Sherbrooke and Burgess) is still 3.7 km away from the existing pipeline in Tay Valley Township.¹⁵

¹⁰ *Fort McKay First Nation v Prosper Petroleum Ltd*, 2020 ABCA 163 at [para. 45](#); *Nakina (Township) v. Canadian National Railway Co.* (1986), 69 N.R. 124 (F.C.A.) cited by FCA in *Sumas Energy 2, Inc. v. Canada (National Energy Board)* (F.C.A.), 2005 FCA 377 at [para. 24](#).

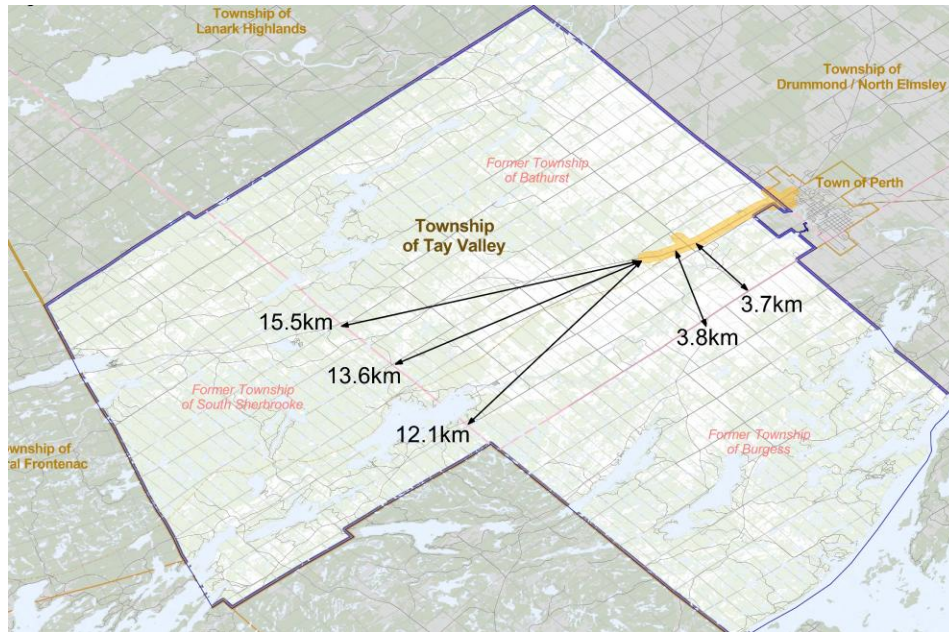
¹¹ Exhibit EGI-CNL-9 (supplemental), p. 2.

¹² Exhibit EGI-OEB-2 (supplemental), p. 4; see also [Affidavit of Susan Brandum](#), July 25, 2025, para. 19.

¹³ *Ibid.*

¹⁴ Exhibit EGI-CNL-1 (Supplemental), (c).

¹⁵ Exhibit EGI-CNL-1 (Supplemental), Attachment 2.



Enbridge acknowledged that the area in question is a “low-density rural area.”¹⁶ With the costs of pipelines ranging up to \$2,500 per metre, it is highly unlikely that an expansion into this low-density area would be cost-effective.¹⁷ No such expansion is being explored or forecast by Enbridge.

There is no foreseeable need for expanded approvals to construct gas works. This factor alone is sufficient for the OEB to reject Enbridge’s application.

Contrary to municipal policy, interests, democratic will, and choice

Enbridge’s request is contrary to municipal policy, municipal interests, and the democratic will of local residents.

Contrary to municipal policy

The affidavits submitted by Tay Valley Township and the Climate Network Lanark detail how Enbridge’s request is contrary to municipal policy and climate protection. The Tay Valley Township representative, Noelle Reeve, states as follows:

Enbridge’s request is inconsistent with the TVT Climate Action Plan. The Climate Action Plan is attached as **Exhibit “A”** to this affidavit. The Climate Action Plan calls for reductions in fossil fuel consumption and greenhouse gas emissions. It also specifically highlights natural gas as a particular concern. The Climate Action Plan states as follows:

¹⁶ Exhibit EGI-CNL-1, supplemental question (f).

¹⁷ Exhibit EGI-CNL-1, supplemental question (c).

Natural gas is a particular concern as the climate crisis worsens. Where natural gas was once seen to be a good transition fuel between the most polluting of the fossil fuels – coal and oil – and renewable sources of energy, in recent years it has become clear that it is a particular contributor to climate change. Natural gas is primarily methane, and methane has a global heating effect that is more than 80 times that of carbon dioxide in the first 20 years after it is released. However, the global heating potential of methane is under re-evaluation as recent research shows greater releases of fugitive methane from storage, pipelines, flaring and wells, and from permafrost and the ocean. (p. 34)

TVT plans to reduce fossil fuels, not increase their consumption and expand the pipelines that deliver fossil fuels.

The approvals requested by Enbridge Gas are particularly concerning because they relate to possible construction of fossil fuels pipelines long into the future in the former townships of North Burgess and South Sherbrooke. There are no gas pipelines in or near those former townships. Our understanding is that there are currently no plans to build pipelines into those former townships, which means that the approvals are for pipeline construction long into the future. While new fossil fuel pipeline construction in 2025 is inconsistent with TVT's Climate Action Plan, it is even more so the case for fossil fuel pipelines to be constructed in, say, 2035.

It is important to emphasize that the expanded approvals that Enbridge Gas is seeking relate to potential *new* fossil fuel pipelines in the former townships of North Burgess and South Sherbrooke. Any economic justification for the construction of new fossil fuel pipelines would require extending the use of fossil fuels long into the future and long past the time when net zero greenhouse gas emissions must be achieved. Enbridge Gas already has permission to maintain and construct gas pipelines in the former township of Bathurst, and TVT is not asking the Ontario Energy Board to revoke this permission.

Enbridge's requests are also inconsistent with TVT's declaration of a climate crisis, which is attached as **Exhibit "B."** The main part of the resolution reads as follows: Tay Valley Township officially declares a climate change crisis for the purposes of naming, framing, and deepening our commitment in our climate action plan to protecting our local ecosystems, local economy, and our community from climate change;

The preamble to the resolution reads as follows:

WHEREAS, climate change annually contributes to hundreds of billions of dollars in property and infrastructure damage worldwide, stressing local to national and international economies;

WHEREAS, climate change jeopardizes the health and risks the extinction of millions of species worldwide, stressing and weakening the health and integrity of ecosystems everywhere;

WHEREAS, climate change harms the health and security of people through intense wildfires, flooding, storms, droughts, rising sea levels, the spread of invasive insects

bearing diseases, negative impacts on agriculture, and food supply interruption, thus further stressing social, economic, and political systems;

WHEREAS, there is now a large body of evidence and climate change risk scenarios which point to the imperative for steep and permanent reductions in greenhouse gas emissions, immediately and in the coming decades, in order to avoid many climate change “tipping points” which, if crossed, will render further and devastating ecological, economic, and societal losses;

AND WHEREAS, a crisis can be defined as "a dangerous situation requiring immediate action

I believe the facts outlined in this resolution and the TVT Climate Action Plan are true.

Expanded approvals to construct fossil fuel pipelines in TVT are inconsistent with the reality that we are in a climate change crisis and with the deepened commitment to the Climate Action Plan that TVT Council has committed to.¹⁸

The co-founder of the Climate Network Lanark, Susan Brandum, states as follows:

Expanded approvals to construct fossil fuel pipelines in a wider area in Tay Valley Township [are] inconsistent with the climate action plans for Tay Valley Township and Lanark County.

The Climate Action Plan for Tay Valley Township is attached to and discussed in the affidavit of Noelle Reeve. I agree with comments and facts laid out by Ms. Reeve in her affidavit and I believe them to be true.

The Climate Action Plan for Lanark County is attached as **Exhibit “A”** to my affidavit. The second guiding principle in the Climate Action Plan for Lanark County is to “eliminate fossil fuels.” The expanded fossil fuel pipeline construction approvals sought by Enbridge are inconsistent with this for the same reason they are inconsistent with the Tay Valley Township Climate Action Plan, as outlined in Ms. Reeve’s affidavit.

The Lanark County Climate Action Plan outlines the likely impacts of climate change on the County (on page 10), which are comparatively higher than the global average because warming is expected to occur at higher rates in northern areas. The Plan also includes carbon emissions reduction targets, which are illustrated below.

¹⁸ [Affidavit of Noelle Reeve](#), July 23, 2025, paras. 4-11.

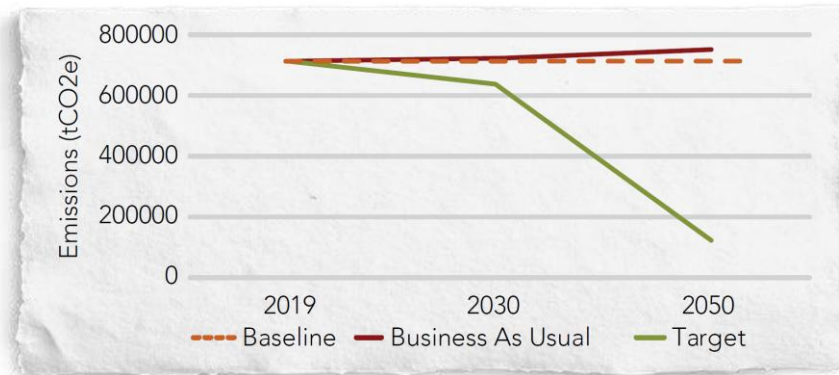


Figure 9. Community greenhouse gas emissions under different scenarios (baseline, business as usual, emission reduction targets).

If carbon emissions are meant to decline according to the Plan's target, it makes no sense to grant approvals to construct fossil fuel infrastructure in new areas of the County, particularly when the construction would occur long into the future and at a time when our carbon emissions must be even lower.

The portions of the Climate Action Plans calling for an end to the combustion of fossil fuels are consistent with the latest science and research on decarbonization. I have attached a report by energy experts prepared for the Ontario Ministry of Energy entitled *Cost Effective Energy Pathways Study for Ontario* as **Exhibit "B."** This report describes how the most cost-effective pathway to decarbonize Ontario involves electrification of buildings. I have also attached a report prepared by energy experts for the Canadian Climate Institute as **Exhibit "C."** This report reaches the same conclusion for Canada and for Ontario. Both reports find a minimal or no role for gas pipelines in the most cost-effective pathways to achieve net-zero by 2050. I believe the facts and conclusions set out in these reports and in the Climate Action Plans of Tay Valley Township and Lanark County to be true.¹⁹

Contrary to local interests and democratic will

The affidavit of Ms. Reeve makes it clear that the municipality opposes Enbridge's request. Enbridge and its predecessors have never sought a certificate to construct gas works in a municipality against the objections of the municipality and the OEB has never approved a certificate against the municipality's request.²⁰ If the OEB were to approve Enbridge's request, it would be the first decision of its kind in Ontario.

This request to override the democratic will of the municipality is particularly concerning because Enbridge made no attempts to consult with the municipality. Ms. Reeve describes this in her affidavit as follows:

¹⁹ [Affidavit of Susan Brandum](#), July 25, 2025, paras. 5-10.

²⁰ Exhibit EGI-CNL-6 (b).

Enbridge Gas has not meaningfully engaged with TVT regarding its request for expanded approvals to build gas pipelines in TVT. It did not ask TVT whether it agrees with this request before applying for an order from the Ontario Energy Board. It also did not present TVT with any options, such as the option to amend the existing certificate to make it clear that it continues to only cover the area of the former township of Bathurst.²¹

The OEB should not condone Enbridge seeking to impose a monopoly without meaningfully engaging with the municipality in question to discuss their interests and concerns.

Contrary to municipal choice and utility competition

Enbridge's application is contrary to municipal choice and competition in the gas sector as it would impose an Enbridge monopoly despite serious concerns expressed about Enbridge by the municipality and local residents represented by the Climate Network Lanark. For instance, Ms. Reeve states as follows:

If there were the prospect of gas pipeline construction in the former townships of North Burgess and South Sherbrooke, TVT would likely explore whether there are entities that could do so more in keeping with TVT's goals and Climate Action Plan. For instance, TVT would likely explore whether other entities could provide renewable natural gas created from local agricultural operations in a local system, instead of fossil fuels piped in from outside the province.

In exploring different entities, TVT would also consider issues relating to customer protection. For example, TVT would likely explore the allegations that Enbridge Gas has engaged in deceptive marketing.²²

Similarly, Ms. Brandum states as follows:

There are also specific and important concerns about Enbridge being the company that is granted a monopoly over a larger area, including Enbridge's deceptive marketing and its focus on fossil fuels.

The Climate Network Lanark was one of six organizations that joined together to request a formal inquiry be instituted against Enbridge Gas for deceptive marketing under the Competition Act. That application, along with the declaration of the Chair of the Climate Network Lanark are attached as Exhibit "E." I believe the facts set out in that application to be true. As a result of our application, the Commissioner of Competition commenced an inquiry, which is still ongoing. It is not in the interests of residents to grant an expanded monopoly to a company that deceives potential customers.²³

²¹ [Affidavit of Noelle Reeve](#), July 23, 2025, para. 13.

²² *Ibid*, paras. 14-15.

²³ [Affidavit of Susan Brandum](#), July 25, 2025, paras. 15-16.

There is no need to grant any entity approval to construct gas works in the expanded area at issue in this proceeding. But if there were, it would still not be appropriate to grant that right to Enbridge despite the explicit concerns that have been expressed.

Inconsistent with regulatory efficiency and OEB policy

Enbridge argues that OEB policy calls for certificates of public convenience and necessity to be expanded to match municipal boundaries when those boundaries change. However, no such OEB policy exists. Enbridge points to three OEB decisions where the area covered by a certificate held by Enbridge was expanded. However, none of those decisions were contested, none involved parties seeking to limit the certificate to the pre-existing areas, all were made by OEB staff under delegated authority, and none of them included any analysis of how best to update certificate boundaries when municipal boundaries change.²⁴

The OEB has also taken a different approach and left area within a municipality outside of a utility's certificate.²⁵ In EB-2017-0108, the OEB expressly considered the issue, unlike in the cases cited by Enbridge. In that case, the OEB noted that it was best to exclude unserved areas on the basis that the framework for community expansion allows multiple gas distributors to provide service within a municipality.²⁶ Excluding area from a utility's certificate when they have no foreseeable plans to expand into that area is consistent with OEB policy and fosters gas sector competition.

Enbridge's position is also inconsistent with clear wording in the OEB's Natural Gas Facilities Handbook. Section 3.6.2 states as follows:

If the boundaries of a person's existing certificate are affected by a municipal amalgamation or annexation, and no other person holds a certificate for any part of the newly amalgamated or annexed municipal territories, then the person should notify the OEB within 90 days of the date that the change takes effect to have the certificate amended to reflect the change. The OEB will not as a matter of course amend the territory covered by the person's existing certificate to include any additional service area that was added to the municipality through the amalgamation or annexation. The certificate would be amended to include the metes and bounds of the person's existing certificate. However, the certificate holder could also apply for a new certificate that would include any additional service area within the newly amalgamated territories.

According to the Natural Gas Facilities Handbook, the presumptive approach is for the certificate to be "amended to include the metes and bounds of the person's existing certificate." Although the Handbook says that a certificate holder may apply to increase the service area, that is not the default option, let alone an option identified by the OEB as being preferred.

²⁴ Enbridge cites the decisions issued in [EB-2023-0146](#), [EB-2023-0239](#), and [EB-2024-0294](#).

²⁵ [EB-2017-0108](#), Decision and Order, October 11, 2018, pp. 15, 18.

²⁶ *Ibid.* para. 14.

Furthermore, the default option of simply amending the certificate to include the metes and bounds²⁷ of the person's existing certificate is far preferable from a regulatory efficiency perspective as it does not require a hearing. Section 8 of the *Municipal Franchises Act* does not state that a new approval needs to be issued or a new hearing be held to implement an entirely non-substantive amendment to a certificate. Nor would a new approval or hearing be required by implication. Section 8 requires that approval be granted before a person construct gas works in a municipality and that said approval be in the form of a certificate. No formal hearing processes are required if the approval remains entirely unchanged, as in the case where the certificate is amended to include the metes and bounds of the person's existing certificate.

It is not clear whether Enbridge is availing itself of this simpler process. However, where it can be pursued, it would reduce the cost and effort on the part of both the OEB and Enbridge in comparison to a public hearing process. Of course, Enbridge retains the right to seek an expanded certificate, and that may be more efficient where the construction of new gas works is expected within the expanded area. However, that could not be farther from the case here.

Finally, greater reliance on an administrative process to update a certificate to include the metes and bounds of the person's existing certificate may help to improve overall compliance with OEB policy by reducing regulatory burden. The current Township boundaries were set in 1998 with the amalgamation of the former townships of Bathurst, North Burgess and South Sherbrooke. According to OEB policy, Enbridge was required to notify the Board and seek an amendment 90 days later.²⁸ Enbridge is approximately 27 years late.

Conclusion

As noted above, the OEB is required to balance competing interests and factors in fulfilling its mandate under s. 8 of the *Municipal Franchises Act*. However, in this case, little balancing is required because all relevant factors support rejecting Enbridge's request and instead amending the certificate to reflect the metes and bounds of the area covered by the existing certificate. The factors that support rejecting Enbridge's request include municipal interests, municipal policy, regulatory efficiency, environmental and climate considerations, the will of local residents, OEB policy, and the promotion of competition in gas distribution. There are no factors in favour of the expanded approvals as there is no reasonably foreseeable need to expand the area in which Enbridge has approval to construct gas works in Tay Valley Township.

The only possible interest in favour of expanded approvals is Enbridge's generic interest in expanding the area over which it has a monopoly to construct gas works in the province. This clearly does not outweigh the far more important countervailing considerations noted above. As such, the Climate Network Lanark requests that the OEB reject Enbridge's request and instead approve an amendment of Enbridge's certificate to reflect the metes and bounds of the area covered by its existing certificate.

²⁷ Metes and bounds are a legal description of a parcel of land that is measured in distances, angles, and directions, such as is often seen legal agreements real property.

²⁸ OEB, [Natural Gas Facilities Handbook](#), s. 3.6.2.