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BY EMAIL

September 12, 2025

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Ritchie Murray:

**Re: Ontario Energy Board (OEB) Staff Submission
Enbridge Natural Gas Inc.
Request for a Certificate of Public Convenience and Necessity for the
Township of Tay Valley
OEB File Number: EB-2024-0342**

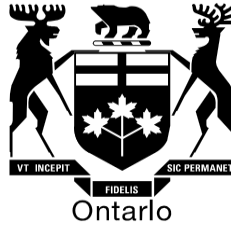
Please find attached OEB staff's submission in the above referenced proceeding, pursuant to Procedural Order No. 4.

Yours truly,

Natalya Plummer
Advisor, Natural Gas

Encl.

cc: All parties in EB-2024-0342



ONTARIO ENERGY BOARD

OEB Staff Submission

Enbridge Gas Inc.

**Request for a Certificate of Public Convenience and Necessity for the
Township of Tay Valley**

EB-2024-0342

September 12, 2025

OEB Staff Submission

Introduction

Enbridge Gas Inc. (Enbridge) has applied for a certificate of public convenience and necessity covering the entire Township of Tay Valley. Currently, Enbridge Gas holds a certificate, issued in 1960 to its corporate predecessor, Union Gas, which covers only the former Township of Bathurst. In 1998 the Township of Bathurst amalgamated with the Township of South Sherbrooke and the Township of North Burgess to form the Township of Tay Valley. The amalgamated municipality was originally known as the Township of Bathurst Burgess Sherbrooke and adopted the name Tay Valley in 2002. Neither Enbridge Gas nor any other gas company holds a certificate for the former townships of South Sherbrooke or North Burgess. In 2006 Tay Valley entered a franchise agreement with Enbridge Gas which covers the entire municipality.

Enbridge Gas requests a new certificate to reflect the municipality's current name and boundaries. If approved, Enbridge Gas's service area under the certificate would roughly double in size.

The Township of Tay Valley and Climate Network Lanark (CNL) oppose Enbridge Gas's request. This appears to be the first time a certificate application has been contested.

A certificate delineates the geographic area in which a gas utility is allowed to build and operate its system. It does not approve specific works. It does not approve or imply the OEB's acceptance of the prudence of the costs of providing service in the area. It does not prevent another utility from obtaining permission to serve the area. Specific works require approval through a leave to construct application unless they fall below certain thresholds or are exempted by virtue of "special circumstances".¹ It follows that what is really at stake in this application is Enbridge Gas's right to build and operate works in the former townships of South Sherbrooke and North Burgess that would not trigger a leave to construct application.

In OEB staff's view, public convenience and necessity weigh in favour of approving the application.

The Meaning of Public Convenience and Necessity

Under subsection 8(1) of the [Municipal Franchises Act](#), the OEB shall not grant a certificate approving the construction of natural gas works "unless public convenience and necessity appear to require that such approval be given".

At first blush, it may seem that there is no "necessity" for adding the areas encompassed by the former townships of South Sherbrooke and North Burgess to Enbridge Gas's certificate. After all, Enbridge Gas has no plans to provide gas service

¹ [Ontario Energy Board Act, 1998](#), sections 90 and 95; [O. Reg. 328/03 \(General\)](#), sections 3 and 3.0.1.

in those areas, and it has not received any requests for new connections. However, as Enbridge Gas has noted (and as CNL acknowledges), the Supreme Court of Canada has said that “the word ‘necessity’ ... cannot be given its dictionary meaning in the strict sense. The meaning in a given case must be ascertained by reference to the context and to the objects and purposes of the statute in which it is found.”² Referring to cases from the U.S., where the term “public convenience and necessity” originated, the Court added that, “The term ‘necessity’ has also been held to be not restricted to present needs but to include provision for the future.”

In keeping with the notion that “public convenience and necessity” is a term of art rather than something that can be precisely defined, Canadian courts and regulators have equated it with the “public interest”.³ It is a matter of expert judgment, not a matter of fact.⁴

CNL argues that “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. The necessity criterion cannot be met if no forecast need has been identified or if it is merely speculative.”⁵ CNL suggests that the OEB should limit the Tay Valley certificate to the metes and bounds of the area covered by Enbridge Gas’s existing certificate.

The OEB has not identified “reasonable foreseeability” as a necessary element of the test for public convenience and necessity. There have been decisions (discussed further below) approving new certificates prompted by municipal boundary changes where the question of whether the need for gas service in previously unserved areas of the municipality did not come up. (Granted, unlike this case, those applications were not contested.)

If CNL’s argument were taken to its logical conclusion, then it might be said that all certificates should be limited to the geographic footprint of the proponent’s actual or proposed infrastructure. That would be a departure from past practice, which is to align the certificate with the municipal boundaries, unless there are multiple gas utilities providing service in the municipality (whether as a result of municipal amalgamations or otherwise). It would also complicate the rational expansion of the natural gas system, as any time the gas company wanted to connect a new customer outside the metes and bounds of its certificate, it would have to apply for a certificate amendment. This would create regulatory inefficiencies and delay. The OEB has typically not treated certificates as living documents, to be updated every time the company’s pipeline network grows.

² [*Memorial Gardens Association \(Canada\) Limited v. Colwood Cemetery Company*](#), [1958] SCR 353, p. 356 (internal citations omitted).

³ In [*Sunshine Transit Service a/o Sunshine Limousine Service v. The Taxicab*](#), 2014 MBCA 33, the Manitoba Court of Appeal said, “The term ‘public convenience and necessity’ is synonymous with ‘public interest’” (para. 33). See also [*Sincennes v. Alberta \(Energy and Utilities Board\)*](#), 2009 ABCA 167 at para. 67, and the OEB’s decision in the Kingston case (EBA 825), discussed below.

⁴ *Memorial Gardens*, p. 357.

⁵ CNL submission, p. 4 (internal footnotes omitted).

Rather, they are generally issued in perpetuity, with no expiry date.⁶ They are meant to be enduring – indeed the certificate for North Bathurst has not changed in 65 years.

The wording of section 8 of the *Municipal Franchises Act* provides support for the view that the municipality is the geographic unit to which a certificate presumptively applies. It requires a certificate to construct 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. [Emphasis added.]

If a gas company was supplying gas to even a tiny corner of a municipality before April 1, 1933, it would today be exempt from the need for a certificate – and therefore it could supply gas – in *all parts* of the municipality. Nothing in the Act suggests that the certificate should be precisely tailored to the location of the works that are in place or are reasonably foreseeable. (As discussed further below, the OEB has held that the Act does not preclude the approval of multiple, non-overlapping certificates within the same municipality for the purpose of enabling competition.)

Even if reasonable foreseeability were an element of the test, it would be met here. Based on the evidence filed by Enbridge Gas, it would appear that although there are no current plans to expand its system into the previously unserved areas of the Township, the prospect of such an expansion is not entirely speculative. This is not a remote municipality far from any existing gas infrastructure. There is already some pipeline in the Township (in the area that was formerly part of Bathurst). And it is not unreasonable to accept Enbridge Gas's suggestion that the Lanark/Balderson project, which was approved for funding under the provincial Natural Gas Expansion Program and would run through parts of Township,⁷ would bring infrastructure closer to currently unserved areas of the Township and therefore lead to service connection requests from homeowners, farms or businesses.

The OEB's Policy and Practice on Municipal Boundary Changes

Both Enbridge Gas and CNL point to this paragraph of the Natural Gas Facilities Handbook:

3.6.2 Municipal Changes that do not affect another Person's Certificate Rights

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

⁶ [Natural Gas Facilities Handbook](#), March 31, 2022 (Handbook), p. 15.

⁷ Ex. EGI-OEB-2(a).

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. [Footnotes omitted.]

Enbridge Gas says this amounts to a direction to utilities to align their certificates with current municipal boundaries.⁸ CNL says that although “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.”⁹ OEB staff understands the spirit and intent of the Handbook to be as follows. Where a municipal boundary change has no impact on anyone's certificate rights (neither the applicant's nor any other gas provider's), then the certificate should be updated to reflect the change, but the update can be dealt with as a purely housekeeping matter, without the need even for a formal application – a simple notification would suffice. So, for example, where Municipality A merges with Municipality B, and the same utility already holds a certificate for both A and B, the utility's certificate would upon notification from the utility be updated to reflect the merged municipality's name and boundaries.¹⁰

On the other hand, where a boundary change would add territory that is not already included in a certificate, then the utility has a choice. It can either ask for a housekeeping amendment to the certificate to reflect the new municipal name (if there is one) while limiting the geographic scope of the certificate to the area covered by the original certificate, or it could apply for a new certificate covering the entire, enlarged municipality. That is the choice Enbridge Gas was faced with here. In OEB staff's view, the Handbook does not express a clear preference for one option over the other.

As Enbridge Gas has pointed out, the OEB has on several occasions approved applications similar to this one, and enlarged the certificate area to reflect the expansion of municipal boundaries.¹¹ CNL correctly notes that none of those applications was contested, and all were decided by an OEB employee under delegated authority.

CNL says that “The OEB has also taken a different approach and left area within a municipality outside of a utility's certificate,” citing the Norfolk County case.¹² But that

⁸ Ex. EGI-CNL-8 Supplemental.

⁹ CNL submission, p. 11.

¹⁰ For instance, in [EB-2022-0240](#), the OEB approved a request by Enbridge Gas for a new certificate after the Town of Ingersoll, in which Enbridge Gas held a certificate, annexed part of another town in which Enbridge Gas also held a certificate. The OEB noted, “Section 3.6.2 of the Natural Gas Facilities Handbook requires only notification of municipal boundary changes to the OEB and not a formal application. Nonetheless, the OEB has processed this change in the same manner as it would a formal application.”

¹¹ Enbridge Gas refers to [EB-2024-0294](#) (Aurora), [EB-2023-0239](#) (Gravenhurst), and [EB-2023-0146](#) (Sarnia): Enbridge Gas letter, February 25, 2025.

¹² Decision and Order in Enbridge Gas Inc. and EPCOR Natural Gas Limited Partnership's application for certificates of public convenience and necessity for Norfolk County, the County of Elgin, and the County of Middlesex, [EB-2017-0108](#), October 11, 2018.

was a different kind of factual situation. The issue was that overlapping certificates had been issued to two different utilities. The solution was to grant new certificates that would delineate each utility's service area: "If both utilities have infrastructure within the same lower-tier municipality, certificates for the lower-tier municipality limited to the metes and bounds of their infrastructure will be awarded."¹³

There is no tension between these decisions. They show that the OEB's approach is to align the certificate with the municipal boundaries, unless there are multiple gas utilities providing service in the municipality.

Expanding the Certificate Area Would Not Preclude Competition

CNL asserts that "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."¹⁴

It is not correct that a certificate would provide Enbridge Gas with a monopoly in the area. As the OEB observed in the Generic Proceeding on Community Expansion, "There is nothing in the Municipal Franchises Act that ensures that the Certificate gives the utility exclusivity (i.e. its monopoly). The Municipal Franchises Act does not appear to prevent the Board from issuing multiple Certificates for the same municipality."¹⁵ If the OEB were to approve Enbridge Gas's request, another gas company could still apply to provide service in the areas formerly known as South Sherbrooke or North Burgess (or indeed in the unserved parts of the former Bathurst). The Handbook explains:

If a certificate has been issued for a particular area in which there is currently no gas distribution service, another person may apply for a certificate to serve that area. The OEB may amend an existing certificate to remove authorization to serve a specific geographic area and grant that authorization to another person, if public convenience and necessity require that such authorization be given. In so doing, the OEB would seek to ensure that the two certificates would cover mutually exclusive areas.¹⁶

If there were any evidence that another gas company was interested in serving any part of the Township, a case could be made for denying Enbridge Gas's request, at least until a competitive process in accordance with the community expansion framework (EB-2016-0004) were allowed to run its course. That would be consistent with the OEB's Norfolk County decision. But there is no such evidence. No other gas company intervened. No other gas company has any certificate rights in an adjacent municipality.

The Township's Opposition and the Broader Public Interest

The Township argues that Enbridge Gas's application is inconsistent with the

¹³ *Ibid.*, p. 13.

¹⁴ CNL submission, p. 10.

¹⁵ Decision with Reasons, [EB-2016-0004](#), November 17, 2016, p. 27.

¹⁶ Handbook, p. 14 (internal footnotes omitted).

Township's Climate Action Plan, which calls for reductions in fossil fuel consumption and identifies natural gas as "a particular concern".¹⁷ The Township further argues that the application is inconsistent with "the democratic will" of the Township.¹⁸ These arguments are echoed by CNL. Enbridge Gas acknowledged in an interrogatory response that it is unaware of any case where the OEB approved a certificate over the objection of the municipality.¹⁹

In OEB staff's view, the municipality's perspective is an important consideration – indeed section 8 of the MFA specifically requires notice of a certificate application to be given to "interested or affected" municipalities. But the municipality does not have a veto over certificates. As the OEB said in Kingston, "While the views of the municipality should be taken into account by the Board they are not determinative of the issue of determining where public convenience and necessity lies."²⁰ (That case was about a franchise renewal under section 10 of the Act, not a certificate under section 8, but "public convenience and necessity" is the test under both provisions.) The OEB explained:

In the Board's view, 'public interest' and 'public convenience and necessity' are broader than local, parochial interests and the Board is required to consider matters affecting provincial gas distribution as a whole and not just local interests. In considering each individual application to renew or extend a franchise, the Board must balance the specific interests of all direct stakeholders, including ratepayers, the municipality and the utility shareholder, against the broader public interest.²¹

The OEB also referred to another case concerning a municipal franchise agreement where the Divisional Court held that "it is the broad public interest that must be served", not "local or parochial interests".²²

OEB staff would not wish to suggest that the Township's concerns about greenhouse gas emissions are "parochial". The point, rather, is that the public interest may not be coterminous with the municipality's interest and indeed in some cases the municipality's interest could frustrate the "broader" public interest.

This is where reference to the Government of Ontario's [Integrated Energy Plan](#) (IEP), released in June 2025, is enlightening. The IEP emphasizes customer choice: "Ontario's approach to affordability centres on the principle of customer choice. Whether heating a home, fueling a vehicle, or powering a business, customers are best positioned to decide which energy solutions work for them – based on their needs,

¹⁷ Affidavit of Noelle Reeve, para. 4.

¹⁸ *Ibid.*, paras. 12-18.

¹⁹ Ex. EGI-CNL-6(b). OEB staff is also not aware of any cases where a certificate was *denied* on the basis of municipal opposition. It appears that this is the first time a municipality has intervened to object to a certificate.

²⁰ Decision and Order, June 2000 ([EBA 825](#)), p. 26.

²¹ *Ibid.*, p. 26.

²² [Union Gas v. Township of Dawn](#) (1977), 76 D.L.R. 613.

preferences, and budgets.”²³ The IEP includes the Government’s Natural Gas Policy Statement. Echoing the theme of customer choice, the Policy Statement explains that “homeowners in rural and northern areas who do not have access to natural gas, want the option to have it through expansion”. Other key messages in the Policy Statement include:

- Natural gas is “indispensable” to the agricultural sector.
- “The OEB will continue to play its role as the natural gas system’s economic regulator, protecting consumers, allowing gas utilities an opportunity to earn a fair return on investment, and enabling the continued rational expansion of the natural gas system.”
- “As part of a gradual transition to a more diverse energy system, Ontario will continue to support the important role of natural gas in Ontario’s energy system and economy while pursuing options to lower costs and reduce emissions through energy efficiency, electrification, clean fuels (e.g., renewable natural gas, low-carbon hydrogen) and carbon capture and storage.”²⁴

The Government issued an [IEP implementation directive](#) to the OEB on June 11, 2025. The directive says that the OEB is to “Consider the government’s Natural Gas Policy Statement to ensure the OEB appropriately considers the future role of natural gas in Ontario’s economy. There is a need for an economically viable natural gas network – as the province builds a more diverse energy system – to attract industrial investment, to drive economic growth, to maintain customer choice and ensure overall energy system resiliency, reliability and affordability.” In hearing and determining Enbridge Gas’s certificate application, the OEB is required to turn its mind to the directive (and therefore to the Policy Statement): under section 2.1 of the *Ontario Energy Board Act, 1998*, “The Board, in exercising its powers and performing its duties under this or any other Act, shall be guided by the objective of facilitating the implementation of any directives issued under subsection 25.30 (2) of the *Electricity Act, 1998*.”

In summary, the Government has established a policy that includes a continuing role for gas in the energy transition and that specifically contemplates gas expansion in currently unserved areas. The Township (and CNL) may disagree with that policy. Still, in OEB staff’s view, the policy must inform the OEB’s assessment of the “broader public interest” in this case.

It should also be emphasized that although the Township now opposes this application, it entered a franchise agreement with Enbridge Gas in 2006 – eight years after the amalgamation that created the Township.²⁵ The agreement (which is in the form of the

²³ IEP, p. 14.

²⁴ IEP, chapter 5.

²⁵ Afterwards, in 2010, parts of the Township of Tay Valley were annexed by the Town of Perth: Enbridge Gas Application, p. 1.

OEB-approved model agreement) applies to the entire Township: it authorizes Enbridge Gas to supply gas “in and through the Municipality” and defines “Municipality” as “the territorial limits of the Corporation on the date when this Agreement takes effect, and any territory which may thereafter be brought within the jurisdiction of the Corporation.”²⁶ The agreement is for a term of 20 years; Enbridge Gas has indicated that it intends to apply for a renewal next year.²⁷ In OEB staff’s view, it would be incongruous and illogical for the franchise agreement and the certificate to cover different areas.

Conclusion

On balance, OEB staff is of the view that public convenience and necessity favour granting Enbridge Gas’s request for a new certificate covering all of the Township.

To be sure, in the absence of any actual plans to expand its infrastructure in the areas of the Township not covered by the current certificate, or any evidence that potential customers in those areas have asked to be connected, there is no pressing need for a new certificate. But the public convenience and necessity test does not demand proof of actual “necessity”.

It is the policy of the Government of Ontario to facilitate customer choice and to accommodate a continued role for natural gas during the energy transition. The OEB is required to take that into account in assessing where the public interest lies. Aligning the certificate with the municipal boundaries – and with the current franchise agreement – would remove a barrier to connecting customers who want access to gas. Specific pipeline projects above the applicable threshold would still require an application for leave to construct, where the OEB would have to determine whether that specific project is in the public interest, having regard to various factors including the need for the project, alternatives to the project (including integrated resource planning), the economics of the project, and environmental impacts.²⁸

~All of which is respectfully submitted~

²⁶ Franchise Agreement, June 27, 2006 (Schedule B to Enbridge Gas application).

²⁷ Ex. EGI-OEB-3(a).

²⁸ Handbook, section 4.4 (Standard Leave to Construct Issues List).