Enbridge Gas Inc.
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Chatham, Ontario, Canada
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September 19, 2025

Mr. Ritchie Murray
Acting Registrar
Ontario Energy Board
2300 Yonge Street, 27th Floor
Toronto, ON  M4P 1E4

Dear Mr. Murray:

**Re: Enbridge Gas Inc.**
**Application for Certificate of Public Convenience and Necessity**
**Township of Tay Valley**
**Ontario Energy Board File No. EB-2024-0342**

Pursuant to Procedural Order No. 4, Enbridge Gas hereby submits reply arguments in response to final argument submissions by Ontario Energy Board staff, Tay Valley Township and Climate Network Lanark.

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

Yours truly,

Patrick McMahon
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cc: (email only)
Noelle Reeve, Township of Tay Valley
Kent Elson, Elson Advocacy (Climate Network Lanark)
Kate Siemiatycki, Elson Advocacy (Climate Network Lanark)
Natalya Plummer, OEB

**IN THE MATTER OF** the *Municipal Franchises Act*, R.S.O. 1990 c. M.55, as amended;

**AND IN THE MATTER OF** an Application by Enbridge Gas Inc. for an Order cancelling and superseding the F.B.C. 316 Certificate of Public Convenience and Necessity related to the former Township of Bathurst and replace it with a Certificate of Public Convenience and Necessity to construct works to supply natural gas in the current Township of Tay Valley.

## REPLY ARGUMENT OF ENBRIDGE GAS INC.

1. These are the reply submissions of Enbridge Gas Inc. (Enbridge Gas) in response to the submissions of Ontario Energy Board (OEB) staff, Tay Valley Township (Tay Valley) and Climate Network Lanark (CNL) in this matter.

Response to OEB Staff's Submissions

2. Enbridge Gas brought this application on November 21, 2024 to update the existing certificate of public convenience and necessity (CPCN) for Tay Valley in order to align CPCN boundaries with the boundaries of the municipality.

3. As is clearly addressed in OEB staff's submissions, a CPCN delineates the geographic area in which a gas utility is allowed to build and operate its system. It does not approve specific works and it does not prevent another party from obtaining permission to serve the area.[1]

4. As OEB staff recognizes, the OEB has not identified "reasonable foreseeability" as a necessary element of the test for public convenience and necessity.[2] In this case, although Enbridge Gas is not currently aware of any service connection requests in the proposed expanded areas for the CPCN, the evidence shows that there are potential customers within a few kilometres of existing Enbridge Gas infrastructure.[3] So, potential future expansion would be reasonably foreseeable in any event (even if that were a requirement, which it is not). And in addition to recognizing that the "necessity" term includes provision for the future, the OEB must also consider the "convenience" of approving the application to allow Enbridge Gas to accommodate future customers in a timely manner whenever requests for service are received.

5. Enbridge Gas agrees with OEB staff's observation that limiting Enbridge Gas' CPCNs to the geographic footprint of the existing or proposed infrastructure would create regulatory inefficiencies and delay in responding to requests from residents and businesses for service connections.[4] This would be counter to the Ontario government's Natural Gas Policy Statement contained within the Integrated Energy Plan (IEP) that emphasizes the important and continuing role of natural gas going forward and specifically contemplates expansion of the natural gas

[1] OEB Staff Argument dated September 12, 2025, page 1
[2] OEB Staff Argument dated September 12, 2025, page 2
[3] Exhibit EGI-OEB-2 Supplemental
[4] OEB Staff Argument dated September 12, 2025, page 2

network in currently unserved areas. The OEB is required to facilitate customer choice as a pillar of the IEP.

6. Enbridge Gas agrees with OEB staff's observations that 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 CPCN presumptively applies and that nothing in the *Municipal Franchises Act* suggests that the CPCN should be precisely tailored to the location of the works that are in place or are reasonably foreseeable.[5] Enbridge Gas holds many CPCNs that cover entire areas of municipalities, but service is not provided in all areas of these municipalities. OEB staff acknowledges that the OEB has on several occasions approved applications similar to this one and enlarged the CPCN area to reflect the expansion of municipal boundaries.

7. Enbridge Gas agrees with OEB staff that it is not correct that a CPCN would provide Enbridge Gas with a monopoly within Tay Valley Township.[6] As OEB staff notes, not only does the *Municipal Franchises Act* not prevent the OEB from issuing multiple CPCNs for the same municipality, but the OEB has done just that to accommodate the operations of EPCOR Natural Gas, Six Nations Natural Gas and local natural gas producers and distributors in municipalities in which Enbridge Gas holds CPCN rights.

8. Enbridge Gas agrees with OEB staff's observation that municipalities do not have a veto over the issuing of CPCNs. As noted by OEB staff, the OEB has previously determined that the views of the municipality are not determinative of the issue of determining where public convenience and necessity lies.[7]

9. Further, the Ontario government has recently made several significant legislative and policy changes which impact and clarify the framework which both municipalities and the OEB, as creatures of statute, are required to follow. For example, Bill 17 - *Protect Ontario by Building Faster and Smarter Act, 2025* (which received Royal Assent on June 5, 2025) introduced changes to the *Building Code Act* which limit a municipality's ability to impose green standards through either the *Municipal Act, 2001* or the *Planning Act* that might impact future development. By reinforcing the authority of the province in this regard, this also highlights (and is consistent with) the OEB's narrower jurisdiction and mandate, namely to oversee the safe, reliable, and economic delivery of energy – not to regulate or dictate Ontarians' energy choices. The OEB does not have jurisdiction over municipal land-use planning, climate change policy, or political determinations about the use of natural gas, points we further address below.

<u>Response to Tay Valley's Submissions</u>

10. Tay Valley's cover letter to their submissions indicates that they are opposed to the Enbridge Gas application for expansion of services in Tay Valley. As noted by Enbridge Gas and explained by OEB staff, this application is not requesting leave to construct or approval of an expansion of services. That will require customers choosing to request gas service in the future and it is part of the OEB's mandate and objectives in the *Ontario Energy Board Act* to facilitate the rational expansion of transmission and distribution systems to satisfy customer choice in this regard. A municipality cannot obstruct or thwart that government policy or legislative mandate based upon its own policy objection to the use of fossil fuels, or its own climate action

[5] OEB Staff Argument dated September 12, 2025, page 3
[6] OEB Staff Argument dated September 12, 2025, page 5
[7] OEB Staff Argument dated September 12, 2025, page 6

plans or green development standards. A municipality's broad-based environmental concerns are beyond the powers of the OEB to regulate.

11. The OEB is required to consider and facilitate implementation of the IEP. The IEP is clear in respect of the continuing role of natural gas into the future and that the OEB is expected to enable "the continued rational expansion of the natural gas system". And, as noted, the IEP emphasizes the importance of ensuring and protecting customer choice. The IEP states that "Ontario's approach to affordability centres on the principle of customer choice" since "customers are best positioned to decide which energy solutions work for them". The IEP "supports this choice by making a diverse range of energy options available", including natural gas. As further stated in the IEP, natural gas is "a critical component of Ontario's future energy mix" and is a "critical energy source for Ontario".[8]

12. Further and importantly, as an economic regulator, the OEB regulates the delivery, storage and supply of gas. It has no jurisdiction or power to regulate the utilization of gas by customers or the effects arising from its use. The OEB's statutory public interest powers do not extend to regulating the broad environmental issues or concerns (GHG emissions and climate change concerns) raised by Tay Valley (and by CNL) – a point the OEB has previously confirmed. Other governmental authorities, including the Ontario Ministry of the Environment, Conservation and Parks have jurisdiction in this area.

13. In EB-2019-0159 (a leave to construct application), for example, certain intervenors including the local municipality (City of Hamilton) objected to a proposed pipeline project on the basis of the same types of broad-based environmental concerns being raised here by Tay Valley (and CNL), including concerns about emissions impacts from downstream use of gas and related climate concerns, and requested that they be added to the issues list. The OEB declined to do so and confirmed that these issues, including specifically "the effects of the consumption of the natural gas", were out of scope and beyond the OEB's statutory powers to address. The OEB noted that its public interest mandate must be interpreted in the context of its enabling legislation. And, relying on prior case law, the OEB confirmed that "the phrase 'public interest' does not broaden the Board's jurisdiction to include an assessment of the environmental or economic impact of the use of the gas flowing through the pipeline." [9]

14. Accordingly, Tay Valley's broad environmental concerns and climate action plans, and its related policy opposition to natural gas, are not relevant or material to the OEB's proper determination of this application. Those concerns and issues arising from the use of gas are outside the OEB's jurisdiction and are not a basis to deny the application. We also note that in Procedural Order No. 2 in this application (which was considering CNL's intervention request and proposed climate change related evidence), the OEB expressly indicated that "broad issues affecting Ontario communities and natural gas customers – beyond the Township of Tay Valley – fall outside the scope of this proceeding." [10]

15. Tay Valley argues that an appropriate process to assign the right to construct gas infrastructure, if such a right needs to be assigned, would allow Tay Valley to assess and consider alternative entities that may be more in keeping with its goals and climate plan and to do so on its own

[8] Ontario Government's June 2025 Integrated Energy Plan, pages 14, 26, 95-96

[9] EB-2019-0159, Application to Construct Natural Gas Pipeline and Associated Facilities in the City of Hamilton, Procedural Order No. 2 and Decision on Issues List, March 6, 2020, pages 9-11

[10] Decision on Intervention of Climate Network Lanark and Procedural Order No. 2, May 29, 2025, page 4

timeline.[11] Such a process would require a legislative amendment to give municipalities such as Tay Valley the authority assigned to the OEB pursuant to the *Municipal Franchises Act* to approve CPCNs. Municipalities have no such role to play.

16. We also note, as did OEB staff in its submissions, that Tay Valley's current position and arguments ignore and are inconsistent with the fact that Tay Valley, a number of years after its amalgamation, entered into a franchise agreement with Enbridge Gas covering the entire municipality and authorizing Enbridge Gas to supply gas throughout its territory. That franchise agreement remains in effect, and Enbridge Gas has confirmed it intends to apply for a renewal of it upon the expiry of its current term. It only makes sense that the franchise agreement and CPCN should cover the same areas.[12]

<u>Response to CNL's Submissions</u>

17. CNL's submissions are very similar to the Tay Valley submissions and should be rejected for similar reasons, as set out above and in the OEB staff submissions. More particularly, CNL argues that the requested CPCN expansion should not be granted because there is no reasonably foreseeable need for the expanded approval.[13] As was identified by OEB staff, the OEB has not identified "reasonable foreseeability" as a necessary element of the test for public convenience and necessity (and even if it were a requirement, it would be met) and there is no evidence or prospect of a competing gas distributor in this area.

18. CNL suggests that the affidavits submitted by Tay Valley and CNL detail how Enbridge Gas' request is contrary to municipal policy and climate concerns and protection.[14] As discussed above, municipalities do not have a veto over the issuing of CPCNs, nor does the OEB have the jurisdiction or statutory power to regulate the utilization of gas or effects arising from it. For reasons addressed above (and consistent with prior OEB rulings), CNL's broad environmental concerns about emissions from the use of gas and its climate action plans are therefore outside the scope of these proceedings and outside the OEB's regulatory powers. Those concerns are not a basis to deny this application and are not relevant / material to the OEB's proper determination of it. CNL's position and fundamental opposition to natural gas is also contrary to the IEP - including in respect of customer choice and rational expansion of the natural gas system - and other guiding objectives in the *Ontario Energy Board Act*, with which the OEB is required to abide and implement.

19. CNL argues that Enbridge Gas' application is contrary to municipal choice and competition in the gas sector as it would impose an Enbridge Gas monopoly within Tay Valley.[15] As noted above, the *Municipal Franchises Act* does not prevent the OEB from issuing multiple CPCNs for the same municipality, and the OEB has done just that in several proceedings. Further, Ontario government policy supports customer choice and through Bill 17 specifically limits the authority of municipalities to obstruct economic growth objectives by imposing mandatory green development standards.

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[11] Tay Valley Township Argument dated September 5, 2025, Affidavit of Noelle Reeve, page 2

[12] OEB staff Argument dated September 12, 2025, pages 6-7; Franchise Agreement dated June 27, 2026 (Schedule B to application)

[13] Climate Network Lanark Argument dated September 5, 2025, pages 1 and 4

[14] Climate Network Lanark Argument dated September 5, 2025, page 6

[15] Climate Network Lanark Argument dated September 5, 2025, page 10

20. CNL argues that the OEB "has also taken a different approach and left area within a municipality outside of a utility's certificate" citing a proceeding that addressed the overlapping of CPCNs that had been issued to two different utilities (Union Gas and Natural Resource Gas) within Norfolk County. As OEB staff explains, the OEB's determination in that proceeding was to grant new CPCNs that would delineate each utility's service area which is clearly distinguishable from this proceeding.

Conclusion

21. In conclusion, Enbridge Gas requests that the OEB issue an order pursuant to section 8 of the *Municipal Franchises Act* updating the existing CPCN for Tay Valley Township such that the area covered by the new CPCN is aligned with the municipal boundaries of the current Tay Valley Township.

All of which is respectfully submitted this 19th day of September, 2025.

Patrick McMahon

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