Ontario Energy Board | Commission de l'énergie de l'Ontario

DECISION AND ORDER

EB-2024-0342

ENBRIDGE GAS INC.

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

BEFORE: **David Sword**
Presiding Commissioner

Fred Cass
Commissioner

October 16, 2025

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1 OVERVIEW

[1] This is the Decision and Order of the Ontario Energy Board (OEB) regarding an application filed by Enbridge Gas Inc. (Enbridge Gas) for a certificate of public convenience and necessity for the Township of Tay Valley. Enbridge Gas holds a certificate dated August 25, 1960, which covers only a portion of the Township of Tay Valley. In this application, Enbridge Gas requested an order of the OEB cancelling its existing certificate and granting it a new certificate to construct works to supply natural gas in the Township of Tay Valley as it is currently constituted.

[2] The Township of Tay Valley and a local interest group, Climate Network Lanark, intervened in the proceeding and opposed the certificate application. They argued that the certificate should be amended to reflect the name change of the municipality but that it should continue to cover only the geographic area for which Enbridge Gas has existing certificate rights.

[3] The Ontario Energy Board (OEB) approves Enbridge Gas's application for a new certificate of public convenience and necessity aligned with the current name and expanded municipal boundaries of the Township of Tay Valley.

The OEB finds that the public convenience and necessity test has been satisfied and that issuing a new certificate is in the public interest.

2 CONTEXT AND PROCESS

2.1 Application Overview

[4] The Township of Tay Valley is a lower-tier municipality located in the County of Lanark that was incorporated on January 1, 1998 by amalgamating the former Township of Bathurst, the former Township of South Sherbrooke and the former Township of North Burgess. The municipality was originally known as the Township of Bathurst Burgess Sherbrooke, but adopted the name of Tay Valley on July 30, 2002.

[5] Enbridge Gas holds a certificate dated August 25, 1960, which covers the former Township of Bathurst.[1] Enbridge Gas does not hold certificate rights for the former Township of South Sherbrooke or the former Township of North Burgess.

[6] On November 21, 2024, Enbridge Gas applied to the OEB for an order under section 8 of the *Municipal Franchises Act* granting it a new certificate to construct works to supply natural gas in the Township of Tay Valley as it is currently constituted.

2.2 Process

[7] A Notice of Hearing was issued on December 11, 2024. Interventions closed on January 9, 2025. The Township of Tay Valley applied for intervenor status.

[8] The OEB issued Procedural Order No. 1 on February 10, 2025, approving the Township of Tay Valley as an intervenor and establishing dates respecting the filing of proposed evidence, and submissions and interrogatories.

[9] On February 11, 2025, a late intervention request was received from Environmental Defence. Enbridge Gas objected to the intervention. The OEB suspended the remaining steps set out in Procedural Order No. 1 as a result of the late intervention request.

[10] On March 20, 2025, the OEB denied Environmental Defence's intervention request. On April 9, 2025, Environmental Defence filed a motion requesting that the OEB vary or overturn that decision.

[1] F.B.C 316

[11] On April 11, 2025, the OEB received a further late intervention request from Climate Network Lanark. After the OEB approved that request, Environmental Defence withdrew its motion.

[12] With leave of the OEB, both the Township and Climate Network Lanark filed evidence.

[13] On Augst 20, 2025, in response to a request from Climate Network Lanark, the OEB ordered Enbridge Gas to elaborate on certain interrogatory responses and to answer certain follow-up questions.

3 DECISION

[14] In addition to the certificate that Enbridge Gas holds for the Township of Tay Valley, Enbridge Gas also holds a franchise agreement for the Township of Tay that was effective June 27, 2006. While Enbridge Gas's existing certificate only covers part of the areas that were amalgamated to form the Township of Tay Valley in 1998, the franchise agreement that Enbridge Gas holds covers the entirety of the Township of Tay Valley. If the application is granted, the certificate would also cover the entirety of the Township of Tay Valley. Enbridge Gas stated that it is not aware of any other natural gas distributor within or in the areas adjacent to the Township of Tay Valley.

[15] Enbridge Gas stated that the Lanark/Balderson Community Expansion Project was approved to receive financial assistance through Phase 2 of the Natural Gas Expansion Program and that the project could potentially provide access to natural gas to residential, commercial and agricultural service locations in the Township of Tay Valley. Enbridge Gas argued that not having a certificate that covers the whole Township of Tay Valley would unnecessarily delay responding to natural gas service requests in unserved areas of the Township of Tay Valley.[2]

[16] Enbridge Gas submitted that the application is part of its ongoing effort to bring all of its certificates in line with the Natural Gas Facilities Handbook and the OEB's decisions over the last few years to match certificates to municipal boundaries.[3]

[17] The Township of Tay Valley opposed Enbridge Gas's request to expand the area in which it can construct and maintain natural gas infrastructure and stated that Enbridge Gas's certificate request is inconsistent with the Township's Climate Action Plan.[4] The Township argued that it plans to reduce fossil fuels and not expand pipelines that deliver fossil fuels[5] and that an appropriate process to assign the right to construct gas infrastructure would allow the Township to assess and consider alternative entities that may be more in keeping with its goals, climate plan and own timeline.[6]

[18] The Township submitted that Enbridge Gas's existing pipelines are not close to the former Township of North Burgess and the former Township of South

[2] Enbridge Gas Response to OEB Staff 2a) and OEB Staff 3a)
[3] Ibid
[4] Affidavit of Noelle Reeve, page 2, para 3
[5] Affidavit of Noelle Reeve, page 2, para 5
[6] Affidavit of Noelle Reeve, page 2, para 3

Sherbrooke and that costs and distances make it unlikely that there will be interest in extending gas pipelines into these areas.[7] The Township argued that Enbridge Gas's certificate request to extend to the former Township of North Burgess and the former Township of South Sherbrooke is premature and unnecessary.[8]

[19] Climate Network Lanark also opposed Enbridge Gas's certificate request. Climate Network Lanark stated that based on the wording in section 8 of the *Municipal Franchises Act* 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."[9] Climate Network Lanark argued that according to the case law, the adjudicator applying the public interest test must consider whether approval is in the public interest, including balancing the various interests that are at stake.[10]

[20] Climate Network Lanark submitted that the certificate request is not just administrative, as Enbridge Gas suggested,[11] but requires careful consideration of the relevant public interest factors.[12] Climate Network Lanark argued that in order to meet the test in section 8 of the *Municipal Franchises Act*, Enbridge Gas must show that there is at least a reasonably foreseeable need for gas works in the relevant area,[13] which Enbridge Gas's evidence does not support. Climate Network Lanark also argued that OEB policy does not call for certificates to match boundaries when boundaries change and that previous expansion cases were not contested, involve parties seeking to limit the certificate to pre-existing areas, or include an analysis of how best to update the certificate.[14]

[21] Both the Township of Tay Valley and Climate Network Lanark requested that the OEB reject Enbridge Gas's application and instead approve an amendment of Enbridge Gas's certificate to describe the area covered by its existing certificate."[15]

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[7] Affidavit of Noelle Reeve, page 5, para 16 and 17
[8] Affidavit of Noelle Reeve, page 6, para 18
[9] Climate Network Lanark Written Submission, September 5, 2025, page 3
[10] Climate Network Lanark Written Submission, September 5, 2025, page 4
[11] Ibid
[12] Climate Network Lanark Written Submission, September 5, 2025, page 3
[13] Climate Network Lanark Written Submission, September 5, 2025, page 4
[14] Climate Network Lanark Written Submission, September 5, 2025, page 11
[15] Climate Network Lanark Written Submission, September 5, 2025, page 3; Affidavit of Noelle Reeve, page 6, para 18

[22] OEB staff submitted that public convenience and necessity weigh in favour of approving the application. OEB staff noted that Enbridge Gas holds a franchise agreement that covers the entirety of the Township of Tay Valley and that it would be incongruous and illogical for the franchise agreement and the certificate to cover different areas.[16]

[23] OEB staff submitted that Canadian courts and regulators have equated public convenience and necessity with the public interest. "Necessity" in the context of "public convenience and necessity" has not been given its strict dictionary meaning and has not been interpreted as requiring actual or reasonably foreseeable infrastructure development. In any case, even if reasonable foreseeability were an element of the test as suggested by Climate Network Lanark, it would be met in the circumstances: although Enbridge Gas has no current plans to expand its system into the previously unserved areas of the Township, the prospect of such expansion is not entirely speculative. The Township is not a remote municipality far from any existing gas infrastructure, and the Lanark/Balderson Project, which was approved for funding under the provincial Natural Gas Expansion Program, could bring infrastructure closer to those unserved areas and therefore lead to new connection requests.[17]

[24] OEB staff submitted that limiting certificates to the geographic footprint of the proponents actual or proposed infrastructure would be a departure from past practice which is to align certificates with municipal boundaries unless there are multiple gas utilities providing service in the same municipality. OEB staff further submitted that this would complicate the rational expansion of the gas system because any time the gas company wanted to connect a new customer outside of its metes and bounds of its certificate, it would have to apply for a certificate amendment which would create regulatory inefficiencies and delay.[18]

[25] OEB staff noted that a certificate delineates the geographic area in which a gas utility is allowed to build and operate its system but it does not approve specific works. A certificate also does not approve or imply the OEB's acceptance of the prudence of costs of providing service in the area. OEB staff also noted that a certificate does not prevent another utility from obtaining permission to serve the area.[19]

[16] OEB Staff Written Submission, September 12, 2025, page 8
[17] OEB Staff Written Submission, September 12, 2025, page 2 and 3
[18] Ibid
[19] OEB Staff Written Submission, September 12, 2025, page 1

[26] In response to the Township's argument (supported by Climate Network Lanark) that granting the certificate would be inconsistent with the Township's climate plan as well as the "democratic will" of the Township, OEB staff submitted that, although the Township's perspective is an important consideration, the Divisional Court has held that "it is the broad public interest that must be served".[20] OEB staff pointed to the Government's recent Integrated Energy Plan which includes the Government's Natural Gas Policy Statement. The Natural Gas Policy Statement emphasizes customer choice and a continuing role for gas in the energy transition. OEB staff submitted that the Township of Tay Valley and Climate Network Lanark may disagree with that policy but the policy must inform the OEB's assessment of the broad public interest in this case.[21]

[27] In its reply argument, Enbridge Gas reiterated that the application is not seeking leave to construct or an approval of the expansion of services.[22] Enbridge Gas argued that the broad environmental concerns that have been raised, the Township of Tay Valley's climate action plan and related opposition to natural gas are not relevant or material to the OEB's proper determination of this application and are not a basis to deny the application.[23] Enbridge Gas further argued that both its certificate and franchise for the Township of Tay Valley should cover the same areas[24] and requested that the OEB issue an order pursuant to section 8 of the *Municipal Franchises Act*, updating the existing certificate for the Township of Tay Vally such that the area covered by the new certificate is aligned with the municipal boundaries of the current Tay Valley Township.[25]

FINDINGS

[28] The OEB approves Enbridge Gas's application for a new certificate of public convenience and necessity, aligning it with the current name and expanded municipal boundaries of the Township of Tay Valley.

[20] OEB Staff Submission, page. 6, citing Union Gas v. Township of Dawn, (1977), 76 D.L.R. 613.
[21] OEB Staff Written Submission, September 12, 2025, page 7
[22] Enbridge Gas Written Reply Submission, September 19, 2025, page 2, para 10
[23] Enbridge Gas Written Reply Submission, September 19, 2025, page 4, para 18
[24] Enbridge Gas Written Reply Submission, September 19, 2025, page 4, para 16
[25] Enbridge Gas Written Reply Submission, September 19, 2025, page 5, para 21

[29] The OEB finds that the public convenience and necessity test has been satisfied and that issuing a new certificate for Enbridge Gas in the Township of Tay Valley is in the public interest.

[30] The OEB's practice of issuing certificates aligned with municipal boundaries is administratively efficient and in keeping with OEB guidelines for certificate updates following municipal amalgamations.[26]

[31] Climate Network Lanark opposed the application arguing that since Enbridge Gas has no current or imminent plans to expand natural gas service locally, the expanded certificate was not necessary and should be limited to Enbridge Gas's existing service area. However, 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."[27] The Court also observed that "the term 'necessity' has also been held to be not restricted to present needs but to include provision for the future."[28] While there may be no pressing need for an expanded certificate, that is not the test.

[32] Historically, certificates have been issued based upon municipal boundaries, which creates regulatory efficiencies and avoids the need for future certificate amendments. As OEB staff said, if certificates were instead limited to the geographic footprint of a utility's actual or proposed infrastructure, the utility would need to apply for a certificate amendment any time it wanted to connect a new customer outside the metes and bounds of the certificate, which would complicate the rational expansion of the gas system. A fragmented and inconsistent approach to certificate issuances across Ontario would not serve the public interest.

[33] The OEB agrees with OEB staff that, although "reasonable foreseeability" of a need is not, as Climate Network Lanark suggested, an element of the test for public convenience and necessity, even if it were, it would be met in this case. Although no specific service connections have been proposed for the previously unserved areas of the Township, it is reasonably foreseeable that Enbridge Gas

[26] Natural Gas Facilities Handbook, March 31, 2022
[27] OEB staff Submission, page. 2, citing *Memorial Gardens Association (Canada) Limited v. Colwood Cemetery Company*, [1958] SCR 353, p. 356 (internal citations omitted).
[28] OEB staff Submission, page. 2, citing *Sunshine Transit Service a/o Sunshine Limousine Service v. The Taxicab*, 2014 MBCA 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)

will receive connection requests, especially if the Lanark/Balderson project proceeds.

[34] Climate Network Lanark expressed concern that issuing a certificate for the entire municipality would grant a monopoly over a large area. The OEB does not agree with the position that only one certificate can be issued per municipality. According to the OEB's Natural Gas Facilities Handbook, the OEB has the authority to issue multiple certificates to different entities for distinct areas within a single municipality.[29] This provision allows for flexibility in natural gas service delivery when circumstances warrant such an approach. In their evidence, Enbridge Gas cited several instances where there are more than one OEB certificate within the same municipality.[30]

[35] The OEB also notes the Township of Tay Valley's interest in fuel alternatives – including renewable natural gas from local agricultural operations.[31] The OEB notes that the Integrated Energy Plan is creating space for such new and emerging energy sources including low- carbon hydrogen in addition to renewable natural gas – to help enhance energy flexibility.[32] Granting the requested decision does not in any way prevent the development of such fuel alternatives in the Township.

[36] Climate Network Lanark also opposed the application on environmental grounds arguing that the potential for natural gas expansion conflicts with the Township's Climate Action Plan, which prioritizes reducing fossil fuels and greenhouse gas emissions. However, in granting a new certificate for the full boundaries of the Township of Tay Valley, the OEB is guided by its legislative objectives related to natural gas, in particular, "to facilitate rational expansion of transmission and distribution."[33] Additionally, the OEB Act stipulates that the OEB "in exercising its powers and performing its duties under this or any other Act, shall be guided by the objective of facilitating any directives issued under subsection 25.30 (2) of the Electricity Act, 1998." The IEP Implementation Directive of June 11, 2025 is such a directive. It requires the OEB 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

[29] Natural Gas Facilities Handbook, March 31, 2022, page 14
[30] Enbridge Gas Supplemental Response to Climate Network Lanark Question 8), August 29, 2025
[31] Affidavit of Noelle Reeve, page 5, para 14
[32] Energy for Generations: Ontario's Integrated Plan to Power the Strongest Economy in the G7, page 5 and 96
[33] Energy for Generations: Ontario's Integrated Plan to Power the Strongest Economy in the G7, page 5 and 96

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." The Natural Gas Policy Statement affirms the continued importance of natural gas in the province's future energy mix, identifying natural gas as a "critical energy source" for Ontario. It also states that "homeowners in rural and northern areas who do not have access to natural gas, want the option to have it through expansion," and identifies gas as being "indispensable" to the agricultural sector.[34]

[34] Energy for Generations: Ontario's Integrated Plan to Power the Strongest Economy in the G7, pge 95

4 ORDER

THE ONTARIO ENERGY BOARD ORDERS THAT:

1. A certificate of public convenience and necessity, attached as Schedule A, is granted to Enbridge Gas to construct works to supply natural gas in the Township of Tay Valley. A current map of the Township of Tay Valley is attached as Schedule B.

2. This certificate of public convenience and necessity cancels and supersedes F.B.C 316.

3. Climate Network Lanark shall file their cost claims with the OEB and forward them to Enbridge Gas Inc. on or before **October 23, 2025**.

4. Enbridge Gas shall file with the OEB and forward to Climate Network Lanark any objections to the claimed costs by **October 30, 2025**.

5. If Enbridge Gas objects to any of Climate Network Lanark's costs, Climate Network Lanark shall file with the OEB and forward to Enbridge Gas their response, if any, to the objection by **November 6, 2025**.

6. Enbridge Gas shall pay the OEB's costs of and incidental to this proceeding upon receipt of the OEB's invoice.

DATED at Toronto October 16, 2025

ONTARIO ENERGY BOARD

Ritchie Murray

Digitally signed by Ritchie Murray
Date: 2025.10.16 15:17:05 -04'00'

Ritchie Murray
Acting Registrar

SCHEDULE A

CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

ENBRIDGE GAS INC.

EB-2024-0342

OCTOBER 16, 2025

EB-2024-0342

Certificate of Public Convenience and Necessity

The Ontario Energy Board grants

Enbridge Gas Inc.

approval under section 8 of the *Municipal Franchises Act,* R.S.O. 1990, c. M.55, as amended, to construct works to supply natural gas in the

Township of Tay Valley

as it is constituted on the date of this Decision and Order.

This certificate of public convenience and necessity cancels and supersedes F.B.C 316.

DATED at Toronto October 16, 2025

ONTARIO ENERGY BOARD

Ritchie Murray

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Ritchie Murray
Acting Registrar

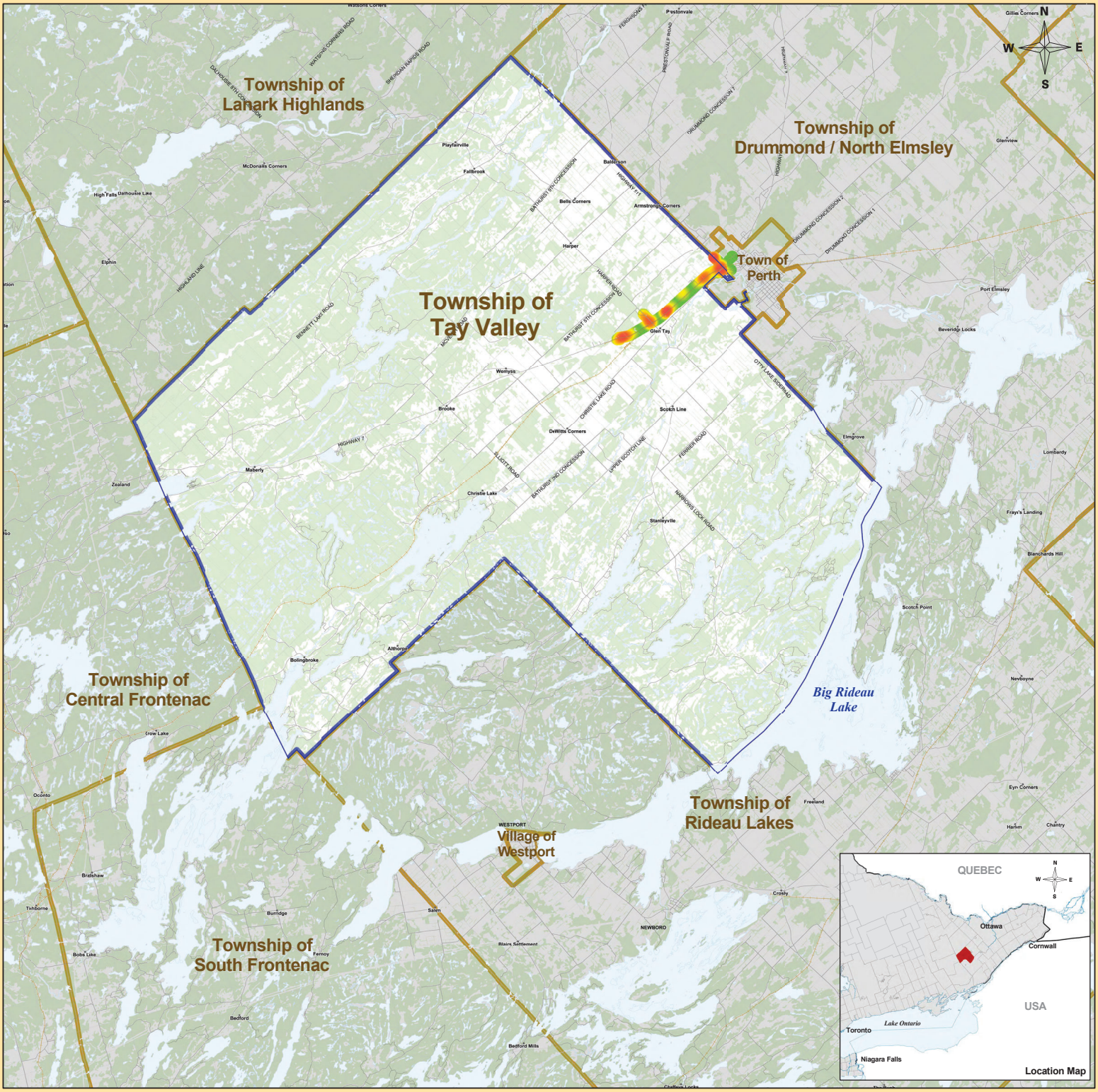
SCHEDULE B

MAP OF THE TOWNSHIP OF TAY VALLEY

ENBRIDGE GAS INC.

EB-2024-0342

OCTOBER 16, 2025



Township of Tay Valley

Legend

- Enbridge Gas Pipeline Coverage Area
- Township of Tay Valley
- Roads
- Railways
- Municipal and Township Boundaries
- First Nation Boundaries

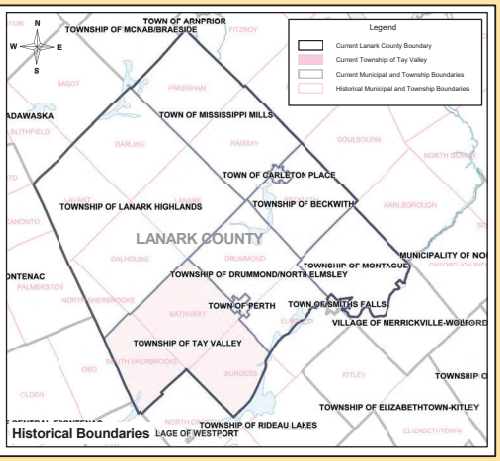
Customer Density

Low — High

0 2 4 6 8 10
Kilometers

Disclaimer:
The map is provided with no warranty express or Implied and is subject to change at any time. Any Person using the Density Map shall do so at its own Risk and the Density Map is not intended in any way As a tool to locate underground infrastructure for the purposes of excavation

ENBRIDGE®



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