

**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 for approval to construct gas works in Tay Valley Township

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**Notice of Motion to Review**

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**November 5, 2025**

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## **NOTICE OF MOTION**

Climate Network Lanark (“CNL”) will make a motion to the OEB on a date and through a method of hearing to be determined by the OEB.

### **THE MOTION IS FOR:**

1. An order overturning the decision to grant Enbridge Gas Inc. approval to construct gas works in a larger area within Tay Valley Township dated October 16, 2025; and
2. Any such further relief as requested by the moving party and that the OEB deems just.

### **THE GROUNDS FOR THE MOTION ARE:**

3. The Board’s decision to grant expanded approvals to construct gas works in this case was based on a misapprehension of the legal test under s. 8 of the *Municipal Franchises Act* and of the relevant facts, amounting to material errors warranting review.

### **Disregard for local interests**

4. The OEB misapplied the requisite test in determining whether a new certificate of public convenience and necessity (“Certificate”) for Tay Valley Township was in the public interest.
5. Under s. 8 of the *Municipal Franchises Act*, the Board was required to consider whether “public convenience and necessity appear to require” approval of Enbridge Gas Inc.’s application. This includes a balancing of the benefits and burdens of the requested relief.

6. A key factor in this case was the clear opposition of local residents and electors, as evidenced by the Township and intervenor's active participation in the proceeding. Unlike most applications under s. 8 of the *Municipal Franchises Act*, the democratic will of local residents was strongly against the expansion of Enbridge's existing Certificate. By failing to adequately consider and balance this important factor against the countervailing principle of administrative efficiency, the Board misapplied the public interest test and committed a material error of law.

### **Misapprehension of OEB Policies**

7. The Board relied on the OEB's Natural Gas Facilities Handbook in determining that an expanded Certificate is in the public interest. The Handbook states that the Board will amend existing Certificates to reflect changes in municipal boundaries in support of administrative efficiency. However, the Handbook distinguishes those amendments from circumstances in which a utility is seeking to expand a Certificate into new service areas, such as in the case before the Board.
8. By ignoring this distinction, the Board put inappropriate weight on the principle of administrative efficiency when balancing the relevant factors under the public interest test.

### **Incorrect interpretation and application of 'necessity' requirement**

9. The OEB's decision was also based on the misapprehension and misapplication of the 'necessity' requirement under s. 8 of the *Municipal Franchises Act*. Under that section, new or expanded approvals to construct gas works must be necessary.

10. The Board committed an error of law by failing to require that a demand for gas service be reasonably foreseeable in the expanded certificate area in order to meet the necessity requirement. Reasonable foreseeability is the lowest conceivable threshold to meet the meaning of ‘necessary’ on a plain language reading of the word. Instead, the Board’s interpretation of this requirement essentially rendered it meaningless.
11. Despite concluding that reasonable foreseeability was not required to prove necessity, the OEB went on to find that a demand for gas connections was nevertheless reasonably foreseeable in the circumstances. In so doing, the Board relied on potential connections arising from the Lanark/Balderson expansion project. However, both Tay Valley Township and CNL submitted reliable evidence that the expansion project would not impact the likelihood of future service connections in Enbridge’s requested expanded area. This was also clear from Enbridge’s own evidence. This misapprehension of the evidence was a clear error of fact that had a material impact on the outcome of the decision.

### **Interests and Material harm**

12. In its Procedural Order No. 2, the Board found that CNL had a substantial interest in the outcome of the proceeding. The group represents the interests of local residents who strongly oppose Enbridge’s application for expanded approval to construct gas works in the communities where they live on personal and policy grounds.
13. The errors of law and fact identified above had a direct impact on the Board’s decision, which ultimately overruled their wishes.

## Threshold Considerations

14. A moving party is required to explain why the motion should pass the threshold described in Rule 43.01, which allows the OEB to determine whether a motion should be summarily dismissed without a review. The considerations under Rule 43.01 are listed in the table below along with the application of each to this particular motion:

Rule 43.01 Consideration	Application to this Motion
(a) whether any alleged errors are in fact errors (as opposed to a disagreement regarding the weight the OEB applied to particular facts or how it exercised its discretion);	The motion is based on errors of law and fact, as noted above.
(b) whether any new facts, if proven, could reasonably have been placed on the record in the proceeding to which the motion relates;	Not applicable
(c) whether any new facts relating to a change in circumstances were within the control of the moving party;	Not applicable
(d) whether any alleged errors, or new facts, if proven, could reasonably be expected to result in a material change to the decision or order;	Without the alleged errors, the OEB would not have come to the determination that an expanded CPCN is in the public interest as required under s. 8 of the <i>Municipal Franchises Act</i> .
(e) whether the moving party's interests are materially harmed by the decision and order sufficient to warrant a full review on the merits;	The material harm is outlined above.
(f) where the grounds of the motion relate to a question of law or jurisdiction that is subject to appeal to the Divisional Court under section 33 of the OEB Act, whether the question of law or jurisdiction that is raised as a ground for the motion was raised in the proceeding to which the motion relates and was considered in that proceeding.	<p>The grounds relate to questions of law that are subject to appeal to the Divisional Court under section 33 of the <i>OEB Act</i>.</p> <p>These issues were raised in Climate Network Lanark's submissions, as well as in the evidence of Tay Valley Township.</p>

**Other grounds**

15. Climate Network Lanark also relies on other grounds as its counsel may submit and the OEB may permit.