

RE: ENBRIDGE GAS INC.

APPLICATION FOR RENEWAL OF FRANCHISE AGREEMENT WITH THE CORPORATION
OF THE CITY OF GUELPH

ONTARIO ENERGY BOARD **FILE NO. EB-2025-0058**

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

AND IN THE MATTER OF an Application by Enbridge Gas Inc. for an Order approving the terms and conditions upon which, and the period for which, The Corporation of the City of Guelph is, by by-law, to grant to Enbridge Gas Inc. the right to construct and operate works for the distribution, transmission and storage of natural gas and the right to extend and add to the works in the City of Guelph; and

AND IN THE MATTER OF an Application by Enbridge Gas Inc. for an Order cancelling and superseding those parts of the existing F.B.C. 109 Certificate of Public Convenience and Necessity held by Enbridge Gas Inc. related to the City of Guelph and replacing them with a Certificate of Public Convenience and Necessity to construct works to supply natural gas in the current City of Guelph.

SUBMISSIONS OF THE CITY OF GUELPH

A. Overview

1. The Corporation of the City of Guelph (the “City”) is a municipal corporation incorporated under the laws of the Province of Ontario. The City is a separated single-tier municipality located in the County of Wellington, in the southwest region of Ontario, to the west of the Greater Toronto Area.
2. The City is governed by an elected municipal council (“Council”). As described in section 224 of the *Municipal Act, 2001*, S.O. 2001, c. 25 (the “*Municipal Act, 2001*”), among other things, it is the role of Council to represent the local public and to consider the well-being and interests of the municipality.

3. Enbridge Gas Inc. (“Enbridge”) is a corporation incorporated under the laws of the Province of Ontario and is a gas distributor as defined under the *Ontario Energy Board Act*, 1998 S.O. 1998, c.15 Schedule B (the “*OEB Act*”). Enbridge owns and operates a gas distribution system and supplies natural gas to customers in the City of Guelph.
4. Enbridge holds Certificate of Public Convenience and Necessity (“CPCN”) F.C.B. 109, dated June 25, 1957, and has an existing Franchise Agreement with the City (EB-2005-0248) effective May 16, 2005 (the “Agreement”). The Agreement was approved by Decision and Order of the OEB dated May 3, 2025. The Agreement was for a term of twenty years from May 16, 2005, the date of passing of the authorizing By-law Number (2005) – 17747.
5. Enbridge brought this Application to the OEB under the *Municipal Franchises Act*, R.S.O. 1990, c. M.55 (the “*Municipal Franchises Act*”) for:
 - (1) an Order under Section 10 approving the terms and conditions upon which, and the period for which, the City is to grant Enbridge the right to construct and operate works for the distribution, transmission and storage of natural gas and the right to extend and add to the works in the City of Guelph; and
 - (2) an Order pursuant to Section 8 cancelling and superseding those parts of the F.B.C. 109 Certificate of Public Convenience and Necessity held by Enbridge related to the City of Guelph and replacing it with a Certificate of Public Convenience and Necessity to construct works to supply natural gas in the current City of Guelph.
6. The City objects to an imposed renewal of Enbridge’s gas franchise right in the City of Guelph on the terms of the Model Franchise Agreement (“MFA”) for a further twenty-year-term. The City is requesting a short duration renewal and specific amendments to the renewed Agreement.
7. The City submits that there are unusual circumstances and compelling local reasons for deviation from the template MFA and for a shorter duration renewal. The City submits that, even if it is made out that public convenience and necessity require the renewal of the gas franchise, it does not require renewal for a twenty-year period under the template MFA.
8. In the alternative, the City supports the proposal of intervenor eMerge Guelph Sustainability that the OEB decline to impose renewal terms and, instead, instruct Enbridge to enter into good faith negotiations with the City toward a mutually acceptable renewal period and terms.

9. The City objects to the issuance of a new CPCN to Enbridge to construct works to supply natural gas in the City of Guelph as it is currently constituted. The City submits that Enbridge has not demonstrated that it holds certificate rights for all the lands that now make up the City of Guelph; has not demonstrated that there is no change to the overall existing CPCN rights held by Enbridge in the City of Guelph; has not complied with the filing requirements described in section 3.7 of the *Natural Gas Facilities Handbook* (the “*Handbook*”)¹ for application for a new or amended certificate; and has not demonstrated that public convenience and necessity require the grant of a new CPCN for the City of Guelph as currently constituted.
10. The City admits paragraphs 1, 4, 8, 9, 10, 15, 16, 17 and 18 of Enbridge’s Application.
11. The City admits paragraph 2 of Enbridge’s Application in so far as it relates to the City. The City has insufficient knowledge to substantiate Enbridge’s service area and customer base as described and the customer density “heat map” attached as Schedule “A” to Enbridge’s application. Further, this does not sufficiently delineate the geographic area of Enbridge’s current CPCN, or the number and general location of customers served, or proposed to be served, by gas infrastructure in new certificate areas. The statement that Enbridge has been providing gas distribution services within the City of Guelph since approximately 1955 is overly broad and does not reflect distributor mergers, acquisitions, amalgamations or other corporate restructurings, or municipal restructuring within the County of Wellington since 1955.
12. The City admits paragraph 3 of Enbridge’s Application in so far as it indicates the Township of Guelph was incorporated in 1855 and the City of Guelph was incorporated in 1879; However, these statements are overly broad and do not explain the distinction between the Township of Guelph, the City of Guelph, or the incorporation of the inhabitants of the municipality as a body corporate pursuant to section 4 of the *Municipal Act, 2001*.
13. The City of Guelph admits paragraph 5 of Enbridge’s Application in part, subject to the comments and clarifications in these submissions.

¹ Ontario Energy Board, *Natural Gas Facilities Handbook*, EB-2022-0081, March 31, 2022 last updated April 3, 2024 (“*Handbook*”): https://www.oeb.ca/sites/default/files/uploads/documents/regulatorycodes/2024-04/OEB_Natural%20Gas%20Facilities%20Handbook_2024.pdf

14. The City admits paragraph 7 of Enbridge’s Application in part, except the statement that Enbridge has applied to the City for the renewal of the right to extend and add to the works in the City of Guelph. Enbridge has not demonstrated in its Application that it has existing certificate rights to all of the lands within the current City of Guelph and therefore the City queries whether Enbridge’s request for renewal would also grant rights to additional geographic areas.
15. The City admits paragraph 13 of Enbridge’s Application subject to the clarification that, in addition to giving the OEB jurisdiction to *renew* Enbridge’s right to operate the gas distribution system in the City of Guelph, Section 10 of the *Municipal Franchises Act* also gives the OEB jurisdiction to *extend* the term of the franchise right for such period of time and *upon such terms as the OEB may prescribe*.
16. The City admits that paragraph 14 of Enbridge’s Application was accurate at the date of submission. The City notes that as of December 22, 2025 the *Municipal Franchises Act* was amended to repeal provisions requiring the assent of the electors. Specifically, Section 3 was re-enacted to remove the requirement for the municipal electors to assent to a by-law passed by Council to approve the grant of gas franchise rights, and, instead, to require that a municipality pass a by-law setting out the terms and conditions. Various amendments are made to other provisions of the Act to reflect that change. Subsection 10(5) was correspondingly amended to provide that an Order of the OEB renewing or extending the term of a franchise right is deemed to be a valid by-law of the municipality concerned for the purpose of the Act, and is no longer deemed to be assented to by the municipal electors. The assent of the electors to the grant of gas franchise rights has been a fundamental tenet of the *Municipal Franchises Act* since 1912.² Under the currently in force version of the Act, an Order issued by the OEB pursuant to Section 10 is deemed to be a valid by-law of the municipality concerned for the purposes of the Act.
17. The City denies paragraphs 6, 11 and 12 of Enbridge’s Application for the reasons set forth in these submissions.

² Report to the Ontario Energy Board RP-1999-0048 In The Matter of the Municipal Franchises Act; And In The Matter of the 2000 Model Franchise, dated December 29, 2000 at paras. 5.1.10 – 5.1.11 (“*Report to the Board, December 29, 2000*”) at para. 1.1.1; *Municipal Franchises Act*, R.S.O. 1914, c. 197; *Municipal Franchises Act*, R.S.O. 1927, c. 240; *Municipal Franchises Act*, R.S.O. 1937, c. 277; *Municipal Franchises Act*, R.S.O. 1950, c.249; *Municipal Franchises Act*, R.S.O. 1960, c. 255; *Municipal Franchises Act*, R.S.O. 1980, c.309.

18. The City understands that the scope of this proceeding is the OEB's consideration of Enbridge's request for a new CPCN for the City of Guelph, and Enbridge's request for renewal of its Agreement with the City based on the terms and conditions of the MFA. Further, the City is aware that the OEB will hold a generic hearing on issues related to the MFA in 2026. Accordingly, the City understands that broad issues that may have implications for communities and natural gas consumers across Ontario, which are not specific to the City of Guelph, are not within the scope of this proceeding.
19. It is the City's position that the requested relief, and the reasons for it, are the exercise of local agency and the expressed will of Council, as provided for under the *Municipal Franchises Act* and contemplated in the renewal provision of the current Agreement. If implemented, the relief would only be binding as between the City and Enbridge specific to the gas franchise for the geographic area under the applicable CPCN. The City notes that franchise agreements are *operational* agreements that outline the terms of access to municipal infrastructure, sharing of costs, and restoration requirements at the local level between each gas distributor and municipality.³
20. The City notes that it requested this proceeding be held in abeyance until the conclusion of the generic hearing on the MFA in 2026. This proceeding could result in an imposed renewal for a term of twenty-years on the terms of the template MFA. Given that the scope of the generic hearing is presently unknown, and to ensure the City is not prejudiced by the decision to adjudicate this Application prior to the generic hearing, it is the City's position that the scope should be reasonably permissive to not result in prejudice to the City.

³ Ontario Energy Board, EB-2016-0004, Decision with Reasons, Ontario Energy Board Generic Proceeding on Community Expansion (November 17, 2016) at page 27.

B. Franchise Agreement Renewal - Local Agency and the Will of Council

21. Enbridge has an existing Franchise Agreement with the City (EB-2005-0248) effective May 16, 2005 for a term of twenty years. The Agreement expired on May 16, 2025.
22. Pursuant to clause 4(c) of the Agreement, any time within two years prior to expiration of the Agreement, either party may give notice to the other that it desires to enter into negotiations for a renewed franchise upon such terms and conditions as may be agreed upon. Although the introduction of Section 10 of the *Municipal Franchises Act* in 1969 allowed the OEB to implement a renewal where the parties did not agree, and the introduction of the first model franchise agreement in 1987 provided a template for consistency and efficiency, the City submits that clause 4(c) of the Agreement preserves the long-standing principle that franchises are negotiated on an individual basis.⁴
23. Enbridge gave notice to the City on May 10, 2024 of its intent to commence the process to renew a twenty-year franchise agreement using the MFA. The City engaged Enbridge in discussions in September to December 2024 to determine if an agreement could be reached with respect to the terms and conditions of the renewed franchise. However, the parties were unable to agree upon the terms and conditions for a renewed franchise.
24. City Council declined to pass a resolution approving the proposed franchise agreement for the City of Guelph in the form of the unamended MFA; did not pass a by-law directing and declaring that the assent of the electors of the City of Guelph is not required; and did not request that the OEB make an Order declaring and directing that the assent of the municipal electors to the form of franchise agreement is not necessary.
25. As described above, the City notes that the assent of the electors was a requirement under the *Municipal Franchises Act* at the applicable time, and historically dating back to the early twentieth century.⁵ Currently, section 3 of the *Municipal Franchises Act* provides that a municipality shall not grant to any person nor shall any person acquire the right to use or occupy any of the highways of the municipality for a public utility or to construct or operate any part of a public utility in the municipality unless the municipality has passed a by-law setting out the terms and conditions upon which and the period for which such right is to be granted or acquired.

⁴ *Report to the Board, December 29, 2000*, at paras 1.1.1 - 1.1.7.

⁵ *Report to the Board, December 29, 2000*, at para 1.1.1.

26. The removal of elector assent from the *Municipal Franchises Act* was touted by the legislature as a streamlining of process.⁶ The City notes Enbridge provided supportive comments on the proposed amendments to the *Municipal Franchises Act*, commenting that “Eliminating the requirement for municipal electors’ assent aligns the statutes with established OEB practice, recognizes council accountability to constituents, and removes an unnecessary step that has the potential to add time and cost to the regulatory process”.⁷ The role of City Council is the remaining municipal mechanism for democratic input to the grant of municipal franchises, and it is fundamental to maintain this role in decisions that affect local residents and businesses.
27. It is the City’s position that, since the repeal of provisions requiring the assent of the electors (or dispensation of the assent of the electors) the decision of Council as representatives of the inhabitants of the City of Guelph to pass or decline to pass a by-law to grant franchise rights is a fundamental check and balance on the rights and privileges of a gas franchise under the *Municipal Franchises Act*. The City submits that, although the determination of public convenience and necessity does not require deference to the wishes of City Council, municipal agency is a key principle of the *Municipal Franchises Act*, and the exercise of authority under Section 10 to implement a renewal should not be utilized as a matter of course.
28. Council represents the local constituency and its role is to consider the well-being and interests of the residents of the municipality. As demonstrated by the direction of Council and voluminous letters of comment that citizens of Guelph submitted, there is vocal opposition to the grant of rights to Enbridge on the terms and conditions of the template MFA for a further twenty-year term. There is no social license for the requested renewal. Council, as representatives of the inhabitants of the municipality, have strongly demonstrated the local demand for a franchise arrangement that balances the present need for natural gas as provided by Enbridge, while respecting municipal autonomy and local policy goals for the City’s current and future inhabitants, and the collective good of climate stewardship and energy innovation.
29. Ontario municipalities are defined by geographic boundaries, their inhabitants are incorporated by statute as a body corporate, and each municipality is governed by a Council with power and authority vested at the local level

⁶ Proposed Amendments to the Electricity Act, 1998, Ontario Energy Board Act, 1998 and the Municipal Franchises Act, to secure energy for generations, ERO number 025-0993, Environmental Registry of Ontario at: <https://ero.ontario.ca/notice/025-0993>

⁷ Enbridge Gas Inc., *Enbridge Feedback on the Proposed Amendments to the Electricity Act, 1998, Ontario Energy Board Act, 1998 and the Municipal Franchises Act, 025-0993*, October 4, 2025, Submitted Online at: <https://ero.ontario.ca/notice/025-0993/comments>

through the *Municipal Act, 2001*. The provisions of the *Municipal Franchises Act* apply at the individual municipal level in each circumstance of franchise grant or renewal. The grant of franchise rights, and renewal of those rights, for a term that would survive several terms of municipal Council directly engages the interests of the local electorate. The negotiation of such a significant contractual arrangement, having long-term local governance, operational, and financial impacts, is inherently local.

30. The MFA is merely a template.⁸ Although many municipalities have consented to the terms, and many others have had the terms imposed on them, common practice is not binding precedent. Prior to the first model franchise agreement, each franchise agreement was negotiated on an individual basis.⁹ With the development of the first model franchise agreement in 1987, and its replacement with the current MFA, the model agreement has served as a template for most initial franchise agreements and also for renewal of franchises.¹⁰

31. The introduction of the MFA has not done away with the practice of franchise negotiation on an individual municipal basis. In the December 29, 2000 Report to the Board by a Panel, the Panel addressed concerns of the City of Toronto that it be made clear to the Board that Toronto was not party to an existing franchise agreement and the new model agreement should not be imposed on them. The Panel expressly stated:

“[T]he Board does not have the jurisdiction to impose a uniform agreement on the parties. That would be tantamount to a predetermination of the decisions which the Board is required to make under the [Municipal Franchises Act]. The purpose of the 2000 MFA is to provide a template to guide the Gas Companies and municipalities as to terms and conditions the Board generally finds reasonable in applications under the [Municipal Franchises Act]. [...] Toronto is free to negotiate the terms of its relationship with ECG.”¹¹

32. The City of Guelph recognizes the OEB’s power and jurisdiction to approve a franchise renewal and prescribe its terms. However, the City submits that, in each case, the OEB is required to engage with the question of whether public convenience and necessity require the renewal, and if so, for what duration and on what terms.

⁸ *Natural Gas Franchises Handbook*, at page 11.

⁹ *Report to the Board, December 29, 2000*, at para. 1.1.3.

¹⁰ *Report to the Board, December 29, 2000*, at para. 1.1.7.

¹¹ *Report to the Board, December 29, 2000*, at paras. 5.1.10 – 5.1.11.

33. In the City of Guelph, there is no local consent to a twenty-year renewal of Enbridge’s franchise. A gas franchise is a significant right and privilege which grants the holder rights to use and occupy municipal property to advance for-profit business interests and the financial interests of investors. Enbridge has increased its dividends to investors every year for 30 years. Enbridge's operational and financial performance in 2024 helped deliver a 37% total annual return to its investors.¹² Long-term municipal franchise agreements are a cornerstone of Enbridge’s low risk, high-return business model. The citizens of the City of Guelph have demonstrated, through their Council representatives and in the letters of comment filed in the system during the course of this hearing, that the local public are vocally opposed to subsidization of Enbridge’s business in the City of Guelph by bearing increased costs associated with infrastructure relocations or removal of gas lines.
34. At its core, this is a matter of agency - the City asserts that local agency is a fundamental tenet of the *Municipal Franchises Act*, and has been since 1912. The City recognizes that local agency is constrained by the broader structure of gas franchises across the province. It is the City’s position that municipalities should have meaningful agency and that the process of franchise renewal should not be fatalistic. The City is exercising its local agency to challenge the prevailing practice of franchise renewal on standard terms, for twenty years, without sufficient reasons. The changes the City requests are driven by unique local policy factors and, if approved, should not have implications for other communities and natural gas consumers across Ontario. The changes are within the OEB’s jurisdiction and authority to approve, and are not incompatible with the public convenience and necessity of a franchise renewal, or the OEB’s mandate and objectives for the natural gas sector.
35. In *Aboutown Transportation Ltd. v. London (City)*, (1992) 9 O.R. (3d) 143, the *Municipal Franchises Act* is described as “both an authorizing and controlling law on the subject of the grant of a franchise”, containing checks and balances to protect the public interest:

¹² Enbridge Gas Inc., “Enbridge Reports Record 2024 Financial Results, Reaffirms 2025 Financial Guidance and Executes on Business Priorities”, February 14, 2025: <https://www.enbridge.com/media-center/news/details?id=123841&lang=en>

[...] the checks and balances which have been written into the *Municipal Franchises Act* and even paras. 103 and 104 of s. 210 of the *Municipal Act* make eminent good sense. The *Municipal Franchises Act* has been on the statute books of this province for many years and reflects a legitimate concern by the legislature that important and potentially profitable franchise rights of the kind in question here not be bargained away without the intervention of some monitoring devices which will protect the public interest. The monitoring devices in s.3(1) -- the referendum -- and s. 6(1)(d) -- the short-term contract combined with Ontario Municipal Board approval reflect local democracy in action.¹³

36. The City submits that Enbridge has a monopoly on gas distribution in the City of Guelph. Although the OEB has confirmed that CPCNs and franchise agreements are not intended to be exclusive, without meaningful local agency, in effect they are exclusive. Gas distributors and municipal hosts are at liberty to negotiate the terms of a franchise agreement, as they have been for over a hundred years. Enbridge could meaningfully negotiate with each municipality and is free to enter into bespoke or tailored agreements with each or any of them. However, Enbridge is positioned to outright refuse to negotiate the terms of the Agreement. Enbridge has no reason to meaningfully engage with municipalities and instead has chosen to avail itself of the power of the OEB.

37. When the application for renewal is before the OEB, the OEB is to consider public convenience and necessity, and should have the benefit of a clear and informative evidentiary record. Instead, the City finds itself with the burden of demonstrating why it should have the right to negotiate local-level terms. It is not compelling or determinative that most municipalities in Ontario have signed franchise agreements with Enbridge without amendments. In EBA 825/872, *Centra Gas (Ontario) Inc. and the Township of Pittsburg* ("Centra Gas"), the OEB held "The mere fact that most franchises are renewed without dispute is not sufficient to justify an assumption of automatic renewal of the franchise."¹⁴

¹³ *Aboutown Transportation Ltd. v. London (City)*, (1992) 9 O.R. (3d) 143 at para 28.

¹⁴ OEB EBA 825/872, Decision and Order, *Centra Gas (Ontario) Inc. and Township of Pittsburg* (June 23, 2000) ("*Centra Gas*") at paragraph 4.0.6. [The OEB's decision was upheld on appeal to the Divisional Court in *Kingston (City) v. Ontario (Energy Board)*, 2001 and the Court of Appeal, *Kingston (City) v. Ontario (Energy Board)*, 2002. Application for leave to appeal to the Supreme Court of Canada was dismissed.]

C. Requested Renewal Term

38. Advancing the expressed will of Council, the City seeks amendments to specific provisions of the MFA that are unfairly balanced in the financial favour of the gas distributor. The City is requesting a short duration renewal, having regard for the will of Council and the local public in the context of the City's climate and energy related plans and strategies, which articulate the City's vision and policy goals and guide the City's long-term planning.
39. The City is not requesting the termination of the franchise. The City urges the OEB to extend the franchise right for three years or less, which, pursuant to Section 6(d) of the *Municipal Franchises Act*, would not require the OEB to determine public convenience and necessity, and would provide continuity for all parties. A twenty-year renewal is not required for public convenience and necessity and would bind the City for an excessive duration, resulting in increased construction and infrastructure costs, inhibit the City's planned use of municipal property and the sharing of municipal property with future utility market participants, and constrain innovative uses of municipal property already encumbered with gas infrastructure, including decommissioned infrastructure abandoned in place.
40. Further, a twenty-year renewal term would result in the City being bound to outdated agreement terms. The City understands that the OEB intends to hold a generic hearing on the MFA in 2026 and, if the MFA is updated, the City would not benefit from any changes until many years later. Per the terms of the existing Agreement, any changes to the MFA during the term of a renewed franchise agreement would only be incorporated into the Agreement at the seventh and fourteenth anniversaries of the date the OEB Order imposing the renewal. The timing of the City's renewal, together with the strength of local opposition to the proposed renewal, are an unusual circumstance¹⁵ and compelling reason for the OEB to impose a renewal for a short duration.
41. The City notes that in the 1997 decision in EBA 795, which predates the current MFA, the Board approved a shorter-term renewal than was requested by Consumers Gas on the basis of a footnote in the form of model franchise agreement in effect at that time, which specified: "The rights given and granted for any subsequent agreement shall be for a term not more than 15 years, unless both parties agree to extend the term to a term of 20 years".¹⁶ The OEB relied on the same reasons to renew the franchise agreements for the City of Orillia, the Town of Gravenhurst, the Town of Severn and the Town

¹⁵ OEB EB-2008-0413, Decision and Order, Natural Gas Resources Limited and Town of Aylmer (May 5, 2009).

¹⁶ OEB EBA 795, Volume 2 Decision, The Consumers' Gas Company and Town of Aurora (October 31, 1997) ("EBA 795").

of Bracebridge in 1998,¹⁷ and the Town of Aylmer in 2009.¹⁸ The City acknowledges that neither the Agreement nor the MFA include a restriction on the term of renewals; However, the City submits that the reasons in EBA 795 are relevant to the City's request. The Board considered the shorter duration requested by the municipalities to be arbitrary, and it was not established that the municipality was affected in a unique way. The Board was persuaded by the gas company's argument that "while generic changes to the Model Franchise Agreement may need to be made periodically, singular changes as individual franchises are renewed, may lead to inequity, and ultimately, to terms based entirely on the strength of bargaining power of the individual Municipality. One of the purposes of the Model Agreement was to avoid such idiosyncratic solutions."¹⁹

42. The City submits that its requested duration is not arbitrary and the City may be prejudiced by a long-term renewal so close to a review of the MFA. Further, the City submits that imposing a template agreement for a standard twenty-year term results in terms based entirely on the complete lack of bargaining power of the individual municipality, which is inconsistent with the agency afforded to municipalities under the *Municipal Franchises Act* and the issue of public necessity and convenience which must consider individual, municipal and collective interests. The City submits that the uniformity the gas company requires is uniform access to municipal property, not uniformity of discrete operational terms, and the amendments the City requests do not materially amend the core substance of the Agreement.

D. Requested Amendments to the Franchise Agreement for the City of Guelph

43. The City submits that the MFA terms impose a financial burden on the City and its residents, while conferring financial benefit to Enbridge with respect to relocation, removal, or abandonment in place of all or part of the gas system. For this reason, the City is seeking the following amendments to the MFA.

¹⁷ OEB EBA 767, EBA, 768, RBA 769, Decision with Reasons, Centra Gas Ontario Inc. and the Corporations of the City of Orillia, the Town of Gravenhurst, the Township of Severn and the Town of Bracebridge (March 31, 1998) at para 4.05.

¹⁸ OEB EB-2008-0413 Decision and Order, Natural Resources Gas Limited and Town of Aylmer (May 5, 2009) at page 6.

¹⁹ EBA 795.

44.Paragraph 1 e. of the MFA defines “highway” to mean “all common and public highways and shall include any bridge, viaduct or structure forming part of a highway, and any public square, road allowance or walkway and shall include not only the travelled portion of such highway, but also ditches, driveways, sidewalks, and sodded areas forming part of the road allowance now or at any time during the term hereof under the jurisdiction of the Corporation”. This definition does not correspond with the definition of “highway” under the *Municipal Act, 2001*, which means “a common and public highway and includes any bridge, trestle, viaduct or other structure forming part of the highway and, except as otherwise provided, includes a portion of a highway.” Comparing these definitions, the City notes that the MFA grants Enbridge rights to use public squares and walkways, which are not appropriate locations for gas infrastructure and other utilities would require easements for the location of their infrastructure in these areas. The City requests that the definition of “highway” be amended to correspond with the *Municipal Act, 2001* definition such that Enbridge does not have the automatic right to locate its infrastructure in areas intended predominantly for public use and enjoyment.

45.Paragraph 11 of the MFA provides that, in the event of a proposed sale or closure of a highway where there is a gas line located, the municipality will grant the Gas Company an easement over the highway and that if the municipality is unable to grant an easement, it will share the cost to relocate or alter the gas system. The City seeks an amendment to paragraph 11 of the MFA such that the City would not be responsible to share the cost of relocating gas lines if the property is no longer available to the City, for example, the closure of a municipal highway and sale to a private owner. The City cannot attest to the accuracy and completeness of the GIS information Enbridge has provided the City regarding its infrastructure. Older infrastructure may not have been approved as to location by the City and the City may not be aware of the existence of decommissioned or abandoned infrastructure. As the City embarks on new models to incent and develop affordable housing, the City is considering ways it can optimize municipal landholdings.²⁰ Gas infrastructure, operational or decommissioned, can be a significant encumbrance to land use and a significant additional cost in construction.

²⁰ Guelph City Council, Tuesday, November 25, 2025, Item 7.2 Advancing Affordable Housing on City-Owned Properties, 2025-461: <https://pub-guelph.escribemeetings.com/Meeting.aspx?Id=4ba54415-72e3-465a-b9d6-107689c71844&Agenda=Merged&lang=English>

46. The City requests paragraph 11 be revised as follows (emphasis added):

Amended paragraph 11:

The Corporation agrees, in the event of the proposed sale or closing of any highway or any part of a highway where there is a gas line in existence, to give the Gas Company reasonable notice of such proposed sale or closing and, if it is feasible, to provide the Gas Company with easements over that part of the highway proposed to be sold or closed sufficient to allow the Gas Company to preserve any part of the gas system in its then existing location. In the event that such easements cannot be provided, the Corporation and the Gas Company shall bear the cost of relocating or altering the gas system to facilitate continuity of gas service, in that event, Paragraph 12 applies to the cost of relocation, except where the part of the gas system required to be moved was not approved by the Corporation as to its location, in which case, the Gas Company shall pay 100% of the relocation costs.

47. Paragraph 12 of the MFA provides that, if in the course of constructing, reconstructing, changing, altering or improving any highway or any municipal works, the municipality deems that it is necessary to take up, remove or change the location of any part of the gas system, the Gas Company shall, upon notice to do so, remove and/or relocate that part of the gas system within a reasonable period of time to a location approved by the City Engineer. Except for portions of the gas system located on a bridge, viaduct, or structure, or portions relocated to an unassumed road or unopened road allowance not approved by the municipality (which shall be at the Gas Company's sole expense), the municipality and Gas Company share in the relocation costs calculated in accordance with paragraph 12(c), with 35% paid by the municipality and 65% paid by the Gas Company.

48. The City seeks amendments to paragraph 12 which would address costs to the City that are not factored in to the cost sharing for gas infrastructure relocations or removals due to conflicts with municipal infrastructure, including where the City incurs a loss or expense by reason of Enbridge not relocating its infrastructure within a reasonable time and delaying a City project, or not removing or relocating decommissioned infrastructure. In particular, the City requests that paragraph 12(c) be amended to revise the calculation of "total relocation costs" to include the City's administrative costs and any additional amounts paid by the City to contractors for work related to the municipal infrastructure project because of failure or delay by the Gas Company to remove and/or relocate within a reasonable time.

49. In *Union Gas Limited v. Norwich (Township)*, 2018, the Court of Appeal confirmed that the cost sharing provisions of the MFA are clear and acknowledged that the cost-sharing mechanism in paragraph 12 was developed by the OEB as a disincentive to require unnecessary pipeline relocation.²¹ The City submits that the cost-sharing mechanism does achieve this objective through its *scope and application*, not the percentage share or the composition of total relocation costs. The gas company is only responsible for any of the costs when the municipality is “in the course of constructing, reconstructing, changing, altering or improving any highway or any municipal works” and the municipality “deems that it is necessary” to take up, remove or change the location of any part of the gas system. The City submits that its requested change is consistent with the substance of the MFA²² as it would preserve the disincentive, which is the fundamental purpose of the provision, and would alleviate the added financial burden to the City of dealing with parts of the gas system in the course of necessary municipal infrastructure works.

50. Paragraph 15(b) of the MFA establishes an option, but not an obligation, for the Gas Company to remove decommissioned parts of its gas system. If the Gas Company does not do so, and the municipality requires the removal of all or any part of the decommissioned gas system for the purpose of altering or improving a highway, or in order to facilitate the construction of utility or other works in any highway, the municipality may remove and dispose of so much of the decommissioned gas system it may require for such purposes and neither party shall have recourse against the other for any loss, cost, expense or damage occasioned thereby. If the Gas Company has not removed the part of the gas system it has decommissioned and the municipality requires the removal of all or any part of the decommissioned gas system for the purpose of altering or improving a highway, or in order to facilitate the construction of utility or other works in a highway, the Gas Company may elect to relocate the decommissioned gas system. The existence of decommissioned gas system parts can result in significant delay and increased construction costs to the City. These costs are absorbed by the City as part of construction projects because this provision specifies there is no recourse. Correspondingly, the financial benefit of this provision to the gas company is not recognized.

²¹ *Union Gas Limited v. Norwich (Township)*, 2018 ONCA 11.

²² OEB EB2024-0280, Decision and Order, Enbridge Gas Inc. and County of Simcoe (August 7, 2025) at para. 43.

51. The City seeks an amendment to paragraph 15(b) which would require Enbridge to remove any part of its decommissioned gas system that is within a City road allowance where the City has identified a strong potential for future conflicts with anticipated maintenance projects. The City requests that paragraph 15 be amended to revise paragraph 15(b) as follows (emphasis added):

Amended paragraph 15(b):

(c) If the Gas Company decommissions any other part of its gas system, it shall have the right, but is not required, to remove that part of its gas system. It may exercise its right to remove the decommissioned parts of its gas system by giving notice of its intention to do so by filing a Plan as required by Paragraph 5 of this Agreement for approval by the Engineer/Road Superintendent. If the Gas Company does not elect to remove the part of the gas system it has decommissioned and the Corporation requires the removal of all or any part of the decommissioned gas system for the purpose of altering or improving a highway or in order to facilitate the construction of utility or other works in any highway, the Corporation may remove and dispose of so much of the decommissioned gas system as the Corporation may require for such purposes and in that event Paragraph 12 shall apply to the cost of removal. If the Gas Company has not removed the part of the gas system it has decommissioned and the Corporation requires the removal of all or any part of the decommissioned gas system for the purpose of altering or improving a highway or in order to facilitate the construction of utility or other works in a highway, the Gas Company may elect to relocate the decommissioned gas system and in that event Paragraph 12 applies to the cost of relocation.

52. In the alternative, if the OEB does not grant the City's requested amendments to the Agreement set out above, the City requests that the Agreement be amended to delete all references to "consent of the Corporation", and replace them with language reflecting that the rights are granted absent this consent by Order of the OEB.

E. Compelling Local Reasons for Deviation

53. The OEB held in *Epcor Natural Gas Limited Partnership*, EB-2021-0269, that it is proper to depart from the MFA where "...there is compelling reason for deviation."²³ This is also noted in the *Handbook*, which states that the MFA is a "template to guide applicants and municipalities regarding the terms that the OEB finds reasonable under the Municipal Franchises Act". The *Handbook* does not *direct* that franchise agreements be based on the MFA.
54. It is the City's submission that the expiry of the twenty-year term of the Agreement, the dissent of Council to the passing of the by-law, the goals and priorities of Council and the City as reflected in its climate-related policies and strategies, and the vocal opposition from local residents are all compelling reasons that warrant a reconsideration of the duration and terms of the gas franchise granted to Enbridge. The City submits that these reasons are especially compelling if the OEB were to grant a new CPCN, which may include new territorial rights, as further discussed below.
55. The MFA was drafted and approved more than twenty-five years ago. The City entered into the Agreement only five years later. Over the past twenty years, much has changed. The City has had the opportunity to evaluate how the template provisions of the Agreement are operationalized, and the imbalance of rights, risk and financial responsibility. The imbalance in favour of the gas distributor is inconsistent with the drive for innovation, efficiency and affordability in the energy sector, which are fundamental to the Province's goals and objectives. As described in the June 11, 2025 Directive to the OEB:

Over the next 25 years, Ontario's electricity demand is expected to increase by 75 per cent or more - driven by strong economic growth, the electrification of transportation and industry and a population forecasted to increase to nearly 21 million people. At the same time, demand for other energy sources - including natural gas - remains strong, while emerging fuels like hydrogen and renewable natural gas will play a growing role as the province builds a more diverse energy system.

To stay competitive in a rapidly changing global economy, Ontario must ensure its entire energy system is focused on meeting growing demand - across all energy sources and sectors. This means building out infrastructure, attracting investment and streamlining regulatory approvals. It will also require the end of siloed planning - Ontario's energy system must plan and operate as one. [...]

²³ OEB EB-2021-0269, Decision and Order, Epcor Natural Gas Limited Partnership and Municipality of Brockton, Municipality of West Grey, and the Township of Chatsworth (February 17, 2022) at page 8.

Ontario's first Integrated Energy Plan ("Plan") - Energy for Generations: Ontario's Integrated Plan to Power the Strongest Economy in the G7- responds to that legislative mandate. It outlines the province's long-term strategy to align energy system development with economic growth, affordability and energy security. The OEB will play an important role in the successful implementation of many of the actions identified in the Plan.²⁴

56. The next two decades will be a period of rapid and significant growth for the Province of Ontario and its municipalities. The City of Guelph is planned to grow significantly, and forecasts major growth-enabling and infrastructure renewal projects to support and sustain growth. Growth is expected to drive energy demand. In addition to the important role of natural gas, the City is cognizant of the increasing demand for electricity and the urgent need for electrical network expansion and capital improvements. The City is also cognizant of the increasing importance of quality, reliability and reach of telecommunications networks. These advances are reliant on access to municipal property. Partnership with municipalities and the stewardship of their property is key to unified energy system. Crowding the municipal right-of-way can reasonably be expected to increase risk and complexity for other utilities, including electrical utilities set to embark on major capital renewal and expansion, as well as telecommunication providers planning and undertaking infrastructure upgrades and expansions to support and drive growth. These utilities often coordinate their projects with City infrastructure projects, and site constraints and complexity also impact their project time and costs.

57. Unless Enbridge is held fully financially accountable for its infrastructure, the true cost of gas distribution is not being recognized and the financial viability of for-profit gas distribution giants is on the backs of municipalities and taxpayers, most of whom are also gas consumers. Enbridge should be incentivized to have due regard for the public property it utilizes and the implications of refusing to deal with its decommissioned infrastructure, and to innovate accordingly. Under the current regime, its business model and risk profile is inert, and profitable.

²⁴ Minister of Energy and Mines Directive to the Ontario Energy Board, Executive Council of Ontario, Order in Council 802/2025 Approved and Ordered June 11, 2025.

58. The City understands that the views of the municipality are to be taken into account, but are not determinative of the issue of where public convenience and necessity lies.²⁵ The City asserts that the fact that its local interests are aligned with broader interests does not mean that they are out of scope. In fact, the alignment of local interests with the broader public interest is especially compelling in the consideration of public convenience and necessity. As articulated in *Centra Gas*:

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.²⁶

59. The City submits that "public convenience and necessity" is a form of cost-benefit analysis, or balancing of interests. In the Report of the Joint Review Panel for the Enbridge Northern Gateway Project, the Panel considered and made recommendations as to whether certificates for pipeline construction should be issued for the Enbridge Northern Gateway Project under the *National Energy Board Act* (now repealed). The Panel took into account the concept of "present and future public convenience and necessity", described as a kind of cost-benefit analysis (emphasis added):

The Panel considered the views and evidence of all participants to the hearing. This information was conveyed to the Panel orally and in writing, and included Aboriginal Traditional Knowledge, personal experience and beliefs, and science-based technology and research. The Panel weighed the potential burdens and benefits of the project as they would affect the *environment, society, and economy at the local, regional, and national levels. These three dimensions of the public interest interact and overlap and were considered in an integrated manner.*²⁷

²⁵ *Centra Gas*, at paragraph 4.0.5.

²⁶ *Centra Gas*, at paragraph 4.0.4.

²⁷ National Energy Board, Considerations: Report of the Joint Review Panel for the Enbridge Northern Gateway Project, 2013 at page 10: https://publications.gc.ca/collections/collection_2014/one-neb/NE23-176-2013-2-eng.pdf.

60. The City submits that the emergence of significant environmental concerns and the City's leadership in climate mitigation, and the right of the municipality to be given a choice in the grant of gas franchise privileges, are compelling factors in the balance of public convenience and necessity. The renewal of a franchise right is an opportunity for improvement on the status quo and is preparatory for growth and change. The template MFA represents inertia and stifled innovation, and does not reflect the City's or the Province's vision for a more diverse and sustainable energy mix, poised for growth, reliability and affordability.

F. Certificate of Public Convenience and Necessity

61. Enbridge holds F.B.C. 109 CPCN, dated June 25, 1957, granting the right to construct works and to supply gas pursuant to Section 8 of the *Municipal Franchises Act*. OEB issued CPCNs define the exact geographic area within a municipality where a gas distributor is permitted to construct gas works. The CPCN grants the right to construct infrastructure for the purposes of supplying gas to consumers in the service territory specified.

62. Since the date of issuance of F.B.C. 109 CPCN in 1957, the geographic boundaries of the City of Guelph have changed through annexations, including the following:

- (1) 1959 annexation of a portion of the Township of Guelph into the City of Guelph by Order of the Ontario Municipal Board dated August 8, 1958;
- (2) 1966 annexation of portions of the Township of Guelph and portions of the Township of Puslinch into the City of Guelph by Order of the Ontario Municipal Board dated November 8, 1965;
- (3) 1989 annexation of a portion of the Township of Guelph into the City of Guelph by Order-in-Council made May 19, 1989 under the *Municipal Boundary Negotiations Act*, 1981;
- (4) 1993 annexation of a portion of the Township of Guelph and a portion of the Township of Puslinch into the City of Guelph by Order-in-Council made March 25, 1993 under the *Municipal Boundary Negotiations Act*, 1981;
- (5) 2004 annexation of a portion of the Township of Guelph/Eramosa into the City of Guelph under annexation agreement dated March 15, 2004 and Minister's Restructuring Order; and

(6)2022 annexation of a portion of the Township of Guelph/Eramosa including the Dolime Quarry under annexation agreement and Ministerial Zoning Order effective January 1, 2022.

63.For the reasons that follow, it is the City’s position that Enbridge does not hold, or has not demonstrated that it holds, CPCNs for the portions of the City of Guelph that were annexed into the City since 1957. The various CPCNs covering the pre-annexed lands, listed in paragraph 22 below, have been cancelled and Enbridge has not demonstrated that F.B.C. 109 includes the annexed lands.

64.In paragraph 5 of its Application, Enbridge indicates that:

(1)the portion of the Township of Puslinch annexed into the City of Guelph in 1966 was, at that time, covered under F.B.C.99 and/or F.B.C. 332 CPCNs held by Union Gas; and the portion of the Township of Guelph annexed into the City of Guelph in 1966 was, at that time, covered under F.B.C. 99, F.B.C. 110 and/or F.B.C. 192 CPCNs held by Union Gas;

(2)the portion of the Township of Puslinch annexed into the City of Guelph in 1993 was, at that time, covered under F.B.C. 99 and/or F.B.C. 332 CPCNs held by Union Gas; and the portion of the Township of Guelph annexed into the City of Guelph in 1993 was, at that time, covered under F.B.C. 99, F.B.C. 110 CPCNs and/or F.B.C. 192 CPCNs held by Ontario Natural Gas Storage and Pipelines Limited or the E.B.C. 209 CPCN held by Union Gas;

(3)the portion of the Township of Guelph/Eramosa encompassing the Dolime Quarry annexed into the City of Guelph in 2022 was, at that time, covered under the EB-2007-0021 CPCN held by Union Gas;

(4)the portion of the Township of Guelph/Eramosa annexed into the City of Guelph in 2004 was, at that time, covered under F.B.C. 99, F.B.C. 110, and/or F.B.C. 192 CPCNs held by Union Gas.

65.In paragraph 6 of its Application, Enbridge asserts that it already holds the CPCN rights for all the lands that now make up the City of Guelph, through CPCNs F.B.C. 99, F.B.C. 110, F.B.C. 192, F.B.C. 332, E.B.C. 209 and/or EB-2007-0021.

66.The City notes that the portions of F.B.C. 99, F.B.C. 110, and F.B.C. 192 associated with the former Township of Guelph and E.B.C. 209 associated with the former Township of Eramosa were cancelled and superseded by EB-2007-0021 dated April 10, 2007. EB-2007-0021 was granted to Union Gas

Limited (now Enbridge) to construct works to supply gas in the Township of Guelph/Eramosa, replacing the portions of F.B.C. 99, F.B.C. 110, F.B.C. 192 and E.B.C. 2009 CPCNs associated with the former Township of Guelph and the former Township of Eramosa, that as of April 10, 2007, were within the Township of Guelph/Eramosa. EB-2007-0021 was subsequently cancelled and superseded by EB-2024-0188 dated January 23, 2025. EB-2024-0188 was granted to Enbridge to construct works to supply natural gas in the Township of Guelph/Eramosa as it was constituted on January 23, 2025, and is currently in force.

67. The City notes that F.B.C 99 (which after EB-2001-0021 only pertained to the Township of Puslinch) and F.B.C. 332 (which was issued specifically for the Township of Puslinch) were cancelled and superseded by EB-2024-0106 dated April 25, 2024. EB-2024-0106 granted Enbridge the right to construct works and supply gas in the Puslinch as it was constituted on April 25, 2024, and is currently in force.

68. Referencing the OEB's Ontario Electricity and Natural Gas Utilities – Service Area Map,²⁸ the City understands that Enbridge holds the following CPCNs for the City of Guelph and adjacent lower-tier municipalities in the County of Wellington:

- (1) Single Tier Certificate for the City of Guelph F.B.C. 109 held by Enbridge Gas Inc., Decision/Order Date 25/06/1957;
- (2) Lower Tier Certificate for the Township of Guelph/Eramosa EB-2024-0188 held by Enbridge Gas Inc., Decision/Order Date 23/01/2025;
- (3) Lower Tier Certificate for the Township of Puslinch EB-2024-0105 held by Enbridge Gas Inc., Decision/Order date 25/04/2024.

69. As described in section 3.6.2 of the *Handbook*, 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. To the City's knowledge, Enbridge did not give timely notice to the OEB to have F.B.C. 109 amended to reflect any of the City of Guelph boundary changes since certificate issuance. To the City's knowledge, the OEB has not amended F.B.C. 109 to include lands annexed into the City of Guelph since 1957.

²⁸ Ontario Energy Board, Ontario Electricity and Natural Gas Service Area Map: <https://www.oeb.ca/ontarios-energy-sector/ontario-electricity-and-natural-gas-utilities-service-area-map>

70. The City understands that it is an established practice of the OEB to grant applications from gas distributors seeking to cancel and supersede old certificates where a new certificate may better align with municipal changes. However, it is also the City's understanding that the OEB will not, as a matter of course, amend the territory covered by a person's existing certificate to include any additional service area that was added to the municipality through the annexation. Upon application to the OEB for amendment to a CPCN, if ordered by the OEB, the certificate would be amended to include the metes and bounds of the person's existing certificate area.²⁹ The OEB has taken the approach of cancelling and superseding historical (but not already cancelled) certificates and replacing them with a new certificate where reasonable based on the evidence provided by the distributor of its coverage associated with historical certificates and the location of its current infrastructure or demonstrated plans for system expansion.³⁰
71. The City understands Enbridge is requesting a new CPCN pursuant to Section 8 of the *Municipal Franchises Act*. The City understands that CPCNs confer the right to build gas facilities within a specific geographic area. The City notes that the OEB can grant a new CPCN without a hearing if the grant of a new CPCN is administrative in nature and would not add new service areas or grant any new rights in respect of a municipality.³¹ It is the City's position that Enbridge has not demonstrated that the grant of a new CPCN for the City of Guelph as currently constituted would not add new services areas or grant Enbridge new certificate rights. The City queries whether Enbridge is seeking rights to construct and add to its distribution system in uncertificated portions of the City of Guelph as presently constituted.
72. The City submits that Enbridge has not provided sufficient evidence regarding its historical certificate coverage or the status of that coverage. The City submits that, without sufficient clarity of existing certificate rights and service territory, it is unclear whether a new CPCN for the current City of Guelph would change or add to Enbridge's service territory, and it cannot properly be determined whether public convenience and necessity require such change.

²⁹ OEB EB-2017-0108, Decision and Order, Enbridge Gas Inc. and EPCOR Natural Gas Limited Partnership re Norfolk County, the County of Elgin, and the County of Middlesex (October 11, 2018).

³⁰ OEB EB-2022-0201, Decision and Order, Enbridge Gas Inc. re Leamington (March 30, 2023) at p.12-13; see also OEB EB-2022-0172, Decision and Order, Enbridge Gas Inc. re North Dumfries (September 8, 2022); see also OEB EB-2022-0253, Decision and Order, Enbridge Gas Inc. re Bracebridge (January 24, 2023).

³¹ OEB EB-2025-0247, Decision and Order, Enbridge Gas Inc. re Pembroke (November 18, 2025).

73. The City submits that it would not be reasonable in this application to cancel and supersede Enbridge's sole CPCN for the City of Guelph and replace it with a new one which may grant new rights without due transparency and consideration. It is the City's understanding that, in considering an application for a new certificate for approval, the OEB will consider the geographic boundaries within which the utility can operate, including any additional service areas within newly amalgamated territories. It is the City's position that Enbridge's Application does not sufficiently delineate the geographic area that Enbridge has in-force certificate rights to serve, and any uncertificated geographic areas it requests certificate coverage over, and whether such areas are currently served by Enbridge or if new service is planned.

74. The City considers the grant of a CPCN to be a significant privilege to a gas distributor and a matter of local and provincial public interest. It is the OEB's mandate to regulate the natural gas sector, including to govern the conduct of utilities, protect the interests of individuals, and support the collective advancement of the people of Ontario.³² To fulfil its mandate, the City believes the OEB should have the benefit of all information relevant to the consideration of a new or amended CPCN, including the following specified in section 3.7 of the *Handbook*:

- (1) confirmation as to whether the application is for a new certificate area or an amendment of an existing certificate (Enbridge is requesting a new rather than amended certificate, but asserts it already has CPCN rights to the area);
- (2) a written description of the proposed certificate area, including the area's physical boundaries (e.g. municipal boundaries, metes and bounds, on-from-to) and the number and general location of any customers currently services or planned to be served in the proposed certificate area; and
- (3) copies of the certificate(s) for the area (Enbridge has only provided F.B.C. 109).

³² Ontario Energy Board, Mission and Mandate: <https://www.oeb.ca/about-oeb/mission-and-mandate>

75. The City takes the position that the consideration of public convenience and necessity requires due consideration of all relevant information. The onus is on the Applicant to demonstrate that public convenience and necessity require the granting of a CPCN. The City submits that the burden on the distributor is dependent on the circumstances and particulars of the application, and is less onerous when a distributor is not seeking or being granted any new rights,³³ and/or when the municipality has given consent in accordance with the *Municipal Franchises Act*,³⁴ and/or where the municipality has not made submissions on a distributor's certificate request,³⁵ or no party has intervened.³⁶ The City argues the burden is higher where there is no municipal by-law, and higher still when there has been a clear refusal by the municipal Council, and where there is evidence of strong dissent from hundreds of individual residents.

76. The City submits that the cursory evidence relating to certificate coverage, the Applicant's presumptive assertion of rights, and the clear and public dissent of Council and vocal opposition by hundreds of individual residents supports a denial of a new CPCN. It is the City's position that Enbridge has not made out that public convenience and necessity require the issuance of a new CPCN for the City of Guelph as currently constituted and the OEB must give due consideration to the interests of the local public.

G. The Board Has Jurisdiction to Prescribe Terms and Duration

77. In *Sudbury (City) v. Union Gas Ltd.* (2001), the Court of Appeal for Ontario stated that the *Municipal Franchises Act* and the *OEB Act* "make clear that the Legislature has accorded to the OEB the widest powers to regulate the supply and distribution of natural gas in the public interest".³⁷

78. The City submits that Section 10(2) of the *Municipal Franchises Act* provides the OEB authority to either refuse the renewal, or, if public convenience and necessity require it, to extend the term of the franchise for such period and on such terms and conditions as the OEB may prescribe.

79. The City submits that in Section 2 of the *OEB Act* provides the OEB authority to make the amendments to the MFA requested by the City. Subsection 2(1)

³³ OEB EB-2025-0247, Decision and Order, Enbridge Gas Inc. re Pembroke (November 18, 2025).

³⁴ OEB EB-2024-0328, Decision and Order, Enbridge Gas Inc. re Tillsonburg (March 13, 2025).

³⁵ OEB EB-2022-0201, Decision and Order, Enbridge Gas Inc. re Leamington (March 30, 2023).

³⁶ OEB EB-2022-0172, Decision and Order Enbridge Gas Inc. re North Dumfries (September 8, 2022).

³⁷ *Sudbury (City) v. Union Gas Ltd.* (2001), 54 O.R. (3d) 439 (C.A.) ("*Sudbury (City) v. Union Gas Ltd.*"), at para. 6; See also *Leamington (Municipality of) v. Enbridge Gas Inc.*, 2024 ONSC 867.

of the *OEB Act* states that, in carrying out its responsibilities, the OEB should be guided by the following objectives:³⁸

- (1) to facilitate competition in the sale of gas to users;
- (2) to inform consumers and protect their interests with respect to prices and the reliability and quality of gas service;
- (3) to facilitate rational expansion of transmission and distribution systems;
- (4) to facilitate rational development and safe operation of gas storage;
- (5) to promote energy conservation and energy efficiency in accordance with the policies of the Government of Ontario, including having regard to the consumer's economic circumstances;
- (6) to facilitate the maintenance of a financially viable gas industry for the transmission, distribution and storage of gas; and
- (7) to promote communication within the gas industry.

80. Subsection 2(1) of the *OEB Act* requires that the Board facilitate competition in the sale of gas to users. By forcing the City into a twenty-year renewal on the terms of the MFA, without regard for the strength and importance of local agency, the competition objective is not being given sufficient weight. The ease with which Enbridge can obtain and renew franchise rights under long-term agreements with municipalities is the key to its low-risk business model.

81. Further, under Section 2(3) of the *OEB Act*, the Board must ensure that Enbridge facilitates "rational expansion of transmission and distribution systems". The City submits that rational expansion cannot be properly engaged in when Enbridge is allowed to decommission gas lines and not remove them from municipal property while continuing to expand transmission and distribution systems.

82. The City further submits that under subsection 2(5) of the *OEB Act*, the Board must "promote energy conservation and energy efficiency/ in accordance with the policies of the Government of Ontario, including having regard to the consumer's economic circumstances". The unamended terms of the MFA over the long-term would infringe the City's autonomy to advance its local policy objectives of energy conservation and energy efficiency having

³⁸ See also OEB EB-2008-0413, Decision and Order, Natural Resources Gas Limited and Town of Aylmer (May 5, 2009) at page 3.

regard for provincial and federal energy policy and climate change commitments.

83. The OEB's authority to approve unique franchise terms is also supported by caselaw. The Ontario Court of Appeal decision in *Sudbury (City) v. Union Gas Ltd.* states:

The OEB may make the order on the terms it determines necessary to protect the public interest. In my view, a purposive reading of the section gives to the OEB a broad power to impose the terms of renewal or extension of the franchise so that service to the public will not be interrupted simply because the municipality and the utility have been unable to agree on the terms for carrying on the service.³⁹

In *Peterborough (City) v. Consumers Gas*, 1980, the Court held that the OEB is not bound to leave the terms of the MFA unchanged, stating:

There is nothing in the statutory provisions to require that the terms and conditions found in the expiring agreement must be continued or that what is prescribed by the Board as a result of its adjudication be agreeable to either or both of the parties.⁴⁰

84. The City is not seeking to discontinue or interrupt natural gas service through intervention in this Application, and notes that the OEB has the ability to ensure service to the public is continued and upholding the broader public interest, and having regard for the will of the municipality. In *Sudbury (City) v. Union Gas Ltd.*, the appellate court explained the public interest rationale that underlies Section 10 of the *Municipal Franchises Act* as follows:

Section 10 of the Municipal Franchises Act clearly gives the OEB [Ontario Energy Board] the power, if public convenience and necessity require it, to renew or extend the right of Union [Gas Ltd.] to operate the gas distribution system in Sudbury. It protects the interests of those who depend on the gas distribution system by allowing either the municipality or the gas utility company to seek a renewal or extension of the bundle of rights that is the franchise. The OEB may make the order on the terms it determines necessary to protect the public interest.⁴¹

³⁹ *Sudbury (City) v. Union Gas Ltd.* at para 23.

⁴⁰ *Peterborough (City) v. Consumers Gas*, (1980) 28 O.R. (2d) 573 (ON SC) at page 5. [The same approach was adopted more recently in *Natural Resource Gas Ltd. (Re)*, 2009 LNONOEB 70 at paragraph 9.]

⁴¹ *Sudbury (City) v. Union Gas Ltd.* at para 23.

85. In *Centra Gas*, the OEB described its jurisdiction under Section 10 as limited to two options: “if the public convenience and necessity appear to require it, the Board can renew or extend the term of the franchisee’s rights; or if public convenience and necessity do not appear to require it, the Board can refuse the extension of the right to operate the distribution works”.⁴² The City submits that the OEB effectively has *three* options:

- (1) If the OEB determines public convenience and necessity requires the franchise, the OEB can impose a twenty-year renewal under template MFA terms as requested by Enbridge;
- (2) If the OEB determines public convenience and necessity requires the franchise, the OEB can *extend* the term under such terms as the OEB may prescribe; or,
- (3) If it is not made out that public necessity and convenience require the renewal, the OEB can reject Enbridge’s request.

H. Conclusion

86. The City recognizes the OEB’s power and jurisdiction to approve a franchise renewal or extend a franchise and prescribe its terms. The City submits that, in each case, the OEB is required to engage with the question of whether public convenience and necessity require the renewal, and if so, for what duration and on what terms. As stated in *Centra Gas*, “the Board must consider the specific proposals regarding the terms and conditions of franchise renewal suggested by the parties and the extent of the Board’s jurisdiction to impose terms and conditions”⁴³

87. It is the City’s position that Enbridge has not made out that public convenience and necessity require the OEB implement a twenty-year renewal on template MFA terms. Further, it is the City’s position that the terms and condition of franchise renewal the City is seeking are not contrary to public convenience and necessity and are within the OEB’s jurisdiction to impose.

88. The City is not seeking to discontinue or interrupt natural gas service through intervention in this Application. The OEB has the ability to ensure service to the public is continued without fully disregarding the will of the municipality. The City urges the OEB to extend the franchise right for three years or less, which would not require the OEB to determine public convenience and necessity, and would provide continuity for all parties.

⁴² *Centra Gas* at paragraph 4.1.1.

⁴³ *Centra Gas* at paragraph 3.4.1.

89. The City notes that it is within Enbridge's ability to enter into agreements that have regard for local circumstances and local agency. The City's requested outcome would encourage Enbridge to do the work at the local level and meaningfully negotiate with individual municipalities for the rights and privileges it enjoys, which bring such significant returns to its investors.

90. The City respectfully submits that the right of the municipality to be given a choice in the grant of gas franchise privileges is a factor of public convenience and necessity and is, on balance, a compelling reason to deviate from the terms of the MFA and impose a short duration renewal where it is not demonstrated by the Applicant that public convenience and necessity do not require otherwise.

91. It is respectfully submitted that none of the requested amendments depart from the substance of the MFA so as to require consultation with stakeholders. The City understands that the issues in this Application may also be relevant for the generic hearing on the MFA planned to occur in 2026; however, the City should not be prejudiced in this proceeding on the basis of unknown scope of a future proceeding.

92. The City further submits that the requested amendments are within the jurisdiction of the Board to approve.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 14th day of JANUARY 2026.