

ONTARIO ENERGY BOARD

EB-2025-0058

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 Inc. for approval of a franchise agreement and a new certificate of public convenience and necessity in the City of Guelph

Submissions of eMerge Guelph Sustainability

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Contents

Introduction.....	3
The legal test.....	4
Deviating from the Model Franchise Agreement	5
Defining the public interest.....	6
Evolution of the public interest.....	6
The proposed agreement is not in the public interest	6
Fairness to municipal taxpayers.....	7
Fossil fuel subsidies	7
Contrary to municipal policy	8
Contrary to resident and local business interests	9
Contrary to provincial policy	13
Outcomes Sought.....	13
Request 1: Require good faith negotiations.....	14
Request 2: 6-month expiry following generic hearing determination	14
Request 3: Conditional term for land-use fees if regulations change.....	15
Request is not speculative	15
Implementation options	16
Request 4: Accept Guelph’s wording changes	16
Request 5: Reject Enbridge’s request for an updated CPCN.....	16
Conclusion	16

Introduction

Enbridge Gas Inc. (“Enbridge”) seeks, among other things, an order under the *Municipal Franchises Act*, RSO 1990, c M.55 (the “MFA” or the “Act”) to impose the terms of a franchise agreement on the City of Guelph (“Guelph” or the “City”). When considering whether to impose an agreement, which terms are most appropriate, and whether to approve deviations from the existing Model Franchise Agreement, the OEB must assess and determine what is in the public interest. This includes a balancing of a variety of interests, including balancing the interests of gas ratepayers with the interests of municipal taxpayers. Important aspects of the relief sought by Enbridge are not in the public interest.

As the OEB is aware, Guelph does not wish to be locked into providing Enbridge free access to its rights-of-way or be required to cover costs for pipeline relocations where underground conflicts arise. eMerge Guelph Sustainability (“eMerge” or “eMerge Guelph”) asks for one of the following orders to address the legitimate concerns raised by the municipality.

First, eMerge asks that the OEB decline to impose terms and instead instruct Enbridge to enter into good faith negotiations with Guelph. Enbridge declined to negotiate any specific terms, issues or counterproposals with city officials prior to bringing its application to the Board. This recalcitrance and immediate recourse to an imposed franchise agreement under the Act is not in the public interest and should be rejected. Instead, where disagreements arise, the public interest is best served if Enbridge is expected to work collaboratively with municipalities before seeking to impose an agreement through an order of the Board.

Second, and in the alternative, if the Board decides to grant Enbridge’s request under s. 10 of the Act, the imposed agreement should expire six-months following the OEB’s decision in the upcoming generic hearing into the Model Franchise Agreement. This will ensure that Guelph is able to raise important issues that have been deemed beyond the scope of this proceeding as part of the generic hearing and benefit from the outcome thereof. This is necessary to provide procedural fairness and allow for a full consideration of the public interest issues and evidence that must be considered according to the applicable legal test under s. 10 of the MFA.

Third, and in the further alternative, eMerge asks that a term be added into any imposed agreement, which ensures that Guelph is not locked into providing free access to its rights-of-ways if Ontario accedes to requests from municipalities to amend regulations to allow such fees. Such a term could indicate, for example, that Guelph may trigger formal negotiations regarding land-use fees for pipelines in the event that the provincial regulation prohibiting such fees is lifted.

Without these terms, an imposed franchise agreement would result in meaningful unfairness for Guelph and its residents by locking them into the provision of land-use subsidies for the duration of the agreement at the expense of taxpayers. It would also run contrary to municipal climate policies, as free use of public lands constitutes an indirect fossil fuel subsidy, which encourages greater levels of climate polluting gases. As a result, such an order would not properly balance the divergent interests at stake in the proceeding and would not best serve the public interest.

Enbridge also seeks an updated Certificate of Public Convenience and Necessity (“CPCN”) under s. 8 of the MFA. eMerge supports the City of Guelph’s objections to Enbridge’s request for a new CPCN. eMerge also supports Guelph’s other requests regarding the terms of the Guelph Franchise Agreement. On each of these points, eMerge supports and relies on the City’s submissions.

The legal test

Enbridge seeks to impose franchise agreement terms on Guelph pursuant to s. 10 of the *Municipal Franchises Act*, which reads as follows:

Application to Energy Board for renewal, etc., of gas franchise

10 (1) Where the term of a right referred to in clause 6 (1) (a), (b) or (c) that is related to gas or of a right to construct, operate, extend or add to works for the distribution of gas has expired or will expire within one year, either the municipality or the party having the right may apply to the Ontario Energy Board for an order for a renewal of or an extension of the term of the right. R.S.O. 1990, c. M.55, s. 10 (1); 1998, c. 15, Sched. E, s. 21 (8); 2025, c. 22, Sched. 2, s. 6 (1).

Powers of Energy Board

(2) The Ontario Energy Board has and may exercise jurisdiction and power necessary for the purposes of this section and, if public convenience and necessity appear to require it, may make an order renewing or extending the term of the right for such period of time and upon such terms and conditions as may be prescribed by the Board, or if public convenience and necessity do not appear to require a renewal or extension of the term of the right, may make an order refusing a renewal or extension of the right. R.S.O. 1990, c. M.55, s. 10 (2) [emphasis added].

Based on the wording of s. 10 and the relevant case law, the public convenience and necessity test under this section requires that the OEB consider whether renewing a franchise agreement is in the public interest, and if so, what terms and conditions are in the public interest.

Although proceedings under s. 10 are often uncontested, when they are, they require careful consideration of the relevant public interest factors. The process is not merely a rubber stamp or purely administrative process. This is clear from the requirement in s. 10 (3) that notice be provided and that the OEB conduct a “public hearing.” Furthermore, courts have repeatedly confirmed that administrative bodies are required to consider all relevant factors when deciding whether an approval is in the public interest.¹

¹ *Fort McKay First Nation v Prosper Petroleum Ltd*, 2020 ABCA 163 at [para. 45](#); *Nakina (Township) v. Canadian National Railway Co.* (1986), 69 N.R. 124 (F.C.A.) cited by FCA in *Sumas Energy 2, Inc. v. Canada (National Energy Board)* (F.C.A.), 2005 FCA 377 at [para. 24](#).

Deviating from the Model Franchise Agreement

The 2000 Model Franchise Agreement (“Model Franchise Agreement” or the “Model Agreement”) was adopted by the OEB as “guidance to applicants and municipalities regarding the standard terms of a franchise agreement and as a tool to efficiently administer the many franchise agreements across the Province.” It provides a “template” as to “the terms that the OEB finds reasonable under the *Municipal Franchises Act*.”² The expectation from the Board is that franchise agreements will be “based on the Model Franchise Agreement unless there is a compelling reason for deviation” [emphasis added].³

When determining whether compelling reasons exist to deviate from the Model Agreement, the OEB retains broad discretion to “make the order on the terms it determines necessary to protect the public interest.”⁴ In this way, the test for determining whether a deviation from the Model Agreement should be approved in a specific case is the same as the general determination of whether a franchise agreement should be imposed under s. 10 of the Act: is it in the public interest.

This flexible approach reflects the Board’s early statements regarding its role under s. 10 of the MFA. In the Board’s Report adopting the 2000 Model Franchise Agreement, the OEB Panel stated:

Section 10 is specifically intended to allow the Board to implement a renewal of a franchise where there is no agreement between the municipality and the utility and to allow the Board to determine the terms of the franchise being renewed.⁵ [emphasis added]

The Model Agreement is not an immutable set of provisions, such as exist in other regulatory contexts.⁶ Instead, as held by the OEB when it developed the Model Agreement, it is simply “guidance to applicants and municipalities.”⁷ As further stated by the OEB panel that developed the Model Agreement:

[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].⁸

² OEB, [Natural Gas Facilities Handbook](#), s. 2.3.

³ Ibid.

⁴ *Leamington (Municipality of) v. Enbridge Gas Inc.*, 2024 ONSC 867 at [para 16](#), citing from *Sudbury (City) v. Union Gas Ltd.* (2001), 54 O.R. (3d) 439 (C.A.).

⁵ RP-1999-0048, [Report to the Board](#), December 29, 2000, s. 1.1.4.

⁶ See for example mandated contractual regulatory provisions under *Farm Implements Act*, [R.S.O. 1990, c. F.4](#), the *Insurance Act*, [R.S.O. 1990, c. I.8](#) or the minimum contractual standards required by the *Employment Standards Act*, 2000, S.O. 2000, c. 41.

⁷ OEB, [Natural Gas Facilities Handbook](#), s. 2.3.

⁸ RP-1999-0048, [Report to the Board](#), December 29, 2000, s/ 5.1.10.

Defining the public interest

The term “public convenience and necessity” has been used in a variety of legislation regulating utilities and other monopolies and has been considered by many courts and tribunals. The case law is clear that an adjudicator applying this test must consider whether the approval is in the public interest.⁹ This includes a balancing of the various interests at stake.¹⁰ In the context of the MFA, the OEB has found that the test includes consideration of the interests of the municipality, as well as the broader public interest.¹¹

Courts have confirmed that the OEB’s jurisdiction when considering what is in the public interest is very broad.¹² This jurisdiction extends to all matters incidental to the production, distribution, transmission, and storage of gas and includes consideration of environmental impacts.¹³ Overall, the OEB is mandated to examine what is in the “broad public interest” when fulfilling its mandate and is not limited, for example, to protecting only the interests of gas ratepayers.¹⁴

Evolution of the public interest

Any determination of the public interest in this case must be informed by the existing energy policy context. Energy planning and regulation have shifted significantly since the development of the 2000 Model Franchise Agreement. During the hearing that led to the Model Agreement’s adoption, there were no substantive discussions regarding energy transition, emissions reduction or climate change impacts.

The public interest has evolved substantially over the past twenty-five years, including with respect to energy and the climate. These developments in energy and climate policy at both the local and provincial level are critical to understanding whether and on what terms a renewed franchise agreement for Guelph would be in the public interest.

The proposed agreement is not in the public interest

Three aspects of the proposed franchise agreement fail to meet the public interest test under the Act. They are:

- a. constraints on charging land-use fees even if amendments are made to allow such fees under Ontario Regulation 584/06;

⁹*Sunshine Transit Service v. The Taxicab Board*, 2014 MBCA 33 at [para 39](#); *Sincennes v. Alberta (Energy and Utilities Board)*, 2009 ABCA 167 at [para 67](#).

¹⁰ *ATCO Gas and Pipelines Ltd v. Alberta*, 2006 SCC 4 at [para. 7](#).

¹¹ [Centra and City of Kingston \(Re\)](#), E.B.A. 825 (June 22, 2000) at para. 4.0.4.

¹² *Garland v Consumers’ Gas Co.*, 185 DLR (4th) 536 at [para. 31](#); *Sudbury (City) v. Union Gas Ltd.* (2001) 54 O.R. (3d) 439 (C.A.) at [para. 6](#).

¹³ *Ibid*; For example, environmental impacts are included as a relevant issue in the OEB’s template [Section 90 and 91 Leave to Construct Issues List](#) and are captured in gas sector leave-to-construct filing requirements.

¹⁴ *Centra*, supra note 11 at paras. 4.03-4.05. [EBO 134](#), para. 5.13.

- b. liability to cost-share gas infrastructure relocations needed due to conflicts with municipal infrastructure under clause 12; and
- c. liability to undertake and pay for removal of decommissioned infrastructure under clause 15(b).

The above terms are not in the public interest as they constitute an unfair burden on taxpayers as well as a subsidy for fossil fuel use that directly conflicts with two significant, relevant factors:

- Municipal policies and goals;¹⁵ and
- Resident and local business interests.

Fairness to municipal taxpayers

The terms that Enbridge seeks to impose are unfair to municipal taxpayers by forcing the municipality to provide free access to its lands for the construction and siting of gas pipelines. The lands under roads are a scarce and valuable resource held by municipalities for the benefit of their residents. Municipalities should be allowed to charge for use of that resource and use those funds for municipal services to support its residents or to reduce taxes.

Enbridge argues that it pays property taxes. However, property taxes are not the same as land-use fees. Homeowners pay taxes as well, but this does not give them the right to install equipment under the sidewalk or road in front of their homes.

Enbridge may argue that Guelph residents are also gas ratepayers. Although that is often the case, in many instances it is not. There is no reason for the Guelph residents who are not gas ratepayers to subsidize the gas system. This is contrary to the beneficiary pays principle and cost causality principle.

eMerge acknowledges that this issue is not unique to Guelph. It therefore is noted as further support for allowing all of these issues to be addressed in the upcoming generic hearing and allowing Guelph to benefit from the outcome thereof, as noted in request #2 above.

Fossil fuel subsidies

In addition, the terms Enbridge seeks to impose are a significant subsidy in support of the consumption of fossil fuels. Evan Ferrarri, Executive Director of eMerge Guelph, explains why this is the case.

First, the agreement would provide access to public lands (i.e. highways) for Enbridge's fossil fuel pipelines for the duration of the agreement terms without any land-based fees (i.e. rent). This includes the long-term use of these public lands by pipelines. Although an Ontario regulation already prohibits municipalities from charging land-based fees for use of highways by gas pipelines, that regulation may change as the result of an ongoing

¹⁵ Centra, supra note 11 at para. 4.0.5.

campaign by municipalities, civil society, and politicians to have the regulation amended. The franchise agreement would lock the municipality into providing free access even if the regulation is changed. A simple change to the agreement could avoid this by allowing land-based fees to be charged if the regulation changes.

Second, the agreement would force Guelph to pay 35% of the cost for pipelines to be relocated if they conflict with municipal infrastructure (e.g. sewers, etc.). This financial contribution toward fossil fuel pipelines is needed even though Enbridge is paying no rent for use of the land.

Third, the agreement could force other parties, including companies and other levels of government, to pay the full cost for pipelines to be relocated if they conflict with new construction projects. This could arise, for example, if a new net-zero district energy system would conflict with existing gas pipelines.

Fourth, the agreement would not require that pipelines be removed when they are no longer needed. Enbridge would be allowed to leave those abandoned pipelines in place on city property forever. If that underground space is needed in the future, other parties would need to do the work to remove the pipelines.

Put simply, the proposed agreement reduces Enbridge's operating costs and forces the City, its residents and businesses to subsidize fossil fuel delivery. The affidavits submitted by eMerge Guelph and the City of Guelph demonstrate how this subsidization conflicts with municipal and resident interests. In particular, the evidence identifies the financial, health, safety and ethical impacts that the above terms have in the specific context of the City of Guelph.

Contrary to municipal policy

Reducing Enbridge's operating costs through indirect subsidization runs contrary to Guelph's current and longstanding climate policies. To avoid duplication, eMerge will not review each of the municipality's climate policies, which will be impacted by the proposed franchise agreement.¹⁶ These will be addressed in detail by the City of Guelph.

However, as a key actor in local environmental advocacy, eMerge has a substantial interest in supporting and protecting the City's current climate policies. Key among them is the City's goal to reduce GHG emissions and become a Net Zero carbon community by 2050.¹⁷ Since officially adopting this target in 2018, Guelph has integrated GHG reduction into all aspects of municipal planning and development, including building codes, transportation plans, decarbonized municipal operations, investments in renewable energy, preservation of natural resources and consumer incentives.¹⁸ This is necessary to ensure that the City can reduce carbon emissions by 63% from 2018, in order to meet the Net Zero target.¹⁹

¹⁶ Affidavit of Tijo Joseph, June 27, 2025, Exhibit 1, Tab 3, p. 74.

¹⁷ Ibid.

¹⁸ Guelph Community Call to Climate Action, Exhibit 1, Tab 3, Schedule 4, p. 266.

¹⁹ Affidavit of Tijo Joseph, June 27, 2025, Exhibit 1, Tab 3 p. 77.

As one of the local groups that has fought tirelessly for the City to adopt and achieve these goals, eMerge is keenly aware that every action or misstep counts. Any indirect subsidization of fossil fuel distribution can impede a government's efforts to reduce these emissions, such as those undertaken by Guelph. It is unfair and contrary to the public interest to require Guelph to provide these indirect fuel subsidies at the same time that it is striving to reduce fossil fuel dependence in all aspects of its policies and operations.

Democratic will

Imposing the proposed franchise agreement on the City of Guelph would also offend the democratic will of the Guelph electorate.

Following public hearings, during which local residents deposed to Council, Guelph City Council voted to direct its staff to negotiate a modified franchise agreement that would permit charging of land-use fees in the event of changes to provincial regulations and restrict municipal liability for pipeline relocation. Council further voted to request that the provincial government amend section 9 of Regulation 584/06 to permit charging of fair fees to gas utilities for land use.²⁰

Council's direction is reflected in the position taken by the City and eMerge Guelph through these proceedings. It is the position of the democratically elected Guelph Council, based on their understanding and representation of the will of their constituents. Should the OEB impose the proposed agreement on the municipality, it will send a message to local electors and advocates that their votes and participation in local politics don't matter.

Indigo Moran, a young person who grew up in Guelph and advocates on behalf of municipal climate policy described the risk this way:

As a young person trying to make a positive impact on my local community, it is important for me to know that our efforts are not erased. Otherwise, it will be difficult to stay motivated to do the necessary work.²¹

It is not in the local or broad public interest to override the hard work and voting power of residents, such that they become disengaged.

Contrary to resident and local business interests

Environmental ethos

The proposed franchise agreement does not align with Guelph's longstanding environmental ethos. In response to the present application, roughly 500 individuals contacted the OEB to voice their support for eMerge Guelph's participation in the proceeding and opposition to Enbridge's application. This is an unprecedented show of support from individual residents in response to a regulatory proceeding under the *Municipal Franchises Act*. Though unprecedented, it is not

²⁰ Affidavit of Indigo Moran, June 24, 2025, Exhibit 5, pp. 6-9.

²¹ *Ibid.*, at para. 12.

surprising given Guelph’s unique reputation as a green municipality, including because of its representation by one of only two Green Party Members of Provincial Parliament in Ontario.

At the municipal level, Guelph residents have given the City a clear mandate to prioritize policies that target climate change and the environment. In a 2019 poll, one-third of respondents stated that the environment and climate change were the most important issues facing the City over the next ten years. As was noted by Mr. Ferrarri,

This surpassed any other issue canvassed, including economic opportunities, which received only half the number of votes as the environment.²²

Mx. Moran discussed the role that Guelph’s environmental ethos has played in their own development. After identifying the real and significant climate-related anxieties that Mx. Moran and their peers are facing in the near future, (including “excess deaths, intensified natural disasters, and increased depression and suicidal ideation”), they noted that:

Any hope I do have for my future comes in large part from growing up in a City that prioritizes environmental planning and policies.²³

For the many Guelph residents who have built and value this environmental ethos, Enbridge’s application is a serious imposition: “It forces us to do something that we morally oppose on ethical grounds – subsidize fossil fuel infrastructure.”²⁴ As such, it should not be considered in the public interest within the particular context of the City of Guelph.

This environmental ethos exists in a climate context that was not present in 2000 when the model franchise agreement was developed, including the following factors outlined by Mr. Ferrari:

- a. Most of the Guelph climate policies were enacted after the model franchise agreement was developed.
- b. The climate science on which Guelph’s climate policies are based has progressed considerably since 2000. For example, scientists are now much more certain about the link between climate change, extreme weather, and deaths.
- c. The international climate agreements and national climate legislation that Guelph’s climate policies are also based on have been made or enacted in the past 25 years. This includes the Paris Accord and the binding targets set in the *Canadian Net-Zero Emissions Accountability Act*.
- d. There are now only 25 years until net-zero must be achieved in 2050. That is half the time we had to decarbonize back in 2000 when the model franchise agreement was developed. Now that we have far less time to decarbonize in order to avoid

²² Affidavit of Evan Ferrarri, July 2, 2025, at para. 26.

²³ Affidavit of Indigo Moran, June 24, 2025, at para. 7.

²⁴ Affidavit of Evan Ferrarri, July 2, 2025, at para. 30.

catastrophic climate change, the imperative and urgency to take steps such as avoiding fossil fuel subsidies is that much greater.

- e. The future role of gas has also changed in 25 years. In 2000, gas was seen by some as a transition fuel that would help Ontario move away from coal. In 2000, it was reasonable to think that there was time to use gas as a stepping stone toward full decarbonization. That is no longer the case. With the combustion of gas generating approximately one-third of Ontario's greenhouse gas emissions, and only 25 years until that must be eliminated, there must be an all-hands-on-deck approach to eliminate the combustion of fossil methane gas over the next two and half decades.
- f. Climate science about the harms of gas has also developed over the past 25 years. This includes science about the true size and impact of methane released to the atmosphere when it is extracted from the ground and when it leaks from pipelines.
- g. In 2000, gas was still considered by many to be a positive public good. In Guelph, that is no longer the case. Our politicians and civil society understand that fossil methane gas needs to be phased out over the next 25 years and that it should not be encouraged through subsidies.²⁵

Financial burden

The proposed franchise agreement imposes unfair financial burdens on local taxpayers, residents and businesses.

As discussed above, the proposed agreement requires local taxpayers to cover the relocation costs for Enbridge pipelines that conflict with municipal works, as well as removal of Enbridge's decommissioned pipelines and infrastructure. This is a direct downloading of Enbridge's operational costs onto Guelph taxpayers, and it is reasonable for the City and residents to reject those terms as contrary to their public interest.

The franchise agreement, as proposed, also unfairly restricts Guelph's ability to charge Enbridge land-use fees in the event that they become permitted under provincial regulations. Currently, O.Reg. 584/06 restricts municipal rights to charge land-use fees to gas distributors. However, several Ontario municipalities have identified this restriction as a concern, and are advocating for the restriction's repeal, given the potential for these fees to provide desperately needed municipal revenue.²⁶ Evan Ferrarri reviewed the findings of some Ontario municipalities and the current practices in other jurisdictions.

Most importantly, the imposed agreement would rule out an important potential revenue stream. I have attached reports by the City of Toronto and the City of Ottawa regarding the charging of land-based fees for the use of highways, respectively as Exhibit "C" and Exhibit "D". I believe the contents of these reports relating to land-based fees for pipelines to be true. As those reports outline, many jurisdictions charge rent for use of

²⁵ Affidavit of Evan Ferrarri, July 2, 2025, at para. 35.

²⁶ Affidavit of Evan Ferrarri, July 2, 2025, at para. 14.

public lands, which is an important revenue source for municipalities. For example, in 2023, Edmonton generated \$98 million dollars in annual revenue from their “Local Access Fee” (in addition to municipal taxes). Similarly, under Saskatchewan’s legislation, Regina operates a fee for use of the right of way, which generated \$5.6 million in annual revenue in 2020.

Mr. Ferrarri estimated that Guelph could potentially generate between \$3.5 and \$8.5 million per year in revenue should it be able to charge land-use fees in the future.²⁷ These are funds that are desperately needed to support critical local services such as affordable housing, transit, infrastructure, capital development, parks, assist those in the community that are energy insecure, and more. Without external revenue sources, these services are either funded from local taxpayer dollars or cut.

Affiant, Robert Blakeney, a Guelph resident and professional engineer specializing in decarbonized building heating systems, reflected on the additional financial burdens that the proposed agreement places on residents and businesses actively investing in the energy transition.

The proposed terms are unfair to taxpayers by forcing us to subsidize the gas system through free access to public lands, and by locking in that subsidy for long into the future. It is also unfair to make us contribute to the cost of relocating pipelines that conflict with public infrastructure when nothing has been paid by the gas company for use of those lands.

This unfairness is particularly problematic for people like me and my clients, who have worked hard and invested in getting off gas. Requiring us to subsidize the gas system both now and long into the future prevents us from being able to free ourselves from gas system costs.²⁸

The proposed franchise agreement also disadvantages local businesses, including clean energy businesses by forcing them to pay the full cost to move pipelines that conflict with planned uses of the municipal rights-of-way. Mr. Ferrarri described the disproportionate financial impacts on these businesses.

This is a particular concern for district and distributed energy systems that use pipelines to distribute heat among buildings in a neighbourhood, including pipelines under roads between buildings. These systems will hopefully increase over the next 20 years as part of our efforts to decarbonize our buildings. Under the franchise agreement, they would need to pay Enbridge the full cost to relocate its fossil fuel pipelines if there is a conflict between the old fossil fuel infrastructure and the new clean energy infrastructure.

It is also unfair to clean energy businesses, who can be charged for use of highway lands. For example, there is nothing to stop a municipality from charging rent to a district

²⁷ Ibid. at para 14.

²⁸ Affidavit of Robert Blakeney, June 30, 2025, para. 8.

energy provider for locating pipes needed to circulate heating under roads.²⁹

Small businesses play a key role in the energy transition across municipalities and so a franchise agreement that creates additional burdens to their operation can't be said to be in the public interest. This is especially true in light of the OEB's mandate under s. 2 (5) of the Ontario *Energy Board Act* 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."³⁰

Contrary to provincial policy

The terms that Enbridge seeks to impose are contrary to provincial policy as they would lock the municipality into providing free use of its lands even if provincial regulations are amended to allow land-based fees for the use of municipal rights-of-way by pipelines. In contrast, the new term proposed would allow any such amendments to take effect.

Outcomes Sought

eMerge proposes three potential outcomes that would ensure Guelph is not burdened by a franchise agreement that conflicts with the public interest as described above, while also providing procedural fairness and limiting prejudice on the City and Enbridge.

The requests include:

1. Reject the application under s. 10 of the MFA and order Enbridge to negotiate with the City; or
2. Approve the application under s. 10 of the MFA and include an expiry date six-months following conclusion of the upcoming Model Franchise Agreement generic hearing; or
3. Approve the application under s. 10 of the MFA and include a conditional term allowing negotiations regarding the charging of land-use fees in the event that provincial regulations are amended.

Although the below submissions are focused on these requests, eMerge also supports the City of Guelph's requests for additional specific deviations from the Model Franchise Agreement in the event that the Board approves Enbridge's application.

Finally, eMerge also supports the City of Guelph's objections to Enbridge's request for an updated CPCN under s. 8 of the MFA.

²⁹ Affidavit of Evan Ferrarri, July 2, 2025, para. 21.

³⁰ [Ontario Energy Board Act](#), 1998, S.O. 1998, c. 15, Sched. B, s. 2(5).

Request 1: Require good faith negotiations

The public interest requires that parties to an agreement under the Act first undertake meaningful and good faith negotiations prior to bringing an application under s. 10 of the MFA. eMerge asks that the OEB decline to impose terms and instead instruct Enbridge to enter into good faith negotiations with Guelph.

In this case, Enbridge declined to negotiate specific terms and potential modifications with Guelph, instead providing a flat “no” without discussing the underlying issues or exploring counterproposals. Following Guelph City Council’s resolution directing city staff to negotiate a modified franchise agreement, Enbridge met with municipal officials only once to discuss the City’s position. Immediately following that discussion, Enbridge voiced their intention to bring the present application under s. 10 of the MFA to impose the proposed agreement terms on the City.³¹ This does not constitute meaningful good faith negotiations. Enbridge’s approach makes a mockery of the idea of seeking to reach an “agreement” regarding use of municipal land prior to seeking relief under the MFA.

It would be appropriate in these circumstances for the Board to order that Enbridge undertake negotiations in good faith regarding pipeline relocation and decommissioning, and conditional land-use fee provisions. The public interest is best served if Enbridge works collaboratively with municipalities before seeking to impose an agreement under the Act, including because the parties are best placed to develop and identify common solutions and compromises to these disputes.

Request 2: 6-month expiry following generic hearing determination

Second and in the alternative, if the OEB will be imposing a new agreement on Guelph, eMerge asks that the agreement expire six months after a decision is issued in the Board’s upcoming generic hearing into the Model Franchise Agreement.³² This will ensure that Guelph is able to raise all of the issues raised above, including those that have been identified as beyond the scope of this proceeding. This is necessary to provide procedural fairness and allow for full consideration of the public interest issues and evidence that are relevant to a determination under s. 10 of the MFA. In this way, it will ensure that the public interest is best served through the present and future proceedings.

eMerge opposes the proposed franchise agreement based on factors that are both unique to Guelph and shared with other municipalities. The OEB has ruled that the latter are outside the scope of this proceeding and has limited admissible evidence on that basis.³³ This does not align with the Board’s duties under s. 10 of the MFA or the Natural Gas Facilities Handbook to consider all issues relevant to the public interest. If the OEB conclusively decides not to allow deviations from the Model Franchise Agreement in this case without considering factors that are

³¹ EGI IRR Exhibit EGI-EMG-4, Attachment 1, p. 8.

³² OEB, Letter dated October 16 2025.

³³ Procedural Order No. 1, March 13, 2025; Procedural Order No. 2, May 29, 2025; Procedural Order No. 5, December 5, 2025.

not unique to Guelph, it will not have discharged its obligations under s. 10 of the *MFA* to consider all issues relevant to the public interest.³⁴

This is particularly important because the factors supporting deviations from the Model Franchise Agreement that are *not* unique to Guelph are important to eMerge's case and to the municipality's position, such as with respect to the sharing of costs for pipeline relocations. Similarly, one of the most important factors supporting deviation from the Model Franchise Agreement is the passage of time since the model agreement was developed and the changed realities relating to climate change. This factor is exhibited in ways that are both unique to Guelph (e.g. its specific climate policies), as well as in ways that are shared with other jurisdictions. If non-unique factors cannot be relied on, and evidence cannot be obtained on those factors, eMerge will be unable to fully make its case.

However, the planned generic hearing process can largely remedy these fairness issues as long as the Guelph Franchise Agreement set in this proceeding will expire soon after the release of the new model franchise agreement. This would allow eMerge and Guelph to raise all public interest factors in the generic hearing and to then have the Guelph Franchise Agreement be set based on the outcome thereof.

Request 3: Conditional term for land-use fees if regulations change

Third, and in the further alternative, eMerge asks that any imposed franchise agreement include a term to ensure that Guelph is not locked into providing free access to its rights-of-way if the province accedes to requests from municipalities to amend regulations to allow such fees. The additional term could indicate, for example, that Guelph may trigger formal negotiations regarding land-use fees for pipelines in the event that the provincial regulation prohibiting such fees is lifted. This will protect the public interest by ensuring Guelph is not locked into providing free use of its public lands for pipelines by the franchise agreement.

Request is not speculative

Enbridge may argue that Guelph and eMerge are being overly speculative in seeking to ensure that Guelph is not locked into providing free access to its rights-of-way if the province accedes to requests from municipalities to amend regulations to allow such fees. However, it is common for long-term agreements to address potential future contingencies. As the agreement term is 20 years, it is reasonable and appropriate for it to address future possibilities.

Furthermore, the likelihood of an amendment to the relevant regulation is not mere speculation as it has been the subject of an ongoing campaign by municipalities and private members bills.

³⁴ This can also be described in legal terms as an administrative tribunal unduly fettering its own discretion, declining to consider a relevant factor, and declining to apply the correct legal test.

Implementation options

There are a number of options to implement the requested term. These include:

- New term: adding a new conditional term that would permit the City to charge land-use fees in the event that O.Reg. 584/06 is amended during the Agreement term. Two examples of potential new terms include the following:
 - If O. Reg. 548/06 is amended to remove the prohibition on municipalities charging fees to gas distributors for the use of property with respect to pipes or works that are or will be located on a municipal highway, The Corporation of the City of Guelph may charge fees for the use of highways and may apply to the Ontario Energy Board (or an alternative body if so required by law) to set those fees.
 - If O. Reg. 548/06 is amended to remove the prohibition on municipalities charging fees to gas distributors for the use of property with respect to pipes or works that are or will be located on a municipal highway, the Gas Company shall pay any such fees duly enacted by The Corporation of the City of Guelph, subject to any limitations set out in law or by an order of the Ontario Energy Board.
- s. 4: allow the municipality to submit a notice to Enbridge triggering a renegotiation process in the event that O.Reg. 584/06 is amended to remove the prohibition on municipalities charging fees to gas distributors for the use of highway lands

The new agreement term requested by the municipality and eMerge is relatively modest. At its core, it is asking that provincial regulations prevail and that the fees issue be re-opened if those regulations are amended. This is a very modest deviation from the Model Franchise Agreement, which should be accepted.

Request 4: Accept Guelph's wording changes

eMerge also supports Guelph's other requests regarding the terms of the Guelph Franchise Agreement. On each of these points, eMerge supports and relies on the City's submissions.

Request 5: Reject Enbridge's request for an updated CPCN

As noted above, eMerge supports the City of Guelph's objection to the present application under s. 8 of the MFA. The evidence does not clearly show that an updated CPCN is required in order to accurately reflect Enbridge's current rights in the City of Guelph. Enbridge has also failed to demonstrate that an expansion of their rights under an updated CPCN is required for the public interests. As such it does not meet the requirements of the Act and should be rejected.

Conclusion

Enbridge's request to impose the Model Franchise Agreement terms without any deviations is not in the public interest and should be rejected. The agreement, as proposed, was arrived at without any meaningful consultation or negotiation with the municipality, and directly conflicts

with municipal policies, resident moral imperatives and taxpayer and small business financial interests.

In light of the Board's upcoming generic hearing into the 2000 Model Franchise Agreement, it is important that any order the Board makes to renew the existing franchise agreement preserves Guelph's ability to raise all of its concerns regarding the proposed terms and benefit from any potential amendments that will come. Otherwise, Guelph will be forced into a twenty-year operational agreement based on outdated energy policies and practices, and likely on the precipice of some change.

As such, eMerge submits that its requests are reasonable, just and fair. In other words, they are squarely within the public interest and the Board's power to order.