

# Elson Advocacy

February 9, 2026

**Ritchie Murray**  
Acting Registrar  
Ontario Energy Board  
2300 Yonge Street, 27th Floor  
Toronto, Ontario M4P 1E4  
registrar@oeb.ca

Dear Mr. Murray,

**Re: City of Guelph Franchise Agreement  
EB-2025-0058**

I am writing on behalf of eMERGE Guelph Sustainability (eMERGE Guelph) in response to the new evidence and new submissions filed with the OEB by Enbridge on February 4, 2026 and February 5, 2026. eMERGE Guelph requests that this new material be struck from the record and disregarded, or in the alternative, that the intervenors be given an opportunity to (a) test and respond to the new evidence and (b) respond to the new arguments.

## **New Evidence**

Enbridge's letters of February 4 and 5 refer to new evidence that is not on the record. This includes evidence stated in the letters and not cited to any source, as well as evidence cited to online documents that are not on the record. This is unfair to the intervenors as they have had no opportunity to test the evidence through interrogatories, submit responding evidence, or make submissions on this new evidence. As such, eMERGE requests that the OEB strike the new evidence from the record or, in the alternative, grant the intervenors and opportunity to test the new evidence through interrogatories, respond to it, and make submissions on it.

Some examples of the new evidence include the following:

- Enbridge submitted seven pages of extensive details regarding the existing CPCNs. This information should have been part of its original application. It is directly relevant to intervenor positions regarding the CPCN requested by Enbridge.
- Enbridge submitted statements and financial figures regarding the municipal taxes paid by Enbridge and the cost of municipal services used by Enbridge without citing any source in the evidence (e.g. paragraph 14 of the letter of February 4, 2026 and in the letter

of February 5, 2026). This is relevant to multiple issues in this proceeding and should have been submitted as part of Enbridge’s application.

- Enbridge refers to various online resources in footnote 33 of its letter of February 4, 2026 and footnotes 1, 2, and 4 of its letter of February 5, 2026. The intervenors have had no opportunity to respond to these materials or Enbridge’s interpretation of them.

## New Arguments

Enbridge’s letters also raise new arguments in reply that could and should have been made in its argument-in-chief. This is improper because it unfairly denies intervenors an opportunity to respond. The Court of Appeal has held that reply should not be allowed where it “merely confirms or reinforces points already made or which could have been made in the moving party’s initial factum.”<sup>1</sup> This is not a mere technicality or a rule that applies only in the court context. It is a requirement to ensure all parties have a fair opportunity to make their case and to respond to arguments.<sup>2</sup>

Some examples of the improper reply argument includes the following:

- Arguments based on the new evidence noted above.
- Arguments relating to the climate concerns raised in the eMERGE affidavits, including in paragraphs 49 to 60 of Enbridge’s February 4, 2026 letter.
- Arguments made in the February 5, 2026 letter in response to the public comments. Enbridge already replied to public comments on March 15, 2025. The further response on February 5, 2026 was contrary to the rules, which requires a response before the record is closed.<sup>3</sup> The evidentiary portion of the hearing had closed long before the response was provided.
- Arguments based on the Leamington decision, which could have and should have been made in Enbridge’s argument-in-chief.
- Arguments about the appropriateness of deviations from the Model Franchise Agreement, which could have and should have been made in Enbridge’s argument-in-chief.
- Arguments interpreting the *Municipal Franchises Act*, including that “the OEB does not have to be satisfied that each individual term of the MFA, such as the particular duration of it, is required by public convenience and necessity” (paragraph 9, letter of February 4, 2026).

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<sup>1</sup> *Dennis v. Ontario Lottery and Gaming Commission*, 2012 ONCA 368, at [para 8](#).

<sup>2</sup> *Ottawa-Carleton Association for Persons with Developmental Disabilities/Open Hands v. Séguin*, 2020 ONSC 7405 (Div. Ct.), at [para 37](#).

<sup>3</sup> Ontario Energy Board, *Rules of Practice and Procedure*, Rule 23.05.

As such, eMERGE asks that the above-noted arguments be disregarded or that the intervenors be afforded with an opportunity to respond.

Yours truly,

A handwritten signature in blue ink, appearing to read 'K. Elson', written in a cursive style.

Kent Elson

cc: Parties in the above proceeding