



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

DECISION AND ORDER

EB-2022-0201

ENBRIDGE GAS INC.

**Application for Approval of a Municipal Franchise Agreement with,
and Certificate Amendment for, the Municipality of Leamington**

BEFORE: Robert Dodds
Presiding Commissioner

Michael Janigan
Commissioner

David Sword
Commissioner

March 30, 2023

1 OVERVIEW

This is the Decision and Order of the Ontario Energy Board (OEB) regarding an application filed by Enbridge Gas Inc. (Enbridge Gas) for renewal of the term of its natural gas franchise with the Municipality of Leamington (Municipality).

Enbridge Gas and the Municipality were parties to a municipal gas franchise agreement that took effect on January 20, 2003 and expired on January 20, 2023 (2003 Agreement). Enbridge Gas sought a renewal based on the terms of the Model Franchise Agreement (Model Agreement), for a duration of 20 years.

The Municipality intervened in the proceeding and opposed the renewal application, submitting that such renewal should not be granted unless the terms and conditions included an amendment to the cost-sharing provisions of the Model Agreement.

The OEB does not accept the reasons for an amendment to the Model Agreement advanced by the Municipality. The OEB approves the application as filed by Enbridge Gas under section 10 of the *Municipal Franchises Act* for the renewal of its gas franchise with the Municipality, based on the terms and conditions of the Model Agreement, without amendment, for a further 20-year term, with an effective date of March 30, 2023, and expiry March 30, 2043.

The OEB also grants a new certificate of public convenience and necessity (certificate) to Enbridge Gas in respect of the Municipality, pursuant to section 8 of the *Municipal Franchises Act*. Effective on the date of this Decision and Order, those parts of the existing certificate (F.B.C. 259) held by Enbridge Gas for the former municipalities within the Municipality will be cancelled and replaced with a new certificate to construct works to supply gas in the Municipality. The new certificate does not change the area within the Municipality to which Enbridge Gas's certificate rights pertain but will be geographically aligned with the current municipal boundaries of the Municipality.

2 CONTEXT AND PROCESS

2.1 Application Overview

Enbridge Gas is a corporation incorporated under the laws of the Province of Ontario, with its head office in the City of Toronto.

The Municipality is a municipal corporation incorporated under the laws of the Province of Ontario. It is a lower-tier municipality located in the County of Essex. The Municipality was formed in 1999 upon the amalgamation of the former Town of Leamington and former Township of Mersea.

In this Decision and Order, a reference to the Municipality is a reference to the municipal corporation or its geographical area, as the context requires.

Enbridge Gas and the Municipality were parties to a municipal gas franchise agreement that took effect on January 20, 2003. The duration of the term of the 2003 Agreement was 20 years and, thus, the agreement expired by its terms and conditions on January 20, 2023. The 2003 Agreement was based on the Model Agreement, with no amendments.¹

Prior to the expiry of the 2003 Agreement, Enbridge Gas approached the Municipality to discuss the renewal of the franchise. The Municipality advised that it did not agree to a renewal unless Enbridge Gas consented to a deviation from the cost-sharing provisions of paragraph 12 (d) of the Model Agreement.

Enbridge Gas subsequently filed an application for a franchise renewal under section 10 of the *Municipal Franchises Act*. The section operates where a franchise agreement reaches the end of its term and the parties to the agreement have been unable to agree on the terms and conditions for renewing or extending it. Specifically, section 10 gives the OEB the power, “if public convenience and necessity appear to require it”, to renew the right of a gas company to operate the gas distribution system in a municipality, “upon such terms and conditions as may be prescribed by the OEB”.

¹ The Model Agreement was adopted by the OEB in 2000, following significant input from interested stakeholders, including the Association of Municipalities of Ontario and natural gas distributors, to provide 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.

2.2 Process

On June 30, 2022, Enbridge Gas filed an application under the *Municipal Franchises Act* for an order of the OEB approving a renewal of its gas franchise with the Municipality, based on the terms and conditions of the Model Agreement. Enbridge Gas also applied for an amendment to its certificate in respect of the Municipality. Specifically, Enbridge Gas applied to the OEB under the *Municipal Franchises Act* for the following:

- (a) an Order pursuant to s.10 approving the terms and conditions upon which, and the period for which, the Municipality of Leamington is, by by-law, to grant Enbridge Gas 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; and
- (b) an Order pursuant to s.9(4) directing and declaring that the assent of the municipal electors of the Municipality of Leamington is not necessary for the proposed franchise agreement by-law under the circumstances²; and
- (c) an Order pursuant to s.8 cancelling and superseding those parts of the existing Certificate of Public Convenience and Necessity held by Enbridge Gas Inc. for the former municipalities within the Municipality of Leamington and replacing them with a Certificate of Public Convenience and Necessity to construct works to supply natural gas in the Municipality of Leamington.

On July 27, 2022, the OEB issued a notice of hearing advising, among other things, that requests from interested persons to intervene in the proceeding would be accepted until August 8, 2022.

On August 5, 2022, the Municipality filed an intervention request, advising of its intention to file evidence, interrogatories, and argument in the proceeding.

On August 12, 2022, and August 23, 2022, the OEB issued letters to the Municipality requesting additional information pertaining to the nature of its intervention request in order to assist the OEB in establishing the procedural timeline for the hearing.

Through its responses dated August 19, 2022, and August 29, 2022, the Municipality

² In its Reply Argument, Enbridge Gas withdrew this request. Section 10 (5) of the *Municipal Franchises Act* provides that an order of the OEB under section 10 (2) is deemed to be a valid by-law of the Municipality, assented to by municipal electors.

advised that its interest in the proceeding would be focused on Enbridge Gas's request in respect of the franchise renewal, that it would be arguing for a deviation from the standard terms and conditions of the Model Agreement, and that it reserved its right to make additional arguments.

On September 8, 2022, the OEB issued Procedural Order No. 1, wherein it approved the Municipality as an intervenor and set the dates for, among other things, the filing of interrogatories, interrogatory responses, and evidence from the Municipality.

On November 18, 2022, the OEB issued Procedural Order No. 2, wherein it set the dates for the filing of reply evidence from Enbridge Gas, interrogatories, and written submissions.

All of the required documents were filed by the parties in accordance with the dates established by the OEB.

3 REQUEST FOR RENEWAL OF THE GAS FRANCHISE

3.1 Do Public Convenience and Necessity Require that the Franchise be Renewed?

Enbridge Gas submitted that it has been providing access to gas services in the Municipality since 1889³ and that its franchise should be renewed.⁴ Enbridge Gas also submitted that it currently serves 9,520 customers within the Municipality⁵ and that there is no other natural gas distributor in the area.⁶

OEB staff submitted that public convenience and necessity require a renewal of the franchise given that the existing 2003 Agreement is expired, and that the OEB should exercise its jurisdiction under section 10 (2) of the *Municipal Franchises Act* to renew the term of the franchise.⁷

The Municipality submitted that it was being forced by Enbridge Gas to enter into a form of franchise agreement to which the Municipality objects. The Municipality's submissions were focused in support of its position that it did not agree with a renewal of the gas franchise based on Model Agreement, unless the terms and conditions thereof were amended such that matters involving the *Drainage Act*⁸ would be governed by the costs sharing provision of the *Drainage Act*.⁹

Findings

For the reasons set out herein, the OEB finds Enbridge Gas's franchise with the Municipality should be renewed.

The franchise agreement to which Enbridge Gas and the Municipality were a party to expired in January 2023. Because the franchise agreement has expired, the OEB has the legislative power to intervene and issue an order in respect of a renewal even if

³ Application, para 5

⁴ Application, para 14

⁵ Application, para

⁶ Application, para 15

⁷ OEB Staff Submission, page 8

⁸ R.S.O. 1990, c. D. 17

⁹ Municipality of Leamington Submission, paras 2 and 10

there is no agreement between the municipality and Enbridge Gas. Sections 10 (1) and (2) of the *Municipal Franchises Act* provide the following pertaining to the OEB's legislative powers:

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 operate 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.

Powers of Energy Board

10 (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.

The nature and scope of the OEB's powers under s. 10 of the *Municipal Franchises Act* have been confirmed by a number of decisions of the courts.¹⁰

When determining an application under section 10 of the *Municipal Franchises Act*, the OEB must address whether public convenience and necessity require the renewal or extension of the term of the franchise. The OEB is guided by the objectives of the *Ontario Energy Board Act, 1998* (OEB Act) relating to supply, distribution, storage and transmission in determining public convenience and necessity.¹¹ Section 2 of the OEB Act provides that, when carrying out its responsibilities in relation to gas, the OEB shall be guided by certain objectives, including:

- To inform consumers and protect their interests with respect to prices and the reliability and quality of gas service. (Section 2(2))

¹⁰ *Sudbury (City of) v Union Gas Ltd.*, 2001 CanLII 2886. See also: *Re City of Peterborough and Consumers Gas (1980)*, 111 D.L.R. (3d) 234, wherein the Divisional Court stated: "If however there is no [Franchise] agreement, it is obviously a matter for adjudication by the Board and they must decide the terms and conditions that the [Municipal Franchises] Act contemplates. This is a matter that is entirely within the Board's discretion, to be exercised after a proper hearing."

¹¹ E.B.A. 825/872 , para. 4.0.3

- To facilitate the rational expansion of transmission and distribution systems. (Section 2(3))
- To facilitate the maintenance of a financially viable gas industry for the transmission, distribution and storage of gas. (Section 2(5))

There is no evidence that would support a denial of the application. The OEB finds that public convenience and necessity require renewal of the term of the gas franchise between Enbridge Gas and the Municipality.

The dispute with respect to the appropriate terms and conditions of the renewed franchise agreement is discussed in the next section of the Decision and Order.

3.2 If Public Convenience and Necessity Require a Renewal of the Franchise, upon what Terms and Conditions should the Renewal be Ordered?

In its application, Enbridge Gas advised that, on June 8, 2022, it met with the Municipality to discuss concerns that the Municipality had with the Model Agreement, and to review the regulatory process associated with having a franchise agreement approved by the OEB. The Municipality was informed that Enbridge Gas currently has franchise agreements in place with 312 lower and single-tier municipalities and that all are the current Model Agreement without amendments (except for one that contains a service area limitation).

Enbridge further advised that, on June 28, 2022, the Council of the Municipality voted not to approve the form of draft by-law and Model Agreement proposed by Enbridge Gas, and instead requested that any order of the OEB renewing or extending the term of the rights within the Model Agreement include an order directing an amendment to paragraph 12 (d) of the Model Agreement (with proposed new language underlined) as follows:

The total relocation costs as calculated above shall be paid 35% by the Corporation and 65% by the Gas Company, except where the part of the gas system required to be moved is located in an unassumed road or in an unopened road allowance and the

Corporation has not approved its location, or the relocation is required pursuant to the report of an engineer appointed under the Drainage Act, R.S.O. 1990, c. D.17 or the costs have been assessed pursuant to section 26 of the Drainage Act, R.S.O. 1990, c. D.17 in which case the Gas Company shall pay 100% of the relocation costs.

Enbridge Gas stated that it did not support the proposed amendment to paragraph 12 (d) of the Model Agreement, and that it took this position given the consistency of franchise agreements currently in place throughout Ontario and given a decision in 2018 by the Ontario Court of Appeal related to the specific *Drainage Act* issue being raised by the Municipality.¹²

Drainage System in the Municipality

Enbridge Gas submitted that the Municipality failed to provide evidence to support its assertion that its drainage systems are unique and that deviation from the Model Agreement is warranted. Enbridge Gas stated that there are drainage issues that have impacted natural gas infrastructure in other municipalities in which it provides services, and that it works directly with municipalities (and their consultants) to assess design options with respect to municipal drainage projects. Enbridge Gas added that it has paid 100% of relocation costs in instances where it was determined that natural gas infrastructure was installed in a manner that impacted drainage infrastructure and that there have been instances where it has worked with a municipal drainage engineer to avoid relocating natural gas infrastructure. Enbridge Gas submitted that it follows the cost-sharing provisions of the Model Agreement in all municipalities in which it provides gas services.¹³

OEB staff submitted that, even if the Municipality's position in respect of its unique topography is accepted, the cost-sharing provisions of the Model Agreement should still apply to the Municipality.¹⁴ OEB staff noted that the cost-sharing provisions of the Model Agreement were intended to apply uniformly throughout the Province. If the cost-sharing formula in paragraph 12 (d) of the Model Agreement does not apply in the Municipality, then it will result in an increase in the share of costs to be borne by Enbridge Gas, with the likely result that these costs will be passed on to Enbridge Gas's ratepayers. OEB staff submitted that it would not be in the public interest for all of Enbridge Gas's

¹² *Union Gas Limited v. Norwich Township*, 2018 Carswell Ont 55 (C.A.)

¹³ Enbridge Gas Argument-in Chief, paras 5-7

¹⁴ OEB Staff Submission, page 7

customers to pay for additional costs where those costs are attributable to the unique topography of the Municipality (assuming this is the case).¹⁵

The Municipality submitted that, due to its unique geography and drainage systems, it would be faced with paying 35% of the costs of pipeline relocations more often than other municipalities, and that this would place an unnecessary burden upon its taxpayers.¹⁶ The Municipality advised that it has 445 municipal drains and that many of the drains are along roads.¹⁷ The Municipality further submitted that “an exemption from the cost sharing provisions related to relocations caused as a result of drainage works is reasonable in these circumstances and public policy would dictate such costs should be spread amongst the Enbridge ratepayers, rather than the Municipality’s taxpayers”.¹⁸

In its reply argument, Enbridge Gas reiterated its position that the Municipality did not provide any evidence to demonstrate that the topography in the Municipality presents drainage-related operational challenges that are unique compared to other municipalities in Ontario, and that the Municipality is not unique with respect to Enbridge Gas’s operations as compared to other municipalities within the province.¹⁹

Paragraph 12 of the Model Agreement

Enbridge Gas submitted that the renewal of the 2003 Agreement should be based on the terms and conditions of the Model Agreement, without amendment. Enbridge Gas stated that it disagreed with the Municipality’s submission that the agreement to operate under the existing franchise agreement has always been based upon the understanding that matters involving the *Drainage Act* would be governed by the costs sharing provision of the *Drainage Act*. Enbridge Gas submitted that it has always maintained that the franchise agreement between the parties operates as an “exception to the cost allocation provisions set out in the *Drainage Act*” and that this position is supported by the Ontario Court of Appeal’s decision in *Union Gas Limited v. The Corporation of the Township of Norwich (Norwich)*.²⁰

¹⁵ OEB Staff Submission, page 7

¹⁶ Municipality of Leamington, Letter, August 29, 2022

¹⁷ Evidence of the Municipality of Leamington, para 4

¹⁸ Municipality of Leamington, Letter, August 29, 2022

¹⁹ Enbridge Gas Reply Argument, para 5

²⁰ Enbridge Gas Reply Argument, para 8

Enbridge Gas submitted that the *Norwich* decision provides that the cost-sharing mechanism in the Model Agreement prevails over any assessment that was or could be made under the *Drainage Act* (against a utility as a result of the relocation of its pipeline to accommodate municipal work). Enbridge Gas argued that the Court of Appeal also found that the *Drainage Act* is not a public policy statute; that there is nothing in the legislative scheme to suggest that the ability to contract for the allocation of relocation costs between a municipality and a utility is contrary to public policy; and that the OEB explicitly found that the franchise agreement was “in the public interest”.²¹ Enbridge Gas further submitted that the Model Agreement outlines the terms that the OEB finds reasonable under the *Municipal Franchises Act* and has advised natural gas distributors that they are to follow the form of the agreement.²²

OEB staff’s views on the *Norwich* decision generally aligned with those of Enbridge Gas. In addition, OEB staff stated that, in that decision, the Court of Appeal also acknowledged that the cost-sharing mechanism in paragraph 12 of the Model Agreement was developed by the OEB as a disincentive to municipalities to require gas pipeline relocation. In OEB staff’s view, renewal of the franchise between Enbridge Gas and the Municipality based on the terms and conditions of the Model Agreement, including the cost-sharing provisions in paragraph 12, would preserve the balancing of interests that the OEB sought to achieve when approving the Model Agreement.

The Municipality argued that, if the OEB orders a renewal of the 2003 Agreement, the terms and conditions of the Model Agreement should be amended in respect of the cost-sharing provisions at paragraph 12 (d), as described in detail previously in this decision.

The Municipality took the position that the cost-sharing provisions of the Model Agreement are open to negotiation, based on the ruling in *Norwich*. The Municipality submitted that the Court upheld the cost-sharing provisions of the franchise agreement in *Norwich* because the municipality in that case voluntarily contracted out the *Drainage Act* cost-sharing provisions. The Municipality stated that, in objecting to the renewal at this time, the Municipality “is clearly articulating that it does not agree to contract out of the *Drainage Act*”.²³ The Municipality also submitted that it has operated under the terms of the 2003 Agreement but with the understanding that the cost-sharing

²¹ Enbridge Gas Reply Argument para 10

²² Enbridge Gas Reply Argument para 7

²³ Municipality of Leamington Submission, para 8, 9

provisions in the *Drainage Act* would govern matters involving the *Drainage Act*.²⁴ In summary, the Municipality argued that “the decision in *Norwich* changed the landscape with respect the Franchise Agreement where drainage works are involved” and “Enbridge has failed to recognize the change from the decision and has in turn sought to take advantage of the decision of the Court of Appeal by refusing to negotiate changes to the model Franchise Agreement”.²⁵

In its reply argument, Enbridge Gas confirmed that additional costs would be passed on to Enbridge Gas’s ratepayers throughout the province if the cost-sharing formula in paragraph 12 (d) of the Model Agreement does not apply in the Municipality. Enbridge Gas submitted that there is no compelling reason to amend the Model Agreement for the Municipality.²⁶

Findings

The OEB finds that the renewal of the gas franchise between Enbridge Gas and the Municipality shall be based on the standard terms and conditions of the Model Agreement, providing for a twenty-year term, without amendment.

The standard terms that address cost-sharing in the Model Agreement were developed to provide certainty and resolve any dispute in an equitable manner. While the OEB understands that the *Drainage Act* may provide a more favourable result for the Municipality, the OEB finds that the *Norwich* decision supported a view of the Model Agreement, in general, as best meeting the public interest by providing fair treatment of both the civic duties of the Municipality and the fair treatment of Enbridge Gas’s ratepayers. This is preferable to a piecemeal approach of negotiating terms specific to a franchise. The OEB is ultimately not convinced that topographic difficulties referenced by the Municipality are sufficient to initiate a renegotiating of cost-sharing provisions in the Model Agreement. Moreover, the OEB notes that the cost-sharing arrangement in the Model Agreement is not an outlier, as such arrangements to share costs of necessary public requirements in which the municipality may have an interest exist in multiple contexts (see for example, the *Public Service on Highways Act*²⁷).

²⁴ Municipality of Leamington Submission, para 2

²⁵ Municipality of Leamington Submission, para 10

²⁶ Enbridge Gas Reply Argument, para 6, 9

²⁷ R.S.O. 1990, c. P.49

4 REQUEST FOR A NEW CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

The Municipality is a lower-tier municipality located in the County of Essex, and was formed on January 1, 1999 with the amalgamation of the former Town of Leamington and the former Township of Mersea. In its application, Enbridge Gas provided the context of its certificate rights in the Municipality, as follows:

Enbridge Gas has a Certificate of Public Convenience and Necessity (FBC 259 dated March 17, 1959) that applies to several municipalities including the former Town of Leamington and the former Township of Mersea which is attached as Schedule “C”. Enbridge Gas and its predecessors have been providing access to gas distribution services within the Municipality of Leamington since approximately 1889 in the former Township of Mersea and since approximately 1904 in the former Town of Leamington.

Enbridge Gas applied for an Order pursuant to section 8 of the *Municipal Franchises Act* cancelling those parts FBC 259 for the former municipalities within the Municipality (i.e. the historic Town of Leamington and the historic Township of Mersea), and replacing them with a new certificate to construct works to supply natural gas in the Municipality.

In its argument-in-chief, Enbridge Gas submitted that the requested certificate will not change the area within the Municipality to which Enbridge Gas’s certificate rights pertain but will be geographically aligned with the current municipal boundaries of the Municipality. Enbridge Gas added that a new certificate would avoid any confusion of references to former municipalities.²⁸

OEB staff noted 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. OEB staff submitted that, in this case, the certificate was issued in 1959, and the requested amendment aligns with current

²⁸ Enbridge Gas, Argument-in-Chief, para 11.

municipal boundaries and avoids potential confusion that may arise from references to the historic municipalities that were amalgamated to create the Municipality in 1999.²⁹ The Municipality did not make submissions on Enbridge Gas's certificate request.

Findings

The OEB approves Enbridge Gas's request to cancel and supersede those parts of the Certificate held by Enbridge Gas for the former municipalities within the Municipality and replacing them with a Certificate of Public Convenience and Necessity to construct works to supply natural gas in the Municipality.

The OEB accepts the submissions made by Enbridge Gas and OEB staff that this approval may serve to avoid any potential confusion that might arise from the reliance of an old certificate that references historic (and since-amalgamated former) municipalities.

²⁹ See, for example: EB-2022-0172, Decision and Order, issued September 8, 2022, wherein the OEB approved Enbridge Gas's request for a new certificate that was "geographically aligned with the current municipal boundaries of the Township of North Dumfries [and stated that the] approach is reasonable given the evidence provided by Enbridge Gas regarding the coverage associated with the historical certificates and the location of its current infrastructure, specifically in the former Township of Beverly".

See also: EB-2022-0253, Decision and Order, issued January 24, 2023, wherein the OEB approved the issuance of a new certificate that "is geographically aligned with the current municipal boundaries of the Town of Bracebridge" and found the "approach is reasonable given that the company has also demonstrated its plans for system expansion within the municipality."

5 ORDER

THE ONTARIO ENERGY BOARD ORDERS:

1. The terms and conditions upon which, and the period for which, the Municipality of Leamington is 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 municipality, as set out in the municipal franchise agreement attached as Schedule A, are approved. A current map of the Municipality of Leamington is attached as Schedule B.
2. This order shall be deemed to be a valid by-law of the Municipality of Leamington assented to by the municipal electors, with an effective date of March 30, 2023, and expiry date of March 30, 2043.
3. A new certificate of public convenience and necessity, attached as Schedule C, is granted to Enbridge Gas Inc. to construct works or supply natural gas in the Municipality of Leamington. This certificate of public convenience and necessity cancels and supersedes those parts of FBC 259 relating to the former Town of Leamington and the former Township of Mersea.
4. Enbridge Gas Inc. shall pay the OEB's costs incidental to this proceeding upon receipt of the OEB's invoice.

DATED at Toronto March 30, 2023

ONTARIO ENERGY BOARD

Nancy Marconi
Registrar

SCHEDULE A
MUNICIPAL FRANCHISE AGREEMENT
ENBRIDGE GAS INC.
EB-2022-0201
MARCH 30, 2023

2000 Model Franchise Agreement

THIS AGREEMENT effective this day of , 2022

BETWEEN:

THE CORPORATION OF THE MUNICIPALITY OF LEAMINGTON

hereinafter called the "Corporation"

- and -

ENBRIDGE GAS INC.

hereinafter called the "Gas Company"

WHEREAS the Gas Company desires to distribute, store and transmit gas in the Municipality upon the terms and conditions of this Agreement;

AND WHEREAS by by-law passed by the Council of the Corporation (the "By-law"), the duly authorized officers have been authorized and directed to execute this Agreement on behalf of the Corporation;

THEREFORE the Corporation and the Gas Company agree as follows:

Part I - Definitions

1. In this Agreement

- (a) "decommissioned" and "decommissions" when used in connection with parts of the gas system, mean any parts of the gas system taken out of active use and purged in accordance with the applicable CSA standards and in no way affects the use of the term 'abandoned' pipeline for the purposes of the *Assessment Act*;
- (b) "Engineer/Road Superintendent" means the most senior individual employed by the Corporation with responsibilities for highways within the Municipality or the person designated by such senior employee or such other person as may from time to time be designated by the Council of the Corporation;

- (c) "gas" means natural gas, manufactured gas, synthetic natural gas, liquefied petroleum gas or propane-air gas, or a mixture of any of them, but does not include a liquefied petroleum gas that is distributed by means other than a pipeline;
- (d) "gas system" means such mains, plants, pipes, conduits, services, valves, regulators, curb boxes, stations, drips or such other equipment as the Gas Company may require or deem desirable for the distribution, storage and transmission of gas in or through the Municipality;
- (e) "highway" means 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;
- (f) "Model Franchise Agreement" means the form of agreement which the Ontario Energy Board uses as a standard when considering applications under the *Municipal Franchises Act*. The Model Franchise Agreement may be changed from time to time by the Ontario Energy Board;
- (g) "Municipality" means the territorial limits of the Corporation on the date when this Agreement takes effect, and any territory which may thereafter be brought within the jurisdiction of the Corporation;
- (h) "Plan" means the plan described in Paragraph 5 of this Agreement required to be filed by the Gas Company with the Engineer/Road Superintendent prior to commencement of work on the gas system; and
- (i) whenever the singular, masculine or feminine is used in this Agreement, it shall be considered as if the plural, feminine or masculine has been used where the context of the Agreement so requires.

Part II - Rights Granted

2. To provide gas service

The consent of the Corporation is hereby given and granted to the Gas Company to distribute, store and transmit gas in and through the Municipality to the Corporation and to the inhabitants of the Municipality.

3. To Use Highways

Subject to the terms and conditions of this Agreement the consent of the Corporation is hereby given and granted to the Gas Company to enter upon all highways now or at any time hereafter under the jurisdiction of the Corporation and to lay, construct, maintain, replace, remove, operate and repair a gas system for the distribution, storage and transmission of gas in and through the Municipality.

4. Duration of Agreement and Renewal Procedures

(a) If the Corporation has not previously received gas distribution services, the rights hereby given and granted shall be for a term of 20 years from the date of final passing of the By-law.

or

(b) If the Corporation has previously received gas distribution services, the rights hereby given and granted shall be for a term of 20 years from the date of final passing of the By-law provided that, if during the 20 year term of this Agreement, the Model Franchise Agreement is changed, then on the 7th anniversary and on the 14th anniversary of the date of the passing of the By-law, this Agreement shall be deemed to be amended to incorporate any changes in the Model Franchise Agreement in effect on such anniversary dates. Such deemed amendments shall not apply to alter the 20 year term.

(c) At any time within two years prior to the expiration of this 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. Until such renewal has been settled, the terms and conditions of this Agreement shall continue, notwithstanding the expiration of this Agreement. This shall not preclude either party from applying to the Ontario Energy Board for a renewal of the Agreement pursuant to section 10 of the *Municipal Franchises Act*.

Part III – Conditions

5. Approval of Construction

- (a) The Gas Company shall not undertake any excavation, opening or work which will disturb or interfere with the surface of the travelled portion of any highway unless a permit therefor has first been obtained from the Engineer/Road Superintendent and all work done by the Gas Company shall be to his satisfaction.
- (b) Prior to the commencement of work on the gas system, or any extensions or changes to it (except service laterals which do not interfere with municipal works in the highway), the Gas Company shall file with the Engineer/Road Superintendent a Plan, satisfactory to the Engineer/Road Superintendent, drawn to scale and of sufficient detail considering the complexity of the specific locations involved, showing the highways in which it proposes to lay its gas system and the particular parts thereof it proposes to occupy.
- (c) The Plan filed by the Gas Company shall include geodetic information for a particular location:
 - (i) where circumstances are complex, in order to facilitate known projects, including projects which are reasonably anticipated by the Engineer/Road Superintendent, or
 - (ii) when requested, where the Corporation has geodetic information for its own services and all others at the same location.
- (d) The Engineer/Road Superintendent may require sections of the gas system to be laid at greater depth than required by the latest CSA standard for gas pipeline systems to facilitate known projects or to correct known highway deficiencies.
- (e) Prior to the commencement of work on the gas system, the Engineer/Road Superintendent must approve the location of the work as shown on the Plan filed by the Gas Company, the timing of the work and any terms and conditions relating to the installation of the work.
- (f) In addition to the requirements of this Agreement, if the Gas Company proposes to affix any part of the gas system to a bridge, viaduct or other structure, if the Engineer/Road Superintendent approves this proposal, he may require the Gas Company to comply with special conditions or to enter into a separate agreement as a condition of the approval of this part of the construction of the gas system.

- (g) Where the gas system may affect a municipal drain, the Gas Company shall also file a copy of the Plan with the Corporation's Drainage Superintendent for purposes of the *Drainage Act*, or such other person designated by the Corporation as responsible for the drain.
- (h) The Gas Company shall not deviate from the approved location for any part of the gas system unless the prior approval of the Engineer/Road Superintendent to do so is received.
- (i) The Engineer/Road Superintendent's approval, where required throughout this Paragraph, shall not be unreasonably withheld.
- (j) The approval of the Engineer/Road Superintendent is not a representation or warranty as to the state of repair of the highway or the suitability of the highway for the gas system.

6. As Built Drawings

The Gas Company shall, within six months of completing the installation of any part of the gas system, provide two copies of "as built" drawings to the Engineer/Road Superintendent. These drawings must be sufficient to accurately establish the location, depth (measurement between the top of the gas system and the ground surface at the time of installation) and distance of the gas system. The "as built" drawings shall be of the same quality as the Plan and, if the approved pre-construction plan included elevations that were geodetically referenced, the "as built" drawings shall similarly include elevations that are geodetically referenced. Upon the request of the Engineer/Road Superintendent, the Gas Company shall provide one copy of the drawings in an electronic format and one copy as a hard copy drawing.

7. Emergencies

In the event of an emergency involving the gas system, the Gas Company shall proceed with the work required to deal with the emergency, and in any instance where prior approval of the Engineer/Road Superintendent is normally required for the work, the Gas Company shall use its best efforts to immediately notify the Engineer/Road Superintendent of the location and nature of the emergency and the work being done and, if it deems appropriate, notify the police force, fire or other emergency services having jurisdiction. The Gas Company shall provide the Engineer/Road Superintendent with at least one 24 hour emergency contact for the Gas Company and shall ensure the contacts are current.

8. Restoration

The Gas Company shall well and sufficiently restore, to the reasonable satisfaction of the Engineer/Road Superintendent, all highways, municipal works or improvements which it may excavate or interfere with in the course of laying, constructing, repairing or removing its gas system, and shall make good any settling or subsidence thereafter caused by such excavation or interference. If the Gas Company fails at any time to do any work required by this Paragraph within a reasonable period of time, the Corporation may do or cause such work to be done and the Gas Company shall, on demand, pay the Corporation's reasonably incurred costs, as certified by the Engineer/Road Superintendent.

9. Indemnification

The Gas Company shall, at all times, indemnify and save harmless the Corporation from and against all claims, including costs related thereto, for all damages or injuries including death to any person or persons and for damage to any property, arising out of the Gas Company operating, constructing, and maintaining its gas system in the Municipality, or utilizing its gas system for the carriage of gas owned by others. Provided that the Gas Company shall not be required to indemnify or save harmless the Corporation from and against claims, including costs related thereto, which it may incur by reason of damages or injuries including death to any person or persons and for damage to any property, resulting from the negligence or wrongful act of the Corporation, its servants, agents or employees.

10. Insurance

- (a) The Gas Company shall maintain Comprehensive General Liability Insurance in sufficient amount and description as shall protect the Gas Company and the Corporation from claims for which the Gas Company is obliged to indemnify the Corporation under Paragraph 9. The insurance policy shall identify the Corporation as an additional named insured, but only with respect to the operation of the named insured (the Gas Company). The insurance policy shall not lapse or be cancelled without sixty (60) days' prior written notice to the Corporation by the Gas Company.
- (b) The issuance of an insurance policy as provided in this Paragraph shall not be construed as relieving the Gas Company of liability not covered by such insurance or in excess of the policy limits of such insurance.
- (c) Upon request by the Corporation, the Gas Company shall confirm that premiums for such insurance have been paid and that such insurance is in full force and effect.

11. **Alternative Easement**

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 share the cost of relocating or altering the gas system to facilitate continuity of gas service, as provided for in Paragraph 12 of this Agreement.

12. **Pipeline Relocation**

- (a) If in the course of constructing, reconstructing, changing, altering or improving any highway or any municipal works, the Corporation 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 within a reasonable period of time such part of the gas system to a location approved by the Engineer/Road Superintendent.
- (b) Where any part of the gas system relocated in accordance with this Paragraph is located on a bridge, viaduct or structure, the Gas Company shall alter or relocate that part of the gas system at its sole expense.
- (c) Where any part of the gas system relocated in accordance with this Paragraph is located other than on a bridge, viaduct or structure, the costs of relocation shall be shared between the Corporation and the Gas Company on the basis of the total relocation costs, excluding the value of any upgrading of the gas system, and deducting any contribution paid to the Gas Company by others in respect to such relocation; and for these purposes, the total relocation costs shall be the aggregate of the following:
 - (i) the amount paid to Gas Company employees up to and including field supervisors for the hours worked on the project plus the current cost of fringe benefits for these employees,
 - (ii) the amount paid for rental equipment while in use on the project and an amount, charged at the unit rate, for Gas Company equipment while in use on the project,
 - (iii) the amount paid by the Gas Company to contractors for work related to the project,

- (iv) the cost to the Gas Company for materials used in connection with the project, and
 - (v) a reasonable amount for project engineering and project administrative costs which shall be 22.5% of the aggregate of the amounts determined in items (i), (ii), (iii) and (iv) above.
- (d) The total relocation costs as calculated above shall be paid 35% by the Corporation and 65% by the Gas Company, except where the part of the gas system required to be moved is located in an unassumed road or in an unopened road allowance and the Corporation has not approved its location, in which case the Gas Company shall pay 100% of the relocation costs.

Part IV - Procedural And Other Matters

13. Municipal By-laws of General Application

The Agreement is subject to the provisions of all regulating statutes and all municipal by-laws of general application, except by-laws which have the effect of amending this Agreement.

14. Giving Notice

Notices may be delivered to, sent by facsimile or mailed by prepaid registered post to the Gas Company at its head office or to the authorized officers of the Corporation at its municipal offices, as the case may be.

15. Disposition of Gas System

- (a) If the Gas Company decommissions part of its gas system affixed to a bridge, viaduct or structure, the Gas Company shall, at its sole expense, remove the part of its gas system affixed to the bridge, viaduct or structure.
- (b) 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 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 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 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.

16. Use of Decommissioned Gas System

- (a) The Gas Company shall provide promptly to the Corporation, to the extent such information is known:
 - (i) the names and addresses of all third parties who use decommissioned parts of the gas system for purposes other than the transmission or distribution of gas; and
 - (ii) the location of all proposed and existing decommissioned parts of the gas system used for purposes other than the transmission or distribution of gas.
- (b) The Gas Company may allow a third party to use a decommissioned part of the gas system for purposes other than the transmission or distribution of gas and may charge a fee for that third party use, provided
 - (i) the third party has entered into a municipal access agreement with the Corporation; and
 - (ii) the Gas Company does not charge a fee for the third party's right of access to the highways.
- (c) Decommissioned parts of the gas system used for purposes other than the transmission or distribution of gas are not subject to the provisions of this Agreement. For decommissioned parts of the gas system used for purposes other than the transmission and distribution of gas, issues such as relocation costs will be governed by the relevant municipal access agreement.

17. Franchise Handbook

The Parties acknowledge that operating decisions sometimes require a greater level of detail than that which is appropriately included in this Agreement. The Parties agree to look for guidance on such matters to the Franchise Handbook prepared by the Association of Municipalities of Ontario and the gas utility companies, as may be amended from time to time.

18. Other Conditions

Notwithstanding the cost sharing arrangements described in Paragraph 12, if any part of the gas system altered or relocated in accordance with Paragraph 12 was constructed or installed prior to January 1, 1981, the Gas Company shall alter or relocate, at its sole expense, such part of the gas system at the point specified, to a location satisfactory to the Engineer/Road Superintendent.

19. Agreement Binding Parties

This Agreement shall extend to, benefit and bind the parties thereto, their successors and assigns, respectively.

IN WITNESS WHEREOF the parties have executed this Agreement effective from the date written above.

**THE CORPORATION OF THE
MUNICIPALITY OF LEAMINGTON**

Per:

Hilda MacDonald, Mayor

Per:

Brenda M. Percy, Clerk

ENBRIDGE GAS INC.

Per:

Mark Kitchen, Director
Regulatory Affairs

Per:

Steven Jelich, Director,
Southwest Region Operations

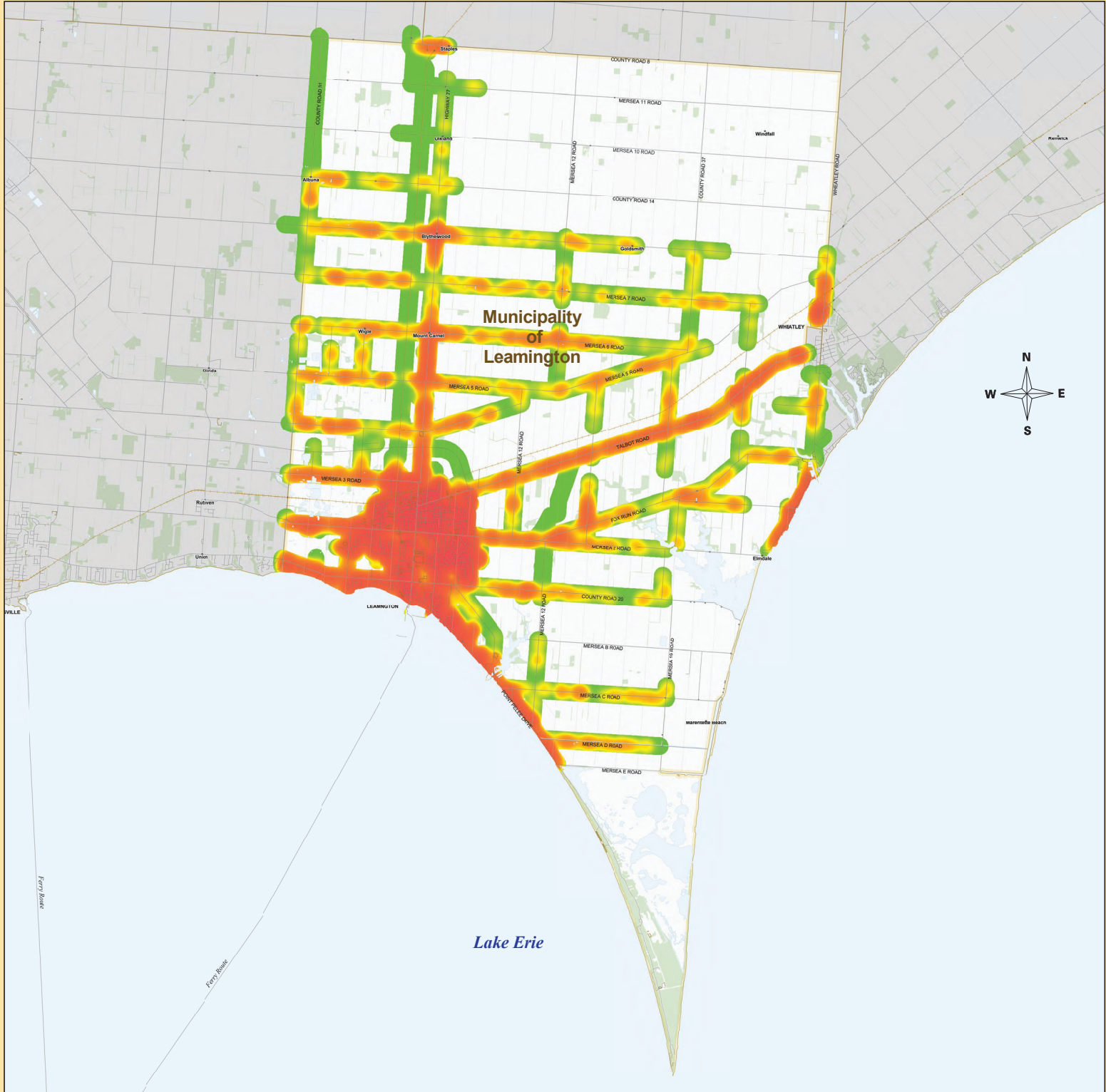
SCHEDULE B

MAP OF THE MUNICIPALITY OF LEAMINGTON

ENBRIDGE GAS INC.

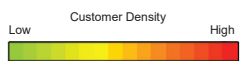
EB-2022-0201

MARCH 30, 2023

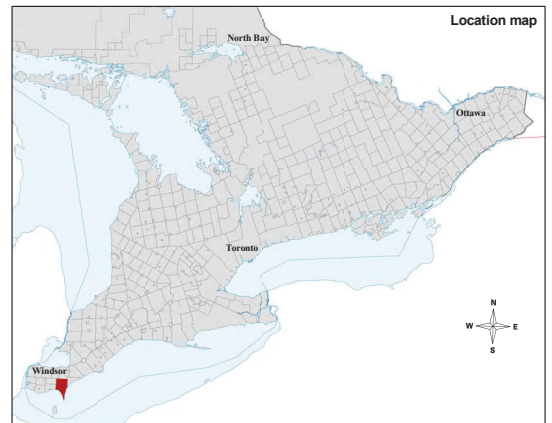


Municipality of Leamington

- Legend**
- Enbridge Gas Pipeline Coverage Area
 - Municipality of Leamington
 - Roads
 - Railways
 - Municipal and Township Boundaries
 - First Nation Boundaries



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



SCHEDULE C
CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY
ENBRIDGE GAS INC.
EB-2022-0201
MARCH 30, 2023

EB-2022-0201

Certificate of Public Convenience and Necessity

The Ontario Energy Board grants

Enbridge Gas Inc.

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

Municipality of Leamington

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

This certificate of public convenience and necessity cancels and supersedes: FBC 259 (former Town of Leamington) and FBC 259 (former Township of Mersea).

DATED at Toronto March 30, 2023

ONTARIO ENERGY BOARD

Nancy Marconi
Registrar