



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

DECISION AND ORDER

EB-2022-0207

ENBRIDGE GAS INC.

**Application for Approval of a Municipal Franchise Agreement with
the County of Essex**

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) on July 13, 2022, for renewal of the term of its natural gas franchise with the County of Essex, based on the terms and conditions of the Model Franchise Agreement issued by the OEB in 2000 (Model Agreement).

The County of Essex intervened in the proceeding and opposed the application and submitted that the municipal franchise agreement that was executed between the County of Essex and Union Gas Limited (Union Gas) in December 1957 (1957 Agreement) remained as the governing agreement. (Enbridge Gas is now the franchise holder as a result of the merger of Enbridge Gas Distribution Inc. with Union Gas Limited effective January 2019).

The OEB finds that the 1957 Agreement had expired because of the application of the rule against perpetuities.¹ The OEB orders the renewal of the franchise agreement based on the terms and conditions of the Model Agreement, in accordance with public convenience and necessity, as provided in the *Municipal Franchises Act*. The renewal is for a period of twenty years, with an effective date of March 30, 2023, and expiry of March 30, 2043, with no amendments to the Model Agreement.

¹ The *Perpetuities Act*, R.S.O 1990 Chap P.9, section 2 provides that the common law rule against perpetuities remains in effect.

2 CONTEXT AND PROCESS

Enbridge Gas is a natural gas storage, transmission and distribution company that brings natural gas services to homes and businesses throughout Ontario, including the County of Essex. Enbridge Gas holds a certificate of public convenience and necessity for the County of Essex, dated January 8, 1958, and operates the franchise granted by the County of Essex in the 1957 Agreement (originally granted to Union Gas Limited in December 1957). Enbridge Gas has constructed and continues to operate numerous transmission and distribution lines along roads under the jurisdiction of the County of Essex.

The County of Essex is a municipal corporation. It is an upper-tier regional municipality comprised of the Town of Amherstburg, the Town of Essex, the Town of Kingsville, the Municipality of Lakeshore, the Town of LaSalle, the Municipality of Leamington and the Town of Tecumseh.

Enbridge Gas filed the application for a renewal of the term of its franchise with the County of Essex on July 13, 2022. Enbridge Gas applied under the *Municipal Franchises Act* for the following:

- a) an order under section 10 (2), approving the terms and conditions upon which, and the period for which, the County of Essex 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 under section 9 (4), directing and declaring that the assent of the municipal electors of County of Essex is not necessary for the proposed franchise agreement by-law under the circumstances.

During the proceeding, Enbridge Gas withdrew its request for relief under section 9 (4), given that an order of the OEB granted under section 10 (2) of the *Municipal Franchises Act* is deemed to be a valid by-law of the municipality assented to by the municipal electors.²

The County of Essex submitted an intervention request on August 19, 2022, seeking to submit evidence, interrogatories, and arguments pursuant to [OEB's Rules of Practice](#)

² Enbridge Gas withdrew this request in its Argument-in-Chief. 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 the municipal electors.

[and Procedure](#). On September 7, 2022, the County of Essex was approved as an intervenor.

The OEB issued Procedural Orders that provided for the filing of evidence and interrogatories as well as oral submissions accompanied by a written summary and a compendium by Enbridge Gas, the County of Essex and OEB staff.

On February 8, 2023, the parties delivered their submissions to the OEB, orally, using the Zoom video conferencing platform for remote hearings. The central issues raised by the submissions were whether the 1957 Agreement was still in effect and, if not, should the Model Agreement provide the terms for the franchise renewal.

3 RENEWAL OF THE FRANCHISE AGREEMENT

3.1 Status of the 1957 Agreement

Enbridge Gas submitted that the decision of the Ontario Divisional Court in *Dawn-Euphemia (Township) v Union Gas Ltd. (Dawn-Euphemia)*³ provided a governing precedent that supported the determination that the 1957 Agreement had expired. Enbridge Gas stated that the 1954 franchise agreement at issue in *Dawn-Euphemia* was very similar to the 1957 Agreement with the County of Essex, and that both agreements confer a future contingent interest in land that offends the rule against perpetuities.

In particular, Enbridge Gas noted that clause 2 of the 1957 Agreement, which speaks to the duration of term, states as follows:

The rights and privileges hereby granted shall continue and remain in force for a period of ten years from the date hereof and so long thereafter as the said lines are in actual use for the transportation of gas.

Similarly, clause 8 of the 1954 franchise agreement in *Dawn-Euphemia* also provided that the franchise could, effectively, continue indefinitely without expiration and, thus, the Court ruled that the agreement could not be sustained in effect.

The rights and privileges hereby granted shall continue and remain in force for a period of twenty years from the date hereof and so long thereafter as the said line or lines are in actual use for the transportation of gas.

Enbridge Gas further argued that the OEB has the jurisdiction to make a ruling on the common law principles of the rule against perpetuities, as section 19 of the *Ontario Energy Board Act, 1998* (OEB Act) allows the OEB to determine questions of law and fact.

OEB staff supported Enbridge Gas's position that the term of the franchise between Enbridge Gas and the County of Essex be renewed, based on the terms and conditions of the Model Agreement. OEB staff submitted that the clause in the 1957 Agreement that relates to the duration of term violates the rule against perpetuities and, as a result, the 1957 Agreement is expired. OEB staff stated that this conclusion is supported by the Divisional Court's decision in *Dawn-Euphemia*.

³ *Dawn-Euphemia (Township) v Union Gas Ltd.*, 2004 CarswellOnt 3909.

OEB staff submitted that section 10 (6) of the *Municipal Franchises Act* should be interpreted purposively, such that the section applies to agreements that, by their terms, had been understood by the parties (and the OEB) to have expired as of December 2, 1969 (which OEB staff submitted was also the date on which section 10 of the *Municipal Franchises Act* came into effect), and not to an agreement that is later held to have expired by operation of law.⁴

In support of its position on this issue, OEB staff cited the Ontario Court of Appeal decision in *Sudbury (City) v Union Gas Ltd. (2001)*⁵ as well as various sections of the OEB Act. OEB staff noted that, in that decision, the Court stated that the “*Municipal Franchises Act* and the *Ontario Energy Board Act* make clear that the legislature has accorded the OEB the widest powers to regulate the supply and distribution of natural gas in the public interest”. OEB staff further submitted that, in respect of section 10 of the *Municipal Franchises Act*, specifically, the Court, in rendering its decision, stated that it applied “a purposive reading of the section”.⁶

OEB staff submitted that section 19 (6) of the OEB Act provides the OEB with exclusive jurisdiction in all cases and in respect of all matters in which jurisdiction is conferred on it by the OEB Act or any other act, and that section 23 of the OEB Act also grants the OEB broad powers in making orders, including the power of the OEB to impose such conditions as it considers to be proper and in the public interest.

The County of Essex argued that the OEB lacks the jurisdiction to make a ruling as to whether the 1957 Agreement is expired and that, in the alternative (i.e. if the OEB were to find it had jurisdiction), then the interest that is the basis of the 1957 Agreement “has vested, and therefore the rule [against perpetuities] was not triggered in the first place”.⁷

The County of Essex submitted that the “Franchise Agreement, despite the assertions of Enbridge, remains in full force and effect, has not been voided, and remains a perpetual agreement.” The County of Essex further stated that Enbridge Gas’s use of the County’s highways are not a contingent interest but a vested interest⁸ and, as a result, the 1957 Agreement is not void by operation of the common law rule against perpetuities.⁹

⁴ Summary of OEB Staff Oral Argument, para 6

⁵ *Sudbury (City) v Union Gas Ltd. (2001)*, 54 OR (3d) 439 (Ont CA)

⁶ Summary of OEB Staff Oral Argument, para 7

⁷ County of Essex Oral Argument Summary, para 10

⁸ County of Essex Oral Argument Summary, para 8

⁹ County of Essex Oral Argument Summary, para 10

The County of Essex also submitted that while the OEB has the statutory power to approve and impose the terms of a franchise agreement on a municipality, it can do so “only if the existing Franchise Agreement requires a renewal or replacement”. The County of Essex submitted: “That would only occur if the existing Franchise Agreement was found to be void. Absent that finding, by a Court of competent jurisdiction in accordance with section 5(1) of the *Perpetuities Act*, the OEB lacks the jurisdiction to impose the Model Franchise Agreement, or any franchise agreement, on the County.”¹⁰ In this regard, the County of Essex relied on the *Perpetuities Act*¹¹ and noted that, therein, the legislature defined “court” as meaning “Superior Court of Justice” and it “did not include the Ontario Energy Board as a court for that purpose”.¹²

The County of Essex cited the decision of the Ontario Court of Appeal in *Clarke v. Kokic*¹³ which found that “[t]he rule does not restrict the duration of property interests, but the length of time that may elapse between the creation of a contingent interest and the vesting of that interest.”¹⁴ The County of Essex submitted that, even if the issue of the rule against perpetuities was properly before the OEB, or brought before a court (as the County of Essex submitted it should have been), the 1957 Agreement does not offend the rule because it is not a contingent interest given that Union Gas Limited, and its successor Enbridge Gas, have used the lands of the County of Essex since the signing of the 1957 Agreement.¹⁵

In its reply argument, Enbridge Gas distinguished *Clarke v Kokic*, as referenced by the County of Essex in its oral argument, stating that the case dealt with termination and not expiry of an agreement, and was based on a materially different set of facts. Furthermore, according to Enbridge Gas, the conflict was over an easement and there was nothing in the decision pertaining to a future contingent interest.¹⁶

Findings

The OEB finds that the 1957 Agreement between Enbridge Gas and the County of Essex has expired.

¹⁰ County of Essex Oral Argument Summary, para 4

¹¹ *Perpetuities Act*, R.S.O. 1990, c. P.9

¹² County of Essex Oral Argument Summary, para 6

¹³ *Clarke v Kokic*, 2018 ONCA 705

¹⁴ County of Essex Oral Argument Summary, para 9

¹⁵ Transcript, County of Essex Oral Argument, pages 49, 50

¹⁶ Transcript, Enbridge Gas, Oral Argument, pages 59, 60

Section 10 of the *Municipal Franchises Act* sets out the procedure and powers of the OEB in an application for renewal of a franchise agreement 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 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.

If the 1957 Agreement is a perpetual agreement as contended by the County of Essex, there would be no need for a renewal as contemplated by section 10 (2). However, the OEB finds that the 1957 Agreement has not vested Enbridge Gas with the perpetual rights and obligations conferred by that agreement. The franchise right is a contingent interest, contingent on the former Union Gas Limited's (now Enbridge Gas's) continued transportation of gas, and cannot be held and exercised in perpetuity without a violation of the common law rule against perpetuities. The operation of this rule in Ontario has been confirmed in the provisions of the *Perpetuities Act* and applied by the Ontario Divisional Court in the decision in *Dawn-Euphemia*.

The OEB also finds that its conclusion that the 1957 Agreement has expired is within its jurisdiction to determine. Section 5 (1) of the *Perpetuities Act* is permissive not mandatory with respect to applications to a court of competent jurisdiction to determine the validity of a provision challenged as a potential violation of the rule. The OEB's powers under the OEB Act are clear in determining the issue of renewals as required by the *Municipal Franchises Act* and can be exercised with respect to the 1957 Agreement.

In the absence of an existing agreement, the OEB must consider the form of the agreement that will renew the franchise right of Enbridge Gas in accordance with public convenience and necessity.

3.2 Form of the Agreement

Enbridge Gas submitted that, because the 1957 Agreement is expired, the OEB should issue an order under section 10 (2) of the *Municipal Franchises Act* renewing Enbridge Gas's franchise with the County of Essex, based on the terms and conditions of the Model Agreement.

Enbridge Gas noted that the 1957 Agreement does not contain many of the standard terms and conditions found in the Model Agreement. Enbridge Gas submitted that the Model Agreement incorporates the standard terms and conditions that the OEB has found in previous cases to meet the test of public convenience and necessity and has served as the basis for many new and renewed franchise agreements.¹⁷

Enbridge Gas provided that the vast majority of the pipelines in the County of Essex are operated as distribution pipelines and that growth in the area will require expansion of the distribution system.¹⁸ Enbridge Gas stated that the 1957 Agreement does not address the distribution of gas in the manner that the standard Model Agreement does to protect the interests of Enbridge Gas, the County of Essex and all end-use customers.¹⁹ Enbridge Gas submitted that the 1957 Agreement is outdated in language²⁰, does not define any terms used and does not address several of the processes that are standard components of the Model Agreement, a number of which provide not only better protections but also better descriptions of the relationship between the County of Essex and Enbridge Gas.²¹

Enbridge Gas stated that the exclusion of cost-sharing requirements from the 1957 Agreement stipulates that if the County of Essex requests relocation work, Enbridge Gas and ratepayers pay all of the costs,²² which is contrary to the cost-sharing provision in the Model Agreement. Enbridge Gas submitted that the County of Essex has not provided compelling evidence to deviate from the Model Agreement²³ and that the completion of road work by the County of Essex in the future does not render it unique

¹⁷ Enbridge Gas Oral Argument Summary, para 4

¹⁸ Enbridge Gas IR Response, Exhibit B.Staff 1

¹⁹ Enbridge Gas IR Response, Exhibit B.Staff 3

²⁰ Application, para 17

²¹ Enbridge Gas IR Response, Exhibit B, Staff 3; Enbridge Gas states that the 1957 Agreement does not contain requirements for the approval of construction, as built drawings, emergencies, restoration of a work area, alternate easements, the allocation of costs for pipeline relocation, and the disposition and decommission of gas system components

²² Application, para 18

²³ Enbridge Gas Oral Argument Summary, para 3

as compared to other municipalities in which Enbridge Gas operates.²⁴ Enbridge Gas also submitted that the OEB has repeatedly reinforced in its decisions that the Model Agreement be used as the basis for franchise agreements.²⁵

OEB staff supported Enbridge Gas's position that the 1957 Agreement is inadequate in several respects²⁶, also noting that the 1957 Agreement pre-dates the enactment of section 10 of the *Municipal Franchises Act*, as well as the findings and recommendations of the OEB following two lengthy generic hearings that the OEB held in 1986 and 2000 that resulted in the adoption of the Model Agreement.²⁷

OEB staff submitted that, in approving the precedential form of the Model Agreement, the OEB intended that the provisions thereof apply fairly and uniformly throughout the province, and that almost all franchise agreements approved by the OEB since 2000 are in the same form as the Model Agreement, and are set for a term of 20 years.²⁸ OEB staff submitted that, if the OEB finds that the 1957 Agreement is expired, then an order issuing a renewal of the term of the franchise based on the terms and conditions of the Model Agreement would be in the public interest.

Throughout the course of the proceeding, the County of Essex maintained its position that the 1957 Agreement is not expired and that, therefore, Enbridge Gas's application should be dismissed. The County of Essex submitted that the 1957 Agreement satisfies the requirement under the *Municipal Franchises Act* that municipalities have a franchise agreement in place for among other things, the transportation of gas and the use of municipal rights of way.²⁹

During its oral argument, in response to a question from Commissioner Janigan, the County of Essex stated that a fair summary of its view is that the Model Agreement is not objectionable apart from the fact that County of Essex believes that the 1957 Agreement still applies.³⁰

²⁴ Enbridge Gas Oral Argument Summary, para 7

²⁵ Enbridge Gas IR Response, Exhibit B.Staff 1

²⁶ Enbridge Gas IR Responses to Staff.1(a) and Staff.3

²⁷ Summary of OEB Staff Oral Argument, para 7

²⁸ Summary of OEB Staff Oral Argument, para 7

²⁹ Application, Schedule F

³⁰ Transcript, County of Essex, Oral Argument, page 54. Also, the OEB notes that it was assisted in arriving at its decision by the submissions of the County of Essex, and is particularly appreciative of the focus of its counsel on only issues of relevance to this application and the resulting efficiency that it enabled.

Findings

As the OEB has found that the 1957 Agreement has expired, the OEB finds that the Model Agreement best meets the requirements of public convenience and necessity appropriate to govern Enbridge Gas and its natural gas operations in the County of Essex. Therefore, the renewal of Enbridge Gas's franchise with the County of Essex shall be based on the terms and conditions of the Model Agreement, for a term of 20-years, with no amendments, and shall take effect on the issuance of this Decision and Order.

This determination of the application of the terms of the Model Agreement to the operations of Enbridge Gas in the County of Essex is based both on its comprehensive provisions and its successful use throughout the province. The OEB is of the view that the Model Agreement is respectful of the interests and the needs of the respective parties in this application including those of Enbridge Gas's ratepayers.

4 ORDER

THE ONTARIO ENERGY BOARD ORDERS THAT:

1. The terms and conditions upon which, and the period for which, the County of Essex 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 County of Essex is attached as Schedule B.
2. This order shall be deemed to be a valid by-law of the County of Essex assented to by the municipal electors, with an effective date of March 30, 2023, and expiry of March 30, 2043.
3. 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
ENBRIDGE GAS INC.
COUNTY OF ESSEX
EB-2022-0207
MUNICIPAL FRANCHISE AGREEMENT
MARCH 30, 2023

2000 Model Franchise Agreement

THIS AGREEMENT effective this day of , 2022

BETWEEN:

THE CORPORATION OF THE COUNTY OF ESSEX

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 Corporation and to the inhabitants of those local or lower tier municipalities within the Municipality from which the Gas Company has a valid franchise agreement for that purpose.

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 COUNTY OF ESSEX

Per: _____
Gary McNamara, Warden

Per: _____
Mary S. Birch, Clerk

ENBRIDGE GAS INC.

Per: _____
Mark Kitchen, Director
Regulatory Affairs

Per: _____
Steven Jelich, Director
Southwest Region Operations

SCHEDULE B

ENBRIDGE GAS INC.

EB-2022-0207

MAP OF THE COUNTY OF ESSEX

MARCH 30, 2023



County of Essex



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

Legend

- Enbridge Gas Pipeline Coverage Area
- County of Essex
- Roads
- Railways
- Municipal and Township Boundaries
- First Nation Boundaries

Customer Density

