

# Staff Report



To	<b>Committee of the Whole</b>
Service Area	Infrastructure, Development and Environment
Date	Tuesday, November 5, 2024
Subject	<b>Municipal Franchise Agreement with Enbridge Gas Inc.</b>

## Recommendation

1. That the report entitled Municipal Franchise Agreement with Enbridge Gas Inc. dated November 5, 2024, be received.
2. That Council approve the form of franchise agreement and draft by-law attached to this report and authorize the submission thereof to the Ontario Energy Board for approval pursuant to the provisions of Section 9 of the Municipal Franchises Act.
3. That Council request that the Ontario Energy Board make an Order declaring and directing that the assent of the municipal electors to the form of franchise agreement and draft by-law attached to this report is not necessary pursuant to the provisions of Section 9(4) of the Municipal Franchises Act.
4. That staff be authorized and directed to do all things necessary to give effect to the foregoing resolutions.

## Executive Summary

### Purpose of Report

The purpose of this report is, first, to provide Council with information regarding gas franchises, including applicable legislation and franchise agreements governing the relationship between a municipality and a natural gas distributor; specifically, the existing Franchise Agreement between The Corporation of the City of Guelph (the City) and Enbridge Gas Inc. (Enbridge) which will expire on May 15, 2025. Second, this report makes recommendations to Council regarding renewal of the Franchise Agreement with Enbridge for a further 20-year period.

### Key Findings

- Enbridge, and its predecessor Union Gas, has provided gas distribution services within the City of Guelph since approximately 1957.
- In Ontario, natural gas distributors are regulated by the Ontario Energy Board (the OEB), a quasi-judicial administrative tribunal, operating under the authority of the Ontario Energy Board Act, 1998. The OEB is responsible for regulation of the natural gas sector in the public interest.
- The OEB adopted the Model Franchise Agreement 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.

- The OEB's regulatory authority includes the power to grant exclusive territorial rights to a particular gas distributor to provide gas service within a municipality, subject to compliance with the Municipal Franchises Act, R.S.O. 1990, c. M.55 (the MFA).
- The MFA sets out the requirements for the allocation of municipal territory to regulated gas distributors, including the requirement that the natural gas distributor obtain municipal consent to the construction and operation of gas works in the municipal territory, on terms and conditions approved by the OEB.
- The City and Enbridge are parties to an existing unmodified, Franchise Agreement which will expire on May 16, 2025. Enbridge has initiated the process to renew the same Model Franchise Agreement.
- If the City and Enbridge do not enter into a new Franchise Agreement prior to expiry of the current agreement, the terms of the current agreement will continue in effect.
- Enbridge has the right to apply to the OEB under the MFA for an Order to approve the franchise renewal on the terms and for the duration set out in the form of franchise agreement attached to this report.

## **Strategic Plan Alignment**

Natural gas is an important part of the energy mix serving residents in the City of Guelph now and in the future as our community grows. Strong relationships with natural gas distributors and other utilities are key to successful coordination of infrastructure upgrades and expansions to enhance service to the community.

### **Future Guelph Theme**

City Building

### **Future Guelph Objectives**

City Building: Improve housing supply

## **Financial Implications**

The renewal of the Franchise Agreement with Enbridge does not have new financial implications for the City.

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## **Report**

### **Gas Franchise Agreement**

In Ontario, natural gas distributors are regulated by the Ontario Energy Board (OEB), which operates under the authority of the Ontario Energy Board Act, 1998. The OEB is responsible for regulation of the natural gas sector in the public interest. Its regulatory authority includes the power to grant exclusive territorial rights to a gas distributor to provide gas service within a municipality.

The Municipal Franchises Act (MFA) sets out the requirements for the allocation of municipal territories to gas distributors, including a requirement to obtain municipal consent to the construction and operation of gas works in the municipality on terms and conditions approved by the OEB.

The OEB has approved a Model Franchise Agreement with standardized terms and conditions for use between municipalities and natural gas distributors. The current agreement between the City and Enbridge is an unmodified Model Franchise Agreement and Enbridge proposes to use the same Model Franchise Agreement for the renewal. Before a natural gas distributor and municipality can enter into a Franchise Agreement, the terms, conditions, and duration must be approved by the OEB. The OEB expects municipalities and natural gas distributors to use the Model Franchise Agreement unless there is a compelling reason for deviation.

If the City and Enbridge do not enter into a new Franchise Agreement prior to expiry of the current agreement, the terms of the current agreement will continue in effect. The automatic continuation does not prevent Enbridge from applying to the OEB under the MFA seeking an Order to approve the gas franchise renewal.

## **Renewal Process**

As a precondition to entering into a Franchise Agreement, the municipal council must pass a by-law approving the form of agreement. Unless dispensed with by the OEB, pursuant to its authority under Section 9(4) of the MFA, the by-law must receive the assent of the electors. Following the passing of the by-law by council, but before the by-law consenting to the gas franchise can be submitted for assent by the municipal electors, the terms, condition, and duration of the Franchise Agreement must first be approved by the OEB.

To obtain OEB approval of a proposed Franchise Agreement, an application is made to the OEB including the resolution of municipal council that: approves the form of agreement and the draft by-law; requests that the OEB declare and direct that the assent of the electors is not required; and authorizes the submission to the OEB for approval. These requirements are covered in the recommendations of this Report.

The OEB will typically make a declaration and direction that the assent of the electors is not required and will give approval of the Franchise Agreement where public convenience and necessity appear to require it. The approval of the OEB takes the form of a Certificate of Public Convenience and Necessity.

The foregoing describes a voluntary process for application to the OEB for renewal of a Franchise Agreement. Where the municipality and gas distributor have not reached an agreement, section 10 of the MFA allows either the municipality or the gas distributor to apply to the OEB for an Order for renewal of the Franchise Agreement. The OEB is required to hold a public hearing upon an application for an Order to renew a Franchise Agreement. An Order of the OEB renewing a Franchise Agreement is deemed to be a valid by-law of the municipality.

## **Identified Issues**

Staff have reviewed the proposed form of Franchise Agreement and identified the following issues. Staff met with Enbridge to discuss these matters. As of the date of this report, efforts to negotiate these terms directly with Enbridge have been unsuccessful. However, some of the identified areas of concern can be managed at the local level through cooperative relationships between the municipality and gas distributor. Identified areas of concern include:

- Broad right to municipal property- The term highway used in the Franchise Agreement is broader than the definition in the Municipal Act, 2001 and includes public squares, walkways, and alternative easements.
- Relocation costs - If, in the course of municipal works, it is necessary to remove or relocate part of the gas system, the municipality is responsible for a portion of the relocation costs.
- Approval of construction – The existence of gas infrastructure in/on public property can result in utility conflicts and increase complexity of linear infrastructure projects. The Franchise Agreement provides a guideline for consultation and review processes to mitigate these risks. The provisions are general in nature, and therefore a good working relationship between the municipality and gas distributor is highly important.

Where a Franchise Agreement is in place, Enbridge is still required to obtain permits for any excavation or work that will disturb the surface of the travelled portion of a highway. The City will continue to review applications, as it does with all third-party utilities, to ensure the proposed plan is in the best interest of the City.

### **Financial Implications**

There are no new financial implications of a renewed Franchise Agreement with Enbridge.

Franchise Agreements do have financial implications for both the gas distributors and municipalities who are party to them. Commonly expressed concerns regarding gas franchises include the cost-allocation provisions under the Model Franchise Agreement, and the restriction on municipal authority to impose fees and charges on gas distributors for use of public property.

Section 9 of O.Reg. 584/06 under the Municipal Act, 2001 provides that municipalities do not have the power to impose a fee or charge on a gas distributor for services or activities, costs payable, or the use of property with respect to pipes, equipment, machinery or other works that are or will be located on a municipal highway; and are or will be used as part of the business of the gas distributor. However, per section 10 of the regulation, nothing in section 9 prevents the imposition of fees or charges to recover the municipality's reasonable costs for issuing permits with respect to placement, cutting, or digging a municipal highway for the works of the gas distributor. Subject to the limits imposed under O. Reg. 584/06, Enbridge is not exempt from applicable permit fees and the City also has the right to be compensated by Enbridge for the staff time for review of proposed plans, and for Street Occupancy permit fees for Enbridge's contractors to complete the work within the City Right-of-Way. This is consistent with other third-party utilities.

Natural gas distributors are also subject to the Assessment Act (Ontario). Currently the City receives tax revenue from Enbridge, based on pipeline assessment. In 2023, the overall pipeline was assessed at \$34,185,000, and thus the City received \$764,730 in City taxes and collected \$300,828 in educational taxes on behalf of the local school boards. This is specific to Enbridge and is not applicable to any other third-party utility.

## **Consultations and Engagement**

Hearings and decisions of the OEB are public, and as such, several applicable OEB decisions were reviewed when making recommendations for this report, as well as appeals of OEB orders. The review affirmed that the OEB will only approve modifications to the Model Franchise Agreement in very limited, unique circumstances where a deviation from the standard terms is necessary or justified for one municipality and gas distributor distinct from all others. The legislature has empowered the OEB with broad authority and jurisdiction to determine reasonable terms and conditions to govern gas franchises in the public interest.

## **Attachments**

Attachment-1 Draft By-law Enbridge Franchise Agreement

Attachment-2 2000 Model Franchise Agreement

## **Departmental Approval**

None

## **Report Author**

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## **This report was approved by:**

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