



## The Corporation of the Town of Tecumseh

Legislative & Clerk Services

**To:** Mayor and Members of Council

**From:** Robert Auger, Director Legislative Services & Clerk

**Date to Council:** Tuesday, February 25, 2025

**Report Number:** LCS-2025-04

**Subject:** Enbridge Franchise Agreement Renewal

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### Recommendations

It is recommended:

**That** Report LCS-2025-04 entitled Enbridge Franchise Agreement Renewal **be received and supported;**

**And that** By-Law 2025-023 being a by-law to enter into a Franchise Agreement with Enbridge Gas Inc. **be considered** for first and second reading.

### Background

The current Franchise Agreement between the Corporation of the Town of Tecumseh (“**Town**”) and Enbridge Gas Inc. (“**Enbridge**”) has been in place since March 23, 2004 (via By-Law 2003-77) and expired to a monthly agreement back on March 23, 2024 (the “**Agreement**”). The Agreement grants Enbridge permission to distribute, store and transmit gas in and throughout the Town. Enbridge currently provides service to approximately 9,967 customers within the Town of Tecumseh.

Enbridge has approached Town staff to renew the Agreement for a further 20 years. The proposed renewal agreement is similar to the current agreement and is a model agreement consistent with what is in place with other Ontario Municipalities using Enbridge’s services. The renewal agreement requires a review and approval

application process to the Ontario Energy Board (“**OEB**”) and such application is usually accompanied by a resolution/by-law evidencing Council’s prior consent to the Agreement as part of the application by Enbridge.

The purpose of this report is to seek Council’s direction to proceed with respect to entering into the renewal Franchise Agreement with Enbridge.

Provincial legislation requires a franchise agreement as between the municipal corporation and the gas company serving that municipality. The OEB has previously mandated, or directed, that the current 2000 Model Franchise Agreement (the “**Model**”) is to be used as the model for such agreements.

The OEB adopted the Model following significant input from interested stakeholders, including the Association of Municipalities of Ontario (“**AMO**”) and natural gas distributors. The Model is intended to provide guidance to applicants and municipalities regarding the standard terms of a franchise agreement and to be a tool to efficiently administer the many franchise agreements across the province. The Model provides a template to guide applicants and municipalities regarding the terms that the OEB finds reasonable under the *Municipal Franchises Act* (the “**MF Act**”), and which meets the OEB’s test of weighing public convenience and necessity in exercising its jurisdiction under the MF Act.

Accordingly, the OEB expects that all agreements with municipalities will be based strictly on the Model, unless there is a “compelling reason for deviation” and such deviation is not considered substantive.

The proposed renewal agreement with Enbridge follows the same terms and conditions contained in the Model. A copy of the proposed renewal franchise agreement is appended with the by-law on the agenda.

## **Comments**

The following summarizes key items with the proposed agreement:

### **Rights Granted**

Subject to the terms and conditions of the renewal agreement, Enbridge will be permitted to enter upon all highways of the Town and lay, construct, maintain, replace, remove, operate, and repair a gas system for the distribution, storage, and transmission of gas.

### **Duration of Agreement and Renewal Procedure**

The proposed renewal agreement is for a 20-year term and does not allow either party to apply to the OEB for a further renewal prior to 2 years from the expiration of the proposed renewal agreement. However, if there are any updates to the Model that are approved by

the OEB over the term, any new provisions will be deemed to take effect on the 7<sup>th</sup> and 14<sup>th</sup> anniversary dates of the renewal agreement.

### **Approvals for of construction/restoration**

Enbridge is required to submit a detailed plan for approval to the Town prior to undertaking any work on the gas system (“Municipal Consent”).

### **Insurance/Indemnification**

Enbridge shall, at all times, maintain Comprehensive General Liability Insurance that indemnifies/saves harmless the Town from and against all liabilities resulting from the gas system and works undertaken within the municipal right-of-way, excluding those that are a result of negligent acts of the Town. The insurance policy shall further identify the Town as an additional named insured.

### **Pipeline Relocation**

If the Town requires relocation of any gas system as a result of municipal work, other than on a bridge or structure, the renewal agreement provides for sharing of total relocation costs based on 35% by the Town and 65% by Enbridge. Where any part of the gas system relocated is on a bridge, viaduct or structure, Enbridge shall alter or relocate that part of the gas system at its sole expense.

The renewal agreement clearly indicates the items that are to be included in this cost-sharing mechanism. Through detailed engineering reviews, the Town will always seek to propose locations to ensure that future relocation costs are minimized.

### **Municipal Consents/Permits**

The renewal agreement doesn’t include provisions to recover costs for issuing permits. However, as per [Ontario Regulation 584/06](#), “Fees and Charges” under the *Municipal Act*, 2001, (O. Reg 584/06) municipalities already have the authority and ability to impose fees related to work to be carried out by gas companies on municipal highways.

### **Consent of the Municipality**

Section 3 of the MF Act provides that a municipal by-law is required granting, extending, or renewing a right to construct or operate a public utility (i.e., to enter into a franchise agreement) which must set forth the terms and conditions and period for which such right is to be granted. However, Section 10 of the MF Act allows Enbridge to apply to the OEB for a hearing and order(s) to deem and approve the franchise agreement in situations where municipal approval has not been obtained.

Upon review it appears that most, if not all, requests made by municipalities across Ontario to make substantive amendments to the wording or terms of the Model have been consistently refused or denied by the OEB.

In particular, back in 2022 the Municipality of Leamington (Leamington) declined to sign the Model in its current form on the basis that its request to amend section 12(d) of the Model was not agreed to by Enbridge.

Section 12(d) of the terms and conditions of the Model Agreement currently reads 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, in which case the Gas Company shall pay 100% of the relocation costs.”*

Leamington was looking to amend the wording of this section to 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.” **[emphasis added]**

Section 26 of the *Drainage Act*, R.S.O. provides that:

*“100% of the increase in the cost of constructing drainage works due to the presence of public utilities may be assessed by an engineer against those utilities...”*

In other words, if the relocation of utilities is necessary to accommodate drainage works, 100% of that cost may be borne by the utility provider.

Enbridge applied on June 20, 2022, to the OEB for a Section 10 application hearing to secure an order to approve the franchise agreement with Leamington.

In opposing the application, Leamington argued that the Model should be amended as Section 26 of the *Drainage Act* shall apply or govern in those matters that involve the drainage process.

The OEB ultimately did not accept the reasons advanced by Leamington and approved the application as filed by Enbridge under section 10 of the MF Act thereby ordering the renewal of Enbridge’s gas franchise with the Municipality of Leamington.

In coming to its decision on March 30, 2023, the OEB stated that the “standard terms that

address cost-sharing in the Model Agreement were developed to provide certainty and resolve any dispute in an equitable manner”. The OEB supported the view that the Model Agreement best meets the public interest by providing fair treatment of both the civic duties of the municipality and the fair treatment of Enbridge’s ratepayers.

In May of 2023, Leamington further appealed this decision to the Ontario Superior Court of Justice (Divisional Court) but this appeal was dismissed in February 2024 and a request for leave to appeal further to the Ontario Court of Appeal was dismissed later in 2024. In providing its decision the Divisional Court stated the following in paragraph 16 of its decision:

*“As s. 10 and related provisions in the MF Act make clear, the MF Act confers on the OEB a broad and highly discretionary power to make decisions about the renewal of natural gas franchises, based on “public convenience and necessity”*

While the Town of Tecumseh was initially interested in requesting the same amendment to the Model Agreement as that sought by Leamington, Administration is of the opinion, based on its review and on the OEB and subsequent Court decisions in the Leamington appeal, that the amendment being sought will also be denied and that the Town should instead proceed with approving the renewal of the Franchise Agreement in its current model form.

## **Consultations**

Chief Administrative Officer  
Public Works & Engineering Services

## **Financial Implications**

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

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.

### Link to Strategic Priorities

Applicable	<a href="#">2023-2026 Strategic Priorities</a>
<input checked="" type="checkbox"/>	Sustainable Growth: Achieve prosperity and a livable community through sustainable growth.
<input type="checkbox"/>	Community Health and Inclusion: Integrate community health and inclusion into our places and spaces and everything we do.
<input type="checkbox"/>	Service Experience: Enhance the experience of Team Tecumseh and our citizens through responsive and respectful service.

### Communications

Not applicable

Website

Social Media

News Release

Local Newspaper

This report has been reviewed by Senior Administration as indicated below and recommended for submission by the Chief Administrative Officer.

Prepared by:

Robert Auger, LL.B.  
Director Legislative Services & Clerk

Reviewed by:

Phil Bartnik, P.Eng.  
Director Public Works & Engineering Services

Recommended by:

Margaret Misek-Evans, MCIP, RPP  
Chief Administrative Officer

<b>Attachment Number</b>	<b>Attachment Name</b>
None	None