

## **Impact of Bill 165 & Gas Utility Use of Public Property in Toronto**

**Date:** May 13, 2024

**To:** Infrastructure and Environment Committee

**From:** Executive Director, Environment & Climate Division

**Wards:** All

### **SUMMARY**

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Natural gas is a fossil fuel responsible for over half of Toronto's annual greenhouse gas ("GHG") emissions as the primary energy source for heating buildings.

The TransformTO Net Zero Strategy aims to accelerate a rapid and significant reduction in natural gas use in buildings, identifying this as one of four "critical steps" to achieving City Council's goal of net zero emissions by 2040. This critical step is consistent with a worldwide energy transition away from fossil fuels because they are the main cause of climate change.

Enbridge Gas Inc. ("Enbridge") is the utility serving Toronto's consumption of natural gas through a network of transmission and distribution pipelines that connect to over 550,000 gas customers in Toronto.

While the City has clearly identified the need to reduce reliance on natural gas, its actions are limited by the jurisdiction provided in provincial legislation. Whether City Council could enact a by-law to ban the transmission, distribution, sale, or use of natural gas within Toronto depends on the scope of the City's by-law authority under the City of Toronto Act, 2006 ("COTA") and related statutory authorities. Among other things, section 11 of COTA limits that authority to those City by-laws that do not conflict with a provincial or federal statute, regulation, order, license, approval or similar instrument. Additional information about this issue is included in Confidential Attachment 1 to the City Solicitor's supplemental report on this item.

This report focuses on the matters raised in Council motion 2024.IE11.8, namely the City's relationship with Enbridge regarding renewable natural gas projects, City staff's recent comments on Bill 165 which deals with expanding new connections to the provincial natural gas grid, and Enbridge's use of public property (especially the right of way).

Beyond these specific matters, the City has the ability to influence demand for natural gas through setting standards for GHG emissions and energy efficiency for new and existing buildings in Toronto. For new buildings, the City's innovative Toronto Green Standard ("TGS") recommends energy efficiency and GHG intensity standards that are intended to become progressively more stringent over time for new residential (minimum 10 units) and non-residential developments. TGS consists of tiers of performance with Tier 1 being mandatory and applied through the planning approval process. It is intended that by May 2028, if adopted by Council, the TGS requirements for near zero GHG emissions will discourage new natural gas connections for heating or domestic hot water. City Council has also directed staff to develop an Emission Performance Standards ("EPS") by-law to address GHG emissions from existing buildings. If Council enacts a by-law requiring existing buildings to meet such emission standards, then property owners may need to take measures to reduce the GHG emissions from their buildings, which may include reducing the use of natural gas.

Regarding the matters raised in Council motion 2024.IE11.8:

- **Renewable Natural Gas ("RNG"):** In collaboration with Enbridge, Solid Waste Management Services ("SWMS") has developed RNG production facilities at the City's Organic Processing Facilities ("OPFs"). While the City's production of RNG can play a useful role in the energy transition, it will be a limited role because production is itself limited by the amount of biogas and landfill gas available. SWMS is currently working with Enbridge towards development of an RNG production facility at the City's Green Lane Landfill;
- **Bill 165:** In April the Executive Director of Environment & Climate made oral and written submissions to the Ontario Legislature's Standing Committee on the Interior, pursuant to Council authority, detailing concerns about potential negative affordability and climate impacts for Toronto from Bill 165, the *Keeping Energy Costs Down Act, 2024*. The written submission is Attachment "A" to this report. The Environment & Climate Division is monitoring for consultation opportunities with the Government of Ontario on its forthcoming natural gas policy statement, announced by the Minister of Energy alongside Bill 165.<sup>1</sup>
- **Enbridge Use of Public Property:** Provincial regulation currently precludes the City from applying a land-based charge for Enbridge's use of the right of way (same for a telecom company, electricity generator, or electricity transmitter or distributor). Municipalities outside Ontario can and do charge gas utilities for use of the right of way (including Edmonton, Calgary and Regina) generating revenue between \$24 and \$97 per capita annually. Were the Province to amend its regulation and City Council decided to apply a land-based charge to Enbridge's use of the right of way, it could generate between \$73 million and \$293 million in total annual revenue based on the range of currently observed charges elsewhere. If City Council decided to apply a land-based charge it could also decide to reduce the amount by the amount Enbridge would otherwise pay in property taxes on its gas pipelines in a given year. City staff plan to engage with the province about potential for regulatory change.

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<sup>1</sup> <https://news.ontario.ca/en/backgrounder/1004216/the-keeping-energy-costs-down-act>

Enbridge could seek to pass on the cost of any land-based charge for use of the right of way to natural gas ratepayers in Toronto. Whether Enbridge could do so would be subject to provincial laws and regulatory approval.

Applying a land-based charge could align with the need to transition away from fossil fuels and move toward lower carbon energy like electricity from Ontario's relatively clean grid and local renewable generation. To the extent that Council directed any future revenues from a land-based charge for Enbridge's use of the right of way (if permitted by law) toward adapting City infrastructure like roads, bridges and sewers to withstand the impacts of climate change caused by fossil fuels, such as more frequent and intense storms, this could amplify the climate-related benefits of the charge.

## **RECOMMENDATIONS**

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The Executive Director, Environment & Climate Division recommends that:

The Infrastructure and Environment Committee receive this report for information.

## **FINANCIAL IMPACT**

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There is no financial impact from this report.

The report discusses potential fees and charges from utility companies related to natural gas that might generate revenues for the City. However, such impacts are wholly dependent on changes to Ontario legislation.

The Chief Financial Officer and Treasurer has reviewed this report and agrees with the financial impact information.

## **DECISION HISTORY**

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On March 20, 2024, City Council adopted the member motion, Requiring Fair Payment from For-Profit Gas Utilities for Use of City Property (2024.IE11.8). City Council requested a report to IEC's May 28<sup>th</sup> meeting on the City's relationship with fuel utilities, including renewable natural gas facilities, use of public property, costs incurred by the City from utility cuts and fuel utilities on public property, taxation/fee recovery mechanisms including a jurisdictional scan, a recommendation for fair fees and the amount of revenue such fees would produce. Council also requested a report back on the potential impacts of the Province's Bill 165, Keeping Energy Costs Down Act. This report responds to these requests.

<https://secure.toronto.ca/council/agenda-item.do?item=2024.IE11.8>

On May 11, 2022, City Council adopted the report, Oversight and Accountability within the Utility Cut Process (2022.IE29.11). The report provides an overview of the City's process for managing utility cuts in the City's right of way, due to utilities' need to access underground infrastructure.

(<https://www.toronto.ca/legdocs/mmis/2022/ie/bgrd/backgroundfile-224377.pdf>)

On December 17, 2021, City Council adopted the report, TransformTO - Critical Steps for Net Zero by 2040 (2021.IE26.16), which laid out the City's Net Zero Strategy on climate and accelerated the City's community-wide net zero greenhouse gas target to 2040.

(<https://secure.toronto.ca/council/agenda-item.do?item=2021.IE26.16>)

On July 28, 2020, City Council adopted the report, Citywide Greenhouse Gas Reduction Strategy through Blending Renewable Natural Gas and Natural Gas, a Low-carbon Fuel Option (2020.IE14.7), directing that renewable natural gas produced at City organic processing facilities be delivered via the local gas utility distribution company.

(<https://secure.toronto.ca/council/agenda-item.do?item=2020.IE14.7>)

## COMMENTS

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### Three Categories of the City's Relationship with Enbridge

The City's relationship with Enbridge can be categorized in at least three ways:

1. In collaboration with Enbridge, Solid Waste Management Services ("SWMS") has developed renewable natural gas ("RNG") production facilities at the City's Organic Processing Facilities ("OPFs") and is currently working with Enbridge towards development of an RNG production facility at the City's Green Lane Landfill;
2. Enbridge sells natural gas to Toronto residents, businesses, and the City Corporation itself through a network of distribution pipelines; and
3. Enbridge accesses/uses the City's right of way and certain other City-owned public property (e.g. parks) to build and maintain its distribution pipelines and related equipment (e.g. compressors, meters).

Each different relationship category has a different set of rules governing its economics.

For the first category, who pays what to whom is determined by agreement between the City and Enbridge.

For the second category, who pays what to whom is largely determined by the Ontario Energy Board as the quasi-judicial regulator responsible for approving natural gas rates, which include distribution costs, subject to provincial legislation and policy direction.

For the third category, who pays what to whom is largely determined by municipal decision-making on permits, taxes and charges/fees, within the jurisdiction afforded by provincial legislation.

## RNG Production and Net Zero

The City, working with Enbridge, has installed infrastructure at the Dufferin and Disco Road OPFs that allows it to create RNG from Green Bin organics. This equipment enables the City to take the raw biogas produced from processing Green Bin organics, turn it into RNG and inject it into Enbridge's natural gas distribution infrastructure for City use.

While chemically identical to traditional natural gas, RNG is a renewable resource that can be produced using materials that are readily accessible through the City's Green Bin organics program. Because RNG is derived from organic material – not fossil – its combustion results in biogenic carbon dioxide emissions that do not contribute to climate change.

The RNG infrastructure projects at the OPFs are paid for by the City. The City pays for the capital construction costs amortized over 15 years via financing from Enbridge, and pays for the ongoing operations, maintenance, and injection through a monthly utility service fee to Enbridge. The projects are not paid for by the natural gas infrastructure rate base for which Enbridge otherwise would earn a regulated return on investment pursuant to approval by the Ontario Energy Board.

Per Council approval, the RNG produced at the OPFs is being injected into the Enbridge distribution grid and is used by the City to reduce emissions in Corporate buildings and Corporate fleet vehicles powered by compressed natural gas by displacing an equivalent amount of natural gas.<sup>2</sup> City Divisions include funding in Operating Budgets that reflects the fully recoverable incremental costs of acquiring and consuming the RNG. Analysis for the 2024 budget identified \$540,000 in operating budget for the purchase of RNG for Corporate buildings, with an estimated annual emission reduction impact of 1,181 t CO<sub>2</sub>e, and \$40,000 in operating budget for the purchase of RNG for Corporate vehicles, with an estimated annual emission reduction impact of 80 t CO<sub>2</sub>e.<sup>3</sup>

While the City's production of RNG can play a useful role in the energy transition it will be a limited role because production is limited by the amount of biogas and landfill gas available. The estimated full production potential of RNG from the City's OPFs could meet 13.2% of current natural gas consumption of City Divisions (excluding City Agencies, Boards and Commissions).<sup>4</sup> Adding RNG production from the Green Lane Landfill could raise this to 64.7%. This amounts to a small fraction of current natural gas consumption in Toronto's buildings sector. Reaching net zero emissions in Toronto's buildings sector through substituting City-produced RNG for natural gas is not possible.

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<sup>2</sup> [2020.IE14.7](#) - Citywide Greenhouse Gas Reduction Strategy through Blending Renewable Natural Gas and Natural Gas, a Low-carbon Fuel Option.

<sup>3</sup> Appendix A – GHG Reduction Actions in the Prepared Budget:

<https://www.toronto.ca/legdocs/mmis/2024/bu/bgrd/backgroundfile-242068.pdf>.

<sup>4</sup> See table "City biogas/landfill gas utilization potential": <https://www.toronto.ca/services-payments/recycling-organics-garbage/solid-waste-facilities/renewable-natural-gas/>.

The TransformTO Net Zero Strategy envisions an electrification pathway as most feasible for achieving net zero emissions from Toronto's buildings. The Environment & Climate Division's work on an EPS by-law to address GHG emissions from existing buildings will help determine reasonable and achievable pathways to reducing emissions in buildings, and by extension will consider the extent of electrification possible for all buildings in the buildings sector over the next sixteen years prior to 2040.

In a scenario where buildings have transitioned to electricity as the primary energy source for heating by 2040, demand for RNG would likely shift to users without a simple electrification pathway. For example, RNG could serve industrial users that require low-carbon gas for certain processes that cannot feasibly electrify. SWMS is also exploring alternative future uses of RNG that do not involve injecting RNG into the Enbridge grid to displace natural gas consumption, such as producing hydrogen which can then be used as a storable, low- or zero-emission energy source.

## **OEB decision and Bill 165**

The City is committed to pursuing net zero emissions while safeguarding affordability for residents and businesses during the energy transition and continues to advance this view with Enbridge and the Province.

In April, the Executive Director of Environment & Climate made oral and written submissions to the Ontario Legislature's Standing Committee on the Interior, pursuant to Council authority, detailing concerns about potential negative affordability and climate impacts for Toronto from Bill 165, the *Keeping Energy Costs Down Act, 2024*. The written submission is Attachment "A" to this report.

The focus of Bill 165 is expanding the gas grid in Ontario via overriding an Ontario Energy Board decision from December 2023. The Board had decided that new connections raise the risk of "stranded assets" (i.e. assets that are not fully utilized for their expected lifetime) given the energy transition away from fossil fuels and that any new connection should be paid for in full up front, rather than cross-subsidized in full by current ratepayers across a 40-year time span.

As part of the submission to Standing Committee, City staff raised the following key points that if enacted, Bill 165 would:

- re-introduce a cross-subsidy for new connections to the natural gas grid<sup>5</sup> that would impose hundreds of dollars in additional costs on Toronto ratepayers<sup>6</sup> for little, if any, savings for new developments in Toronto, most of which are expected to forego connecting to the natural gas grid for reasons of cost (lower

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<sup>5</sup> Coupled with the Government of Ontario's intention to "immediately introduce regulations to reset the revenue horizon for natural gas connection costs to 40 years" if Bill 165 is enacted: Government of Ontario, "[Background: The Keeping Energy Costs Down Act](#)" (Feb 22, 2024).

<sup>6</sup> In the OEB's decision, the total capital spending Enbridge proposed for customer connections in the 2025-28 period was \$1.01 billion (Ontario Energy Board, [EB-2022-0200](#), Dec 21, 2023, Table 1 at p. 48). Assuming the entirety of this cost is cross-subsidized by 3.8 million existing Enbridge ratepayers in Ontario, it would total \$267 per customer.



lifecycle cost of electric heat pumps) and policy (future City-led emission standards applying to new developments and eventually existing buildings);

- maintain an uneven playing field by creating incentives for new gas connections that put ratepayers at risk, especially economically vulnerable ratepayers, of bearing the future costs of an energy transition away from fossil fuels including natural gas;
- conflict with the City's TransformTO Net Zero Strategy, Toronto's Official Plan, and key City of Toronto policy measures (such as the [Toronto Green Standard](#) for new development and forthcoming [Emission Performance Standards](#) for buildings), which altogether envision a broad transition away from natural gas as the primary energy source for heating buildings between now and 2040; and
- disregard the conclusions of the OEB as an expert, independent energy regulator that makes decisions based on evidence and an inclusive and transparent process – relatedly, Bill 165 also appears out of step with the findings and recommendations of the Government of Ontario's own independent Electrification and Energy Transition Panel.

Beyond the points included in the summary above, the submission further noted that transitioning away from natural gas for heating and other domestic uses in buildings has many benefits beyond the affordability and climate benefits described above:

- Natural gas combustion, including from cooking, impairs air quality raising risks for those persons with respiratory health conditions;<sup>7</sup>
- Increasing dependence on natural gas, which must be imported into Ontario, means Ontarians will lack predictability over household energy costs, which is especially important for lower income households;
- Natural gas is made up primarily of methane which is a potent short-term greenhouse gas that causes 80 times more warming effect than carbon dioxide on a 20-year timescale. A portion of this methane leaks directly into the atmosphere along the natural gas supply chain. Reducing reliance on natural gas will reduce the amount of methane leaking into the atmosphere and help slow climate change in the near term;
- Many households in Toronto that don't currently have air conditioning will invest in electric heat pumps (which provide cooling *and* heating) anyway because of extreme heat driven by climate change – utilizing a single heat pump system to both heat and cool a house is more efficient;
- Removing the cross-subsidy for natural gas expansion (as the OEB decision did but Bill 165 would reverse) is consistent with Canada's international commitments to phasing out fossil subsidies;
- If buildings are transitioned off natural gas in accordance with the energy performance tiers of the new National Building Code of Canada, those buildings

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<sup>7</sup> John R. Balmes et al, "[Cooking with Natural Gas: Just the Facts, Please](#)" *Am J Respir Crit Care Med* (Apr 15, 2023).

should achieve higher levels of energy efficiency which brings savings and resilience.

Bill 165 was sent back to the legislature for third reading without amendment.

## **Enbridge Use of Public Property**

### **Use of the Right of Way**

Similar to the utility service providers, Enbridge distribution pipelines make extensive use of City highways (aka public “right of way”).<sup>8</sup> While the City is able to charge permit fees,<sup>9</sup> provincial regulation precludes the City from applying a land-based charge for Enbridge’s use of the right of way (similarly the City may not apply a land-based charge to a telecom company, an electricity generator, or an electricity transmitter or distributor using the right of way).<sup>10</sup> Thus, the Province would need to amend its regulation to clear the way for City Council to decide whether and how to apply a land-based charge for a utility’s use of the right of way.

Space in the right of way is limited, both above ground and below ground as this space is used to convey services like water, telecommunications, electricity, natural gas and for transit infrastructure. A key difference between the use of the right of way for natural gas and all other uses is that natural gas is a fossil fuel that causes climate change.

### **Franchise Agreement – Use of Right of Way**

It must be noted that the City has no franchise or access agreement with Enbridge governing the latter’s use of the right of way. Unlike some other municipalities in Ontario, the City has not entered into an agreement conforming to the Ontario Energy Board’s [Model Franchise Agreement](#) and therefore is not bound by its terms. Instead, Enbridge Gas was originally given a franchise for operation within the City of Toronto as the Consumers Gas Company of Toronto in 1848 under a statute entitled *An Act to incorporate The Consumer’s Gas Company of Toronto*. Section XIII of the 1848 statute provides, in part, as follows (emphasis added):

And be it enacted, That it shall and may be lawful for the said Company, after two days’ notice in writing to the Mayor, Aldermen and Citizens of the City of Toronto, to break up, dig and trench so much and so many of the streets, squares, and public places of the said City of Toronto as may at any time be necessary for the laying down the mains and pipes to conduct the Gas from the works of the said Company to the consumers thereof, or for taking up, renewing, altering or repairing the same when the said Company shall deem it expedient, doing no unnecessary damage in the premises, and taking care as far as may be to preserve a free and uninterrupted passage through the

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<sup>8</sup> The public highway, also sometimes referred to as the public right-of-way, also known as municipal road allowance, refers to a piece of City-owned land. It includes the untravelled road allowance, roadways, sidewalks and land under these surface areas used for utility services (e.g. electrical equipment, water mains, gas lines and telecommunication cables).

<sup>9</sup> O. Reg. 595/06: Fees and Charges, [s. 9](#).

<sup>10</sup> O. Reg. 595/06: Fees and Charges, [ss. 7-8](#).



said street, squares and public places, as the City Surveyor, under the direction of Council of the said City, shall reasonably permit and point out; [...] also finishing the work and replacing the said streets, squares and public places in as good condition as before the commencement of the work without any unnecessary delay [...].

Where a particular line has been constructed with the approval of the OEB, subsection 103 of the *Ontario Energy Board Act, 1998*, could also apply to permit entry as follows:

#### Entry upon land

103. (1) Any person may at any time enter upon land, without the consent of the owner of the land, for the purpose of inspecting, altering, maintaining, repairing, renewing, disconnecting, replacing or removing a work or part of a work where leave for the construction, expansion or reinforcement of the work or the making of an interconnection was granted under this Part or a predecessor of this Part.

In Toronto's case, if the provincial regulation precluding a land-based charge for the gas utility's use of the right-of-way were amended, there would be no subsequent need to renegotiate a franchise or access agreement and no need to have any changes made to the Model Franchise Agreement by the Ontario Energy Board.

In contrast, the City of Ottawa is covered by the Model Franchise Agreement and therefore its terms were central to the City of Ottawa staff's analysis of gas utility use of the right of way in the context of the Model Franchise Agreement Review.<sup>11</sup> Notably, the Model Franchise Agreement allows a gas utility to abandon disused pipelines in the right of way at no cost but this provision does not apply to the City of Toronto.

If widespread adoption of electric heating occurs in buildings sector and a number of customers disconnect from the natural gas grid, there could be an increase in the number of abandoned pipelines within Toronto. Most underground abandoned utility infrastructure in the right of way, including gas pipelines, is typically left in place unless and until it is required to be addressed during future work. Generally, the impacts of abandoned gas pipelines could include the degradation of the pipe and potential creation of voids (e.g. if it collapses), as well as interference with future City or utility work sited in the same space.

While provincial legislation does generally contemplate compensation for damages, removal of abandoned pipelines in the right of way in Toronto is not addressed expressly in that legislation. Where the City engages in work for improving a highway that requires relocating or removing a gas pipeline in the right of way, the City may give notice to require the utility to do so under the *Public Service Works on Highways Act*. This legislation provides that the parties may agree on sharing the cost of labour for that work.

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<sup>11</sup> <https://www.toronto.ca/legdocs/mmis/2024/ie/comm/communicationfile-177656.pdf>.

A jurisdictional scan shows that cities in provinces outside Ontario are charging gas utilities for use of the right of way and gaining significant revenue by doing so. The practice is notably widespread in Alberta, where at least 217 Alberta municipalities have natural gas local access fees,<sup>12</sup> including the two largest in Edmonton and Calgary.

In many cases, provincial legislation allows municipalities to set fees within a range, with approval required from the relevant energy utility regulator. For example, in Alberta, municipalities can charge fees between zero and 35% of the local gas utility's delivery revenues (the range is between zero and 20% for electricity). Edmonton charges the maximum rate of 35% in its local access fee while also collecting property taxes for its gas utility's pipelines.

The table below summarizes notable examples from outside Ontario.

**Table 1: Jurisdictional Scan of Annual Revenues from Gas Utility Use of Public Right of Way**

Province	Legislation	Municipality	Type of Fee/Charge	Basis of Fee/Charge	Annual Revenue	Annual Revenue (per capita)
AB	<i>Municipal Government Act</i>	Edmonton	Franchise Fee (aka, "Local Access Fee")	35% of delivery revenues <sup>13</sup>	\$98 million (2023)	\$97
	<i>Municipal Government Act</i>	Calgary	Franchise Fee (aka, "Local Access Fee")	11 % of delivery revenues	Not available	\$65 (approx.)
SK	<i>SaskEnergy Act</i>	Regina	Franchise Fee (aka, "Local Access Fee")	5% access fee, or surcharge to gas utilities	\$5.6 million (2020)	\$24

<sup>12</sup> <https://www.calgary.ca/our-finances/facts/energy-costs.html>.

<sup>13</sup> "Calculation of franchise rate is based upon percentage of the delivery revenue generated by providing natural gas services. The calculation excludes the cost of the commodity, which then reduces volatility related to the franchise fee revenue." See Edmonton Franchise Fees White Paper [https://www.edmonton.ca/public-files/assets/document?path=TWWF\\_FranchiseFees\\_WhitePaper.pdf](https://www.edmonton.ca/public-files/assets/document?path=TWWF_FranchiseFees_WhitePaper.pdf)

Province	Legislation	Municipality	Type of Fee/Charge	Basis of Fee/Charge	Annual Revenue	Annual Revenue (per capita)
MB	Municipal Charter (Electricity and Gas By-law No. 479-73)	Winnipeg	Sales Tax	2.5% for domestic purposes, and 5% for non-domestic purposes	\$22 million (2020)	\$29
BC	<i>Utilities Commission Act</i>	Kelowna, Highlands, Nanaimo and Nelson	Franchise Fee (aka, "Operating Fee")	3% operating fees of all gas revenues	not available	not available

In Alberta, gas utilities can apply to the Alberta Utilities Commission for a "rate rider" that passes on the cost of the "local access fee" in a given municipality to ratepayers in that municipality.<sup>14</sup> Where a rate rider is in place, the local access fee revenue is effectively generated from ratepayers, not the gas utility.

While the City of Ottawa does not apply an access fee, its Model Franchise Fee Review document suggested a fee generating \$27 per capita in annual revenue would be fair and consistent with the revenues seen in municipalities outside Ontario.<sup>15</sup>

Using the jurisdictional scan, different revenue generation potentials can be identified for the City of Toronto. Multiplying the per capita annual revenue from each municipality by Toronto's population (3,025,647) suggests a land-based charge could result in between \$73 million and \$293 million.

**Table 2: Toronto's Potential Revenue based on Jurisdictional Scan of Annual Revenues from Gas Utility Use of Public Right of Way**

Jurisdiction	Type	(\$/capita)	Toronto Population	Toronto's Potential Revenue based on \$ per capita
Edmonton	Franchise Fee	\$97	3,025,647	\$293 million
Calgary	Franchise Fee	\$65	3,025,647	\$196 million
Winnipeg	Sales Tax	\$29	3,025,647	\$88 million
Ottawa (proposed)	Franchise Fee	\$27	3,025,647	\$82 million

<sup>14</sup> Alberta Utilities Commission, "[How rate riders are set](#)".

<sup>15</sup> In Ottawa's White Paper "Model Franchise Agreement Review", they advised including an access fee equating to 10% of commodity charges, which is approximately equivalent to 5% of gas revenues.

Regina	Franchise Fee	\$24	3,025,647	\$73 million
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The City of Calgary notes that its annual revenue from local access fees serves a number of important needs:

The revenue generated from the [Local Access Fee] is a vital resource for our city. Budgeted revenue from local access fees is used to support the operating budget and contribute to keeping property taxes low. Any positive variance is directed to the Reserve for Future Capital, where it is invested into new facilities and other amenities or used for maintenance of existing ones. These initiatives are carefully designed to benefit Calgarians directly.<sup>16</sup>

Were the City of Toronto enabled by provincial regulatory amendments to set a land-based charge for Enbridge's use of the right of way, City Council might wish to consider defining the uses to which the revenue would be put. One such use could include capital funds for adapting City infrastructure to the changing climate, recognizing the direct link between fossil fuels like natural gas and the damage to roads, bridges, sewers and other infrastructure from increasingly frequent and severe extreme weather events.

City staff assume that Enbridge could seek to pass on the cost of any land-based charge for use of the right of way to natural gas customers in Toronto, similar to what is seen in Alberta.<sup>17</sup> From a climate action perspective, this would be different than Toronto ratepayers bearing the cost of natural gas grid expansions as with Bill 165. In the case of Bill 165, Toronto ratepayers' costs will go up to cross-subsidize new natural gas grid connections across the province which is at odds with the Council-approved TransformTO Net Zero Strategy and provides no local benefit. In contrast, if the legislation is amended to allow the application of a land-based charge for Enbridge's use of the right of way would be aligned with the need to transition away from fossil fuels to achieve net zero and provide revenue that could deliver local benefits, including potentially climate related benefits. Relatedly, the City would need to study the potential impact of a land-based charge on equity deserving groups that might transition off natural gas more slowly than other groups during the energy transition.

### **Utility Cuts in the Right of way (Permits and Related fees)**

Utility companies' infrastructure networks are located either above or below the City's public right of way. When required to perform repairs and/or upgrades to buried infrastructure, utility companies often need to cut into the roads and/or sidewalks to access the infrastructure. Utility companies that want to undertake work in the City's right of way obtain a permit from Transportation Services Division prior to starting work.

There are three types of permits for work involving a utility cut or excavation:

<sup>16</sup> <https://www.calgary.ca/our-finances/facts/energy-costs.html>.

<sup>17</sup> Alberta Utilities Commission, "[How rate riders are set](#)".

- Emergency: required for work done within two days, in response to a failure that has the potential to result in danger to the public, loss of an essential service and/or damage to infrastructure.
- Short Stream: required for localized maintenance and repair works such as boreholes, replacement of existing infrastructure, or road crossings.
- Full Stream: required for work that may take multiple weeks to complete such as large-scale construction of new underground or surface infrastructure, and any work not classified as emergency or short stream.

On average, Transportation Services issued approximately 33,156 permits per year between 2018-2023. These permits pertain to 17 utility companies/organizations including natural gas, electricity, telecommunications, Toronto Water and the Toronto Transit Commission. Of the 33,156 permits issued by the City each year, approximately 6,365 permits were issued to Enbridge representing approximately 19% of all permits.

The City's standard terms and conditions for street work permits (as set out in Appendix A of Ch. 743 of the Municipal Code, Use of Streets and Sidewalks) require permit applicants to indemnify the City for losses incurred by the City in connection with issuing the permit including claims in respect of property damage. These standard terms and conditions also require the permit applicant to restore the street in substantially the same condition in which it was before such street work was undertaken by the applicant. In the case of utility companies, they are responsible for conducting the restoration (permanent repairs) of areas impacted by their cuts including the reinstatement of roads, curbs, sidewalks and other City infrastructure back to its previous condition and in compliance with City construction standards and specifications. Utilities are also required to maintain a two-year warranty on their permanent repairs and if the applicant fails to repair and/or restore any street to the satisfaction of Transportation Services the City may undertake such repairs and charge all costs owing to the applicant.

The City charges fees to recover the cost of overseeing and administering the utility cut permit process. The current fees are:

- Short Stream or Emergency permit: \$338.93 (including HST) per permit. This includes a fee of \$208.17 (no HST) and an inspection fee of \$115.72 (plus HST).
- Full Stream utility review and inspection: \$1,602.60 (including HST) per application for excavation up to one kilometre.<sup>18</sup> This permit includes engineer review and site inspection up until temporary (preliminary) repairs.<sup>19</sup>

Total fees collected by the City annually for utility cut permits were \$10,860,929, averaged over 2018-2023. Total fees collected from Enbridge averaged over this time period were \$1,724,266, or 16% of the total. The Enbridge fees were comprised of

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<sup>18</sup> City of Toronto website. Utility Cut Permit Application. Visited April 18, 2024.

<https://www.toronto.ca/services-payments/building-construction/infrastructure-city-construction/construction-standards-permits/utility-cut-permit-application/>

<sup>19</sup> <https://www.toronto.ca/legdocs/mmis/2022/ie/bgrd/backgroundfile-224377.pdf>

\$1,623,598 for Short Stream and Emergency permits, and \$100,669 for Full Stream permits.<sup>20</sup>

In addition to the permitting fees charged to utility companies, the City is also able to charge utilities a pavement degradation fee which covers the costs associated with the reduction in pavement service-life and increased maintenance expenses as a result of utility cuts. These fees are based on the type of pavement, age of pavement and road classification and are calculated based on the physical size of the utility cuts made into the pavement.

Transportation Services is reviewing its utility management processes including staffing, and the results will inform future updates to fees. The scope of the review includes costs related to the permitting, inspection, oversight and impacts of utility work on Transportation infrastructure, however fees related to the use of the right-of way are not included.

### **Property Tax for Gas Pipelines**

The City of Toronto collects property tax from residents and businesses owning property (within the City of Toronto boundary) to help pay for public education as well as city services and programs. Property taxes are based on the assessed value of a property as determined by the Municipal Property Assessment Corporation (MPAC), multiplied by the combined municipal and education tax rates for the applicable class of property.<sup>21</sup>

Pipelines are a defined class of property for municipal taxation. Provincial regulation sets the allowable range for the tax ratio of the pipeline property class at 0.6 to 0.7 compared to the residential property class, where the latter is set at one.<sup>22</sup> The City's total tax rate for pipelines in 2024 is 1.961520%.<sup>23</sup>

MPAC states that the assessed values for pipelines are determined by provincial regulation given the difficulty of using traditional approaches to value assessment.<sup>24</sup> In 2023, when the City's tax rate for pipelines was 1.867316%, the City collected approximately \$ 6.88 million from Enbridge for its gas transmission and distribution pipelines. These pipelines may be located under the right of way but also outside the right of way (e.g. under greenspace).

Notably, pipelines that have been abandoned cease to be liable for assessment effective with the assessment next following the date of abandonment.<sup>25</sup> This means that any pipelines abandoned by Enbridge due to the energy transition (or for any other reason) will no longer generate property tax revenue for Toronto.

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<sup>20</sup> March 2019 Short Stream and Emergency permit fees are not included.

<sup>21</sup> <https://www.ontario.ca/page/property-tax-0>

<sup>22</sup> *City of Toronto Act, 2006*, S.O. 2006, c. 11, Sched. A, s. 275

<sup>23</sup> <https://www.toronto.ca/services-payments/property-taxes-utilities/property-tax/property-tax-rates-and-fees/>

<sup>24</sup> MPAC, [Approaches to Value and Classification Fact Sheet](#) (Dec 14, 2023), see subsection "Regulated Rates"; and see O. Reg. 282/98, [Part VIII "Assessment of Pipe Lines"](#).

<sup>25</sup> *Assessment Act*, R.S.O. 1990, c. A.31, s. 25(8).



## **Use of City-owned Property Outside the Right of Way**

Any utility that wishes to use City-owned property outside the right of way, including Enbridge, is required to be charged market value. The City may lease land, grant a license, or grant a temporary or permanent easement for the purpose of accommodating utility infrastructure (notably, the City can only grant temporary, not permanent, easements on land zoned as parks and open spaces in Toronto's Official Plan). However, regardless of the form, property interests are to be based on appraised market value pursuant to Chapter 213 "Real Property", Appendix B of the Toronto Municipal Code.

The precise terms governing the compensation that Enbridge would pay to the City for a property interest in public property outside the right of way, and any provisions around access to that property for work on pipelines or other equipment, would be set out in the relevant agreement pertaining to a particular property. It is not known exactly how many licences and easements the City has granted to Enbridge and its 19<sup>th</sup> and 20<sup>th</sup> century predecessors.

## **CONTACT**

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## **SIGNATURE**

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James Nowlan  
Executive Director, Environment & Climate Division

## **ATTACHMENTS**

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Letter from Executive Director, Environment & Climate Division to Standing Committee on the Interior re Bill 165