



# **Ontario Energy Board Commission de l'énergie de l'Ontario**

---

## **DECISION AND ORDER**

**EB-2017-0108**

## **UNION GAS LIMITED**

**Application for Certificates of Public Convenience and Necessity for Norfolk County, the County of Elgin and the County of Middlesex**

**By Delegation, before: Pascale Duguay**

---

**October 11, 2018**

## TABLE OF CONTENTS

1	INTRODUCTION AND SUMMARY.....	2
2	THE PROCESS .....	4
3	THE APPLICATION.....	6
3.1	MUNICIPALITIES IN QUESTION .....	6
3.2	CERTIFICATES IN QUESTION .....	6
3.3	THE REQUEST.....	9
4	OVERLAPPING AREAS IN THE COUNTY OF ELGIN AND THE COUNTY OF MIDDLESEX .....	11
5	OVERLAPPING AREAS IN NORFOLK COUNTY .....	15
6	AREAS NOT COVERED BY AN EXISTING CERTIFICATE AND NON- COMPLIANT INFRASTRUCTURE .....	16
7	ORDER .....	19

## 1 INTRODUCTION AND SUMMARY

The *Municipal Franchises Act* requires persons constructing any works to supply natural gas to have the approval of the Ontario Energy Board (OEB), in the form of a certificate of public convenience and necessity (certificate). This certificate provides the authorization to construct works within the specified geographic area, and is generally as well as historically granted within the boundaries of a municipality for ease of administration.

A certificate relates to a geographical area. Therefore, where a certificate is granted for an upper-tier municipality, unless otherwise stated, it would include the authorization to construct facilities within the lower-tier municipalities contained within the upper-tier municipality. As well, in a situation where separate certificates also exist for the lower-tier municipalities, the upper- and lower-tier certificates would each be valid, and there would be no hierarchy between them.

A concern arises when an upper-tier certificate has been issued for one distributor, and a certificate for a lower-tier municipality within this upper-tier is issued to a different distributor. It becomes unclear as to whose rights take precedence within the lower-tier municipality. This lack of clarity among gas distributors can give rise to questions about where each distributor can and cannot operate, safety concerns, and records management.

On August 19, 2016, Union Gas Limited (Union Gas) was directed by the OEB to file a report confirming that the utility held certificates covering the geographic areas in which its facilities are located.

On December 22, 2016, Union Gas filed a report which identified the areas in which it has existing infrastructure but does not hold a certificate. The report also identified included overlapping certificates for areas in Norfolk County, as well as for the County of Elgin and the County of Middlesex (the Counties) that had been issued to both Union Gas and Natural Resource Gas Limited (EPCOR Natural Gas Limited Partnership's (EPCOR) predecessor).

Union Gas applied to the OEB on February 24, 2017 for an order amending Union Gas' and EPCOR's authorizations in the Counties in order to eliminate this overlap. The application also included a request to grant certificates for areas where Union Gas has existing infrastructure but does not hold a certificate. The OEB approved EPCOR and On-Energy Maricann Limited Partnership (OMLP) as intervenors in the proceeding.

The OEB afforded the parties to the proceeding an opportunity to settle any differences in their positions on the overlap issue. A settlement was not reached.

The OEB finds that the public interest requires that the current overlap situation in the Counties be resolved. Overlapping certificates can lead to confusion as to where each distributor can or cannot operate, and are not desirable given the possible safety and records management issues that may arise.

This Decision and Order grants a new certificate to each of Union Gas and EPCOR for Norfolk County, limited to the areas covered by their previous certificates in Norfolk County. As there is no gas distribution service in the area where both Union Gas' and EPCOR's certificates for Norfolk County currently overlap, this area will be excluded from the new certificates. Areas that are currently not covered by a certificate will remain without a certificate at this time; however, Union Gas is granted the areas in Norfolk County where it currently has infrastructure to bring it into compliance.

This Decision and Order also cancels each of Union Gas' and EPCOR's upper-tier certificates for the County of Elgin and the County of Middlesex. Where only one distributor currently serves an entire lower-tier municipality, that distributor is granted (or retains) the lower-tier certificate. For areas where both distributors have gas infrastructure present, each distributor is granted a lower-tier certificate limited to the areas where each distributor currently serves.

## 2 THE PROCESS

Union Gas filed an application with the OEB on February 24, 2017, under section 8 of the *Municipal Franchises Act*. The application was for an order of the OEB amending Union Gas' and EPCOR's authorizations to construct gas works and supply gas in Norfolk County, the County of Elgin and the County of Middlesex.

A Notice of Hearing was published in local newspapers on July 13, 2017. Natural Resource Gas Limited (NRG)<sup>1</sup>, EPCOR and OM Limited Partnership (OMLP) applied and were awarded intervenor status.

The OEB proceeded by way of a written hearing.

In accordance with Procedural Order No. 1, issued September 6, 2017, OEB staff and intervenors filed interrogatories, and Union Gas responded to those interrogatories. Given that Union Gas' and EPCOR's existing certificates do not sufficiently delineate the areas each utility is currently serving, the OEB issued Procedural Order No. 2, on October 16, 2017, and ordered Union Gas, EPCOR, NRG and OMLP to convene a settlement conference on November 2, 2017, giving the parties an opportunity to reach an agreement and make a joint proposal to the OEB as to how the certificates should be amended, in a manner that serves the public interest.

Pursuant to Procedural Order No. 2, on November 3, 2017, Union Gas filed with the OEB a letter indicating that there was no settlement proposal arising from the settlement conference. Union Gas indicated, however, that there was agreement between the parties to exchange additional information and continue discussions.

On November 9, 2017, Union Gas filed another letter with further details regarding the process agreed to by the parties during the settlement conference, and requested that the deadline to submit a settlement proposal be extended to January 31, 2018. This request was supported by EPCOR. The OEB granted the extension in Procedural Order No. 3, which was issued on November 14, 2017.

Pursuant to Procedural Order No. 3, Union Gas filed, on January 30, 2018, a letter indicating that there was no settlement proposal arising from settlement discussions.

---

<sup>1</sup> On November 9, 2017, EPCOR filed a letter advising the OEB that NRG had transitioned its participation in the proceeding to EPCOR, given that the transaction for EPCOR to acquire the assets of NRG had closed.

Union Gas requested an opportunity to update its application by February 16, 2018, given the information that was clarified during settlement discussions.

The OEB issued Procedural Order No. 4 on February 5, 2018, requiring Union Gas to file any updates to its application by February 16, 2018, and made provision for intervenors to submit evidence if they chose to do so, as well as for an interrogatory process for intervenor evidence. Union Gas filed an updated application on February 16, 2018.

In accordance with the OEB's Procedural Order No. 5, issued on March 26, 2018, EPCOR, OMLP and OEB staff filed their written submissions by April 12, 2018, and Union Gas filed its reply submission by April 26, 2018.

OEB staff's submission presented options for the OEB to consider that had not been otherwise presented in the evidentiary phase of the proceeding. In Procedural Order No. 6, issued on June 7, 2018, the OEB provided EPCOR an opportunity to file submissions on the options presented by OEB staff, and Union Gas with an opportunity to file a reply submission. EPCOR's submission was filed on June 15, 2018; Union Gas' reply submission was filed on June 22, 2018.

### **3 THE APPLICATION**

#### **3.1 Municipalities in Question**

Norfolk County, the County of Elgin and the County of Middlesex are municipal corporations incorporated under the laws of the Province of Ontario. In this Decision and Order, a reference to Norfolk County, the County of Elgin or the County of Middlesex is a reference to the municipal corporation or its geographical area, as the context requires.

Norfolk County is a single-tier municipality with a geographic area that has experienced a number of boundary changes over the past 50 years. The most recent set of boundary changes created the former Town of Norfolk on January 1, 2001, through an amalgamation of the former Town of Simcoe, the former Town of Delhi, the former Township of Norfolk and the western half of the former City of Nanticoke. On January 23, 2001, the former Town of Norfolk was renamed Norfolk County.

The County of Elgin is an upper-tier municipality composed of seven incorporated lower-tier municipalities: the Municipality of Central Elgin, the Township of Malahide, the Town of Aylmer, the Municipality of Bayham, the Municipality of West Elgin, the Township of Southwold and the Municipality of Dutton/Dunwich.

The County of Middlesex is also an upper-tier municipality, and is composed of eight incorporated lower-tier municipalities: the Township of Strathroy-Caradoc, the Municipality of Middlesex Centre, the Municipality of Thames Centre, the Municipality of North Middlesex, the Municipality of Southwest Middlesex, the Township of Lucan Biddulph, the Township of Adelaide-Metcalf and the Village of Newbury.

#### **3.2 Certificates in Question**

Union Gas is a corporation incorporated under the laws of the Province of Ontario, with its head office in the Municipality of Chatham-Kent, Ontario.

EPCOR is a corporation incorporated under the laws of the Province of Ontario, with its head office in the Municipality of Aylmer, Ontario.

On August 19, 2016, Union Gas was directed by the OEB to file a report confirming that the utility held certificates covering the geographic areas in which its facilities are located.

As part of its investigation, Union Gas raised the matter of overlapping certificates held by both Union Gas and EPCOR within Norfolk County, the County of Elgin and the County of Middlesex, and committed to filing an application to eliminate this overlap of certificates.

Union Gas and EPCOR hold the following certificates of public convenience and necessity granting Union Gas and EPCOR the right to construct works to supply natural gas in Norfolk County, the County of Elgin and the County of Middlesex:

	<b>Union Gas</b>	<b>EPCOR</b>
<b>Norfolk County</b>	<b>F.B.C. 259</b> , dated March 17, 1959, for the whole of the following former Townships: the Township of Charlotteville, the former Township of Townsend, the former Township of Windham, and the former Township of Woodhouse; and for certain areas within the following former Townships: the Township of Houghton, the former Township of Middleton, the former Township of North Walsingham, the former Township of South Walsingham	<b>E.B.C. 111/119</b> , dated May 5, 1982, for certain areas within the following former Townships: the Township of Houghton, the Township of Middleton, the Township of North Walsingham, the Township of South Walsingham
<b>County of Elgin</b>	<b>F.B.C. 259</b> , dated March 17, 1959, for the County of Elgin	<b>E.B.C. 212</b> , dated February 9, 1996, for the County of Elgin
<i>Municipality of Bayham</i>	<b>E.B.C. 255</b> , dated January 17, 1997, for the former Township of Bayham, excluding areas in Bayham granted to EPCOR	<b>E.B.C. 111/119</b> , dated May 5, 1982, for the former Village of Vienna and the former Township of Bayham, excluding areas held by Union Gas
<i>Town of Aylmer</i>	No certificate	<b>E.B.C. 111/119</b> , dated May 5, 1982, for the Town of Aylmer

<i>Township of Malahide</i>	No certificate	No certificate
<i>Municipality of Central Elgin</i>	<b>EB-2007-0810</b> , dated January 14, 2008, for the Municipality of Central Elgin, excluding the former Village of Belmont and areas in the former Township of Yarmouth granted to EPCOR in E.B.C. 111/119 and E.B.C. 242, respectively	<b>E.B.C. 111/119</b> , dated May 5, 1982, for the former Village of Belmont and E.B.C. 242, dated September 6, 1996, for certain areas in the former Township of Yarmouth, located in the Municipality of Central Elgin
<i>Municipality of West Elgin</i>	<b>EB-2008-0412</b> , dated March 4, 2009, for the Municipality of West Elgin.	No certificate
<i>Municipality of Dutton-Dunwich</i>	<b>EB-2010-0205</b> , dated July 16, 2010, for the Municipality of Dutton-Dunwich.	No certificate
<i>Township of Southwold</i>	<b>F.B.C. 259</b> , dated March 17, 1959, for the Township of Southwold.	No certificate
<b>County of Middlesex</b>	<b>F.B.C. 259</b> , dated March 17, 1959, for the County of Middlesex.	<b>E.B.C. 239</b> , dated October 16, 1995, for the County of Middlesex
<i>Municipality of Thames Centre</i>	<b>EB-2009-0034</b> , dated April 14, 2009, for certain areas in the former Township of North Dorchester, located in the Municipality of Thames Centre.	<b>E.B.C. 111/119</b> , dated May 5, 1982, for certain areas in the former Township of North Dorchester, located in the Municipality of Thames Centre
<i>Township of Strathroy-Caradoc</i>	<b>EB-2009-0169</b> , dated September 8, 2009, for the Township of Strathroy-Caradoc.	No certificate

<i>Municipality of Middlesex Centre</i>	<b>EB-2009-0333</b> , dated December 4, 2009, for the Municipality of Middlesex Centre.	No certificate
<i>Municipality of North Middlesex</i>	<b>EB-2008-0326</b> , dated December 23, 2008, for the Municipality of North Middlesex.	No certificate
<i>Municipality of Southwest Middlesex</i>	<b>EB-2007-0908</b> , dated January 29, 2008, for the Municipality of Southwest Middlesex.	No certificate
<i>Township of Adelaide Metcalfe</i>	<b>EB-2008-0302</b> , dated October 27, 2008, for the Township of Adelaide Metcalfe.	No certificate
<i>Village of Newbury</i>	<b>P.F.M. 583</b> , dated October 2, 1952, for the Village of Newbury.	No certificate
<i>Township of Lucan-Biddulph</i>	<b>E.B.C. 77</b> , dated April 23, 1969, for the former Village of Lucan and for the former Township of Biddulph, located within the Township of Lucan-Biddulph.	No certificate

### 3.3 The Request

Union Gas requests the following, as described in its evidence updated on February 16, 2018:

1. An order cancelling those parts of Union Gas' certificate F.B.C. 259 related to the former County of Norfolk and those parts of EPCOR's certificate E.B.C. 111/119 related to the former Township of Norfolk that were in the former Townships of Houghton, Middleton, North Walsingham and South Walsingham, and replacing them with utility-specific certificates for Norfolk County.
2. An order cancelling those parts of Union Gas' certificate F.B.C. 259 related to the County of Elgin and EPCOR's certificate E.B.C. 212 related to the County of Elgin, and replacing them with utility-specific upper-tier certificates for the

- County of Elgin pertaining to the areas within the County of Elgin for which each utility holds lower-tier certificates.
3. An order cancelling Union Gas' certificate EB-2008-0309 related to the County of Middlesex and EPCOR's certificate E.B.C. 239 related to the County of Middlesex, and replacing them with utility-specific upper-tier certificates for the County of Middlesex pertaining to the areas within the County of Middlesex for which each utility holds lower-tier certificates.
  4. An order granting Union Gas a certificate for the Township of Malahide limited to Lot 24 in Concession 11.

## 4 OVERLAPPING AREAS IN THE COUNTY OF ELGIN AND THE COUNTY OF MIDDLESEX

EPCOR submitted that Union Gas' application was filed with the OEB without Union Gas conferring with, and without the consent of, EPCOR, and that the OEB should dismiss the application and use it as an opportunity to provide clear guidance about overlapping certificates, including the process for and requirements of applying for and amending such certificates. EPCOR disagreed with the proposition that overlapping certificates are causing a problem that must be rectified, and stated that Union Gas has not provided any evidence of harm or prejudice to Union Gas or to the public in having overlapping certificates. EPCOR alleged that the application was Union Gas' attempt to maximize its incumbency advantage while circumscribing EPCOR's certificate rights and ability to expand.

EPCOR noted that the OEB has recognized certificates as not exclusive. However, EPCOR submitted that there is a significant advantage held by an incumbent in that the incumbent can expand into unserved areas without requiring OEB approval (where the need to file a leave to construct application is not triggered), which pre-empts any alternative proposals by competitors or the need to apply for a certificate. EPCOR submitted that if Union Gas is truly concerned about certainty with regard to the areas covered by each utility's certificates, then EPCOR has no objections to the OEB modifying Union Gas' certificates to specifically state the lots or locations of Union Gas' assets in the County of Elgin and the County of Middlesex. EPCOR objected to any efforts to modify its certificates in any way through this proceeding.

OEB staff submitted that it is problematic when an upper-tier certificate has been issued for one distributor, and a certificate for a lower-tier municipality within this upper-tier is issued to a different distributor. In OEB staff's view, both certificates are equally valid and it becomes unclear as to whose rights take precedence. OEB staff argued that this lack of clarity can give rise to questions about where each distributor can and cannot operate, safety concerns, and records management issues. OEB staff further submitted that upper-tier certificates are unnecessary because upper-tier municipalities are made up of lower-tier municipalities for which individual certificates can be issued.

OEB staff suggested that the OEB eliminate the upper-tier certificates for both Union Gas and EPCOR and either: A) replace them with lower-tier certificates limited to the metes and bounds of each utility's existing infrastructure, or B) award lower-tier

certificates for the whole of a lower-tier municipality to each utility, if the utility is the only distributor within the lower-tier municipality, and if both utilities have infrastructure within the same lower-tier municipality, to award certificates for the lower-tier municipality limited to the metes and bounds of their infrastructure. OEB staff expressed a preference for Option A, stating that it acknowledges that both distributors have rights to the area, and provides both distributors equal opportunity to apply to the OEB to serve currently unserved areas. Competition to operate in these unserved areas was not examined in this proceeding.

Union Gas submitted that since certificates confer the right to build facilities within a specific area, it is not desirable for two distributors to hold certificates for the same location. Union Gas further submitted that while the right to operate within any given municipality is not exclusive, Union Gas agrees with OEB staff that overlapping certificates can give rise to a lack of clarity as to where distributors can operate, safety concerns and records management issues.

Union Gas argued that Option A is impractical and against the public interest because it would be inefficient to administer and would lead to the constant amendment of certificate boundaries, as well as cause additional costs and substantial delays for customers requesting service. Union Gas submitted that Option B would be a more workable solution, but still contains some of the same problems inherent in Option A where both distributors have infrastructure. Union Gas proposed its preferred option, Option C, which it submitted would eliminate the problem of overlapping certificates while avoiding inefficiencies. Option C would involve issuing to one utility a lower-tier certificate for the whole municipality if it was the only distributor in the area; and, if Union Gas and EPCOR both have infrastructure in the area, then the utility who owns the majority of the infrastructure in the area could be granted a lower-tier certificate that covers the area of the whole municipality, excluding the areas where the other utility has infrastructure. The other utility would then be granted a certificate for the lower-tier municipality limited only to the areas where it currently has infrastructure. If neither distributor has a majority of the infrastructure in the lower-tier municipality, then each distributor would be granted a certificate limited to the specific lots on which it currently has infrastructure, leaving the remaining areas without a certificate.

While EPCOR maintained its position that its certificates not be amended in this proceeding, EPCOR submitted that if the OEB is inclined to select an option presented by OEB staff, then it should be Option A. In EPCOR's opinion, Option A is more reflective of the status quo and is less likely to result in inadvertent expansion. EPCOR

agreed with OEB staff that, with Option A, competition to serve the unserved areas remains possible, and that, in any event, it may be premature to grant whole areas to Union Gas via Option B and C. EPCOR stated that Option C clearly favours Union Gas because Union Gas would gain previously uncertificated territory (given that Union Gas has the majority of the infrastructure in the area) without EPCOR having been afforded the ability to compete for that area in this proceeding. EPCOR submitted that the arguments raised by Union Gas favour expediency and convenience over procedural safeguards.

In its reply submission, Union Gas argued that the implementation of Option A would not reflect the status quo, and would neither be fair nor efficient. Union Gas cited the example of the City of London where, if Option A were carried out, Union Gas would then be unable to meet additional service requests without filing a certificate application to expand its boundaries. Union Gas submitted that anything that allows for the timely provision of services, reduces costs and promotes administrative efficiency is considered in the public interest. Union Gas argued that it is unlikely that a utility that is currently not operating in a municipality could serve a customer within the municipality more economically and to the customer's advantage.

## Findings

In order to rectify the issues presented in this proceeding, the OEB finds that Option B best serves the public interest, as it balances fairness with administrative efficiency. Accordingly, the upper-tier certificates for both Union Gas and EPCOR are to be cancelled and replaced with lower-tier certificates for the entire lower-tier municipality to each utility, if the utility is the only distributor within the lower-tier municipality. If both utilities have infrastructure within the same lower-tier municipality, certificates for the lower-tier municipality limited to the metes and bounds of their infrastructure will be awarded.

The OEB recognizes that the existing certificates granted to each of Union Gas and EPCOR conferred equal rights to both utilities to construct works to supply gas and to supply gas within the County of Elgin, the County of Middlesex, and certain areas within Norfolk County. However, the OEB agrees with Union Gas and OEB staff that a lack of clarity in terms of whose rights take precedence in these areas can make it difficult to determine where each distributor can operate and can give rise to safety and records management concerns. The OEB also agrees with OEB staff that upper-tier certificates are unnecessary, and that certificates for lower-tier municipalities, which are awarded based on geographical area, provide sufficient authorization to

construct works to supply gas in area given jurisdiction, which should also include the county roads under upper-tier jurisdiction. The OEB finds that the “do nothing” approach advocated by EPCOR is not appropriate as it does not address the safety and record management concerns identified above. The OEB also agrees with EPCOR that Option C advanced by Union Gas clearly favours Union Gas’ position. While Option A addresses the concern outlined above, it raises issues with respect to administrative efficiency, including minimizing delays to provide service to customers. For those reasons, the OEB finds that Option B strikes a balance between fairness and administrative efficiency.

The Generic Proceeding on Community Expansion established a framework within which natural gas service could be expanded to communities that are not currently served, which includes areas within lower-tier municipalities that an incumbent distributor is not currently serving. As noted by OEB staff, multiple distributors can provide service in a municipality as long as their service boundaries are clearly defined. The OEB agrees with OEB staff that any distributor can apply for a certificate to operate in an area that is currently unserved, if that distributor has a plan to serve that area, whether or not that area is covered by another distributor’s certificate. If EPCOR is currently serving or planning to serve locations outside of the areas mentioned above, EPCOR can file an application for a certificate for these locations.

Therefore, the OEB finds that the parts of both utilities’ certificates pertaining to upper-tier municipalities of the County of Elgin and the County of Middlesex shall be canceled. They will be replaced with lower-tier certificates for each utility. Each of Union Gas and EPCOR is to provide the OEB with draft orders for certificates for each of the lower-tier municipalities that they both have infrastructure in, complete with the metes and bounds information in lots and concessions, and the customer density maps with boundaries delineating these areas. Union Gas’ and EPCOR’s current certificates for lower-tier municipalities where they are the sole distributor in the municipality will continue to be valid, except where the certificate does not reflect the current municipality’s name (in which case new certificates will be issued with the correct name). Utilities are expected to file certificate applications that align their certificates with their municipal franchise agreements.

## 5 OVERLAPPING AREAS IN NORFOLK COUNTY

Union Gas identified Lot 1 in Concessions 9, 10, 11 and 12 in Norfolk County as areas where Union Gas' and EPCOR's certificates overlap. Union Gas initially requested that this area be removed from EPCOR's certificate and granted to Union Gas, as it would allow Union Gas to respond quickly to new requests for service. To Union Gas' knowledge, EPCOR has no facilities in place to serve customers in this area, while Union Gas has facilities in close proximity. Union Gas also submitted that providing Union Gas with certificate rights in this area does not prevent other parties from requesting certificate rights in the future to serve customers in this area.

EPCOR submitted that Union Gas' request should be dismissed, as Union Gas has provided no evidence of any specific request for service, or that any new requests for service have been hindered by the certificate overlap.

OEB staff suggested in its submission that the OEB cancel current authorizations to serve in Norfolk County, and issue new certificates for Norfolk County to each of Union Gas and EPCOR, limited to the areas covered by their existing certificates, but excluding the area of overlap. In its reply submission, Union Gas stated that it agrees with OEB staff.

### Findings

The OEB notes that Union Gas does not appear to be serving any customers in Lot 1 of Concessions 9, 10, 11 and 12 in Norfolk County. Without evidence to the contrary, the OEB assumes there is no infrastructure in this area. Unless EPCOR provides evidence that it is providing service or has infrastructure located in the area of overlap, the OEB finds that that this area is to be excluded from each utility's certificate. If either utility wishes to serve locations within the area of overlap, it will have to apply for an amendment to its certificate for Norfolk County.

## 6 AREAS NOT COVERED BY AN EXISTING CERTIFICATE AND NON-COMPLIANT INFRASTRUCTURE

### Norfolk County

Union Gas identified a number of areas in Norfolk County that are currently not covered by a certificate: the north half of Lots 2, 3, 4 and 5 in Concession 7 and all of Lots 2, 3, 4 and 5 in Concession 8. Union Gas acknowledged that it had put facilities in place in error in the north half of Lots 2, 3, and 5 in Concession 7, and all of Lots 4 and 5 in Concession 8, and that this application was its attempt to rectify the inadvertent error. Union Gas originally proposed that these areas (excluding the north half of Lot 2 in Concession 7, which was, at the time, being reviewed by the OEB in OMLP's certificate application<sup>2</sup>) should be included within its certificate for Norfolk County, since these lots were already being serviced by Union Gas or were in close proximity to existing Union Gas facilities and could be provided service upon request without undue delay. Union Gas submits that, to its knowledge, EPCOR has no facilities within the vicinity of this area which would allow EPCOR to economically serve customers in this area of Norfolk County.

EPCOR submitted that Union Gas has not provided evidence of any specific request for service, or that any new requests for service have been unduly delayed by the certificate overlap. EPCOR further submitted that Union Gas had acted contrary to the *Municipal Franchises Act*, and that if the OEB were to rectify Union Gas' certificate, it should not reward Union Gas by granting Union Gas the balance of the uncertificated lots in Norfolk County. EPCOR shared Union Gas' view that the north half of Lot 2 in Concession 7 should remain uncertificated (until the OEB issued its decision on OMLP's certificate application).

OEB staff submitted that Union Gas should not be granted the uncertificated areas in Norfolk County, except for areas where Union Gas already has infrastructure (and not including the north half of Lot 2 in Concession 7), to bring Union Gas into compliance. As noted in its reply submission, Union Gas agreed with OEB staff on this issue.

---

<sup>2</sup> The OEB issued its decision on OMLP's certificate application (EB-2017-0289) on June 14, 2018, granting OMLP a certificate to construct facilities and supply natural gas to a new Maricann Group Incorporated Langton Facility in Norfolk County.

## County of Elgin

Union Gas also identified a number of areas not covered by a certificate within the Municipality of Central Elgin in the County of Elgin, which would need to be included in its lower-tier certificate for the Municipality of Central Elgin under Option C. Union Gas submitted that it may be worthwhile to ensure all areas within the County are covered by upper- and lower-tier certificates, and that leaving these areas uncertificated would unnecessarily delay providing service when requested, as a certificate application would then have to be filed and processed by the OEB prior to the service being provided.

EPCOR submitted that Union Gas has not provided any evidence of the delayed provision of requested services in the Municipality of Elgin, nor of any prejudice to the public, and noted that Union Gas had stated that it was not aware of any pending requests for service in these areas. EPCOR further submitted there is no such specific request before the OEB, and that it would only be appropriate to issue a certificate where there is a proper and fulsome application before the Board.<sup>3</sup> EPCOR submitted that if the OEB adopted an approach that expanded a utility's certificate rights in the absence of a specific request for service, then the OEB would be ceding its ability to supervise growth and foster competition in currently uncertificated areas.

Union Gas took the position that competition to serve unserved areas in the County of Elgin and the County of Middlesex has not been addressed in this proceeding as the competitive framework established by the decision issued in the Generic Proceeding on Community Expansion only addressed expanding natural gas service to communities that are not currently served, and does not apply to contiguous expansion of the existing system. Union Gas noted that all of the lower-tier communities within the Counties are currently receiving natural gas. Union Gas also submitted that while the OEB has stated that where a certificate has been issued for an area, another distributor can apply to serve parts of the certificated area that are currently unserved.

Union Gas also identified four locations within Lot 24 in Concession 11 in the Township of Malahide in the County of Elgin which Union Gas currently serves without a lower-tier certificate for the area. Union Gas requests a certificate for the Township of Malahide, limited to Lot 24 in Concession 11.

---

<sup>3</sup> EPCOR Submission, April 12, 2018, p. 14

EPCOR did not object in principle to Union Gas' request for a certificate for Lot 24 in Concession 11 in the Township of Malahide, but stated that the certificate should be limited to the four locations that Union Gas currently serves.

In reply submission, Union Gas acknowledged EPCOR's concern that Union Gas would gain territory on a "lots" approach as opposed to a more granular "metes and bounds" approach, but stated that it does not see the purpose to a more granular description of land within a municipality, when lots and concessions descriptions are standard measurements used within all municipalities.

## Findings

The OEB finds that the areas currently not covered by existing certificates are to be excluded from each utility's certificate for Norfolk County, with the exception of the areas in Norfolk County where Union Gas currently has infrastructure, specifically the north half of Lots 3, and 5 in Concession 7, and all of Lots 4 and 5 in Concession 8, which is to be added to Union Gas' certificate. The OEB notes that a certificate for the north half of Lot 2 in Concession 7 has already been granted to OMLP.

Union Gas and EPCOR are to submit draft orders for their certificates for Norfolk County based on the areas each utility currently has authorization for, excluding the area of overlap, as well as facilities maps or customer density maps with boundaries delineating each area of authorization. Union Gas is to include in its certificate the north half of Lots 3, and 5 in Concession 7, and all of Lots 4 and 5 in Concession 8 in its certificate, and EPCOR is to exclude these areas.

In this particular instance, the OEB finds that lots and concessions are granular enough for the purposes of specifying areas of service. In the interests of bringing Union Gas into compliance, Union Gas is granted the authorization to serve Lot 24 in Concession 11 in the Township of Malahide, which Union Gas is instructed to include in its draft order for a certificate for the Township of Malahide. Going forward, it is expected that Union Gas will comply with the *Municipal Franchises Act* and file certificate applications prior to constructing works to supply gas in areas where it currently does not hold a certificate.

## 7 ORDER

### THE BOARD ORDERS THAT:

1. Union Gas Limited shall file with the OEB and serve EPCOR Natural Gas Limited Partnership draft orders for certificates for each of the lower-tier municipalities in the County of Elgin and the County of Middlesex that both Union Gas Limited and EPCOR Natural Gas Limited Partnership have infrastructure in, complete with the metes and bounds information in lots and concessions, and the customer density maps with boundaries delineating these areas by **November 1, 2018**. Union Gas is to include Lot 24 in Concession 11 of the Township of Malahide in the draft order for its certificate for the Township of Malahide.
2. EPCOR Natural Gas Limited Partnership is to file with the OEB and serve Union Gas Limited draft orders for certificates for each of the lower-tier municipalities in the County of Elgin and the County of Middlesex that both EPCOR Natural Gas Limited Partnership and Union Gas Limited have infrastructure in, complete with the metes and bounds information in lots and concessions, and the customer density maps with boundaries delineating these areas by **November 1, 2018**.
3. Union Gas Limited shall file with the OEB and serve EPCOR Natural Gas Limited Partnership a draft order for a certificate for Norfolk County, based on the areas Union Gas Limited currently has authorization for, excluding the area of overlap, as well as customer density maps with boundaries delineating each area of authorization by **November 1, 2018**. Union Gas Limited is to include in the draft order for its certificate for Norfolk County the north half of Lots 3, and 5 in Concession 7, and all of Lots 4 and 5 in Concession 8.
4. EPCOR Natural Gas Limited Partnership is to file with the OEB and serve Union Gas Limited a draft order for a certificate for Norfolk County, based on the areas EPCOR Natural Gas Limited Partnership currently has authorization for, excluding the area of overlap, as well as customer density maps with boundaries delineating each area of authorization by **November 1, 2018**. EPCOR Natural Gas Limited Partnership is to exclude in the draft order for its certificate for Norfolk County the north half of Lots 3, and 5 in Concession 7, and all of Lots 4 and 5 in Concession 8.

5. Parties who wish to make written submission on the draft orders filed by each of Union Gas Limited and EPCOR Natural Gas Limited Partnership shall file such submission with the OEB, and deliver them to the other parties by **November 15, 2018**.
  
6. If Union Gas Limited or EPCOR Natural Gas Limited Partnership wishes to reply to the submission of other parties, the reply shall be filed with the OEB and delivered to the other parties by **November 29, 2018**.

**DATED** at Toronto October 11, 2018

**ONTARIO ENERGY BOARD**

*Original Signed By*

Pascale Duguay  
Manager, Application Policy and Climate Change