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April 12, 2018

Kirsten Walli
Board Secretary
Ontario Energy Board
P.O. Box 2319
27th Floor, 2300 Yonge Street
Toronto ON M4P 1E4

Dear Ms. Walli:

**Re: Union Gas Limited (Union Gas)
Application for certificates of public convenience and necessity for Norfolk
County, the County of Elgin and the County of Middlesex
OEB File Number EB-2017-0108**

In accordance with Procedural Order No. 5, please find attached OEB staff's submission for the Union Gas/EPCOR Natural Gas Limited Partnership certificate overlap proceeding. Union Gas and all intervenors have been copied on this filing.

Yours truly,

Original signed by

Azalyn Manzano
Case Manager

/ attach.



ONTARIO ENERGY BOARD

OEB STAFF SUBMISSION

April 12, 2018

Union Gas Limited

**Application for certificates of public
convenience and necessity for Norfolk County,
the County of Elgin and the County of Middlesex**

EB-2017-0108

Introduction

These are the submissions of Ontario Energy Board (OEB) staff on the application filed by Union Gas Limited (Union Gas) on February 24, 2017, under section 8 of the *Municipal Franchises Act*, for an order amending Union Gas' and EPCOR Natural Gas Limited Partnership's (EPCOR) authorizations to construct gas works and supply gas in Norfolk County, the County of Elgin and the County of Middlesex (collectively, the Counties).

Union Gas' and EPCOR's certificates of public convenience and necessity have overlapping areas in Norfolk County, and both distributors hold certificates for each of the County of Elgin and the County of Middlesex. Union Gas is requesting that the OEB cancel and supersede the certificates relating to these areas and replace them with utility-specific certificates for the single-tier Norfolk County, and each of the upper-tiers of the County of Elgin and the County of Middlesex.

This proceeding is atypical from other certificate applications in that if the application is granted as filed, the certificate rights of another distributor, EPCOR Natural Gas Limited Partnership (EPCOR), would also be impacted.

Union Gas' application raises a number of issues, each of which are addressed by OEB staff below. The issues are, namely, how should the OEB deal with: 1) overlapping upper-tier and lower-tier certificates issued to Union Gas and EPCOR, 2) Union Gas' non-compliant infrastructure (i.e. facilities built in an area without a certificate), and 3) areas within the three counties for which there currently are no certificates.

Summary of OEB Staff's Position

OEB Staff submits that it is not desirable to have overlapping certificates for the same area. While certificates are not inherently exclusive, OEB staff submits that it is not in the interest of the public to have two distributors serving the same area. For this reason, OEB staff supports Union Gas' desire to clarify the areas of service between the two distributors.

Overlapping upper-tier certificates

For reasons that include administrative efficiency and safety, when granting certificates the OEB has historically aligned them with municipal boundaries. However, in this case,

OEB staff submits that the OEB cancel the overlapping upper-tier certificates for the County of Elgin and the County of Middlesex and replace them with lower-tier certificates to Union Gas and EPCOR for the areas where they currently have distribution infrastructure. In other words, the lower tier certificates would be limited to the metes and bounds of their existing infrastructure. Any distributor could, in the future, then apply for a certificate authorizing it to operate in an area that is currently unserved when it has a plan to serve that area.

OEB staff recommends this course of action as this acknowledges that both distributors have equal rights to the area. It also provides both distributors with an equal opportunity to serve the currently unserved areas, and does not provide the potential perception that the OEB is choosing one distributor over another at this time, given that competition to serve currently unserved areas may be possible and has not been examined in this proceeding.

OEB staff submits that, in the alternative, the OEB may, upon cancelling the upper-tier certificates for the County of Elgin and the County of Middlesex, issue lower-tier certificates for the entire lower-tier municipality to a distributor in the situation where the distributor is the only service provider in the municipality. For lower-tier municipalities where both distributors are currently providing service however, similar to the first option above, the OEB could issue certificates that are limited to the metes and bounds of a distributor's existing infrastructure.

This second option will be more administratively simple compared to the first option in that it will allow for certificates to be granted for entire lower-tier municipalities in some situations, which makes it easier to track service territories in the future. At the same time, this second option does not prevent other distributors from being able to operate in an unserved area that is covered by another distributor's certificate. Certificates do not provide exclusive incumbent rights in a municipality for unserved areas – multiple distributors can provide service in a municipality as long as their boundaries are clearly defined. Any distributor could apply in the future for a certificate to operate in an area that is currently unserved when it has a plan to serve that area, whether or not that area is covered by another distributor's certificate. However, issuing a certificate for an entire lower-tier municipality just because the distributor is currently the only service provider in the municipality could be perceived as unfair, given that both distributors have had equal rights to the area by virtue of their upper tier certificates; it could also be considered premature given that, as mentioned above, competition to serve the unserved areas in the lower-tier municipality may be possible and has not been examined in this proceeding.

OEB staff submits that either option eliminates the confusion brought about by having a certificate for an upper-tier issued to one distributor and certificates for a lower-tier area within the upper-tier for a different distributor.

Overlapping lower-tier certificates

OEB staff submits that the OEB should grant a certificate for Norfolk County to each of Union Gas and EPCOR, limited to the boundaries of their former certificates and their existing infrastructure, but excluding the overlapping areas.

From the evidence on the record of this proceeding and to the best of OEB staff's knowledge, the overlapping areas currently have no infrastructure and are unserved. If either distributor wishes to serve the overlapping areas, the distributor can file an application to request a certificate when it has a plan to serve the area. OEB staff submits that competition to serve such areas is possible and has not been examined in this proceeding.

Union Gas' noncompliant infrastructure

OEB staff submits that the OEB should issue certificates limited to the metes and bounds of Union Gas' existing infrastructure for the areas where it currently does not hold a certificate.

Unserved areas within the County for which no certificates have been issued

OEB staff submits that the OEB should at this time refrain from issuing certificates for any areas within the Counties that are both currently not covered by a certificate and have no infrastructure. OEB staff submits that competition to serve such areas is possible and has not been examined in this proceeding.

Process

The OEB issued a Notice of Hearing on July 13, 2017, which was served and published as directed. Natural Resource Gas Limited (NRG), EPCOR Natural Gas Limited Partnership (EPCOR), and OM Limited Partnership (OMLP) applied for and were granted intervenor status. The OEB proceeded by way of a written hearing.

The OEB issued Procedural Order No. 1 on September 7, 2017, setting the schedule

for written interrogatories and written submissions. In Procedural Order No. 2, issued October 16, 2017, the OEB found that the existing certificates of both Union Gas and NRG did not sufficiently delineate the areas that the distributors currently serve, nor address the potential overlap of unserved areas in the three Counties, and so therefore provided for a settlement conference on November 2, 2017. The purpose of the settlement conference was to give the parties an opportunity to reach an agreement and make a joint proposal to the OEB on how the certificates should be amended (or cancelled and superseded) by the OEB, in a manner that best serves the public interest.

Pursuant to Procedural Order No. 2, Union Gas filed with the OEB a letter on November 3, 2017, indicating that there was no settlement proposal arising from the settlement conference, but that there was agreement between parties to exchange additional information and continue discussions. The OEB then issued Procedural Order No. 3 on November 14, 2017, which further extended the deadline to submit a settlement proposal to January 31, 2018.

On November 9, 2017, EPCOR filed a letter advising 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.

On January 30, 2018, Union Gas filed a letter indicating there was no settlement proposal arising from settlement discussions. Union Gas requested an opportunity to update its application by February 16, 2018 given the information that was clarified during settlement discussions.

On February 5, 2018, the OEB issued Procedural Order No. 4, which ordered Union to file any updates to its application by February 16, 2018, and made provision for an interrogatory process for the updated application. The OEB also provided an opportunity for intervenors to submit evidence if they chose to do so, as well as for an interrogatory process for intervenor evidence, while reminding parties to refrain from using or sharing information arising out of the settlement conference.

EPCOR and OEB staff submitted interrogatories on Union Gas' updated application on February 23, 2018. Union Gas submitted interrogatory responses on March 2, 2018.

On March 5, 2018, EPCOR filed a letter advising the OEB that it intended to file intervenor evidence by the March 9, 2018 deadline. On March 8, 2018, EPCOR filed a second letter advising the OEB that EPCOR would not be filing intervenor evidence.

The OEB issued Procedural Order No. 5 on March 26, 2018, which provided for written submissions from EPCOR, OMLP and OEB staff to be filed by April 12, 2018, and a reply submission from Union Gas by April 26, 2018.

Overlapping Certificates

Background

The *Municipal Franchises Act* requires persons constructing any works to supply natural gas to have the approval of the OEB, in the form of a certificate of public convenience and necessity (certificate). This certificate provides the authorization to construct works anywhere within the specified geographic area, and is generally as well as historically granted within the boundaries of a municipality for ease of administration. More rarely, it can also be granted for a specific purpose or area, without mention of municipal boundaries.²

A certificate does not distinguish between upper-tier and lower-tier boundaries; if a certificate is granted for an upper-tier municipality, it includes the authorization to construct facilities within the lower-tier municipalities contained within the upper-tier municipality. Neither does a certificate for an upper-tier municipality “trump” a certificate for a lower-tier municipality contained within it. There is no hierarchy to the certificates; both certificates are equally valid.

A problem 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.

For these reasons, the OEB has historically not encouraged facilities owned by different gas distributors in the same area, except for cases of system bypass that have been shown to be in the public interest. The OEB has stated in the *Decision and Order*

² Most recently, the certificate granted to Greenfield South Power Corporation in EB-2014-0299.

*for the Ontario Energy Board Generic Proceeding on Community Expansion*³ that certificates are not exclusive. OEB staff submits that once infrastructure has been built, practically speaking, the certificates become exclusive as it is not in the public interest to have two sets of gas lines going down the same street. By that logic, OEB staff submits that certificates do not provide exclusive incumbent rights to unserved areas within a municipality, but also that overlapping certificates are not desired.

A certificate differs from a municipal franchise agreement in that a municipality can have more than one franchise agreement for the exact same area. A franchise agreement specifies contractual roles, rights and obligations (e.g. how work is to be done and how costs are to be allocated between the municipality and the distributor). Franchise agreements between upper-tier municipalities and distributors, as well as franchise agreements between lower-tier municipalities and distributors, are needed because upper-tier municipalities are responsible for certain areas within the municipality that are outside the jurisdiction of lower-tier municipalities.

The same cannot be said of certificates. Technically speaking, no upper-tier certificates are necessary because upper-tier municipalities are made up of lower-tier municipalities, for which individual certificates can be (and have been) issued.

A secondary problem arises when municipal boundaries change over time, especially when adjacent municipalities “belonging” to different distributors become part of annexations and amalgamations. It becomes difficult to trace lot and concession numbers as well as old boundary lines of former townships as the decades go by, which makes it an imperative to update certificates as the changes happen and provide clear boundaries describing the current municipality. As Union Gas stated in its interrogatory response, referring to one of their responses in the Ashfield-Colborne-Wawanosh certificate proceeding ⁴:

Based on previous discussions with Board staff, Union understands that the Board’s preference is to match franchise agreements to amalgamated municipalities and Certificates of Public Necessity and Convenience [sic] to franchise agreements.

³ EB-2016-0004

⁴ Union Interrogatory Response in RP-2002-0117, as referred to in Exhibit B.Staff.2, page 2, Union Interrogatory Response for this proceeding, filed March 2, 2018

The Issue

Union Gas submitted the application to amend its and EPCOR's authorizations to construct gas works and supply gas in the three Counties in response to a letter from the OEB on August 19, 2016. The OEB's letter directed Union Gas to review its service territory to ensure that it had certificates for all the geographic areas in which its infrastructure was located. As part of its review, Union Gas identified three areas where both Union Gas and EPCOR (then Natural Resource Gas Limited) had overlapping certificates: Norfolk County, the County of Elgin, and the County of Middlesex.

The County of Elgin

Union Gas and EPCOR each hold upper-tier certificates for the County of Elgin. Union Gas holds F.B.C. 259 and EPCOR holds E.B.C. 212, both specifically naming the County of Elgin.

Each of Union Gas and EPCOR hold certificates for various lower-tier municipalities within the County of Elgin, as follows:

Lower-tier Municipality	Union Gas	EPCOR
Municipality of Bayham	<ul style="list-style-type: none"> E.B.C. 255 (former Township of Bayham excluding Bayham areas held by EPCOR) 	<ul style="list-style-type: none"> E.B.C. 111 and 119 (former Township of Bayham excluding Bayham areas held by Union Gas, former Village of Vienna)
Town of Aylmer	No certificate	<ul style="list-style-type: none"> E.B.C. 111 and 119 (Town of Aylmer)
Township of Malahide	No certificate	No certificate
Municipality of Central Elgin	<ul style="list-style-type: none"> EB-2007-0810 (Municipality of Central Elgin excluding the former Village of Belmont and areas in the former Township of Yarmouth held by EPCOR) 	<ul style="list-style-type: none"> E.B.C. 111 and 119 (former Village of Belmont) E.B.C. 242 (specific areas in the former Township of Yarmouth)
Municipality of West Elgin	<ul style="list-style-type: none"> EB-2008-0412 (Municipality of West Elgin) 	No certificate

Municipality of Dutton-Dunwich	<ul style="list-style-type: none"> EB-2010-0205 (Municipality of Dutton-Dunwich) 	No certificate
Township of Southwold	<ul style="list-style-type: none"> F.B.C. 259 (Township of Southwold) 	No certificate

Union Gas holds certificates for four of the seven lower-tier municipalities in the County of Elgin: Municipality of Central Elgin (EB-2007-0810, excluding areas covered by EPCOR's E.B.C. 111 and 119 and E.B.C. 242 certificates), Municipality of West Elgin, Township of Southwold and the Municipality of Dutton/Dunwich. In addition, Union Gas holds certificates for areas within the Municipality of Bayham (E.B.C. 255, for the former Township of Bayham excluding areas covered by EPCOR's E.B.C 111 and 119 certificate).

Union Gas does not hold certificates for the Township of Malahide or Town of Aylmer. However, Union Gas states that it is currently serving two residential customers in the Township of Malahide which are billed by EPCOR under a contract between the two distributors, as well as two additional locations on the other side of the street from Union's existing lower-tier certificate for the Municipality of Central Elgin.⁵

EPCOR holds a certificate for a lower-tier municipality, specifically the Town of Aylmer, in the County of Elgin. EPCOR holds certificates for areas in the Municipality of Central Elgin (for the former Village of Belmont and specific areas in the former Township of Yarmouth). EPCOR holds a certificate for areas within the Municipality of Bayham (for the former Township of Bayham limited to certain areas). Union Gas states that EPCOR serves the Township of Malahide but does not hold a lower-tier certificate for this area.

Union Gas is proposing the following resolution to the matter of overlapping certificates issued to Union Gas and EPCOR within the County of Elgin:

- The OEB should issue a certificate for the County of Elgin to Union Gas excluding the portion within which EPCOR holds lower-tier certificates, to replace the parts of F.B.C. 259 related to the County of Elgin

⁵ As OEB staff understand the arrangement, this is in effect a gross billing agreement by which EPCOR, an embedded utility supplied by Union Gas, is billed for the gas consumed by these customers as part of the total supply provided it by Union Gas. EPCOR then bills these customers as if they had taken supply directly from EPCOR.

- The OEB should issue a certificate for the County of Elgin to EPCOR limited to the area within which EPCOR holds lower-tier certificates, to replace E.B.C. 212
- The OEB should issue a certificate to Union Gas for the Township of Malahide, limited to Lot 24 in Concession 11 to address the four customers being served by Union Gas in that area

OEB Staff Recommendation

As stated above, the existence of overlapping upper-tier certificates can lead to confusion as to who can serve a particular area. However, OEB staff observes that Union Gas appears to generally have built right up to the boundaries of its lower-tier certificate. Given the lack of information on the record regarding EPCOR's facilities within the County of Elgin, it is unclear whether EPCOR has facilities outside of the boundaries of the areas for which it currently holds lower-tier certificates.

OEB staff submits that the OEB eliminate the upper-tier certificate for the County of Elgin, for each of Union Gas and EPCOR. Following the elimination of the overlapping upper-tier certificates, OEB staff proposes the following option (A) as the best way to deal with this. In the alternative, OEB staff proposes option (B) as set out further below.

- A. The OEB could order both distributors to submit the metes and bounds of their existing infrastructure for all lower-tier municipalities within the County of Elgin where their facilities are located, and cancel existing lower-tier certificates and supersede them by issuing new lower-tier certificates to each utility limited to where their infrastructure is currently located. If distributors wish to serve beyond the boundaries of their new limited certificates, they will have to file an application for a certificate to include the area that they wish to serve, which would include a description of the plans they have to serve the area.

OEB staff recommends this option as it acknowledges that both distributors have rights to the area covered by the entire County of Elgin, but that it is difficult to divide the entire area in a manner that is fair to both distributors. This option provides both distributors with an equal opportunity serve the currently unserved areas and does not provide the potential perception that the OEB is choosing one distributor over another at this time, given that competition to serve currently unserved areas may be possible and has not been examined in this proceeding.

- B. Alternatively, the OEB can grant a certificate for an entire lower-tier municipality to one distributor if only one distributor currently has infrastructure in that lower-tier municipality. If both distributors have infrastructure located within the same lower-tier municipality, then similar to the first option, the OEB can grant a lower-tier certificate to each distributor limited to the metes and bounds of their existing infrastructure, and currently unserved areas in that lower-tier municipality would remain uncertified at this time.

OEB staff notes again that the certificates do not provide exclusive incumbent rights where there is no infrastructure built. If EPCOR or Union Gas wishes to serve an unserved area that is within the certificate rights of the other distributor, they are welcome to file a certificate application for the area.

This option is also more administratively simple compared to the first option in that it will allow for certificates to be granted for entire lower-tier municipalities in some situations, which makes it easier to track service territories in the future.

However, issuing a certificate for an entire lower-tier municipality just because the distributor is currently the only service provider in the municipality could be perceived as unfair, given that both distributors have had equal rights to the area by virtue of their upper tier certificates; it could also be considered premature given that as mentioned above, competition to serve the currently unserved areas in the lower-tier municipality may be possible and has not been examined in this proceeding.

A comparison of Union Gas' and OEB staff's recommended proposals for, as well as the map of, the County of Elgin, are included in the first page of the Appendix A. Appendix B provides a list of the various orders that the OEB could issue to implement option A or B for the County of Elgin.

The County of Middlesex

Union Gas and EPCOR each hold an upper-tier certificate for the County of Middlesex. Union Gas holds EB-2008-0309 which replaced those parts of F.B.C. 259 relating to the County of Middlesex, and EPCOR holds E.B.C. 239 for the entire County of Middlesex.

Union Gas holds certificates for seven of the eight lower-tier municipalities in the County of Middlesex: the Township of Strathroy-Caradoc, the Municipality of Middlesex

Centre, the Municipality of Thames Centre (excluding areas covered by EPCOR's E.B.C. 111 and 119 certificate), the Municipality of North Middlesex, the Municipality of Southwest Middlesex, the Township of Adelaide Metcalfe and the Village of Newbery. In addition, Union Gas holds certificates for areas within the Township of Lucan-Biddulph (E.B.C. 77, for the former Village of Lucan and the former Township of Biddulph).

EPCOR holds a certificate for areas in the Municipality of Thames Centre (E.B.C. 111 and 119, for the former Township of North Dorchester).

Union Gas is proposing the following in relation to the overlapping certificates issued to Union Gas and EPCOR within the County of Middlesex:

- a certificate for the County of Middlesex issued to Union Gas excluding the portion within which EPCOR holds lower-tier certificates, to replace Union Gas' EB-2008-0309 non-specific certificate for the County of Middlesex
- a certificate for the County of Middlesex issued to EPCOR limited to the area within which EPCOR holds lower-tier certificates, to replace EPCOR's E.B.C. 239 non-specific certificate for the County of Middlesex

Union Gas' interrogatory response at Exhibit B/Staff 6/Attachment 3 also included a suggestion as to how Union Gas' certificate for the Municipality of Thames Centre could be updated by specifically identifying the areas within Thames Centre that EPCOR currently holds certificate rights to (i.e. listing the metes and bounds specified in EPCOR's certificate), as well as identifying EPCOR instead of NRG.

OEB Staff Recommendation

As stated above, the existence of overlapping upper-tier certificates can lead to confusion as to who can serve a particular area. However, as in the County of Elgin, OEB staff observes that Union Gas appears to generally have built right up to the boundaries of its lower-tier certificate for the Municipality of Thames Centre. Given the lack of information on the record regarding EPCOR's facilities within the County of Middlesex, it is unclear whether EPCOR has facilities outside of the boundaries of the lower-tier certificates it has been issued.

Similar to OEB staff's recommendation for the County of Elgin, subject to a review of EPCOR's facilities in the County of Middlesex, OEB staff recommends that the OEB eliminate the upper-tier certificates issued to both Union Gas and EPCOR. Following the elimination of the overlapping upper-tier certificates, OEB staff proposes the

following option (A) as the best way to deal with this. In the alternative, OEB staff proposes option (B) as set out further below.

- A. The OEB could order both distributors to submit the metes and bounds of their existing infrastructure for all lower-tier municipalities within the County of Middlesex where their facilities are located, and then issue lower-tier certificates to each utility limited to where their infrastructure is currently located. If distributors wish to serve beyond the boundaries of their limited certificates, they will have to file an application for a certificate to include the area that they wish to serve, which would include a description of the plans they have to serve the area.

Similar to OEB staff's recommendation for the County of Elgin, OEB staff recommends this option as it acknowledges that both distributors have rights to the area covered by the entire County of Middlesex, and the difficulty of dividing the entire area in a manner that is fair to both distributors. This option provides both distributors with an equal opportunity serve the currently unserved areas and does not provide the potential perception that the OEB is choosing one distributor over another at this time, given that competition to serve currently unserved areas may be possible and has not been examined in this proceeding.

- B. Alternatively, the OEB could grant a certificate for an entire lower-tier municipality to one distributor if only one distributor currently has infrastructure in that lower-tier municipality. If both distributors have infrastructure located within the same lower-tier municipality, then the OEB should grant a lower-tier certificate to each distributor limited to the metes and bounds of their existing infrastructure, and currently unserved areas in the lower-tier municipality would remain uncertified at this time.

OEB staff notes again that the certificates do not provide exclusive incumbent rights where there is no infrastructure built. If EPCOR or Union Gas wishes to serve an unserved area that is within the certificate rights of the other distributor, they are welcome to file a certificate application for the area.

As in the case of the County of Elgin however, while this option may appear to be administratively simpler, issuing a certificate for an entire lower-tier municipality just because the distributor is currently the only service provider in the municipality could be perceived as unfair, given that both distributors have had equal rights to the area by virtue of their upper tier certificates; again, it could also be considered premature given that as mentioned above, competition to serve the currently

unserved areas in the lower-tier municipality may be possible and has not been examined in this proceeding.

A comparison of Union Gas' and OEB staff's recommended proposals for, as well as the map of, the County of Middlesex, are included in the second page of Appendix A. Appendix B provides a list of the various orders that the OEB could issue to implement option A and B for the County of Middlesex.

Norfolk County

Norfolk County is a single-tier municipality which consists of a number of former townships that have been amalgamated through the years. Union Gas holds a certificate (F.B.C. 259) for areas within Norfolk County (the former Townships of Charlotteville, Houghton, Middleton, North Walsingham, South Walsingham, Townsend, Windham and Woodhouse); Union Gas states it has been providing service to these areas since the early 1900s. EPCOR holds a certificate (EBC. 111 and 119) for areas within Norfolk County as well (the former Townships of Houghton, Middleton, North Walsingham and South Walsingham).

Given the number of annexations and amalgamations that happened between 1974 to 2001, it has been difficult for OEB staff to ascertain where the exact boundaries of Union Gas' certificates currently stand. Nonetheless, Union Gas has identified the area of overlap to be Lot 1 in Concessions 9, 10, 11 and 12, except for the area "all of the southerly 20 feet of the said Lot except the westerly 200 feet of the said southerly 200 feet" of Lot 1 in Concessions 9 and 10, which is excluded from EPCOR's certificate; EPCOR has not provided any evidence to the contrary.

Union Gas is proposing the following in relation to the overlapping certificates issued to Union Gas and EPCOR within Norfolk County:

- 1) a certificate for the Norfolk County issued to Union Gas cancelling and superseding the parts of F.B.C. 259 related to Norfolk County, and including the area of overlap identified above
- 2) a certificate for the Norfolk County issued to EPCOR limited to the area within which EPCOR holds lower-tier certificates, to replace E.B.C. 111 and 119 and excluding the area of overlap

Union Gas states that the overlap area should be granted to Union Gas, as to Union Gas' knowledge, EPCOR has no facilities in place to serve customers, while Union Gas has facilities in close proximity. Union Gas adds that providing Union Gas with

certificate rights within these areas does not prevent any other party from requesting certificate rights in the future to serve these areas.

Staff Recommendation

Given that it is unclear whether or not EPCOR has facilities in the area of overlap, OEB staff submits that it would be premature at this point to award Union Gas the area of overlap. OEB staff submits that the OEB should cancel and supersede current authorizations to serve the area and issue new certificates for Norfolk County to both Union Gas and EPCOR limited to the areas covered by their respective existing certificates, but excluding the area of overlap. This would in effect simply cancel both distributors' rights to the area of overlap.

The record for this proceeding does not have sufficient evidence for the OEB to consider which distributor can best serve the area of overlap, or at least some basis with which to divide the area. OEB staff submits that it could be perceived as unfair and premature for the OEB to grant a certificate and a perception of incumbent rights at this point for the area of overlap, given that competition to serve the area may be possible and has not been examined in this proceeding. OEB staff notes that this is consistent with OEB staff's preferred option for the resolution of overlapping certificates in the County of Elgin and the County of Middlesex, in that overlapping certificate areas without infrastructure in Norfolk County are similarly not granted to either distributor. However, each distributor gets to keep the areas covered by existing certificates which do not overlap.

If either Union Gas or EPCOR wishes to serve the area where their existing certificates currently overlap, then they are welcome to file a certificate application with the OEB, with information regarding their plans to serve the area. If the other distributor wishes to challenge the first distributor's application in a competition to serve the area, their proposals can then be weighed in that proceeding.

A comparison of Union Gas' and OEB staff's recommended proposals for, as well as the map of the Norfolk County, are included in the third page of Appendix A. OEB staff's suggested orders that the OEB could issue to implement staff's proposal is included in the non-compliant infrastructure section below.

Non-compliant Infrastructure

The Issue

Union Gas also acknowledged that it had put facilities in the following areas not covered by a certificate issued to Union Gas:

- In Norfolk County:
 - The north half of Lots 2, 3 and 5 in Concession 7
 - All of Lots 4 and 5 in Concession 8
- In the County of Elgin:
 - Lot 24 in Concession 11 in the Township of Malahide, for four customers, as mentioned above

Union Gas has requested certificates for these areas, with the exception of the north half of Lot 2 in Concession 7 in Norfolk County, which is currently the subject of OMLP's application for a certificate⁶.

Staff Recommendation

OEB staff notes that Union Gas already has infrastructure in these areas and is requesting certificates only to bring itself into compliance, as directed by the OEB. OEB recommends that the OEB issue certificates limited to the metes and bounds of Union Gas' existing infrastructure for the areas identified in order to bring Union Gas back into compliance with the Municipal Franchises Act.

Specifically, OEB staff recommends that the OEB:

- Cancel and supersede Union Gas' current certificate rights for areas in Norfolk County with a new certificate for Norfolk County, with rights to the area covered by the certificate it currently has, excluding the overlap area mentioned above, but including the north half of Lots 3 and 5 in Concession 7, and all of Lots 4 and 5 in Concession 8
- Cancel and supersede EPCOR's current certificate rights for areas in Norfolk County with a new certificate for Norfolk County, with rights to the area covered by the certificate it currently has, excluding the overlap area mentioned above, and the north half of Lots 3 and 5 in Concession 7, and all of Lots 4 and 5 in Concession 8

⁶ EB-2017-0289. OM Limited Partnership has applied to the OEB for a certificate of public convenience and necessity which would give it the right to construct facilities and supply natural gas to the new Maricann Group Inc. Langton Facility located in the Township of North Walsingham, Norfolk County. To date, a decision has not yet been issued in this proceeding.

- Grant Union Gas a certificate for the Township of Malahide, limited to Lot 24 in Concession 11

OEB staff notes that if the OEB takes OEB staff's preferred option for the County of Elgin, which gives each distributor a lower-tier certificate for the metes and bounds of its existing infrastructure, the OEB would be granting Union Gas Lot 24 in Concession 11 in the Township of Malahide anyway.

OEB staff also notes that the OEB is currently working to eliminate exchange agreements (long-term load transfers) in its regulation of electricity distributors. The OEB may wish to consider eliminating similar agreements between gas distributors as well. This would effectively be accomplished in this case if the OEB adopted OEB staff's recommended use of metes and bounds.

Uncertificated Areas

The Issue

Union Gas also identified areas that are currently uncertificated in Norfolk County:

- The north half of Lots 2, 3, 4 and 5 in Concession 7
- All of the Lots 2, 3, 4 and 5 in Concession 8

Most of these lots already have infrastructure built by Union Gas as mentioned above. Union Gas proposes that all of these areas be added to its certificate for Norfolk County excluding the north half of Lot 2 in Concession 7 which, as mentioned above, is currently the subject of OMLP's application for a certificate.

Union Gas also identified other areas within the Municipality of Central Elgin that are currently uncertificated and excluded from its certificate for the lower-tier municipality, and submits that it may be worthwhile to ensure that this area is covered by a certificate. Union Gas states that leaving these uncertificated may unnecessarily delay providing requested service, although Union Gas is not aware of any pending requests for service in these areas at the moment. Union Gas however, has not specifically requested a certificate for these areas.

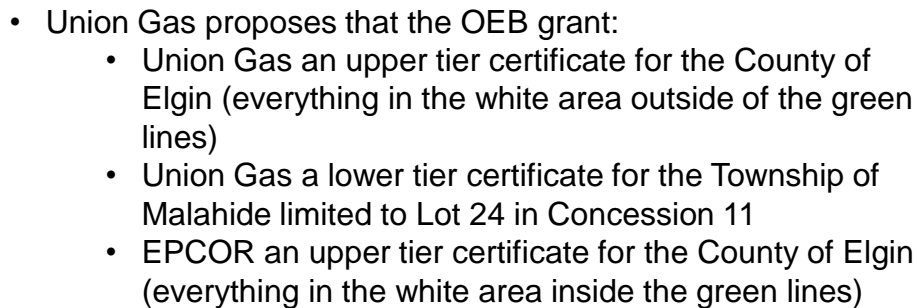
Staff Recommendation

OEB staff submits that Union Gas should not be granted the uncertificated areas in

Norfolk County. OEB staff submits that it could be perceived as unfair and premature for the OEB to grant a certificate and a perception of incumbent rights for the currently uncertificated areas at this point, given that competition to serve the area may be possible and has not been examined in this proceeding.

All of which is respectfully submitted.

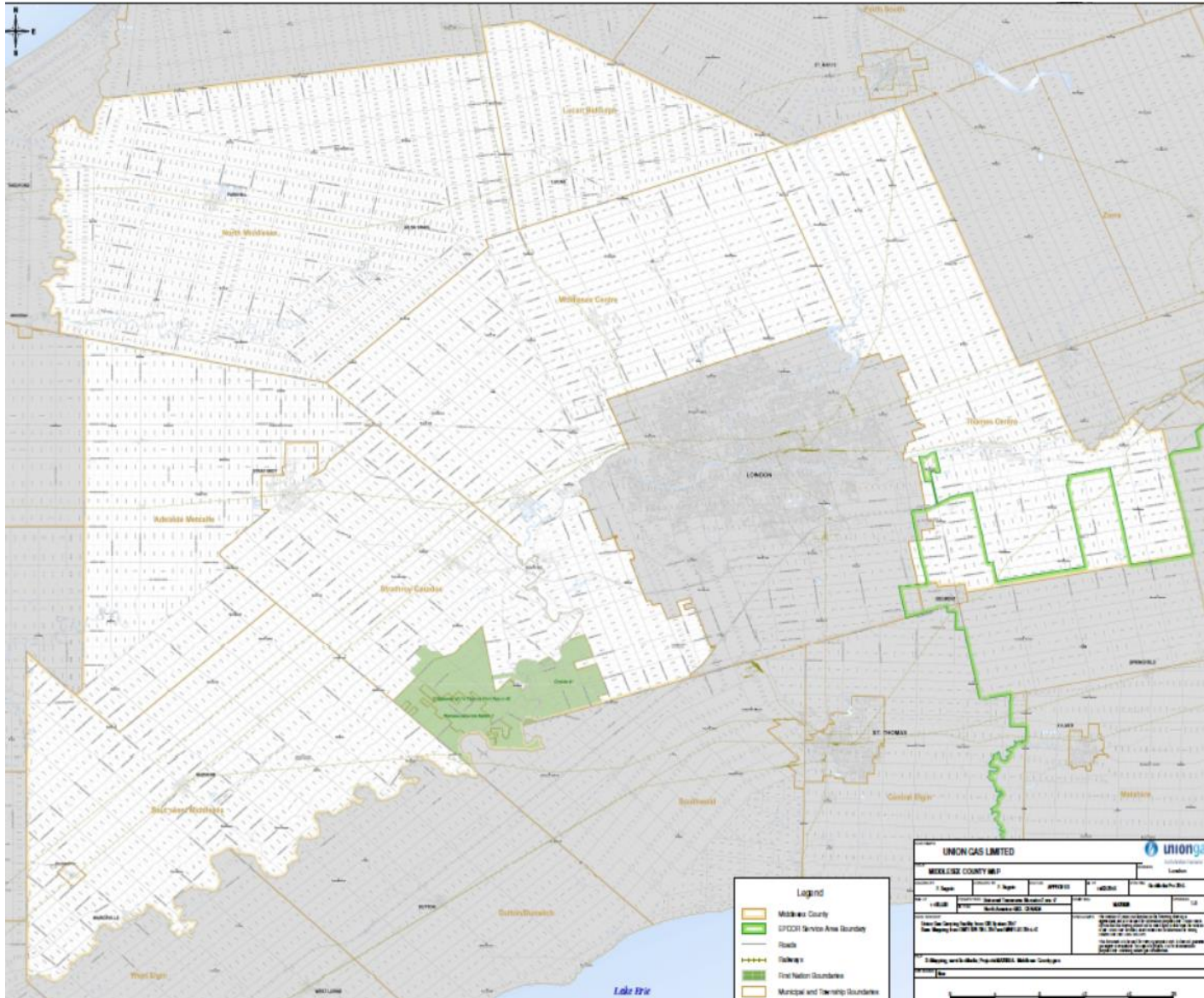
Map of the County of Elgin



- 1

Appendix A to OEB Staff Submission on Union/EPCOR Overlap (EB-2017-0108)

Map of the County of Middlesex



- Union Gas proposes that the OEB grant:
 - Union Gas an upper tier certificate for the County of Middlesex (everything in the white area outside of the green lines)
 - EPCOR an upper tier certificate for the County of Middlesex (everything in the white area inside the green lines)
- Staff proposes that the OEB should:
 - Eliminate upper tier certificates
 - Cancel all lower tier certificates and re-issue them limited to the metes and bounds of each utility's existing infrastructure, with unserved areas remaining uncertificated

Appendix A to OEB Staff Submission on Union/EPCOR Overlap (EB-2017-0108)

Map of Norfolk County



- Union Gas proposes that their certificate for Norfolk County include everything to the right of the purple line
 - This includes the area of overlap (in pink), and the uncertificated area (in grey), except for the area requested by OMLP
- Staff submits that:
 - Each utility should be given a certificate for Norfolk County limited to the areas in their current certificates, but excluding the overlap area (in pink)
 - Union Gas should be granted certificate rights in the uncertificated area (in grey) only where their noncompliant infrastructure (green lines) is currently located
 - The rest of the uncertificated area (in grey) should remain uncertificated

Appendix B to OEB Staff Submission on Union/EPCOR Overlap (EB-2017-0108)

In order to implement OEB staff's recommendations, OEB staff acknowledges that information from EPCOR on the location of its infrastructure in the three Counties will be required to be put on the record. OEB staff submits that an order directing EPCOR to file information on its facilities (in a non-confidential manner) in the three Counties will be necessary to implement OEB staff's recommendations and ensure that EPCOR's infrastructure is not left "stranded" without a certificate.

County of Elgin

Option A:

If the OEB chooses this option, the OEB would have to do the following, after ordering Union Gas and EPCOR to submit the metes and bounds of their infrastructure within the lower-tier municipalities in the County of Elgin, and cancelling both distributors' upper tier certificates for the County of Elgin:

Union Gas

- Cancel and supersede Union Gas' existing certificate for the Municipality of Central Elgin with a new certificate for the Municipality of Central Elgin limited to the metes and bounds of existing Union Gas infrastructure in the Municipality of Central Elgin
- Cancel and supersede Union Gas' existing certificate for the Municipality of Bayham with a new certificate for the Municipality of Bayham limited to the metes and bounds of existing Union Gas infrastructure in the Municipality of Bayham
- Grant a certificate for the Township of Malahide to Union Gas, limited to the metes and bounds of existing Union Gas infrastructure in the Township of Malahide (which should be limited to Lot 24 in Concession 11, as this is the only area Union Gas states it has infrastructure in the municipality, and will bring Union Gas into compliance with the Municipal Franchises Act)
- Cancel and supersede Union Gas' existing certificate for the Municipality of West Elgin with a new certificate for the Municipality of West Elgin limited to the metes and bounds of existing Union Gas infrastructure in the Municipality of West Elgin
- Cancel and supersede Union Gas' existing certificate for the Township of Southwold with a new certificate for the Township of Southwold limited to the metes and bounds of existing Union Gas infrastructure in the Township of Southwold
- Cancel and supersede Union Gas' existing certificate for the Municipality of Dutton/Dunwich with a new certificate for the Municipality of

Dutton/Dunwich limited to the metes and bounds of existing Union Gas infrastructure in the Municipality of Dutton/Dunwich

EPCOR

- Cancel and supersede EPCOR's existing certificates for the former Township of Yarmouth and the former Village of Belmont with a new certificate for the Municipality of Central Elgin limited to the metes and bounds of existing EPCOR infrastructure in the Municipality of Central Elgin
- Cancel and supersede EPCOR's existing certificate for the former Township of Bayham and the former Village of Vienna with a new certificate for the Municipality of Bayham limited to the metes and bounds of existing EPCOR infrastructure in the Municipality of Bayham
- Cancel and supersede EPCOR's existing certificate for the Town of Aylmer with a new certificate for the Town of Aylmer limited to the metes and bounds of existing EPCOR infrastructure in the Town of Aylmer
- Grant a certificate for the Township of Malahide to EPCOR, limited to the metes and bounds of existing EPCOR infrastructure in the Township of Malahide
- Grant a certificate for the Municipality of West Elgin to EPCOR, limited to the metes and bounds of existing EPCOR infrastructure in the Municipality of West Elgin
- Grant a certificate for the Township of Southwold to EPCOR, limited to the metes and bounds of existing EPCOR infrastructure in the Township of Southwold
- Grant a certificate for the Municipality of Dutton/Dunwich to EPCOR, limited to the metes and bounds of existing EPCOR infrastructure in the Municipality of Dutton/Dunwich

Option B:

Based on the information that is currently on the record (and pending confirmation that EPCOR does not have any other infrastructure in the County of Elgin outside of the areas described in its existing lower-tier certificates in the County of Elgin), for this option, after eliminating both distributors' upper-tier certificates for the County of Elgin, the OEB would issue the following lower-tier certificates:

Union Gas

- Cancel and supersede Union Gas' existing certificate for the Municipality of Central Elgin with a new certificate for the Municipality of Central Elgin limited to the metes and bounds of existing Union Gas infrastructure in the Municipality of Central Elgin
- Cancel and supersede Union Gas' existing certificate for the Municipality of Bayham with a new certificate for the Municipality of Bayham limited to the metes and bounds of existing Union Gas infrastructure in the Municipality of Bayham
- Grant a certificate for the Township of Malahide to Union Gas, limited to Lot 24 in Concession 11, to bring Union Gas into compliance with the Municipal Franchises Act

EPCOR

- Cancel and supersede EPCOR's existing certificate for the former Village of Belmont and the former Township of Yarmouth with a new certificate for the Municipality of Central Elgin limited to the metes and bounds of existing EPCOR infrastructure in the Municipality of Central Elgin
- Cancel and supersede EPCOR's existing certificate for the Township of Bayham with a new certificate for the Municipality of Bayham limited to the metes and bounds of existing EPCOR infrastructure in the Municipality of Bayham
- Grant a certificate for the Township of Malahide to EPCOR, excluding Lot 24 in Concession 11, as according to Union Gas and from the maps filed, almost the entirety of the Township is currently being served by EPCOR

Given that with option b, the OEB would grant a certificate for an entire lower-tier municipality to one distributor if only that distributor currently has infrastructure in that lower-tier municipality, OEB staff recommends that the OEB let EPCOR's existing certificate for the Town of Aylmer and Union Gas' existing certificates for the Municipality of West Elgin, the Township of Southwold and the Municipality of Dutton/Dunwich stand, unless additional information from EPCOR reveals that EPCOR has built infrastructure outside of the boundaries of its lower-tier certificate in the County of Elgin. If EPCOR has built infrastructure outside of the boundaries of its lower-tier certificate in the County of Elgin, the OEB can grant both utilities lower-tier certificates limited to the metes and bounds of the areas where each utility currently has infrastructure.

County of Middlesex

Option A:

If the OEB chooses this option, the OEB would have to do the following, after ordering Union Gas and EPCOR to submit the metes and bounds of their infrastructure within the lower-tier municipalities in the County of Middlesex, and cancelling both distributors' upper tier certificates for the County of Middlesex:

Union Gas

- Cancel and supersede Union Gas' existing certificate for the Township of Strathroy-Caradoc with a new certificate for the Township of Strathroy-Caradoc limited to the metes and bounds of existing Union Gas infrastructure in the Township of Strathroy-Caradoc
- Cancel and supersede Union Gas' existing certificate for the Municipality of Middlesex Centre with a new certificate for the Municipality of Middlesex Centre limited to the metes and bounds of existing Union Gas infrastructure in the Municipality of Middlesex Centre
- Cancel and supersede Union Gas' existing certificate for the Municipality of Thames Centre with a new certificate for the Municipality of Thames Centre limited to the metes and bounds of existing Union Gas infrastructure in the Municipality of Thames Centre
- Cancel and supersede Union Gas' existing certificate for the Municipality of North Middlesex with a new certificate for the Municipality of North Middlesex limited to the metes and bounds of existing Union Gas infrastructure in the Municipality of North Middlesex
- Cancel and supersede Union Gas' existing certificate for the Municipality of Southwest Middlesex with a new certificate for the Municipality of Southwest Middlesex limited to the metes and bounds of existing Union Gas infrastructure in the Municipality of Southwest Middlesex
- Cancel and supersede Union Gas' existing certificate for the Township of Adelaide Metcalfe with a new certificate for the Township of Adelaide Metcalfe limited to the metes and bounds of existing Union Gas infrastructure in the Township of Adelaide Metcalfe
- Cancel and supersede Union Gas' existing certificate for the Village of Newbery with a new certificate for the Village of Newbery limited to the metes and bounds of existing Union Gas infrastructure in the Village of Newbery
- Cancel and supersede Union Gas' existing certificate for the former Village of Lucan and the former Township of Biddulph with a new certificate for the Township of Lucan-Biddulph limited to the metes and bounds of existing Union Gas infrastructure in the Township of Lucan-Biddulph, to match the current name of the municipality

EPCOR

- Cancel and supersede EPCOR's existing certificate for the former Township of North Dorchester with a new certificate for the Municipality of Thames Centre limited to the metes and bounds of existing EPCOR infrastructure in the Municipality of Thames Centre
- Cancel and supersede EPCOR's existing certificate for the Township of Strathroy-Caradoc with a new certificate for the Township of Strathroy-Caradoc limited to the metes and bounds of existing EPCOR infrastructure in the Township of Strathroy-Caradoc
- Cancel and supersede EPCOR's existing certificate for the Municipality of Middlesex Centre with a new certificate for the Municipality of Middlesex Centre limited to the metes and bounds of existing EPCOR infrastructure in the Municipality of Middlesex Centre
- Cancel and supersede EPCOR's existing certificate for the Municipality of North Middlesex with a new certificate for the Municipality of North Middlesex limited to the metes and bounds of existing EPCOR infrastructure in the Municipality of North Middlesex
- Cancel and supersede EPCOR's existing certificate for the Municipality of Southwest Middlesex with a new certificate for the Municipality of Southwest Middlesex limited to the metes and bounds of existing EPCOR infrastructure in the Municipality of Southwest Middlesex
- Cancel and supersede EPCOR's existing certificate for the Township of Adelaide Metcalfe with a new certificate for the Township of Adelaide Metcalfe limited to the metes and bounds of existing EPCOR infrastructure in the Township of Adelaide Metcalfe
- Cancel and supersede EPCOR's existing certificate for the former Village of Lucan and the former Township of Biddulph with a new certificate for the Township of Lucan-Biddulph limited to the metes and bounds of existing EPCOR infrastructure in the Township of Lucan-Biddulph

Option B:

Based on the information that is currently on the record (and pending confirmation that EPCOR does not have any other infrastructure in the County of Middlesex outside of the areas described in its existing lower-tier certificates in the County of Middlesex), for this option, after eliminating both distributors' upper-tier certificates for the County of Middlesex, the OEB would issue the following lower-tier certificates:

Union Gas

- Cancel and supersede Union Gas' existing certificate for the Municipality of Thames Centre with a new certificate for the Municipality of Thames Centre limited to the metes and bounds of existing Union Gas infrastructure in the Municipality of Thames Centre
- Cancel and supersede Union Gas' existing certificate for the former Village of Lucan and the former Township of Biddulph with a new certificate for the Township of Lucan-Biddulph, to match the current name of the municipality

EPCOR

- Cancel and supersede EPCOR's existing certificate for the former Township of North Dorchester with a new certificate for the Municipality of Thames Centre limited to the metes and bounds of existing EPCOR infrastructure in the Municipality of Thames Centre

Union Gas currently has certificates for the whole of the following lower-tier municipalities: the Township of Strathroy-Caradoc, the Municipality of Middlesex Centre, the Municipality of North Middlesex, the Municipality of Southwest Middlesex, the Township of Adelaide Metcalfe and the Village of Newbery. With this second option OEB staff recommends that the OEB let these certificates stand, unless additional information from EPCOR reveals that it has built infrastructure outside of the boundaries of its lower-tier certificate in the County of Middlesex, in which case the OEB can grant both utilities lower-tier certificates limited to the metes and bounds of the areas where each utility currently has infrastructure.