

April 26, 2018

Ms. Kirsten Walli
Board Secretary
Ontario Energy Board
2300 Yonge Street, 27th Floor
Toronto, ON M4P 1E4

Dear Ms. Walli:

**Re: Union Gas Limited Application – Certificates of Public Convenience and Necessity for Norfolk County, County of Elgin and County of Middlesex
OEB File No. EB-2017-0108**

Pursuant to Procedural Order No. 5, please find attached Union Gas' reply submission regarding the submissions of OEB Staff and EPCOR Natural Gas Limited Partnership dated April 12, 2018.

Yours truly,

[Original signed by]

Myriam Seers

cc (by email only):

Azalyn Manzano, Ontario Energy Board
Ritch Murray, Ontario Energy Board
Richard Lanni, Ontario Energy Board
Bruce Brandell, EPCOR Utilities Inc.
Britt Tan, EPCOR Utilities Inc.
Patrick Welsh, Osler Hoskin & Harcourt LLP
Scott Lewis, OM Limited Partnership

ONTARIO ENERGY BOARD

IN THE MATTER OF the *Ontario Energy Board Act, 1998*, S.O. 1998, c.15 (Sched. B);

AND IN THE MATTER OF an Application by Union Gas Limited for certificate of public convenience and necessity for Norfolk County, the County of Elgin and the County of Middlesex.

REPLY SUBMISSION OF UNION GAS LIMITED

April 26, 2018

1. These are Union Gas Limited's reply submissions in response to the submissions of OEB Staff and EPCOR Natural Gas Limited Partnership in this matter.

A. Response to OEB Staff's Submissions

Need to eliminate overlapping certificates

2. As it committed to do in its report to the Board dated December 22, 2016, Union brings this application to eliminate the overlap in Certificates of Public Convenience and Necessity ("certificates") held by Union and EPCOR Natural Gas Limited Partnership (formerly Natural Resource Gas or NRG) within Norfolk County, the County of Elgin and the County of Middlesex. Since certificates give their holder the right to build facilities within a specified location, it is not desirable for two distributors to hold certificates for the same location.

3. As OEB Staff recognizes, overlapping certificates can create a "lack of clarity among gas distributors" which "can give rise to questions about where each distributor can and cannot operate, safety concerns, and records management [issues]."¹

4. Union recognizes that certificates are not inherently exclusive, but agrees with OEB Staff that "once infrastructure has been built, practically speaking, the certificates become exclusive as

¹ OEB Staff Submission, p. 5.

it is not in the public interest to have two sets of gas lines going down the same street” and that “overlapping certificates are not desired.”²

Elgin and Middlesex Counties

5. OEB Staff proposes two options to address overlapping certificates in Elgin and Middlesex Counties. Under Option A, a certificate would be issued to each of Union and EPCOR limited to the metes and bounds of existing infrastructure, and existing certificates would be cancelled. Under Option B, the OEB would issue a certificate for an entire lower-tier municipality if only one of either Union or EPCOR has facilities located in that municipality, and would issue a certificate limited to the metes and bounds of existing infrastructure in lower-tier municipalities in which both utilities have existing infrastructure. Union respectfully submits that a modified version of Option B would provide a workable solution, while Option A would be impractical and contrary to the public interest because it would cause substantial delays for customers and additional costs.

6. ***Option A would be impractical and against the public interest.*** Reducing the existing certificates to include only the metes and bounds of existing infrastructure would mean that a new OEB proceeding would be necessary before infrastructure could be expanded, even within a municipality in which only one distributor has existing facilities (and therefore is in a better position to serve additional customers in the vicinity of those existing facilities). Each request for new service outside the metes and bounds of the existing infrastructure identified in the certificate would need to be the subject of a new OEB proceeding. In addition to being difficult to administer and leading to constant amendment to the boundaries of certificates, this would lead to substantial unnecessary delay before a new customer outside the service boundary could receive service.

7. For example, within the City of London, Union provides service to over 126,300 customers using infrastructure that covers the vast majority of territory within the municipal boundaries. While it is not clear exactly where EPCOR has facilities within the City of London, EPCOR only has certificate rights to serve specific lots in the former Township of Westminster

² OEB Staff Submission, p. 6.

which now sit within the municipal boundaries of the City of London, in accordance with Certificates EBC 111 and 119. If Option A were adopted, a line would be drawn around Union's vast infrastructure in the City of London, and around EPCOR's presumably minimal infrastructure in the City of London. Union would be required to submit a new certificate application to the OEB every time it received a request to serve customers located outside the metes and bounds of its current infrastructure. This would cause substantial additional costs for customers, delays and administrative inefficiency.

8. Similarly, within the Township of Malahide, EPCOR provides service to the majority of the municipality while Union only provides service to customers within Lot 24 in Concession 11. It would be inefficient and contrary to the public interest to require EPCOR to submit a new certificate application to the OEB every time a new customer within that municipality required service.

9. This approach would also be problematic in municipalities in which only one distributor currently has existing infrastructure, and therefore only one distributor is currently in a position to serve additional customers in the vicinity of that existing infrastructure. In the County of Elgin, this includes the Municipality of West Elgin, the Township of Southwold, and the Municipality of Dutton/Dunwich in which only Union has existing facilities, and the Town of Aylmer in which only EPCOR has existing facilities. In the County of Middlesex, this includes the Township of Strathroy Caradoc, the Municipality of Middlesex Centre, the Municipality of North Middlesex, the Municipality of Southwest Middlesex, the Township of Lucan Biddulph, the Township of Adelaide Metcalfe and the Village of Newbury in which only Union has existing facilities.

10. ***Option B creates a more workable solution, but still presents challenges.*** While Option B provides a more workable solution to eliminate the certificate overlap while at the same time not overly restricting the boundaries of new certificates, it still presents many of the same challenges as Option A. Option B would better align certificates with existing Franchise Agreements in those municipalities set out above in which only one of either Union or EPCOR currently operates. It would allow each utility to construct new infrastructure within those municipalities as needed without seeking a certificate amendment from the OEB. This would

allow each utility to respond to requests for service more expeditiously and without burdening the OEB with unnecessary proceedings.

11. However, in municipalities in which both utilities currently have infrastructure, all of the concerns that arise under Option A would also arise under Option B. This would be the case even where one utility has the vast majority of the infrastructure in a municipality, such as the City of London and the Township of Malahide, as set out above.

12. ***Option C provides a workable hybrid solution.*** Union submits that a variant of OEB Staff's Option B would be most appropriate – an approach which Union will describe as Option C for simplicity. Under this approach, the OEB would cancel existing certificates held by Union and EPCOR in the Counties of Elgin and Middlesex, and replace them with new certificates as follows:

- (1) if only one of Union or EPCOR has infrastructure located within a lower-tier municipality, issue to that entity a certificate that covers the territory of that municipality;
- (2) for the lower-tier municipalities in which both Union and EPCOR currently have infrastructure:
 - if one distributor has a majority of the infrastructure in the municipality, issue to that distributor a certificate that covers the territory of the entire municipality, excluding the specific lots in which the other distributor currently has infrastructure, and issue to the other distributor a certificate covering only the specific lots in which that distributor currently has infrastructure; and
 - if neither distributor has a majority of the infrastructure in the municipality, issue to each distributor a certificate that covers only the specific lots in which that distributor currently has infrastructure, and leave the remaining lots uncertificated.

13. Union submits that this approach would eliminate the problem of overlapping certificates while at the same time avoiding the inefficiencies identified above.

14. Under Option C for the County of Elgin:

- Union would be provided Certificates rights covering all of the Municipality of West Elgin, the Township of Southwold, the Municipality of Dutton/Dunwich and the City of St. Thomas;
- EPCOR would be provided with Certificate rights covering all of the Town of Aylmer;
- Union would be provided Certificate rights covering all of the Municipality of Central Elgin and the Municipality of Bayham excluding those areas in which EPCOR currently has infrastructure in place;
- EPCOR would be provided with Certificate rights covering those areas in the Municipality of Central Elgin and the Municipality of Bayham in which EPCOR currently has infrastructure in place;
- EPCOR would be provided Certificate rights covering all of the Township of Malahide excluding those areas in which Union currently has infrastructure in place (Lot 24 in Concession 11); and
- Union would be provided with Certificate rights covering those areas in the Township of Malahide in which Union currently has infrastructure in place (Lot 24 in Concession 11).

15. Under Option C for the County of Middlesex:

- Union would be provided Certificates rights covering all of the Township of Strathroy-Caradoc, the Municipality of Middlesex Centre, the Municipality of North Middlesex, the Municipality of Southwest Middlesex, the Township of Lucan Biddulph, the Township of Adelaide Metcalfe and the Village of Newbury;

- Union would be provided with Certificate rights covering all of the City of London excluding those areas in which EPCOR currently has infrastructure in place;
- EPCOR would be provided with Certificate rights covering those areas in the City of London in which EPCOR currently has infrastructure in place.
- Union would be provided with Certificate rights covering all of the Municipality of Thames Centre excluding those areas in which EPCOR currently has infrastructure in place; and
- EPCOR would be provided with Certificate rights covering those areas in the Municipality of Thames Centre in which EPCOR currently has infrastructure in place.

Norfolk County: area of overlap

16. Union has identified the area of certificate overlap within Norfolk County to be Lot 1 in Concessions 9, 10, 11 and 12. Union agrees with OEB Staff's recommendation that this area of overlap be excluded from the certificates issued to Union and EPCOR.

Infrastructure not covered by existing certificate

17. In its August 19, 2016 letter, the OEB directed Union to identify any areas in which its facilities are located in which Union does not hold certificate rights, and to provide a plan to rectify the situation. Through this application (and applications related to other service areas), Union is seeking to bring itself into compliance with the *Municipal Franchises Act*.

18. Union agrees with OEB Staff's recommendation that Union's certificate for Norfolk County be cancelled and superseded by a new certificate with rights to the area covered by the certificate Union currently has, excluding the area of overlap with EPCOR's certificate, but including the north half of Lots 3 and 5 in Concession 7 and all of Lots 4 and 5 in Concession 8. Union also agrees with OEB Staff's recommendation that Union be granted a certificate for the Township of Malahide limited to Lot 24 in Concession 11.

19. Union recommends that the OEB not try to reduce the description of the north half of Lots 3 and 5 in Concession 7 and all of Lots 4 and 5 in Concession 8 to a metes and bounds

description recommended by OEB Staff since the description by lots is already sufficiently precise.

Norfolk County: uncertificated areas

20. Union has identified areas within Norfolk County which are currently uncertificated – 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. While OEB Staff submits that Union should not be granted certificate rights in the uncertificated areas, Union assumes that this refers only to those areas in which Union does not currently have facilities in place (i.e., the north half of Lots 2 and 4 in Concession 7 and all of Lots 2 and 3 in Concession 8). Union has no objection to these areas remaining uncertificated.

B. Reply to EPCOR's Submissions

21. Contrary to EPCOR's submission, Union is not proposing "a solution in search of a problem" "under the auspices of administrative clean-up" through this application. As OEB Staff recognizes, overlapping certificates are undesirable because they cause confusion and give rise to potential safety concerns.

22. EPCOR's submission fails to make any proposal whatsoever to rectify the issue of overlapping certificates. EPCOR inexplicably resists having its certificate amended to exclude areas in which Union currently has facilities. As the OEB stated in its Community Expansion Decision on which EPCOR relies heavily, "it would be inappropriate to have more than one gas distribution system serve any specific location".³ The OEB in that proceeding recognized that another distributor may apply for a certificate to serve an unserved area for which another distributor has a certificate but currently does not have facilities. In that sense, certificates are not inherently exclusive, and the fact that a distributor has a certificate does not prevent another distributor from applying to the OEB to serve an unserved area covered by the certificate. But nothing in the Community Expansion Decision suggests that overlapping certificates are permissible in respect of areas that are served and in areas where there is infrastructure already in place.

³ EB-2016-0004, p. 20.

23. Contrary to the statement at paragraph 14 of EPCOR's submission, Union has not "attempted to narrow" the certificate rights of NRG "on numerous occasions". In the proceedings that EPCOR cites, Union identified issues with overlapping certificates and encouraged the OEB to address them. This is entirely consistent with the position that Union has taken in this proceeding.

Norfolk County: overlapping area

24. As set out above, Union agrees with OEB Staff's suggestion that the area of overlap within Norfolk County become uncertificated. This would eliminate the overlap while recognizing that neither Union nor EPCOR currently has any facilities in the area (although Union has facilities in the vicinity which will better position it to serve the area in the future).

Norfolk County: uncertificated area in which Union has facilities

25. EPCOR takes the position that Union should not be granted a certificate for areas in which it currently has facilities in Norfolk County that are not subject to a certificate. This position is untenable. As set out above, the OEB directed Union to identify such areas and a plan to bring itself into compliance with the *Municipal Franchises Act*. As OEB Staff recognizes, that is what Union is doing through this application. EPCOR is unable to identify any prejudice to it arising from this request.

Elgin and Middlesex Counties

26. Again, EPCOR fails to identify any solution to rectify the overlap in certificates, or even to recognize that the overlap is problematic. As set out in paragraph 6 above, a variation to OEB Staff's proposed Option B would rectify the overlap while providing a workable solution to address municipalities in which both utilities have facilities.

Township of Malahide

27. As set out above, Union does not object to its certificate rights for the Township of Malahide being limited to Lot 24 in Concession 11.

A generic proceeding is not necessary

28. EPCOR submits in the alternative that the OEB should constitute a generic proceeding on certificates “to allow all affected stakeholders to make proposals on a level playing field and with clear guidance issued by the Board.” A generic proceeding is not necessary to resolve the issues at play in this application. The affected stakeholders were given an opportunity to participate in this proceeding, as in all proceedings. EPCOR has participated throughout, has submitted interrogatories, and had the opportunity to present evidence as it saw fit. EPCOR initially advised that it would submit evidence, only to change its mind three days later. EPCOR has had a full opportunity to present its arguments, which it has in fact done. In these circumstances, a generic proceeding would be a waste of OEB resources and cost.

All of which is respectfully submitted this 26th day of April, 2018.

[Original signed by Myriam Seers]

Torys LLP
Lawyers for Union Gas Limited