



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

DECISION AND ORDER

EB-2017-0289

OM LIMITED PARTNERSHIP

**Application for certificate of public convenience and necessity to
construct facilities and supply natural gas to the new Maricann
Group Inc. Langton Facility located in Langton, Ontario**

BEFORE: Susan Frank
Presiding Member

Emad Elsayed
Member

June 14, 2018

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1 INTRODUCTION AND SUMMARY

OM Limited Partnership (OMLP) filed an application with the Ontario Energy Board (OEB) on August 25, 2017 under section 8 of the *Municipal Franchises Act* for an order granting OMLP a certificate of public convenience and necessity (certificate) to construct facilities and supply natural gas to a new Maricann Group Incorporated Langton Facility located in Langton, Ontario (the Greenhouse Facility). OMLP intends to supply its locally produced natural gas to an affiliate named Maricann Group Inc. for the purposes of the Greenhouse Facility, which will be located immediately adjacent to Maricann's existing greenhouse facility.

OMLP is a limited partnership between On-Energy Corporation (ON-Energy) and Maricann Group Incorporated (Maricann). ON-Energy owns and operates 150 natural gas wells and over 300 kilometres of pipeline infrastructure in Elgin and Norfolk Counties. ON-Energy intends to transfer certain of its natural gas wells and associated production and gathering pipelines to the limited partnership. Maricann is a medical marijuana producer and dispenser with over 8,000 registered patients.

Maricann intends to retire its existing greenhouse, which is supplied by Union Gas Limited (Union), and construct the five times larger Greenhouse Facility on adjacent land. OMLP is seeking approval to supply the Greenhouse Facility with its own locally produced natural gas. In order to do so, OMLP will need to construct a new 3.7 kilometre pipeline, which it asserts is part of its natural gas production and gathering operations.

Union holds a Municipal Franchise Agreement for the area (Norfolk County), but does not hold a certificate that encompasses either the existing or new Maricann facility (Union's certificate has exclusions). A portion of OMLP's pipeline, however, will be constructed in an area of Norfolk where Union holds the certificate.

A map of the proposed project is attached as Schedule A to this Decision and Order.

For the reasons set out below, the OEB approves the certificate request with conditions.

2 THE PROCESS

The OEB issued a Notice of Hearing on January 10, 2018. The last date for intervention was January 29, 2018. Pursuant to the Notice of Hearing, Union applied for intervenor status. No objection was received from OMLP.

The OEB proceeded by way of a written hearing. In accordance with Procedural Order 1, issued on February 13, 2018, the interrogatory phase was completed on March 9, 2018. Union filed its written submission on March 16, 2018 and OEB staff's written submission was filed on March 19, 2018. OMLP filed a written reply submission with the OEB on March 23, 2018.

3 CONSIDERATIONS

OMLP's application has raised several questions beyond the narrow request for a geographically limited certificate. This decision considers the purpose of the assets being constructed and the expectations within the *Ontario Energy Board Act, 1998* (OEB Act) for assets of this description.

3.1 Certificate of Public Convenience and Necessity

OMLP applied for a geographically limited certificate to enable it to provide natural gas to the Greenhouse Facility. Specifically, OMLP is seeking the certificate for a tie-in system on Maricann's property. The tie-in system provides gas conditioning, pressure regulation, odourization and metering capabilities. The property on which the Greenhouse Facility lies is not currently covered by a certificate.

OMLP also plans to install approximately 3.7 kilometres of new 4-inch high-density polyethylene pipeline (the Pipeline) within a road allowance. The purpose of the Pipeline and the tie-in system is to serve the Greenhouse Facility. Most of the Pipeline will be located on territory that is already covered by a certificate held by Union. OMLP has characterized the pipeline as a gathering system pipeline, not a distribution pipeline, as it will be used to move untreated raw natural gas rather than pipeline quality natural gas. (The gas will be treated at the Greenhouse Facility). OMLP contends that, as it believes the Pipeline will not be a distribution line, it is therefore not under the jurisdiction of the OEB.

Parties questioned whether the application raises "by-pass" issues, specifically whether the application represents a by-pass of territory covered by a certificate of Union. Although the site of the Greenhouse Facility itself is not currently covered by a certificate, a portion of the road allowance upon which the Pipeline will lie is.

Findings

The site of the Greenhouse Facility is not currently covered by a certificate, and there are therefore no by-pass issues for that site. OMLP requires a certificate in order to construct facilities to supply gas; therefore, the OEB grants OMLP a certificate for that site.

The OEB does not accept that the Pipeline is a "gathering system", and finds instead that it will be providing distribution services. OMLP has clearly indicated that both the Pipeline and the tie-in system are required to serve the Greenhouse Facility. There is no mention of new wells being integrated into the system with this new Pipeline. The sole

purpose of the Pipeline appears to be to distribute gas to the Greenhouse Facility. The OEB therefore finds that the new Pipeline provides a distribution function.

Section 8 of the *Municipal Franchises Act* provides that a certificate of public convenience and necessity is required prior to the construction of any works to supply natural gas in a municipality. The Pipeline will serve a distribution function and will be supplying natural gas to the Greenhouse Facility, and it will therefore require a certificate. As a portion of the Pipeline will be located on territory that is already part of a certificate held by Union, this requires a by-pass. One of the key considerations in determining whether a by-pass approval is appropriate is whether there will be harm to existing ratepayers of the “by-passed” utility – i.e. Union. In its application, OMLP stated that the new OMLP assets will have no impact on Union’s current or future customers. However, it did not consider the impact of closing the existing greenhouse. Union currently serves the existing Maricann greenhouse, which will be closed when the new facility is built. The revenues lost from this customer could have a negative impact on other Union customers.

The current case is unusual in that:

- Union does not hold a certificate for the property on which the Greenhouse Facility (and the old greenhouse facility that is being replaced) is located. Therefore, the actual facility being served (i.e. the load) does not require a by-pass.
- The incremental load associated with the new, much larger, greenhouse has no impact on the current Union ratepayers. Only the loss of the current load is considered for by-pass.¹
- The existing greenhouse is a relatively small Union customer and, in the OEB’s view, its closure would have minimal impact on Union’s ratepayers.

Under these circumstances, the OEB is prepared to grant Maricann a limited certificate to cover the course of the Pipeline. The certificate will not permit Maricann to serve any customers in Union’s service territory (though Maricann can, of course, serve the Greenhouse Facility). This certificate is attached as Schedule B. OMLP must meet all requirements associated with the distribution of natural gas including being in compliance with all related regulatory requirements including the design, operation, maintenance, safety, and integrity requirements under the province’s Technical Standards and Safety Authority (TSSA) mandate.

¹ EB-2014-0299, Decision and Order, Greenfield South Power Corporation (April 2, 2015).

3.2 Leave to Construct

The Pipeline is 3.7 kilometres in length, has an estimated capital cost of \$335,000, is NPS 4 and operates at a maximum pressure of 100 psig (approximately 690 kPa). OMLP has not applied for a leave to construct for the Pipeline. Union's submission is silent on the need for a leave to construct application. OEB staff notes that section 90 of the OEB Act states that no person shall construct a hydrocarbon pipeline without first obtaining an order from the OEB granting leave to construct the hydrocarbon line if it meets certain length (longer than 20 kilometres), cost (more than \$2 million), diameter (greater than or equal to 12-inches) and/or pressure (greater than or equal to 2000 kPa) criteria.

Findings

The Pipeline does not meet the thresholds for a leave to construct in the OEB Act or associated regulations, and the OEB therefore finds that no leave to construct approval is required.

3.3 Rate Regulation

OMLP has indicated that it intends to supply gas to the new Greenhouse Facility and will charge for the natural gas supplied. OMLP will therefore be a natural gas distributor. Section 36 of the OEB Act requires a distributor to obtain an order of the OEB prior to charging for the distribution, transmission, storage or sale of gas. Although there are exemptions to this requirement under certain regulations made under the OEB Act², these exemptions do not appear to apply to OMLP.

Furthermore, neither the OEB Act nor the regulations provide relief for a company supplying gas to itself or an affiliate in terms of the requirement to obtain a rate order from the OEB.

Findings

OMLP is not exempt from the need to have an approved tariff to serve the new greenhouse facility. A rate order will be required prior to commencing service to the new Greenhouse Facility.

² Section 36 of the OEB Act does not apply to the sale, transmission, distribution or storage of gas by a distributor who distributes less than 3,000,000 cubic metres of gas annually. O. Reg. 161/99, s. 3.

4 ORDER

THE BOARD ORDERS THAT:

1. A certificate of public convenience and necessity, attached as Schedule B to this Decision and Order, is granted to OM Limited Partnership to construct pipeline facilities to the new Maricann Group Inc. Langton Facility located in Langton, Ontario.
2. A certificate of public convenience and necessity, attached as Schedule C to this Decision and Order, is granted to OM Limited Partnership to construct tie-in system facilities and supply natural gas to the new Maricann Group Inc. Langton Facility located in Langton, Ontario.
3. These certificate approvals are subject to OM Limited Partnership being in compliance with all related regulatory requirements including the design, operation, maintenance, safety, and integrity requirements under the province's Technical Standards and Safety Authority (TSSA) mandate.
4. OM Limited Partnership is required to obtain a rate order from the OEB prior to commencing service to the new Maricann Group Inc. Langton Facility.
5. OM Limited Partnership is not permitted to serve additional customers without first applying for and receiving approval of the OEB.
6. OM Limited Partnership shall pay the OEB's costs incidental to this proceeding upon receipt of the OEB's invoice.

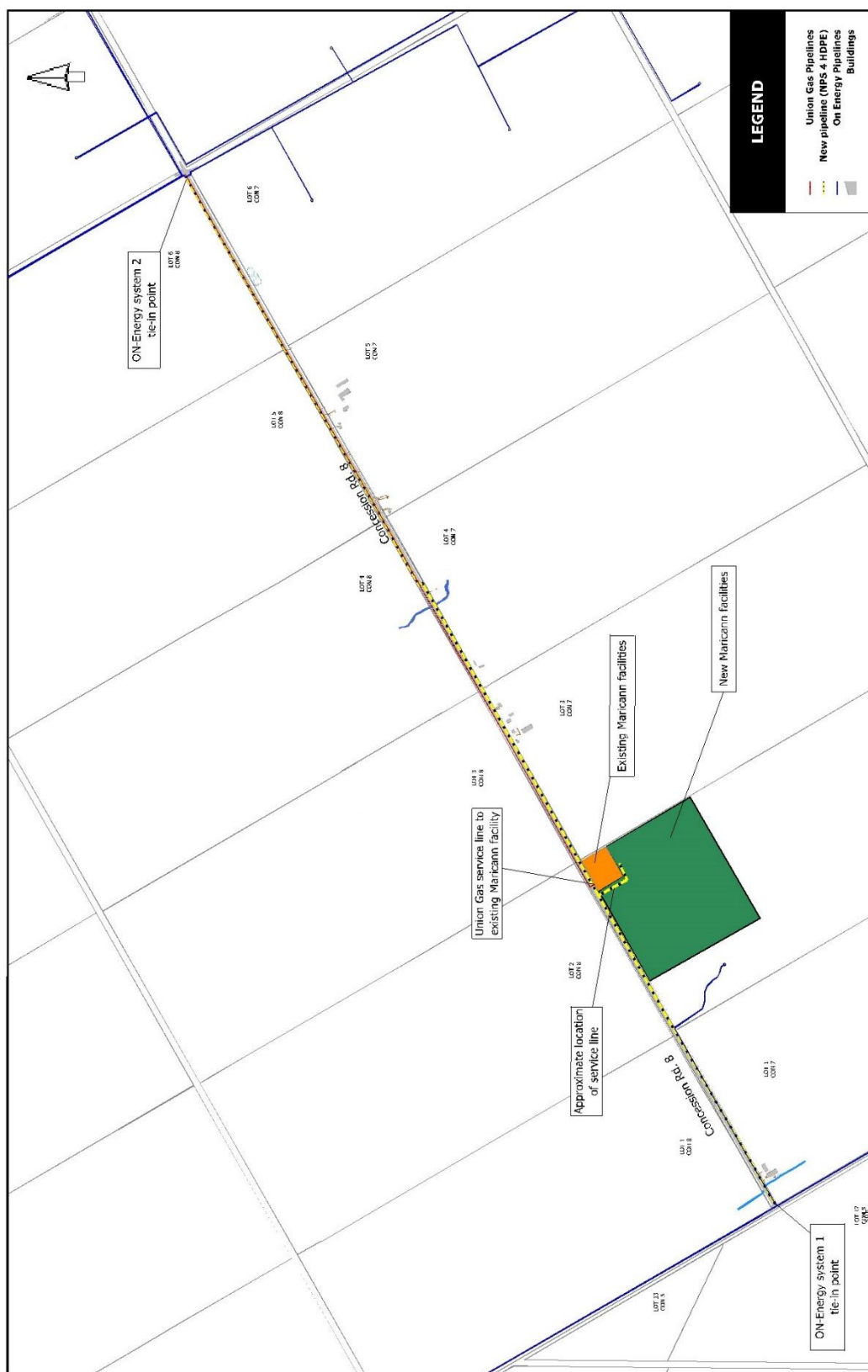
DATED at Toronto June 14, 2018

ONTARIO ENERGY BOARD

Original Signed By

Kirsten Walli
Board Secretary

SCHEDULE A
DECISION AND ORDER
OM LIMITED PARTNERSHIP
EB-2017-0289
PROJECT MAP
JUNE 14, 2018



SCHEDULE B
DECISION AND ORDER
OM LIMITED PARTNERSHIP
EB-2017-0289
CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY
PIPELINE FACILITIES
JUNE 14, 2018

The Ontario Energy Board hereby grants
CERTIFICATE OF PUBLIC CONVENIENCE AND
NECESSITY

EB-2017-0289-A

to

OM Limited Partnership

under section 8 of the *Municipal Franchises Act*, R.S.O. 1990, c. M.55, as amended

to construct pipeline facilities on Concession Road 8

from County Road 23 to W Quarter Line Road

for the purpose of supplying natural gas to

the new Maricann Group Inc. Langton Facility located in Langton, Ontario.

DATED at Toronto, June 14, 2018

ONTARIO ENERGY BOARD

Original Signed By

Kirsten Walli
Board Secretary

SCHEDULE C
DECISION AND ORDER
OM LIMITED PARTNERSHIP
EB-2017-0289
CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY
TIE-IN SYSTEM FACILITIES
JUNE 14, 2018

The Ontario Energy Board hereby grants
CERTIFICATE OF PUBLIC CONVENIENCE AND
NECESSITY

EB-2017-0289-B

to

OM Limited Partnership

under section 8 of the *Municipal Franchises Act*, R.S.O. 1990, c. M.55, as amended

to construct tie-in system facilities on

the north half of Lot 2, Concession 7, Norfolk County,

for the purpose of supplying natural gas to

the new Maricann Group Inc. Langton Facility located in Langton, Ontario.

DATED at Toronto, June 14, 2018

ONTARIO ENERGY BOARD

Original Signed By

Kirsten Walli
Board Secretary