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June 15, 2018

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Sent By Electronic Mail, Courier and RESS Electronic Filing

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

Dear Ms. Walli:

EB-2017-0108: Application for certificates of public convenience and necessity for Norfolk County, the County of Elgin, and the County of Middlesex

Re: Further Written Submissions of EPCOR Natural Gas LP

Further to Procedural Order No. 6 dated June 7, 2018, please find the enclosed the written submissions of EPCOR Natural Gas Limited Partnership (EPCOR) in connection with the above matter.

Please do not hesitate to contact me if you have any questions.

Yours very truly,



Patrick G. Welsh

PW:vs

c (email only): Patrick McMahon, *Union Gas Limited*
Myriam Seers, *Torys LLP*
Brian Lippold, *EPCOR Natural Gas Canada*
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ONTARIO ENERGY BOARD

IN THE MATTER OF the *Municipal Franchises Act*, R.S.O. 1990,
c. M.55, as amended (the “Act”);

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

**FURTHER SUBMISSIONS OF
EPCOR NATURAL GAS LIMITED PARTNERSHIP**

June 15, 2018

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Background

1. On April 12, 2018, Staff of the Ontario Energy Board (the “**OEB**”) filed a submission wherein it proposed two Options to address the alleged issue of overlapping Certificates of Public Convenience and Necessity (“**Certificates**”) held by EPCOR Natural Gas Limited Partnership (“**EPCOR**”) and Union Gas Limited (“**Union**”) for the County of Elgin, County of Middlesex, and Norfolk County, which have been the subject of this proceeding.

2. In brief, OEB Staff proposed two options to address the alleged issue of overlapping Certificates: Option “A”, a narrower, more tailored and arguably fairer approach limiting each utility’s Certificates to the metes and bounds of their existing infrastructure, and Option “B”, a broader, arguably less fair, and arguably premature approach granting Certificates for the entirety of a lower-tier municipality where the utility is the only distributor in an area, and Certificates limited to the metes and bounds of existing infrastructure where more than one utility provides service.

3. In its reply of April 26, 2018, Union proposed an Option “C” approach where a utility would be issued a new Certificate for the entirety of a municipality where that utility was the only distributor in the area or where one distributor had the “majority” of the infrastructure in the municipality, with the “minority” distributor receiving a limited Certificate covering only the specific lots where the distributor currently has infrastructure.

4. On May 9, 2018, EPCOR provided a brief Letter of Comment, stating that EPCOR maintains its position outlined in its submissions of April 12, 2018 that Union’s application should be dismissed in its entirety, but also noting that if the OEB was inclined to select any of the

proposed Options discussed above, EPCOR was most supportive of OEB Staff's Option "A" approach.

5. On May 10, 2018, Union filed a letter objecting to EPCOR's Letter of Comment on the basis that Union was granted the final right of reply in this proceeding. In Procedural Order No. 6, the OEB invited EPCOR to provide further submissions, in particular regarding the consumer-related issues raised by Union regarding Options "A" and "B".

EPCOR's Position Generally: any relief granted should be narrow. Option "A" is the narrowest of the Options provided by OEB Staff

6. As EPCOR stated in its Letter of Comment, EPCOR maintains its position outlined in its submission of April 12, 2018 that there is no evidence before the OEB warranting intervention into EPCOR's Certificates and that EPCOR is concerned that Union's application is an attempt to expand its Certificate areas through a process that has been packaged as an administrative "clean-up" exercise. EPCOR also maintains that if the OEB is inclined to grant relief to Union, then it should do so in an extremely narrow fashion.

7. EPCOR is also of the view that if the OEB was inclined to select any of the Options proposed by OEB Staff, EPCOR is most supportive of Option "A", being the most narrow Option and the Option least likely to result in unintended consequences.

8. Finally, EPCOR is of the view that if the OEB is inclined to modify existing Certificates or issue new Certificates on a more granular basis, the new or modified Certificates should use a "metes and bounds" approach rather than a "lots" approach.

Union’s “public interest” arguments are essentially those of expediency and convenience, at the expense of OEB oversight and competition

9. In its Reply dated April 26, 2018 (the “**Reply**”), Union argued that Option “A” would be “impractical and contrary to the public interest because it would cause substantial delays for customers and additional costs.” Union also argued that Option “B” was “more workable” because it was not “overly restricting [of] the boundaries of new certificates” and would allow each utility to respond to requests for service more expeditiously and without “burdening the OEB with unnecessary proceedings”. However, in Union’s view, Option “B” was still not workable in municipalities where both utilities had infrastructure.

10. In EPCOR’s assessment, these arguments raised by Union of unnecessary delays, additional costs for customers, and administrative inefficiency are not true “public interest” arguments. Rather, they are arguments in favour of expediency and convenience over procedural safeguards and the potential for fostering competition in unserved areas.

11. As explained more fully in EPCOR’s submissions,¹ the process for granting Certificates is the only way the OEB can control and supervise the expansion of a gas distribution system where the proposed expansion falls below the leave-to-construct threshold. If the OEB adopted any approach that expanded a utility’s Certificate rights in the absence of a specific request for service (whether Option “B”, Option “C”, or some other approach), the OEB would be ceding its ability to supervise growth and foster competition in currently uncertificated areas (an objective clearly

¹ EB-2017-0108, Written Submissions of EPCOR (April 12, 2018) at pp. 2-6.

emphasized by the OEB in the *Ontario Energy Board Generic Proceeding on Community Expansion*²).

12. Additionally, Union's bald assertions that potential customers have been or may be harmed lacks any evidentiary foundation. As stated in EPCOR's submissions, Union has not provided any examples of any delays or increased costs, let alone any examples of requests for service in uncertificated areas (in fact, with respect to the Municipality of Central Elgin, Union explicitly stated that it was "not aware of any pending requests for service in these specified areas."³). Instead, Union has advanced hypothetical arguments of expediency and convenience in order to justify an approach that ultimately reduces the ability of the OEB to exercise its regulatory functions.

Expanding a utility's Certificate rights in the absence of a specific request for service would be premature

13. As stated in EPCOR's Letter of Comment dated May 9, 2018, EPCOR agrees with OEB Staff that Option "B" (and by implication, Option "C") is premature because competition to serve the unserved areas may be possible and has not been explored in this proceeding. Adopting either Option "B" or "C" would crystallize all of the concerns raised by EPCOR in its submissions

² EB-2016-0004, Ontario Energy Board, Decision with Reasons, Generic Proceeding (November 17, 2016)(the "Generic Proceeding")

³ EB-2017-0108, Revised Application by Union Gas Limited (June 19, 2018) ("Union Application"), page 11, lines 14-15. See also EPCOR's submissions regarding the lack of any evidence of new service requests or of delays in providing service to customers at pp. 9, 10, 13, 14.

regarding incumbency advantages,⁴ and would be contrary to the OEB's stated desire in the *Generic Proceeding* to encourage "competing bids" for uncertificated areas.

Union's statements reveal the underlying objective of the application: unchecked expansion

14. As previously argued, EPCOR believes that the true purpose of Union's application is to maximize the areas in which Union can expand its service area all while circumscribing the areas in which EPCOR can construct as-of-right. Two points in particular highlight EPCOR's concern.

15. First, Union's Option "C" approach clearly favours Union because Union typically has the majority of the infrastructure in most municipalities, and in the area more generally. Under Option "C", Union would gain previously uncertificated territory solely because it is the "majority" utility without any specific request for service or opportunity for EPCOR to provide a competing bid. In EPCOR's view, Option "C" is so flagrantly self-serving that it does not merit serious consideration by the OEB.

16. Second, Union expressed concern that the OEB would favour a "metes-and-bounds" approach over a "lots" approach. This discussion arose in the context of the Township of Malahide, where Union is seeking a limited Certificate (to Lot 24 in Concession 11) because Union previously constructed facilities at four locations in Lot 24 outside of its Certificate area. However, by seeking a Lot-wide Certificate, as opposed to the strict metes-and-bounds approach limited to existing infrastructure, there is the possibility that Union would be granted the ability to construct and to serve more than just the four specific locations in Lot 24 without any OEB oversight. In other words, Union would "gain" more territory on a lot basis simply because the less granular

⁴ See Written Submissions of EPCOR, particularly at pp. 2-6.

approach was taken. As EPCOR argued in its submission, EPCOR did not object in principle to Union's request for a limited Certificate in Lot 24 in Concession 11, but EPCOR also stated that any Certificate issued to Union be limited to the four locations within Lot 24. This approach accords more closely with a metes-and-bounds approach.

Conclusion

17. In EPCOR's view, if the OEB is inclined to select an Option presented by OEB Staff, then the only reasonable and fair approach is Option "A". Option "A" is also more reflective of the *status quo* in terms of the territorial distribution between the utilities, is more consistent with the OEB's stated desire to foster competition for unserved areas and is less likely to result in unintended consequences or inadvertent expansion.