

June 22, 2018

BY RESS, EMAIL AND COURIER

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

Dear Ms. Walli:

**Re: EB-2017-0232 – EPCOR application for approval of a franchise agreement
with the County of Oxford**

We are counsel to Union Gas Limited in the above-noted matter. Please find enclosed Union's Reply Submissions in respect of the motion to compel responses to interrogatories.

The Reply Submissions in respect of the motion to compel responses to interrogatories will be filed on RESS and a copy served on all parties.

Yours truly,

[Original signed by Myriam Seers]

Myriam Seers

MS/lt
Enclosure

cc (email only): Azalyn Manzano, OEB Staff
Richard King, Osler, Hoskin & Harcourt LLP
Patrick Welsh, Osler, Hoskin & Harcourt LLP
Brian Lippold, EPCOR
Britt Tan, EPCOR
Patrick McMahon, Union Gas Limited

ONTARIO ENERGY BOARD

IN THE MATTER OF the *Ontario Energy Board Act, 1998*, S.O. 1998, c. 15, Schedule B, as amended;

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

AND IN THE MATTER OF an application made by EPCOR Natural Gas Limited Partnership (“EPCOR”) for an order pursuant to the *Municipal Franchises Act* approving EPCOR’s proposed franchise agreement with the County of Oxford;

AND IN THE MATTER OF Rule 8 of the *Rules of Practice and Procedure* of the Ontario Energy Board.

**REPLY SUBMISSIONS OF UNION GAS LIMITED
(motion to compel responses to interrogatories)**

June 22, 2018

1. These are Union Gas Limited’s reply submissions in response to the submissions of OEB Staff and EPCOR Natural Gas Limited Partnership regarding Union’s motion to compel EPCOR to answer certain interrogatories.

A. EPCOR should submit a customer density map

2. In its interrogatory 1(c), Union requested that EPCOR provide a customer density map showing the location of EPCOR’s customers and facilities within the Township of South-West Oxford. EPCOR has, without explanation, failed to provide the requested map. This information is necessary to determine the areas in which EPCOR is providing service, and to what extent.
3. OEB Staff agrees with Union that EPCOR should be responsive to the OEB’s guidance in EB-2017-0159, in which the OEB ordered Enbridge Gas Distribution to provide such a map because it “requires a clear understanding of where customers are being served by rate-regulated natural gas distributors within the Province.” The OEB in that proceeding stated that it “expect[s] Enbridge Gas, as well as other rate-regulated gas distributors in the

Province, to be guided by [its] decision regarding current and future applications for the approval of franchise agreements and for certificates of public convenience and necessity.”

4. In OEB Staff’s submission, while there is no official requirement to file a customer density map, EPCOR should still be responsive to the OEB’s guidance in the EB-2017-0159 proceeding by filing information that accurately delineates its service boundaries, as well as the general location and density of the customers it serves, in the County of Oxford. OEB Staff submits that the information contained in a customer density map is relevant to this proceeding and it is not unreasonable to expect that EPCOR provide it.
5. OEB Staff goes on to state that the information need not necessarily be provided in the form of a customer density map, but the required information that would be gleaned from a customer density map should be filed on the record.
6. In Union’s submission, a customer density map is the best way to ensure that the confidentiality of the identity and location of EPCOR’s customers and facilities is maintained. To provide information about the density and location of customers in another format would likely not accurately delineate EPCOR’s service boundaries and identify the general location and density of customers served within those boundaries, contrary to the OEB’s guidance in EB-2017-0159.
7. In its responding submissions, EPCOR inexplicably fails to explain why it should not be required to comply with that decision. Instead, EPCOR asserts that a customer density map has not been requested by OEB Staff and “is not relevant to these proceedings”. On the contrary, the OEB unambiguously held that all rate-regulated gas distributors in the Province should be guided by its decision in all current and future applications for the approval of franchise agreements and certificates of public convenience and necessity.
8. EPCOR’s characterization of Union’s position as “whataboutism” is not inaccurate – given this clear direction from the OEB, there is no basis on which EPCOR should be absolved from the requirement to provide the same information that Union and Enbridge Gas Distribution are required to provide in similar applications. Consistent requirements in the regulation of natural gas distributors within Ontario ensures fairness and consistency.

Regulated utilities in Ontario should be expected to understand the requirements upon which they operate without being specifically told by OEB Staff what they need to do. Utilities must make the effort to understand the evolving requirements and expectations of the regulatory environment in Ontario. EPCOR is not absolved from these requirements and should not be held to any different standard or subjected to different requirements.

9. EPCOR's second argument against providing the requested map is that OEB Staff has not requested it. Since OEB Staff agrees that EPCOR should comply with EB-2017-0159, this argument also provides no answer to EPCOR's non-compliance. In any event, the fact that OEB Staff has not requested the information is irrelevant given the guidance provided by the OEB itself.
10. EPCOR's third argument is that its predecessor has already provided a map "showing the general location of NRG's (now EPCOR's) distribution facilities within Oxford County's jurisdiction as Schedule B to this application." But this map does not show the information that the OEB stated that a gas distributor must provide in applications of this type, i.e. information that accurately delineates EPCOR's service boundaries and identify the general location and density of customers served within those boundaries. EPCOR also asserts that "EPCOR has already provided copies of its system map (which includes layers with customers) to Union and to OEB Staff." No such map is on the record in this proceeding, and it is unclear to which map EPCOR's statement refers. If EPCOR is referring to maps provided under the cover of settlement privilege in another proceeding, then such a map is clearly insufficient to respond to the interrogatory request because it is not on the public record at all, much less on the record in this proceeding.
11. Finally, EPCOR argues that the information is irrelevant for this proceeding because "EPCOR has already confirmed that its infrastructure is located within the boundaries of its Certificate" and "would not provide much assistance to the OEB because all of Oxford County is of relatively low density." Again, this is not a reason not to comply with the OEB's guidance in EB-2017-0159, which states unambiguously that "[t]he OEB requires a clear understanding of where customers are being served by rate-regulates natural gas distributors

within the Province.” Regardless of whether or not the County of Oxford is “of relatively low density,” EPCOR must comply with this clear direction from the OEB.

EPCOR should explain the proposed deviations from the 2000 Model Franchise Agreement

12. EPCOR did not respond to Union’s interrogatory 2(d), through which Union asked EPCOR to “explain the harm to either the County of Oxford or EPCOR’s customers of leaving the clause related to the *Drainage Act* within the franchise agreement”.
13. EPCOR has proposed a deviation from the 2000 Model Franchise Agreement, by deleting section 5(g), which requires that “[w]here the gas system may affect a municipal drain, the Gas Company shall also file a copy of the Plan with the Corporation’s Drainage Superintendent for purposes of the *Drainage Act*, or such other person designated by the Corporation as responsible for the drain.”
14. OEB Staff agree that EPCOR should respond to this question, and confirm that an understanding of the rationale for changes to the Model Franchise Agreement would be helpful in considering whether the changes should be approved.
15. OEB Staff have also stated that EPCOR needs to explain why any of the formatting changes (i.e., the proposed changes to headings, subheadings, paragraph numbering, etc.) are required because, in OEB Staff’s view, there is overall benefit in having municipal franchise agreements remain as consistent as possible with the Model Franchise Agreement.
16. Union emphasizes that the OEB has rarely approved deviations from the Model Franchise Agreement and has done so only where “exceptional and unique circumstances” particular to the municipality are present that would warrant a deviation. Again, EPCOR should not be held to any different standard in justifying deviations from the Model Franchise Agreement than that to which Union or EGD would be held. EPCOR must explain the proposed deviation, and why “exceptional and unique circumstances” are present that would justify the deviation.
17. Union also supports OEB Staff’s request that EPCOR explain the proposed formatting changes to the Model Franchise Agreement. While these changes are not substantive,

consistent numbering and formatting amongst the franchise agreements based on the current Model Franchise Agreement helps with the uniform application of those agreements. There are no exceptional or unusual circumstances that render the numbering change necessary.

18. EPCOR provides an explanation of the circumstances that led to the deletion of the provision in paragraphs 12 to 19 of its submissions, and states that “there is no additional information that EPCOR would or could provide that is different from what has already been stated.” These reasons boil down to the fact that the municipality requested the deviation. But the fact that a municipality requests a deviation from the Model Franchise Agreement is neither a “unique” nor an “exceptional” circumstance warranting that deviation. To accept this rationale for deviation would eviscerate the very purpose of the Model Franchise Agreement, because every franchise agreement would be subject to deviations at the request of a municipality, even in the absence of exceptional and unique circumstances.
19. In any event, there is nothing either exceptional or unique about the County of Oxford’s circumstances that are relevant to section 5(g) of the Model Franchise Agreement. This provision is included in Union’s franchise agreement with the County of Oxford. To Union’s knowledge, the provision has not been removed from any franchise agreement with an upper-tier municipality, even though other upper-tier municipalities may similarly not be responsible for drainage projects.
20. Union accepts that EPCOR may not have any additional information to provide. However, this is its opportunity to do so, being on notice that it must establish “exceptional” and “unique” circumstances if the deviation is to be approved. Unless a better explanation is provided, Union expects to take the position in its final submissions that the deviation should not be approved.

ALL OF WHICH IS RESPECTFULLY SUBMITTED

June 22, 2018

Original signed by Myriam Seers

Torys LLP
Lawyers for Union Gas Limited