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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: 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

We are counsel to Union Gas Limited in the above-noted matter. Please find enclosed Union's Further Reply Submission.

The Further Reply Submission 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): All Intervenors
Patrick McMahon, Union Gas Limited

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

FURTHER REPLY SUBMISSION OF UNION GAS LIMITED

June 22, 2018

1. These are Union Gas Limited's further reply submissions in response to the submissions of EPCOR Natural Gas Limited Partnership regarding consumer impact and other issues related to the options to address overlapping Certificates of Public Convenience and Necessity.

Need to eliminate overlapping certificates

2. In the first paragraph of its supplemental submission on the consumer impact and other issues, EPCOR refers to the "alleged issue" of overlapping Certificates of Public Convenience and Necessity held by Union and EPCOR for the County of Elgin, the County of Middlesex and Norfolk County. EPCOR continues to base its arguments on the false premise that overlapping certificates do not pose a problem needing to be addressed.
3. As Union has submitted several times in this proceeding 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. OEB Staff agrees. In its submissions of April 12, 2018, OEB Staff states that overlapping certificates can create a "lack of clarity among gas distributors" which "can give rise to questions about where each distributor can and cannot operates, safety concerns, and records management [issues]."¹

¹ OEB Staff Submission, April 12, 2018, p. 5.

Option A would be impractical and against the public interest

4. Under OEB Staff's proposed 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. As Union submitted at paragraphs 6 to 9 of its April 26 reply argument, Option A is not desirable because 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). This would be difficult to administer, would lead to constant amendment of certificate boundaries, and would lead to substantial unnecessary delay before a new customer outside the service boundary could receive service.
5. For example, if Option A were applied to the City of London, where Union serves over 126,300 customers and EPCOR only has certificate rights to serve specific lots in the former Township of Westminster, Union would be required to submit a new application to the OEB for a new certificate every time it receives a request to serve new customers outside the boundaries of the existing infrastructure, even though EPCOR has no facilities in the vicinity that would allow it to meet those service requests economically. This solution would cause substantial additional costs for customers, delays and administrative inefficiency, not to mention that it would create a large administrative burden for the OEB.
6. EPCOR asserts that Option A is a "narrower, more tailored and arguably fairer approach" less likely to lead to "unintended consequences" and inadvertent expansion, and most reflective of the status quo.
7. Contrary to EPCOR's submission, Option A is not at all reflective of the status quo. Option A would result in a reduction of the existing certificates to include only the metes and bounds of existing infrastructure. For example, under the certificates currently in place, Union can meet additional service requests in the City of London without bringing a new OEB proceeding for approval of an expanded certificate. It would no longer be able to do so if Option A were accepted, as set out above. This is neither fair nor efficient.

8. EPCOR further submits that the consumer interest issues raised by Union associated with unnecessary delays to get requested service, additional costs for customers and administrative inefficiency are not true “public interest” arguments. On the contrary, the OEB’s mission is to promote a viable, sustainable and efficient energy sector that serves the public interest and assists consumers to obtain reliable energy services that are cost effective. The “public interest” has traditionally been regarded as the welfare or well-being of the general public. In Union’s submission, this very much includes ensuring that anything that allows for the timely provision of services, reduces costs and promotes administrative efficiency is considered in the public interest.
9. Part of the OEB’s mandate is to oversee how energy companies operate to ensure the public interest is served. Union submits that the OEB must consider how services are provided to ensure the public interest is being considered and met.
10. It is self-evident that there will be a delay in meeting new service requests and increased administrative costs and inefficiency if Union is required to bring a new OEB proceeding to revise certificate boundaries every time it receives a new service request. Union has no objection to providing more detailed evidence to the OEB in this regard should it be useful to the OEB.

Option B creates a more workable solution, but still presents challenges

11. 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. As set out in paragraphs 10 and 11 of Union’s reply argument, Option B presents a more workable solution than Option A, but presents the same challenges as does Option A in all municipalities in which both utilities have existing infrastructure.
12. EPCOR considers Option B a “broader, arguably less fair, and arguably premature approach” of granting Certificates because competition to serve the unserved areas may be possible and has not been explored in this proceeding. EPCOR also believes that Option B would

crystallize all of the concerns raised in its previous submissions regarding incumbency advantages and would be contrary to the OEB's stated desire to encourage competing bids for uncertificated areas.

13. Union submits that Option B would better align certificates for the upper-tier municipalities with existing franchise agreements in those lower-tier municipalities within Elgin and Middlesex Counties in which only one of either Union or EPCOR currently operates. Union considers it unlikely that a utility not currently operating within a municipality could serve a customer within the municipality more economically and to the customer's advantage.
14. It would be naïve to think that a utility already operating in a municipality would not be considered to have an advantage and be in a better position to provide service in areas of the municipality not currently receiving service. This advantage results from the fact that the incumbent already has existing infrastructure in the area. Expansion of the incumbent's service area allows a natural, and efficient, use of existing infrastructure, whereas an alternate provider may have little or no infrastructure within any reasonably economic distance.
15. The reason that competition to serve unserved areas within Elgin and Middlesex Counties has not been addressed in this proceeding is because it is not relevant in the context of EPCOR's reference to the Generic Proceeding on Community Expansion (EB-2016-0004). The OEB's Generic Proceeding on Community Expansion was convened to establish a framework within which natural gas service could be expanded to communities that are not currently served. All of the lower-tier communities within Elgin and Middlesex Counties currently receive natural gas service.
16. Utilities are required to charge customers that are in the same rate class the same rate. In the Generic Proceeding on Community Expansion, the OEB determined that it would allow utilities to charge "stand alone" rates to new service expansion communities and that it would not be appropriate to require existing customers to pay for a portion of any expansion of service to a new community. In Union's submission, these determinations within the Generic Proceeding on Community Expansion have nothing to do with expanding service within a municipality that already receives natural gas service.

17. The OEB clearly states in its Decision with Reasons in that proceeding that contiguous expansion of the existing system with development on the edge of serviced areas would continue to be managed under the EBO 188 framework and would not be addressed within the new competitive framework to address providing service to currently unserved communities.²
18. The competitive framework that EPCOR inappropriately references has been designed for providing service to unserved communities in which new rate zones and a competitive leave to construct process would be facilitated. This framework does not pertain to extending service further along streets within an already served community.
19. While the OEB notes that where a Certificate has been issued for an area but there is currently no distribution service may result in another distributor applying to serve that area³, there could only be “competition” if there were more than one economically feasible alternative to serve an area.

Union’s proposed Option C is a preferable alternative

20. Union’s proposed Option C, described at paragraphs 12 to 15 of its reply argument, provides a preferable hybrid solution that avoids the public interest issues that would arise under both Options A and B.
21. EPCOR submits that under Union’s proposed 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.
22. EPCOR has missed the intent of the proposed Option C alternative, which is to avoid the public interest issues that would arise under the alternative Options A and B. 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

² EB-2016-0004 - Decision with Reasons, November 17, 2016, p. 22.

³ EB-2016-0004 - Decision with Reasons, November 17, 2016, p. 20.

existing facilities). In Union's submission, requiring a new OEB proceeding for every request for new service will unnecessarily delay providing the requested service and lead to inordinate regulatory and administrative costs. The proposed Option C would eliminate the problems created by overlapping certificates while at the same time avoiding the inefficiencies and costs created under Options A and B.

23. The OEB has 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.
24. EPCOR submits that Union expressed concern that the OEB would favour a "metes and bounds" approach over a "lots" approach. EPCOR submits that by seeking a lot-wide certificate for the portion of the Township of Malahide in which Union serves four customers, 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, EPCOR submits that Union would "gain" more territory on a lot basis simply because the less granular approach was taken.
25. Metes and bounds is a method of describing land that uses physical features of local geography to define and describe the boundaries of a parcel of land. Union does not see the purpose behind trying to identify a more granular description of land within a municipality than lots and concessions descriptions which are the standard measurements used within all municipalities.

Intent of Union's application

26. EPCOR submits 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 facilities.

27. On the contrary, as Union has stated previously, the intent of the application is to eliminate the problem of overlapping certificates which the OEB has identified as an issue to address.⁴ Eliminating this overlap will create clarity as to the accountability for particular geographic areas, and ensure safe and reliable operations, as well as efficient and effective customer access to natural gas services. Union hopes that the elimination of the overlap will not add cost or time to the process of providing service as requested.

* * *

28. Union therefore respectfully requests that the OEB adopt its Option C solution to the overlapping certificates problem, as described in paragraphs 12 to 17 of its reply argument.

All of which is respectfully submitted this 22nd day of June, 2018.

[Original signed by Myriam Seers]

Torys LLP
Lawyers for Union Gas Limited

⁴ OEB Staff Submission, p. 6.