



EB-2017-0232

**EPCOR Natural Gas Limited Partnership**  
**Application for municipal franchise agreement with the**  
**County of Oxford**

**DECISION ON MOTION AND**  
**PROCEDURAL ORDER NO. 3**

**October 4, 2018**

EPCOR Natural Gas Limited Partnership (EPCOR) is seeking an order of the Ontario Energy Board (OEB), pursuant to the *Municipal Franchises Act*, approving EPCOR's proposed franchise agreement with the County of Oxford.<sup>1</sup>

The OEB issued a Notice of Hearing on February 2, 2018. Union Gas Limited (Union Gas) is an intervenor in the proceeding.

Procedural Order No. 1 was issued April 19, 2018, establishing dates for the filing of interrogatories, responses to interrogatories and final written submissions.

EPCOR filed its response to the interrogatories of OEB staff and Union Gas on May 17, 2018. Subsequently, on May 25, 2018, Union Gas filed a motion with the OEB to compel EPCOR to answer certain interrogatories posed by Union Gas. Specifically, the motion is for an order requiring EPCOR to provide full and adequate responses to Union Gas interrogatories 1(c) and 2(d), and allowing Union Gas to file its written submissions on the application five days after EPCOR provides full and adequate responses to those interrogatories.

On May 28, 2018, EPCOR filed a letter in response to the motion indicating that, in EPCOR's view, and given that the letter provides additional information with respect to

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<sup>1</sup> The application was originally filed by Natural Resource Gas Limited (NRG) on August 24, 2017, under section 9 of the *Municipal Franchises Act*. NRG was acquired by EPCOR in November 2017.

Union Gas interrogatories 1(c) and 2(d), the motion is not necessary to resolve these matters.

The OEB issued Procedural Order No. 2 on May 30, 2018, which gave notice of the motion and made provision for the filing of any additional material and submissions by parties. EPCOR and OEB staff filed submissions on June 15, 2018. Union Gas filed its reply submission on June 22, 2018.

### **Customer Density Map**

#### **Position of Parties**

Union Gas argued that as a natural gas distributor in Ontario, EPCOR should be expected to provide the same degree of detail to support its application as other natural gas distributors are required to provide. Union Gas submitted that since the OEB issued its decision approving Enbridge Gas Distribution Inc.'s franchise agreement with the Township of Collingwood (Collingwood Decision)<sup>2</sup>, the OEB has expected natural gas distributors to submit customer density maps in all applications for the approval of a franchise agreement or certificate of public convenience and necessity (certificate).

EPCOR submitted that Union Gas has not demonstrated the need for EPCOR to provide a customer density map. EPCOR argued that Union Gas' argument, which points out that other gas distributors in other proceedings and contexts have been required by the OEB or OEB staff to provide customer density maps, is not an adequate reason to require EPCOR to provide a customer density map, in the absence of a request from the OEB or OEB staff. EPCOR noted that Union Gas had either been required by the OEB to provide, or had voluntarily provided customer density maps in the cases cited by Union Gas in its motion. EPCOR also noted that its application for a franchise agreement with the County of Oxford was filed on June 12, 2017, prior to the Collingwood Decision, which was issued on July 4, 2017. EPCOR also stated that a customer density map would not provide much assistance to the OEB because all of the County of Oxford is of relatively low density and that, in any event, EPCOR had already provided a system map to both Union Gas and OEB staff.

OEB staff submitted that while there is no filing requirement in respect to customer density maps, EPCOR should still be responsive to the guidance in the Collingwood Decision. OEB staff submitted that while the information required by the Collingwood Decision does not necessarily need to be provided in the form of a customer density

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<sup>2</sup> EB-2017-0159

map, it is not unreasonable to expect EPCOR to provide the required information that would be gleaned from a customer density map.

In its reply submission, Union Gas submitted that the OEB had unambiguously meant for its guidance in the Collingwood Decision to apply to all rate-regulated gas distributors in Ontario for all current and future applications for the approval of franchise agreements and certificates. Union Gas argued that EPCOR should not be held to a different standard or subjected to different requirements than other regulated utilities in Ontario. Union Gas also noted that EPCOR had not filed a system map on the record in this proceeding.

## Findings

I agree with OEB staff and Union Gas that the guidance in the Collingwood Decision was meant to apply to all rate regulated gas distributors in Ontario. In the interest of moving this application forward, EPCOR ought to provide information that would be gleaned from a customer density map. In particular, I expect that EPCOR will provide 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.

Going forward, EPCOR is expected to abide by the same standards as other natural gas distributors in Ontario. Unless the cost is considered prohibitive or the undertaking so onerous, a customer density map should be provided as part of any application filed for the approval of municipal franchise agreements and certificates. The onus would be on the distributor to justify why a customer density map could not be provided. At a minimum, information that accurately delineates service boundaries and the general location and density of customers ought to be provided to the OEB in proceedings under the *Municipal Franchises Act*.

## **Deviation from the 2000 Model Franchise Agreement**

### Position of Parties

EPCOR's proposed franchise agreement deleted section 5(g), which requires that "where 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 the purposes of the Drainage Act, or such other person designated by the Corporation as responsible for the drain" (*Drainage Act* clause). EPCOR states that this deletion was made at the County of Oxford's request. EPCOR's evidence indicates that the County of Oxford has

delegated drainage to the Township of South-West Oxford as a lower-tier responsibility which puts it outside the jurisdiction of the County of Oxford.

Union Gas submitted that EPCOR has not provided any explanation for the deviation from the 2000 Model Franchise Agreement (2000 MFA), other than to state that the clause was deleted at the County of Oxford's request. Union Gas noted that the OEB has rarely approved deviations from the 2000 MFA, and has done so only where "exceptional and unique circumstances" particular to the municipality are present that would warrant a deviation. Union Gas submitted that EPCOR has failed to explain whether such circumstances exist, and argued that the franchise agreement should not be approved by the OEB without a compelling explanation and assurance that this deviation only applies to EPCOR's franchise agreement with the County of Oxford, and is based on considerations that only apply to the County of Oxford.

EPCOR submitted that Union Gas has not demonstrated the need for EPCOR to provide further information regarding the removal of the *Drainage Act* clause in the 2000 MFA. EPCOR also stated that there is no additional information that EPCOR could provide regarding the removal of the *Drainage Act* clause that is different from what it had already stated. EPCOR reiterated that it had agreed to remove the *Drainage Act* clause at the request of the County of Oxford, and as a condition of the County of Oxford signing a franchise agreement, despite repeated explanations to the County of Oxford that the OEB prefers not to deviate from the 2000 MFA, and that all of EPCOR's other franchise agreements used the terms of the 2000 MFA. EPCOR also stated its willingness to defer to the OEB's preference regarding the terms of the franchise agreement with the County of Oxford.

OEB staff submitted that an understanding of the rationale for changes to the 2000 MFA would be helpful to the OEB in considering whether or not the changes should be approved. OEB staff also requested that EPCOR explain why any of the formatting changes are required, given OEB staff's view that there is an overall benefit in having municipal franchise agreements remain as consistent as possible with the 2000 MFA.

Union Gas' reply submission argued that there is nothing exceptional or unique about the County of Oxford's circumstances that are relevant to the *Drainage Act* clause of the 2000 MFA. Union Gas further states that to its 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 works.

## Findings

The purpose of the *Drainage Act* clause contained in the 2000 MFA is for distributors to inform the proper authorities of the works that may affect a municipality's drainage system. The 2000 MFA is a template for franchise agreements between distributors and municipalities. There may however be circumstances in which it would be appropriate to make modifications to the 2000 MFA if there are compelling reasons to do so. However, in this case, it is clear that the intent of the *Drainage Act* clause contained in the 2000 MFA must remain. I am concerned that removing the drainage clause in this specific case could be interpreted as abdicating the distributor's responsibility to provide this information to the proper authorities.

I note that the *Municipal Act, 2001* states that drainage is a sphere of jurisdiction which is assigned to upper-tier municipalities. However, this assignment is non-exclusive, and allows for the transfer of drainage responsibilities between upper-tier and lower-tier municipalities. I also note that the current wording of the *Drainage Act* clause in the 2000 MFA is such that it appears to allow for a distributor to file a copy of its plan with any other person designated by the County of Oxford as responsible for drainage.

EPCOR is directed to provide a response to Union Gas' interrogatory 2(d). As part of that response, EPCOR is asked to provide an explanation as to why it is problematic to leave the *Drainage Act* clause in 2000 MFA given that this section of the clause appears to allow the County of Oxford to assign the responsibility for drainage to the Township of South-West Oxford. EPCOR could then file a copy of its plan for any works affecting drainage within the County of Oxford with the Drainage Superintendent for the Township of South-West Oxford. At a minimum, EPCOR is to provide as part of its response to interrogatory 2d) an explanation as to how EPCOR has and will fulfill the intent of the *Drainage Act* clause in situations where EPCOR has a franchise agreement with an upper-tier municipality that has assigned its responsibility for drainage to the lower-tier municipality.

It is necessary to make provision for the following matters related to this proceeding. Further procedural orders may be issued by the OEB.

### **IT IS THEREFORE ORDERED THAT:**

1. EPCOR shall provide 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. EPCOR shall also provide a response to Union Gas' interrogatory 2(d) and address the information requested by the OEB herein

regarding the proposed deviation from the 2000 Model Franchise Agreement. EPCOR shall file this information and serve it on Union Gas by **October 18, 2018**.

2. Union Gas and OEB staff may file any written submission with the OEB and serve them on EPCOR by **November 1, 2018**.
3. EPCOR may file a written reply submission with the OEB and serve it on Union Gas by **November 15, 2018**.

All filings with the OEB must quote the file number **EB-2017-0232**, and be made through the OEB's web portal at <https://www.pes.ontarioenergyboard.ca/eservice/>, and consist of two paper copies and one electronic copy in searchable / unrestricted PDF format. Filings must be received by the OEB by 4:45 p.m. on the stated date. Parties should use the document naming conventions and document submission standards outlined in the RESS Document Guideline found at [www.oeb.ca](http://www.oeb.ca). If the web portal is not available, parties may e-mail their documents to the attention of the Board Secretary at [BoardSec@oeb.ca](mailto:BoardSec@oeb.ca).

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**DATED** at Toronto, **October 4, 2018**

**ONTARIO ENERGY BOARD**

*Original signed by*

Kirsten Walli  
Board Secretary