

**Osler, Hoskin & Harcourt LLP**  
Box 50, 1 First Canadian Place  
Toronto, Ontario, Canada M5X 1B8  
416.362.2111 MAIN  
416.862.6666 FACSIMILE

**OSLER**

Toronto

Montréal

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November 9, 2018

Patrick Welsh  
Direct Dial: 416.862.5951  
pwelsh@osler.com

**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:

**Re: EB-2018-0247: Application for Leave to Transfer Certificates of Public Convenience and Necessity**

**Re: EPCOR Southern Bruce Gas Inc., along with EPCOR Utilities Inc. and EPCOR Natural Gas Limited Partnership (collectively, "EPCOR")**

Please find enclosed the reply submissions of EPCOR in the above proceeding, all in accordance with Procedural Order No. 2 of the Ontario Energy Board dated October 32, 2018.

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

Yours very truly,



Patrick G. Welsh

PW:vs

c (email only): Bruce Brandell, *EPCOR Utilities Inc.*  
Britt Tan, *EPCOR Utilities Inc.*  
Richard King, *Osler, Hoskin & Harcourt LLP*  
Patrick McMahon, *Union Gas Limited*

## **ONTARIO ENERGY BOARD**

**IN THE MATTER OF** Section 18 of the *Ontario Energy Board Act, 1998*, S.O. 1998, c. 15, (Sched B) and Section 8 of the *Municipal Franchises Act*, R.S.O. 1990, c. M.55;

**AND IN THE MATTER OF** an application by EPCOR Utilities Inc., EPCOR Southern Bruce Gas Inc., and EPCOR Natural Gas Limited Partnership for an Order pursuant to Section 18(1) of the *Ontario Energy Board Act, 1998* granting leave to transfer the Certificates of Public Convenience and Necessity for the Municipality of Arran-Elderslie, the Municipality of Kincardine and the Township of Huron-Kinloss to EPCOR Natural Gas Limited Partnership.

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### **REPLY OF EPCOR UTILITIES INC., EPCOR SOUTHERN BRUCE GAS INC., and EPCOR NATURAL GAS LIMITED PARTNERSHIP**

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November 9, 2018

OSLER, HOSKIN & HARCOURT LLP  
Box 50, 1 First Canadian Place  
Toronto, ON M5X 1B8

Patrick G. Welsh  
Tel: 416.862.5951  
Fax: 416.862.6666  
[pwelsh@osler.com](mailto:pwelsh@osler.com)

Counsel for EPCOR Utilities Inc., EPCOR  
Southern Bruce Gas Inc., and EPCOR Natural  
Gas Limited Partnership

### **Background**

1. On August 10, 2018, EPCOR Utilities Inc., EPCOR Southern Bruce Gas Inc. (“**EPCOR Southern Bruce**”), and EPCOR Natural Gas Limited Partnership (“**ENGLP**”) (collectively, “**EPCOR**”) applied to the Ontario Energy Board (the “**OEB**” or the “**Board**”) to transfer from EPCOR Southern Bruce to ENGLP the following Certificates of Public Convenience and Necessity (each a “**Certificate**” or together the “**Certificates**”):

- i) a Certificate for the Municipality of Arran-Elderslie, excluding the geographic area of the former Township of Arran and the former Village of Tara (pursuant to Decision and Order EB-2016-0137);
- ii) a Certificate for the Municipality of Kincardine (pursuant to Decision and Order EB-2016-0138); and
- iii) a Certificate for the Township of Huron-Kinloss (pursuant to Decision and Order EB-2016-0139).

2. Further to Procedural Order No. 2 dated October 31, 2018, the OEB granted permission to Union Gas Limited (“**Union**”) and Board Staff to file written submissions regarding EPCOR’s application and provided EPCOR with an opportunity for reply.

3. On November 5, 2018, Board Staff filed submissions that were supportive of EPCOR’s application, ultimately recommending that the OEB should approve the transfer of EPCOR Southern Bruce’s Certificates to ENGLP.

4. Also on November 5, 2018, Union filed submissions opposing EPCOR’s application.

### **Reply of EPCOR**

5. On August 10, 2018, EPCOR submitted a brief application to transfer the Certificates from EPCOR Southern Bruce to ENGLP. EPCOR agrees with Board Staff’s assessment that this application is “essentially the transfer of authorizations to construct works to supply the South

Bruce area that have already been granted.”<sup>1</sup> EPCOR also agrees with the assessment of the OEB, in Procedural Order No. 2, that there is a “very limited issue under consideration in this proceeding, which is the proposed transfer of an authorizations [sic] that have already been granted...”.<sup>2</sup>

6. In its submission, Union suggested that an application under section 43 of the *Ontario Energy Board Act, 1998* (the “Act”) is required in order to transfer the Certificates from EPCOR Southern Bruce to ENGLP.<sup>3</sup> Union was not clear in its submission whether it was referring to an application pursuant to subsection 43(1) (i.e., an application to sell, lease or otherwise dispose of, *inter alia*, a gas distribution system) or subsection 43(2) (i.e., an application to acquire share control of, *inter alia*, a gas distribution system). Either way, section 43 of the Act clearly does not apply because no gas distribution system has been built yet. Conversely, the Certificates are clearly an “authority given by the Board under [the Act] or any other Act” (in the case of the Certificates, the *Municipal Franchises Act*) which are appropriately the subject of an application pursuant to section 18 of the Act (i.e., application to transfer authority or licence).

7. Union further alleged that EPCOR’s application did not address the entirety of the Certificates of Public Convenience and Necessity required to serve the Southern Bruce municipalities.<sup>4</sup> Again, EPCOR submits that this is a limited proceeding with a single issue: the transfer of the Certificates granted in the Board’s Decision and Order of April 12, 2018 in EB-2016-0137/EB-2016-0138/EB-2016-0139 (the “**Southern Bruce Expansion Proceeding**”).

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<sup>1</sup> OEB Staff Submission, EB-2018-0247 (November 5, 2018) (“**OEB Staff Submission**”) at page 2.

<sup>2</sup> Procedural Order No. 2, EB-2018-0247 (October 31, 2018) at page 1.

<sup>3</sup> Submission of Union Gas Limited, EB-2018-0247 (November 5, 2018) (“**Union Submission**”) at page 1.

<sup>4</sup> Union Submission at page 1.

EPCOR asserts that, given the limited nature of this proceeding, this is not the appropriate forum to address the approval of franchise agreements or any limited certificates of public convenience and necessity in outlying municipalities required for the gas distribution system to pass through. EPCOR will address any other Board approvals required for the gas distribution system in a separate and appropriate proceeding.

8. Union also raised issues related to various commitments made by EPCOR during the Southern Bruce Expansion Proceeding.<sup>5</sup> EPCOR, in its application, clearly stated that ENGLP would assume and continue any applicable obligation of EPCOR Southern Bruce related to the Board's decision and order of April 12, 2018 in the Southern Bruce Expansion Proceeding.

9. Finally, Union suggested that the Certificates should not be transferred because the Certificates were issued conditionally.<sup>6</sup> EPCOR submits that the Board, in its Order of April 12, clearly granted the Certificates to EPCOR Southern Bruce and also imposed further obligations related to the Certificates (including the filing of leave-to-construct applications by October 12, 2018). But this does not change the fact that the Certificates are "authorities given by the Board under [the Act] or any other Act" and therefore properly form the subject of an application to transfer such authorities pursuant to section 18 of the Act. The fact that certain conditions were imposed in the Southern Bruce Expansion Proceeding should not, in of itself, hinder a transfer application, especially where EPCOR and ENGLP have explicitly committed to assuming and

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<sup>5</sup> Union Submissions at page 2.

<sup>6</sup> Union Submissions at page 2.

continuing any obligations of EPCOR Southern Bruce and where the primary temporal condition, the filing of leave-to-construct applications by October 12, has already been met.

10. Union concluded by alleging that EPCOR was trying to “pass its application off as simply an administrative issue” and went on to say that “the awarding of a certificate, particularly a certificate arising from the CIP review process should not be approached by the OEB as a ‘tick the box’ exercise.”<sup>7</sup> First, EPCOR is not trying to “pass off” its application as anything more than what it is: an application to transfer three Certificates from one EPCOR entity, EPCOR Southern Bruce, to another EPCOR entity, ENGLP. EPCOR acknowledges and agrees with Board Staff’s view that “ENGLP has the experience and expertise necessary to safely develop and operate the Southern Bruce project and store and distribute natural gas in Ontario” and that “ratepayers and other natural gas utilities in Ontario will not be adversely affected by approval of [EPCOR’s] request.”<sup>8</sup> In EPCOR’s assessment, the Board is applying the appropriate degree of scrutiny and proportionality to EPCOR’s application, and is not treating this hearing as a “box ticking exercise”. Rather, Union’s assertion that this application is about the “awarding of a certificate” is an attempt to use this straightforward and narrow Certificate transfer application to re-litigate issues already determined in the Southern Bruce Expansion Proceeding and to otherwise put into question EPCOR’s ability to serve the Southern Bruce area through this proceeding.

11. EPCOR respectfully submits that the Board should approve the transfer of the Certificates from EPCOR Southern Bruce to ENGLP without delay.

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<sup>7</sup> Union Submissions at page 2.

<sup>8</sup> OEB Staff Submission at page 2.

Dated at Toronto, Ontario, this 9<sup>th</sup> day of November, 2018.



**EPCOR UTILITIES INC.,  
EPCOR NATURAL GAS  
LIMITED PARTNERSHIP, AND  
EPCOR SOUTHERN BRUCE  
GAS INC.**

By their Counsel

Patrick G. Welsh  
Osler, Hoskin & Harcourt LLP