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**BY EMAIL**

May 21, 2019

Ms. Kirsten Walli  
Board Secretary  
Ontario Energy Board  
2300 Yonge Street, 27<sup>th</sup> Floor  
Toronto ON M4P 1E4

Dear Ms. Walli:

**Re: OM Limited Partnership  
Application for a municipal franchise agreement with Norfolk County  
OEB Staff Submission**

**Ontario Energy Board File Number: EB-2019-0104**

In accordance with Procedural Order No. 2, please find attached the OEB Staff Submission for the above proceeding. This document has been sent to OM Limited Partnership and Enbridge Gas Inc.

OM Limited Partnership is reminded that its Reply Submission, if any, is due by May 27, 2019.

Yours truly,

*Original Signed By*

David Martinello  
Analyst, Supply & Infrastructure



## **OEB Staff Submission**

# **Application for a Municipal Franchise Agreement with Norfolk County**

## **OM Limited Partnership**

**EB-2019-0104**

**May 21, 2019**

## 1 INTRODUCTION

These are the submissions of Ontario Energy Board (OEB) staff on the application filed by OM Limited Partnership (OMLP) on March 7, 2019, under section 9 of the *Municipal Franchises Act*. The application is for an order approving OMLP's municipal franchise agreement with Norfolk County and an order directing and declaring that the assent of the municipal electors of Norfolk County is not necessary for the franchise by-law. The municipal franchise agreement is in the form of the 2000 Model Franchise Agreement, with no amendments, and is for a term of twenty years.

OMLP currently has two certificates of public convenience and necessity for Norfolk County that enable it to construct facilities for the purpose of supplying natural gas to the new Maricann Group Inc. Langton Facility in Langton, Ontario. Specifically, the certificates of public convenience and necessity allow OMLP to construct facilities and supply natural gas on:

- Concession Road 8 from County Road 23 to W Quarter Line Road, Norfolk County (EB-2017-0289-A)
- The north half of Lot 2, Concession 7, Norfolk County (EB-2017-0289-B)

## 2 PROCESS

The OEB issued a Notice of Hearing on April 2, 2019, which was served and published as directed. On April 17, 2019, Enbridge Gas Inc. (Enbridge Gas) filed a letter with the OEB requesting intervenor status.

The OEB issued Procedural Order No. 1 on April 26, 2019, which set the schedule for a written hearing and approved Enbridge Gas as an intervenor. On May 3, 2019, the OEB issued Procedural Order No. 2 which revised the date for OEB staff and Enbridge Gas to file submissions.

Enbridge Gas filed interrogatories on May 6, 2019, and OMLP filed interrogatory responses on May 13, 2019.

## 3 MUNICIPAL FRANCHISE AGREEMENT

OMLP is seeking approval of its municipal franchise agreement with Norfolk County and, with its application, filed a municipal franchise agreement that appears to have

been signed and executed. OMLP also provided the accompanying by-law<sup>1</sup> in its application. Through interrogatories, Enbridge Gas sought clarity from OMLP on the matter regarding the effective date of the municipal franchise agreement. Specifically, Enbridge Gas requested OMLP to confirm its understanding that the effective date of any franchise agreement would be the later date of (i) the Decision and Order issued by the OEB approving a municipal franchise agreement, and (ii) the date of the passing of the by-law approving the municipal franchise agreement. In its response, OMLP noted that the effective date of any municipal franchise agreement would be the later date; however, for determining the term of the agreement, OMLP would consider it to be twenty years from the date of final execution of the municipal franchise agreement or such other date as determined by the OEB.<sup>2</sup>

As part of its interrogatories, Enbridge Gas requested OMLP to confirm whether the municipal franchise agreement filed as part of its application provides OMLP rights to construct and operate works for the distribution, transmission and storage of natural gas and the right to extend and add to the works throughout all of Norfolk County. OMLP confirmed that the executed municipal franchise agreement provided such rights, but that OMLP has no current plans to provide gas distribution services to any part of Norfolk County other than the Maricann Facility on Concession Road 8.<sup>3</sup>

Enbridge Gas questioned OMLP's interpretation of clause 4 of the 2000 Model Franchise Agreement. As part of the 2000 Model Franchise Agreement, clause 4 discusses the duration of the agreement and renewal procedures. Specifically, clauses 4(a) and 4(b) are as follows:

- a) If the Corporation has not previously received gas distribution services, the rights hereby given and granted shall be for a term of 20 years from the date of final passing of the By-law.
- b) If the Corporation has previously received gas distribution services, rights hereby given and granted shall be for a term of 20 years from the date of final passing of the By-law provided that, if during the 20-year term this Agreement, the Model Franchise Agreement is changed, then on the 7<sup>th</sup> anniversary and on the 14<sup>th</sup> anniversary of the date of the passing of the By-law, this Agreement shall be deemed to be amended to incorporate any changes in the Model Franchise Agreement in effect on such anniversary dates. Such deemed amendments shall not apply to alter the 20-year term.<sup>4</sup>

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<sup>1</sup> By-law 2018-103, enacted and passed on December 18, 2018.

<sup>2</sup> OMLP Enbridge Interrogatory Response D, p. 2.

<sup>3</sup> OMLP Enbridge Interrogatory Responses A and B, p. 2.

<sup>4</sup> 2000 Model Franchise Agreement, p. 3.

Enbridge Gas appears to suggest, through its interrogatories, that clause 4(b) would be appropriate given that consumers in Norfolk County have been receiving gas from Enbridge Gas for several decades. OMLP noted that the clause may be open to interpretation with respect to from whom Norfolk County has received gas distribution services. However, OMLP stated that it would abide by the terms in clause 4(b) of the municipal franchise agreement.<sup>5</sup>

### **Submission**

OEB staff submits that the municipal franchise agreement for OMLP with Norfolk County should be granted. The municipal franchise agreement is an agreement between the municipality and the distributor, and it specifies each of their contractual roles, rights and obligations (e.g., how work is to be done and how costs are to be allocated between the municipality and the distributor). However, the specific location within which a distributor is authorized to operate in a municipality is limited by the OEB-issued certificate of public convenience and necessity. Therefore, should OMLP wish to construct gas facilities for the purpose of distributing natural gas to areas in Norfolk County other than for which it already has approval under certificates EB-2017-0289-A and EB-2017-0289-B, OMLP will first be required to apply for and be granted such certificates from the OEB.

OEB staff notes that the municipal franchise agreement filed by OMLP is already signed and that this is inconsistent with the process set out in E.B.O. 125<sup>6</sup>. In the normal course, a distributor is to file an unsigned municipal franchise agreement for approval, with a resolution from the municipal council.

In this instance, OEB staff submits that the inconsistency with E.B.O. 125 is not significant enough to prevent the municipal franchise agreement for OMLP with Norfolk County from being granted. OEB staff also submits that as per the OEB's typical practice, the OEB should dispense with the assent of the municipal electors. OEB staff notes that the effective date of the franchise agreement between OMLP and Norfolk County would simply be the date of any Decision and Order issued by the OEB approving the municipal franchise agreement, as according to the *Municipal Franchises Act*, a municipal by-law with a signed municipal franchise agreement would not be valid prior to the OEB approving the terms and conditions of the agreement.

In the time allotted for this submission, OEB staff has been unable to locate a precedent regarding the matter of clause 4. If the phrase from clause 4(b), "if the Corporation has previously received gas distribution services", were to mean gas distribution service

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<sup>5</sup> OMLP Enbridge Interrogatory Response F, p. 2.

<sup>6</sup> E.B.O. 125 Report of the Board: Ontario Energy Board Review of Franchises & Certificates, "How a Franchise Agreement is Established", Section 2.11 (May 21, 1986).

from the same distributor that the municipality is signing the agreement with, OEB staff's view would be that clause 4(a) would apply as OMLP has not previously provided gas distribution services in Norfolk County.

All of which is respectfully submitted.