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BY EMAIL

June 3, 2019

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

Dear Ms. Walli:

**Re: EPCOR Natural Gas Limited Partnership (ENGLP)
Southern Bruce Project
OEB Staff Submission
Ontario Energy Board File Number: EB-2018-0263**

In accordance with Procedural Order No. 2, please find attached the OEB staff submission for the above proceeding. This document has been sent to ENGLP.

ENGLP is reminded that its Reply Submission is due by June 10, 2019.

Yours truly,

Original Signed By

Azalyn Manzano
Case Manager



ONTARIO ENERGY BOARD

OEB STAFF SUBMISSION **June 3, 2019**

EPCOR Natural Gas Limited Partnership
Southern Bruce Project
EB-2018-0263

Introduction

EPCOR Natural Gas Limited Partnership (ENGLP) applied to the Ontario Energy Board (OEB) under section 90(1) of the *Ontario Energy Board Act, 1998* (OEB Act) for an order granting leave to construct approximately 298 kilometres of natural gas pipeline crossing the County of Bruce, the County of Grey, the Municipality of Brockton, the Municipality of West Grey, and the Township of Chatsworth to serve the Municipality of Arran-Elderslie, the Municipality of Kincardine and the Township of Huron-Kinloss (Southern Bruce Municipalities) (Southern Bruce Project or the Proposed Project). ENGLP is also requesting approval for the proposed form of easement agreements, pursuant to section 97 of the OEB Act.

ENGLP is requesting approval under section 9 of the *Municipal Franchises Act, 1990* (MFA Act) for approval of a natural gas municipal franchise agreement (MFA) with each of the Corporation of the County of Bruce, the Corporation of the County of Grey, the Corporation of the Municipality of Arran-Elderslie, the Corporation of the Municipality of Brockton, the Corporation of the Municipality of Kincardine, the Corporation of the Municipality of West Grey, the Corporation of the Township of Chatsworth and the Corporation of the Township of Huron-Kinloss. Under section 8 of the MFA Act, ENGLP also applied for approval of a certificate of public convenience and necessity (certificate) for each of the County of Bruce, the County of Grey, the Municipality of Brockton, the Municipality of West Grey and the Township of Chatsworth.

ENGLP plans to start construction in June 2019 to begin providing gas distribution service to the Southern Bruce Municipalities by the 2019-2020 heating season.

Process

ENGLP was the successful proponent in the competitive process in the South Bruce Expansion Applications¹ and was granted the certificates to serve the Southern Bruce Municipalities, conditional on the approval of a leave to construct application for the project. On September 20, 2018, ENGLP applied to the OEB for an order granting leave to construct the Southern Bruce Project.

The Proposed Project was initially funded by the Natural Gas Grant Program (NGGP) for \$22 million. The NGGP was cancelled by the Ontario government in September 2018. On October 3, 2018, the OEB received a letter from ENGLP stating that despite it not receiving NGGP funding, it is “prepared to continue supporting the project on its current schedule if we receive confirmation from the Province that such funding will be

¹ EB-2016-0137|-0138|-0139

available at some time in the future.” The OEB put ENGLP’s application in abeyance on November 29, 2018. ENGLP received a letter from Ministry of Energy, Northern Development and Mines (MENDM) on December 21, 2018 stating that the Southern Bruce Project would be eligible to receive rate protection under Bill 32, the *Access to Natural Gas Act*. On February 27, 2019, ENGLP filed an updated application. On March 11, 2019, the applicable regulation (O. Reg. 24/19) for Bill 32 confirmed ENGLP’s eligibility for funding.

The OEB issued a Notice of Hearing on March 22, 2019. Anwaatin Inc. (Anwaatin), the Corporation of the Municipality of Brockton (Municipality of Brockton), Enbridge Gas Inc. (Enbridge Gas), Industrial Gas Users Association (IGUA) and collectively, the Municipality of Kincardine, the Municipality of Arran-Elderslie and the Township of Huron-Kinloss were granted intervenor status.

The OEB issued Procedural Order No. 1 on April 17, 2019, setting the timeline for a written discovery process. OEB staff, Anwaatin, Enbridge Gas and IGUA delivered written interrogatories. ENGLP filed responses to written interrogatories on May 1, 2019.

On May 10, 2019, ENGLP filed revised responses to interrogatories, which included updated information regarding impacted landowners. In Procedural Order No. 2, which was issued on May 13, 2019, the OEB directed ENGLP to serve all other currently registered property owners and encumbrancers with lands or interest in the lands potentially directly affected by the proposed pipeline and related facilities who had not been previously served.

The OEB staff submission is organized as follows:

- Leave to Construct
 - o Project Need
 - o Proposed Facilities and Alternatives
 - o Economics and Feasibility
 - o Environmental Matters
 - o Indigenous Consultation
- Land Matters
- Certificates
- Municipal Franchise Agreements
- Conditions of Approval

Leave to Construct**Project Need**

ENGLP states that for a number of years, the Southern Bruce Municipalities have been working towards bringing natural gas service into their communities to increase the energy options available. The expansion of natural gas in the Southern Bruce Municipalities increases the energy options for the total available market of 8,739 customers (including 7,250 residential, 688 commercial, 20 industrial/agricultural), and is expected to provide economic benefits to the communities. ENGLP's surveys of the area in 2014 and 2017 have concluded that 65% of the commercial sector and 60% of the residential customers would be likely to convert to natural gas if it were available.

ENGLP states that its attachment forecast has changed from what it originally proposed in its Common Infrastructure Plan (CIP) in the South Bruce Expansion Applications. Due to the re-filing of the application and the passage of time, ENGLP states that it has had to revise its construction schedule, which in turn has reshaped its customer connection profile. ENGLP states that the new attachment forecast is more aggressive than the CIP forecast, and will catch up to its CIP values by 2021. ENGLP's updated ten-year forecast for attachments is reproduced below in Table 1, with ENGLP's table comparing the update with the original forecast in Table 2.

Table 1. Updated Ten-Year Forecast Attachments

| Customer Type | 2019 | 2020 | 2021 | 2022 | 2023 | 2024 | 2025 | 2026 | 2027 | 2028 | Cumulative |
|-----------------------------------|----------|--------------|--------------|--------------|--------------|--------------|--------------|--------------|--------------|--------------|---------------|
| Existing Residential | 0 | 1,149 | 3,237 | 3,742 | 4,176 | 4,349 | 4,349 | 4,349 | 4,349 | 4,349 | 34,049 |
| New Residential | 0 | 52 | 159 | 215 | 271 | 328 | 384 | 424 | 462 | 469 | 2,764 |
| <i>Sub Total</i> | 0 | 1,200 | 3,396 | 3,957 | 4,447 | 4,677 | 4,733 | 4,773 | 4,811 | 4,818 | 36,812 |
| Small Commercial | 0 | 72 | 215 | 288 | 343 | 359 | 359 | 359 | 359 | 359 | 2,713 |
| Medium Commercial | 0 | 14 | 43 | 59 | 67 | 69 | 69 | 69 | 69 | 69 | 528 |
| Large Commercial | 0 | 4 | 13 | 16 | 17 | 19 | 19 | 19 | 19 | 19 | 145 |
| <i>Sub Total</i> | 0 | 89 | 271 | 363 | 427 | 447 | 447 | 447 | 447 | 447 | 3,385 |
| Small Agricultural | 0 | 0 | 0 | 1 | 2 | 2 | 2 | 2 | 2 | 2 | 13 |
| Industrial and Large Agricultural | 2 | 3 | 9 | 11 | 11 | 11 | 11 | 11 | 11 | 11 | 91 |
| <i>Sub Total</i> | 2 | 3 | 9 | 12 | 13 | 13 | 13 | 13 | 13 | 13 | 104 |
| Grand Total | 2 | 1,292 | 3,676 | 4,332 | 4,887 | 5,137 | 5,193 | 5,233 | 5,271 | 5,278 | 40,301 |

Source: EB-2018-0263 ENGLP Interrogatory Response, Table Enbridge 3-1

Table 2. Original vs. Updated Forecast Attachments

| | Col. 1 | Col. 2 | Col. 3 | Col. 4 | Col. 5 | Col. 6 | Col. 7 | Col. 8 | Col. 9 | Col. 10 |
|---------------------------|--------|--------|--------|--------|--------|--------|--------|--------|--------|---------|
| Description | 2019 | 2020 | 2021 | 2022 | 2023 | 2024 | 2025 | 2026 | 2027 | 2028 |
| Customer Connections CIP | 979 | 2,583 | 3,676 | 4,332 | 4,887 | 5,137 | 5,193 | 5,233 | 5,271 | 5,278 |
| New Construction Schedule | 2 | 1,292 | 3,676 | 4,332 | 4,887 | 5,137 | 5,193 | 5,233 | 5,271 | 5,278 |

Source: EB-2018-0263 ENGLP Interrogatory Response, Table OEB 9-2

OEB Staff Submission

OEB staff submits that there is a need for the Proposed Project. The Southern Bruce region is the largest area in southern Ontario currently without access to natural gas. OEB staff agrees that the Proposed Project will increase energy options for consumers and is likely to decrease operating expenses and help support economic growth and competitiveness in the area.

OEB staff notes that the application includes a number of letters of support from large agricultural and industrial customers in the area, and that ENGLP has had the continued support of the Southern Bruce Municipalities. OEB staff also notes that ENGLP reports that it is still continuing negotiations with two major industrial customers that the Southern Bruce system is expected to serve, and also reports that it appears that parties will be able to resolve any outstanding issues.²

Proposed Facilities and Alternatives

The Proposed Project will consist of constructing:

- approximately 60 kilometers of steel NPS 8 pipeline
- approximately 15 kilometres of steel NPS 6 pipeline
- approximately 45 kilometres of MDPE NPS 6 pipeline
- a pressure regulator and metering station at Dornoch on Grey Road 25 between Concession Road 1 and Concession Road 2, which will be the main supply line to the Southern Bruce system
- a pressure regulating station at Chesley near the intersection of Bruce Road 19 and Side Road 30N to tie into the NPS 8 mainline and decrease the mainline pressure to serve the community of Chesley

² Response to OEB staff interrogatory # 7(c)

- a pressure regulating station at Paisley near the intersection of the Brant-Elderslie Road and Bruce Road 3, to tie into the NPS 8 mainline and decrease the mainline pressure to serve the community of Paisley
- a pressure regulating station at Tiverton near the intersection of Bruce Road 23 and Bruce Road 15, to tie into the NPS 6 mainline and decrease the mainline pressure to serve the community of Tiverton
- a pressure regulating station at Inverhuron near the intersection of Bruce Road 23 and Parkwood Road, to tie into the NPS 6 mainline and decrease the mainline pressure to serve the community of Inverhuron
- a pressure regulating station at Kincardine near the intersection of Bruce Road 23 and north of Kincardine Hospital, to tie into the terminus of the NPS 6 mainline and decrease the mainline pressure to serve the community of Kincardine
- a pressure regulating and flow measurement station at the Bruce Energy Centre

ENGLP also clarified in its interrogatory response that it was only requesting leave to construct the 120 kilometre mainline, and that the 178 km of distribution pipelines was referenced only to provide a more complete description of the overall infrastructure.³

ENGLP states that the preferred route was selected from among the alternatives as it “strikes a balance between maximizing future customer connections while minimizing negative environmental and cumulative impacts”.⁴

ENGLP originally proposed to begin construction in April 2019 with construction ending in December 2020. Construction is now planned to start in June 2019 to be able to provide service by the 2019-2020 heating season, with project completion by December 31, 2021. If construction is delayed past June 2019, ENGLP states that the completion of the mainline to the Bruce Energy Centre would risk being delayed to summer 2020.

OEB Staff Submission

OEB staff has no concerns with the proposed facilities. OEB staff notes that ENGLP has confirmed in its interrogatory responses that the infrastructure proposed in this application is the same as that proposed in its CIP.⁵

OEB staff submits that the alternatives to the proposed facilities in this case are limited to routing options. Typical alternatives such as looping and geo-targeted DSM, etc., are only applicable to existing distribution systems. OEB staff submits that the proposed routing was appropriately selected from among the alternatives, as the detailed routing

³ Response to OEB staff interrogatory # 1(b)

⁴ Evidence Exhibit A, Tab 3, Schedule 1, page 5

⁵ Response to OEB staff interrogatory # 3

was selected from options in the Environmental Assessment (EA) (a process that involved public input), and the EA and (route selection) was completed in compliance with the OEB's *Environmental Guidelines for the Location, Construction and Operation of Hydrocarbon Pipelines and Facilities in Ontario* (OEB Environmental Guidelines).

OEB staff submits that ENGLP requires approval for leave to construct all 298 kilometres of both mainline and distribution pipeline. Section 90 of the OEB Act does not make a distinction between types of "hydrocarbon lines", and the proposed pipelines to be built total more than 20 kilometres in length and cost more than \$2 million. However, OEB staff does not believe that the disparity between ENGLP and OEB staff's interpretation of what exactly requires leave to construct raises any issues, as the notice for the proceeding informed parties and the public that the Proposed Project to be approved includes 298 kilometres of pipeline, and parties to the proceeding have been able to examine the entire costs of the Proposed Project.

OEB staff submits that the evidence supporting the economic tests, environmental and land matters is sufficient for parties to make submissions on in terms of the OEB approving the Proposed Project, regardless of which interpretation is assumed. OEB staff has assessed all evidence and matters that are relevant in this proceeding on the premise that ENGLP requires approval for leave to construct all 298 kilometres of pipeline.

Economics and Feasibility

ENGLP was required by the OEB to ensure that its leave to construct application is consistent with its CIP proposal. ENGLP confirms that the Proposed Project costs and its revenue requirement are consistent with the underlying details supporting the three key metrics it committed to in its CIP.⁶ The total estimated cost of the Proposed Project is \$87 million (see Table 3 below). This includes a 4.7% contingency. The Ontario Government has committed \$22 million of rate protection to the Proposed Project through Bill 32.

⁶ Evidence Exhibit A, Tab 7, Schedule 1, page 1; Interrogatory response to OEB staff interrogatory # 1(a), #8(b)

Table 3. Proposed Project Costs

| Description of Cost | Cost (\$000's) | Value of Funding Allocated (\$000's) |
|---|----------------|--------------------------------------|
| Construction and Material Cost | 72,660 | 22,000 |
| External Costs (Engineering, Environmental, etc.) | 3,000 | |
| Internal Costs | 6,619 | |
| Contingency | 3,851 | |
| Interest During Construction | 959 | |
| Sum | 87,089 | 22,000 |

Source: EB-2018-0263 ENGLP Evidence, Exhibit A, Tab 7, Schedule 1, page 2

The OEB established a ten-year rate stability period for the Proposed Project in its Partial Decision on the Issues List and Procedural Order No. 6 for the South Bruce Expansion Applications⁷:

During this period customers can expect relative rate stability as the proponent's revenue related to its controllable costs will be capped at its proposed level. The rate stability period may include an allowance for consideration of externally driven, unforeseen events as well as annual financial allowance updates typically allowed by the OEB [emphasis ENGLP's].

As part of its interrogatories for the current proceeding, OEB staff requested that ENGLP perform a DCF analysis and report a NPV for the Proposed Project based on the proposed rates in its Southern Bruce rate application⁸ and forecast attachments. ENGLP declined to do so on the basis that the commitments made during the ten-year rate stability period transferred the risk relating to the Proposed Project and potential revenues to ENGLP if customer attachments do not occur as forecast. ENGLP states that it had considered the rate stability period in developing its CIP and determined economic feasibility on this basis. ENGLP also stated that within the set of common parameters under which it submitted its CIP, as the winning proponent, it had accepted the risk that its cumulative 10-year revenue requirement would be sufficient to cover costs to the extent that the NPV of the Proposed Project was acceptable; the risk of achieving an acceptable NPV remained with ENGLP⁹. ENGLP further states that no customers have been assessed a contribution-in-aid-of construction (CIAC) for the

⁷ EB-2016-0137 | EB-2016-0138 | EB-2016-0139

⁸ EB-2018-0264

⁹ Response to OEB staff interrogatory # 7(d)

construction of this Proposed Project¹⁰.

ENGLP states that as part of the competitive process, ENGLP was required to take additional risks during the rate stability period, such as market risk and capital cost risk, ensuring that their customers from either rate zone will not be exposed to any capital cost overruns from the development of the distribution system. ENGLP also states that it is proposing rates with an objective of being competitive so as to encourage conversion, and that if the connection forecast fails to develop as anticipated, it will work to determine the cause and implement measures to increase customer connections.

OEB Staff Submission

OEB staff submits that ENGLP's CIP proposal was the result of a competitive process that dis-incented the proponents from overstating costs. OEB staff therefore has no concerns with the estimated costs of the Proposed Project.

OEB staff accepts that ENGLP carries the risk for any capital cost overruns and attachments/volumes that do not materialize during the 10-year rate stability period. However, OEB staff submits that there may be a substantial rate shock in year 11 if the project costs substantially exceed the estimated costs and the forecast attachments/volumes do not materialize. OEB staff submits that ENGLP should expect to have to provide evidence on the prudence of their capital spending, attachments, etc. when it seeks to rebase its rates for year 11. OEB staff discusses the matter of project cost reporting further in the section on Conditions of Approval.

OEB staff also notes that ENGLP has requested an additional amount of \$1.7 million (in the revenue requirement) to account for the delay in the OEB decision and the approval of grant funding, which OEB staff expects will be addressed by the OEB in the concurrent Southern Bruce rates proceeding¹¹.

Environmental Matters

ENGLP retained Stantec Consulting Ltd. (Stantec) to complete an Environmental Report (ER) in accordance with the requirements of the OEB Environmental Guidelines and to propose a route for the Proposed Project. Stantec identified two potential routes. Following its consultation activities, ENGLP selected Alternate A as its final preferred route.

¹⁰ Response to OEB staff interrogatory # 7(e)

¹¹ EB-2018-0264

The ER was provided to members of the Ontario Pipeline Coordinating Committee (OPCC) for review and comment. ENGLP had received comments from the Ministry of the Environment, Conservation and Parks (MECP), the Ministry of Natural Resources and Forestry (MNRF) and the Technical Standards and Safety Authority (TSSA). ENGLP provided an updated summary of the OPCC review comments in response to interrogatories¹². The summary indicates that there are no outstanding concerns from OPCC members.

In its updated interrogatory response filed on May 10, 2019, ENGLP provided the draft Environmental Protection Plan for the Proposed Project¹³. ENGLP states that the final version is expected to be completed by June 30, 2019.

OEB Staff Submission

OEB staff accepts the selection of the final preferred route compared to the other alternative route. OEB staff also has no major environmental or archeological concerns with the Proposed Project. OEB staff submits that ENGLP has followed the requirements of the OEB Environmental Guidelines and that ENGLP's compliance with the Environmental Protection Plan (EPP) and the proposed conditions of approval in Appendix A will ensure that impacts of pipeline construction are mitigated and monitored.

OEB staff notes that the EPP, which is intended to compile all the recommendations for mitigation and monitoring, including that of the OPCC, was not filed as part of the application. ENGLP filed a draft EPP in its interrogatory response update on May 10, 2019, stating that it expects to complete the final version by June 30, 2019. OEB staff submits that OEB approval should be conditional on filing the final version of the EPP.

OEB staff notes that the Stage 1 Archeological Assessment required that certain locations along the proposed route undergo a Stage 2 Archeological Assessment that has not yet been completed. OEB staff submits that if leave to construct is granted, it should be conditional on ENGLP obtaining, filing with the OEB, and adhering to the Ministry of Tourism, Culture and Sport's (MTCS) Stage 2 Archeological Assessment.

Indigenous Consultation

ENGLP received a delegation letter for the Proposed Project from the MENDM,

¹² Response to OEB staff interrogatory # 17

¹³ Response to OEB staff interrogatory # 18

Indigenous Energy Policy¹⁴ on May 4, 2017, which identified the communities to be consulted. As part of its interrogatory responses, ENGLP filed correspondence it received on May 1, 2019, which stated that MENDM was of the opinion that the procedural aspects of consultation undertaken by ENGLP for the Proposed Project were satisfactory.¹⁵ Details of the Indigenous consultation are provided in ENGLP's evidence. ENGLP has also stated that it would continue to engage with all identified First Nations and Métis communities concerning the Proposed Project, hear and address (as feasible) concerns and seek information on the exercise of, and potential impacts to Treaty rights in the Proposed Project area. ENGLP also states that it anticipates it will continue its active involvement in the community in an effort to maintain long-term relationships with First Nations, Métis communities and rights-holder community groups¹⁶.

No party other than the applicant has filed any evidence in relation to the duty to consult, and none of the Indigenous groups that have been engaged by the applicant have intervened or otherwise directly participated in this proceeding. Anwaatin – an Indigenous business corporation – intervened in this proceeding. Anwaatin described its mission as ensuring that Indigenous communities are afforded reliable and affordable energy and have a central role in energy-related climate change action, and indicated that it hoped to provide the OEB with a unique perspective regarding Indigenous communities currently living in energy poverty in Ontario and to provide stakeholder views on the differential impact of natural gas franchise and related matters on remote and near-remote communities. In Procedural Order No. 1, it was noted that Anwaatin's membership includes communities that are affected by the Proposed Project. Anwaatin filed interrogatories relating to: ENGLP's consideration of alternative routes, including the impacts on Indigenous rights and interests; ENGLP's consideration of documentation prepared by the Saugeen Ojibway Nation (SON); the impacts of the Proposed Project on the provision and cost of natural gas to SON reserve communities and off-reserve members; ENGLP's approach to the duty to consult and accommodate the SON; and ENGLP's plans, if any, to enter into a "franchise agreement (or similar)" with SON. Anwaatin did not file any evidence, nor did it request an opportunity to do so.

OEB Staff Submission

OEB staff notes that ENGLP confirmed in its interrogatory response that while feedback received from Indigenous rights holders did not result in any routing changes,

¹⁴ Previously the Ministry of Energy, Indigenous Energy Policy

¹⁵ Response to OEB staff interrogatory # 14

¹⁶ Application, Exhibit A/ Tab 11/Schedule 1 pages 7 to 8

feedback from the SON resulted in an updated Archeological Assessment for the Proposed Project¹⁷. In OEB staff's view, ENGLP appears to have made adequate efforts to engage with affected Indigenous groups and no concerns that could materially affect the Proposed Project have been raised through its consultation. In addition, OEB staff notes that MENDM was of the opinion that the procedural aspects of consultation undertaken by ENGLP for the Proposed Project were satisfactory.

As noted above, none of the Indigenous groups identified by MENDM intervened or otherwise directly participated in the proceeding. OEB staff is not aware of any concerns that the duty to consult has not been adequately discharged, and there is no evidence on the record of this proceeding that points to concerns in this regard.

Based on the above, OEB staff submits that the duty to consult has been sufficiently discharged for the Proposed Project.

Land Matters

ENGLP has determined that the majority of the pipeline proper will be constructed in existing road allowances. In the event that certain sections are outside the road allowances, ENGLP will obtain an easement from private landowners or the appropriate authorities and/or municipalities. In ENGLP's updated interrogatory responses, it stated that the number of potentially affected properties had increased from 17 to 39, due to the addition of properties identified for temporary land use and a valve site.

ENGLP states that it has finalized the Dornoch and Bruce Energy Centre station locations which are required for the 2019 construction season, and that it expects to reach agreement with the landowners regarding permanent easements for these stations by May 31, 2019. ENGLP states that it is still working to finalize five more stations which will require land purchases, but that these are not critical for the 2019 construction and that it expects to have these discussions all completed by the end of Fall 2019. ENGLP states that it does not expect land purchases to have any effect on the project schedule or costs.

ENGLP also reports that to date, the landowners it has approached have not had any negative comments or concerns¹⁸.

¹⁷ Response to Anwaatin interrogatory # 1

¹⁸ Response to OEB staff interrogatory # 6(d)

ENGLP also states that the forms of these agreements it has requested approval for is substantially similar to those previously approved by the OEB¹⁹.

OEB Staff Submission

OEB staff has no concerns with the permanent or temporary land use agreements and submits that the proposed forms of agreement should be approved as they are consistent with the form of agreement previously approved by the OEB.

Certificates

ENGLP is requesting certificates for the upper-tier municipalities of Grey County and Bruce County, and for the lower-tier municipalities of the Municipality of West Grey, the Township of Chatsworth and the Municipality of Brockton, each of which would be limited to a strip 500 metres to the north and south of the preferred pipeline route.

OEB Staff Submission

Section 8 of the MFA Act requires persons constructing any works to supply natural gas to have the approval of the OEB in the form of a certificate. This certificate provides the authorization to construct works within the specified geographic area. OEB staff submits that all certificates necessary for ENGLP to serve the Southern Bruce Municipalities should be granted. However, as further described below, OEB staff submits that only certificates for lower-tier municipalities should be granted, and that the certificates should be described in such a manner that limits the authorization for ENGLP to traversing the route in the Municipality of West Grey, the Township of Chatsworth and the Municipality of Brockton, as opposed to being characterized as “limited to 500 metres on either side of the route” in these municipalities as proposed by ENGLP.

OEB staff submits that most residents and businesses along the route live within 500 metres of either side of the route and would therefore be within ENGLP’s certificate (and within its authorization to serve). OEB staff submits that even though ENGLP expresses no interest in serving these specific residences and businesses in the Municipality of West Grey, the Township of Chatsworth and the Municipality of Brockton at this time, limiting the certificates to traversing these municipalities ensures that the

¹⁹ Response to OEB staff interrogatory # 6(e)

certificates do not include these potential future customers (who are currently covered by Enbridge Gas Inc.'s certificates for these municipalities) and allows for future competition to determine who can best serve them (if they are currently unserved).

OEB staff also notes that in the certificate proceeding which resolved the issue of Enbridge Gas Inc. and ENGLP's overlapping upper-tier certificates²⁰, the OEB found that:

...upper-tier certificates are unnecessary, and that certificates for lower-tier municipalities, which are awarded based on geographical area, provide sufficient authorization to construct works to supply gas in area given jurisdiction, which should also include the county roads under upper-tier jurisdiction.

OEB staff submits that ENGLP should file draft lower-tier certificates in a format consistent with that in EB-2014-0299²¹ for the Township of Chatsworth, the Municipality of West Grey and the Municipality of Brockton, describing the roads the high pressure mains will traverse and specifying the certificates' function (i.e. in order to bring gas to the communities to be served).

Municipal Franchise Agreements

ENGLP is also seeking approval of its municipal franchise agreements (MFAs) with each of the Southern Bruce Municipalities, and each of the Township of Chatsworth, the Municipality of West Grey, the Municipality of Brockton, the County of Grey and the County of Bruce. The MFAs filed by ENGLP are in the form of the 2000 Model Franchise Agreement, and all except the MFAs with the Municipality of Brockton and the County of Grey appear to have been signed and executed, with the accompanying by-laws.

²⁰ EB-2017-0108. The OEB previously issued certificates for the entirety of both the County of Elgin and the County of Middlesex to both Union Gas Limited (now Enbridge Gas Inc.) (F.B.C. 259) and Natural Resource Gas Limited (now EPCOR Natural Gas Limited Partnership) (E.B.C. 111/119). Enbridge Gas Inc. filed an application requesting that the OEB issue utility-specific certificates for Norfolk County, the County of Elgin and the County of Middlesex. Both utilities had certificates for a number of different lower-tier municipalities in both counties. Certificates for the upper-tier municipalities technically gave both utilities the authorization to serve in the lower-tier municipalities that they did not have lower-tier certificates for. The OEB determined that it would only issue lower-tier certificates going forward, to avoid the confusion of having two different distributors having the rights to serve the same area.

²¹ In Greenfield South Power Corporation's (Greenfield) application for a certificate to connect a natural gas fired power plant in St. Clair Township near Sarnia, Ontario to the Vector Pipeline, the OEB granted Greenfield a functional as opposed to a geographic certificate, specifically to "connect the Green Electron Power Project generation facilities to the Vector Pipeline in the Township of St. Clair".

Enbridge Gas questioned ENGLP's use of clause 4(a) as opposed to clause 4(b) of the 2000 Model Franchise Agreement in ENGLP's proposed franchise agreements with the Municipality of Arran-Elderslie, the Municipality of Brockton, the Township of Chatsworth, the Municipality of West Grey, the County of Bruce and the County of Grey. Enbridge Gas appears to suggest that clause 4(b) would be more appropriate given that consumers in these municipalities have been receiving gas distribution services from Enbridge Gas for several decades.

ENGLP responded that it had chosen clause 4(a) as it considers its proposed franchise agreements to be "greenfield" projects, and as such clause 4(b) was neither necessary nor appropriate²². However, ENGLP stated that it was agreeable to modifying its proposed franchise agreements as the OEB deemed appropriate.

OEB Staff Submission

OEB staff submits that all MFAs necessary for ENGLP to serve the Southern Bruce Municipalities should be granted, specifically the MFAs for each of the Southern Bruce Municipalities and the County of Bruce.

Unlike certificates, OEB staff submits that distributors can have MFAs with both upper- and lower-tier municipalities. An MFA is an agreement between the municipality and the utility and specifies 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). Franchise agreements between upper-tier municipalities and distributors, as well as franchise agreements between lower-tier municipalities and distributors, are needed because upper-tier municipalities are responsible for certain areas within the municipality that are outside the jurisdiction of lower-tier municipalities.

However, section 6 of the MFA Act provides an exception to the requirement for OEB approval of an MFA, in the case where infrastructure is meant to pass through a municipality to serve another municipality. OEB staff submits that OEB approval for the MFAs for the Township of Chatsworth, the Municipality of West Grey, the Municipality of Brockton and the County of Grey is unnecessary, and that the OEB should only approve ENGLP's MFAs with each of the Southern Bruce Municipalities and the County of Bruce.

Irrespective of which MFAs the OEB finds are required, OEB staff notes that all the MFAs except those with the Municipality of Brockton and the County of Grey are

²² Response to Enbridge interrogatory # 4(c)

already signed, which is not consistent with the process set out in E.B.O. 125²³, which is for a distributor to file an unsigned MFA for approval, with a resolution from the municipal council supporting the request to approve the MFA. Section 9 of the MFA Act states that no by-law granting the right to construct or operate works for the distribution of gas can be submitted to the municipal electors for their assent unless the terms and conditions upon which and the period for which such right is to be granted has first been approved by the OEB. The same section states that the OEB, after holding a public hearing, can declare and direct that the assent of the electors is not necessary. However, OEB staff submits that the OEB should still approve the MFAs, and declare that the assent of the electors is not necessary. OEB staff notes that the effective date of the franchise agreements between ENGLP and the municipalities would simply be the date of any Decision and Order issued by the OEB approving the municipal franchise agreements, as according to the MFA 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. OEB staff also submits that as per the OEB's typical practice, the OEB should dispense with the assent of the municipal electors. In the future ENGLP should follow the process set out in E.B.O. 125 and the MFA Act.

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 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 ENGLP has not previously provided gas distribution services in the areas covered by the Proposed Project.

Conditions of Approval

In its interrogatories, OEB staff proposed a set of draft Conditions of Approval for ENGLP's review and comment. In response, ENGLP proposed edits to correct errors in the draft conditions. ENGLP also proposed to strike the requirements for it to:

- Prior to completion of the Proposed Project, notify the OEB of any material change in the project cost (Condition 4 in the OEB staff interrogatory, Condition 5 in Appendix A)
- Include in its Post Construction Completion Report a variance analysis of project cost, including the extent to which the project contingency was

²³ 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)

utilized (Condition 5 in the OEB staff interrogatory, Condition 6 in Appendix A)²⁴

ENGLP states that while it understands that cost reporting is a typical condition of approval, and that this is helpful to the OEB to monitor costs and explain variances between LTC estimates and actual capital costs to be included in the rate base, ENGLP submits that it is taking on the financial risk on the capital cost of the Proposed Project, as per its CIP. As such, ENGLP submits that the typical capital cost reporting would not yield useful or relevant information for rate-making.

ENGLP also recommended the addition of a “material” qualifier to Condition 6(a)(v)²⁵. ENGLP submits that given the size of the Proposed Project, inadvertently omitting a minor approval should not render any senior executive certification false or in violation of the Conditions of Approval.

OEB Staff Submission

Section 23 of the OEB Act permits the OEB, when making an order, to “impose such conditions as it considers proper”. OEB staff submits that the OEB should approve ENGLP’s Proposed Project subject to the conditions of approval attached as Appendix A to this submission, which includes the requirements to notify the OEB of changes to the project cost. OEB staff submits that this will assist the OEB in monitoring the extent to which the Proposed Project’s costs will affect its rate case at the end of the ten-year rate stability period. OEB staff notes that the reporting requirements have not been revised for any of the other recently approved community expansion projects by Enbridge Gas. Enbridge Gas is currently applying a rate stability period for these expansion areas and is bearing the same risks for any capital cost overruns and attachments/volumes in the ten-year period following the amalgamation of the former Enbridge Gas Distribution Inc. and Union Gas Limited. OEB staff notes that the word material was inadvertently added to Condition 4 in OEB staff’s interrogatory (now Condition 5 in Appendix A), and that this has been removed in the proposed Conditions below. OEB staff submits that this is consistent with the OEB’s standard Conditions of Approval for leave to construct applications, where distributors are required to advise the OEB of any proposed changes to OEB approved construction or restoration procedures (which would include changes to the proposed route, construction schedule, necessary environmental and other approvals that could affect the cost of the project).

With respect to ENGLP’s concern that an inadvertent omission of a minor approval

²⁴ Response to OEB staff interrogatory # 21(a)

²⁵ Response to OEB staff interrogatory # 21(a)

could render a certification false or violate the Conditions of Approval, OEB staff submits that the “material” qualifier should not be included in Condition 7(a)(v) (Condition 6(a)(v) in the OEB staff interrogatory) as it could possibly be interpreted as ENGLP not being required to have all the required approvals. In addition, OEB staff expects that the OEB would use its judgement as to whether a minor omission constitutes a false report or violates a Condition of Approval. Further, OEB staff expects that the OEB would inquire as to the completeness of the report before rendering any judgements, and if the omission is an oversight that it would provide ENGLP the opportunity to correct the report.

OEB staff submits that the Conditions of Approval should also include obtaining, filing with the OEB, and adhering to the MTCS’s Stage 2 Archeological Assessment Requirements, and the final version of the Environmental Protection Plan as they were not included in the application, nor did they form part of ENGLP’s response. OEB staff notes that this Condition was not included in the OEB staff interrogatory on the draft Conditions of Approval. This Condition has been added in Appendix A as Condition 4.

All of which is respectfully submitted.

Appendix A

Leave to Construct Conditions of Approval
EPCOR Natural Gas Limited Partnership
EB-2018-0263

1. EPCOR Natural Gas Limited Partnership (ENGLP) shall construct the facilities and restore the land in accordance with the OEB's Decision and Order in EB-2018-0263 and these Conditions of Approval.
2. (a) Authorization for leave to construct shall terminate 18 months after the decision is issued, unless construction has commenced prior to that date.

(b) ENGLP shall give the OEB notice in writing for the following:
 - i. The commencement of construction, at least ten days prior to the date construction commences
 - ii. The planned in-service date, at least ten days prior to the date the facilities go into service
 - iii. The date on which construction was completed, no later than 10 days following the completion of construction
 - iv. The in-service date, no later than 10 days after the facilities go into service
3. ENGLP shall implement all the recommendations of the Environmental Protection Plan and Environmental Report filed in EB-2018-0263, and all the recommendations and directives identified by the Ontario Pipeline Coordinating Committee review.
4. Authorization for leave to construct is granted conditional of ENGLP filing with the OEB a final version of the Environmental Protection Plan and a clearance letter from the Ministry of Tourism, Culture and Sport for the project.
5. ENGLP shall advise the OEB of any proposed change in the project, including but not limited to changes in: OEB-approved construction or restoration procedures, the proposed route, construction schedule and cost, the necessary environmental assessment approvals, and all other approvals, permits, licences, certificates and rights required to construct the proposed

facilities. Except in an emergency, ENGLP shall not make any such change without prior notice to and written approval of the OEB. In the event of an emergency, the OEB shall be informed immediately after the fact.

6. Concurrent with the final monitoring report referred to in Condition 7(b), ENGLP shall file a Post Construction Financial Report, which shall provide a variance analysis of project cost, schedule and scope compared to the estimates filed in this proceeding, including the extent to which the project contingency was utilized. ENGLP shall also file a copy of the Post Construction Financial Report in the proceeding where the actual capital costs of the project are proposed to be included in rate base or any proceeding where ENGLP proposes to start collecting revenues associated with the project, whichever is earlier.
7. Both during and after construction, ENGLP shall monitor the impacts of construction, and shall file with the OEB one paper copy and one electronic (searchable PDF) version of each of the following reports:
 - (a) A post construction report, within three months of the in-service date, which shall:
 - i. Provide a certification, by a senior executive of the company, of ENGLP's adherence to Condition 1
 - ii. Describe any impacts and outstanding concerns identified during construction
 - iii. Describe the actions taken or planned to be taken to prevent or mitigate any identified impacts of construction
 - iv. Include a log of all complaints received by ENGLP, including the date/time the complaint was received, a description of the complaint, any actions taken to address the complaint, the rationale for taking such actions
 - v. Provide a certification, by a senior executive of the company, that the company has obtained all other approvals, permits, licences, and certificates required to construct, operate and

maintain the proposed project

- b) A final monitoring report, no later than fifteen months after the in-service date, or, where the deadline falls between December 1 and May 31, the following June 1, which shall:
 - i. Provide a certification, by a senior executive of the company, of ENGLP's adherence to Condition 3
 - ii. Describe the condition of any rehabilitated land
 - iii. Describe the effectiveness of any actions taken to prevent or mitigate any identified impacts of construction
 - iv. Include the results of analyses and monitoring programs and any recommendations arising therefrom
 - v. Include a log of all complaints received by ENGLP, including the date/time the complaint was received, a description of the complaint, any actions taken to address the complaint, the rationale for taking such actions.
- 8. ENGLP shall designate one of its employees as project manager who will be responsible for the fulfillment of these conditions, shall provide the employee's name and contact information to the OEB and to all the appropriate landowners, and shall clearly post the project manager's contact information in a prominent place at the construction site.

The OEB's designated representative for the purpose of these Conditions of Approval shall be the OEB's Manager of Supply and Infrastructure (or the Manager of any OEB successor department that oversees leave to construct applications).