

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

June 13, 2019

Montréal

Patrick Welsh
Direct Dial: 416.862.5951
pwelsh@osler.com

Calgary

Sent By Electronic Mail, Courier and RESS Electronic Filing

Ottawa

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

Vancouver

New York

Dear Ms. Walli:

EB-2019-0101: 2019 Federal Carbon Pricing Program Application

Re: Argument-in-Chief of EPCOR Natural Gas Limited Partnership

Further to Procedural Order No. 1 dated May 1, 2019, please find enclosed the Argument-in-Chief of EPCOR Natural Gas Limited Partnership associated with the above file.

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

Yours very truly,



Patrick G. Welsh

c (email only): Susannah Robinson/Daniela O'Callaghan, *EPCOR*
Richard King, *Osler, Hoskin & Harcourt LLP*

ONTARIO ENERGY BOARD

IN THE MATTER OF the *Ontario Energy Board Act, 1998*, S.O. 1998, c. 15, as amended (the “**Act**”);

AND IN THE MATTER OF an Application by EPCOR Natural Gas Limited Partnership for approval pursuant to section 36(1) of the Act to increase rates to recover costs associated with the federal *Greenhouse Gas Pollution Pricing Act*.

**WRITTEN ARGUMENT-IN-CHIEF OF
EPCOR NATURAL GAS LIMITED PARTNERSHIP**

Background

1. On November 30, 2017, EPCOR Natural Gas Limited Partnership (“**ENGLP**”) filed its application with the Ontario Energy Board (the “**OEB**”) seeking approval of just and reasonable rates effective April 1, 2019 for its Aylmer operations to recover costs associated with the federal *Greenhouse Gas Pollution Pricing Act* (the “**GGPPA**”) from customers on a pass-through basis, along with approval to use its existing Greenhouse Gas Emissions-related deferral/variance accounts to record amounts related to the GGPPA (the “**Application**”).

2. On April 1, 2019, the OEB issued an Interim Decision and Order denying ENGLP’s request to use its existing greenhouse gas accounts established under the now-discontinued provincial Cap-and-Trade program to record costs/cost variances associated with compliance with the GGPPA. Instead, the OEB approved, on an interim basis, the establishment of three new accounts to record (i) administrative costs related to the GGPPA; (ii) the federal carbon charges for natural gas that ENGLP delivers to customers, and (iii) facility-related costs arising from compliance with the GGPPA. The OEB also denied interim rates as of April 1, 2019, stating that it would consider the

comments of stakeholders and submissions of parties prior to making a determination on any new charges and related bill presentation issues.

3. The OEB issued a Notice of Hearing on April 8, 2019, and the Building Owners and Managers Association, Greater Toronto (“**BOMA**”) applied for intervenor status and cost eligibility. On May 1, 2019, the OEB issued Procedural Order No. 1 (“**PO 1**”) wherein it denied BOMA’s application on the basis that BOMA had not demonstrated that it had a substantial interest in the proceeding, in particular because BOMA could not confirm that any of its members are customers of ENGLP.

4. The OEB also established the scope of this proceeding in PO 1. Specifically, the OEB stated that the scope will be “limited to considering recovery of [ENGLP’s] costs related to the [Federal Carbon Pricing Program] and the presentation of the carbon charges on customers’ natural gas bills. The OEB also noted that the proceeding will determine whether any final approval will be granted for the three new accounts established in the April 1 Interim Decision and Order.

5. This argument-in-chief is organized as follows:

- (a) ENGLP will outline its obligations under the GGPPA and the approvals it is seeking from the OEB;
- (b) ENGLP will outline the volume and carbon cost forecasts from which it has derived proposed unit rates;
- (c) ENGLP will explain its proposed Federal Carbon Charge and Facility Carbon Charge and associated modifications to rate schedules;

- (d) ENGLP will explain the need for the requested new deferral and variance accounts in a manner consistent with PO 1 and the tests set out in the *Filing Requirements for Natural Gas Rate Applications*.

ENGLP's obligations under the GGPPA and Orders Sought

6. The GGPPA received Royal Assent on June 21, 2018. The purpose of the GGPPA is to impose a carbon pricing mechanism in provinces or territories where no such carbon pricing mechanism (e.g., a cap-and-trade system or carbon tax) has been put into place or where such mechanism does not meet national criteria. On October 23, 2018, the Government of Canada deemed Ontario to be a “listed province” that is subject to the GGPPA’s carbon pricing mechanism.

7. ENGLP was required to register with the Canada Revenue Agency (“CRA”) as a distributor of marketable natural gas, and did so on February 27, 2019. ENGLP’s CRA account number under the program is 74396 8299 CT0001.

8. Unlike Enbridge Gas Distribution Inc. (“**Enbridge**”), ENGLP is not required to register as an “emitter” pursuant to section 57(1) of the GGPPA because ENGLP is not a person responsible for a “covered facility” (in Enbridge’s case, its “covered facilities” include its transmission system and storage compressor stations). ENGLP has also confirmed with Environment and Climate Change Canada (“**ECCC**”) that it is not required to register as an “emitter” because its facility emissions are below 10,000 tonnes of CO₂e.

9. As a registered distributor, ENGLP is required under section 17(1) of the GGPPA to pay a charge applied to fossil fuels, generally paid by registered distributors (fuel producers and

distributors), as set out in Part 1 of the GGPPA, effective April 1, 2019 (the “**Fuel Charge**”), for volumes of natural gas delivered to its customers. Additionally, pursuant to section 18(1) of the GGPPA, ENGLP is required to pay the Fuel Charge for volumes of natural gas that it uses. These volumes delivered or used must be reported - and the corresponding Fuel Charge must be remitted – to the CRA on a monthly basis.

10. Ordinarily, Enbridge would be required to report and remit the Fuel Charge for volumes of natural gas sold to ENGLP. However, subsection 17(2) of the GGPPA deems that the Fuel Charge is not payable if the fuel is delivered to a person who holds an “exemption certificate” issued by the CRA pursuant to section 36(1) of the GGPPA (an “**Exemption Certificate**”). ENGLP obtained an Exemption Certificate as a registered distributor and provided a copy to Enbridge on March 1, 2019, all in accordance with the GGPPA.

11. Accordingly, ENGLP, in its capacity as a registered distributor, will be required to remit the 2019 Fuel Charge rate of \$0.0391/m³, increasing annually and reaching \$0.0979/m³ by 2022, of natural gas delivered to customers unless a customer provides ENGLP with an Exemption Certificate.

12. ENGLP will also be required to remit the 2019 Fuel Charge for natural gas that it consumes in the operation of its distribution system (i.e. for its office building and natural gas vehicle (“**NGV**”) fleet fuel).

13. In light of ENGLP’s obligations under the GGPPA, ENGLP proposes to treat all prudently-incurred costs of compliance with the GGPPA as a pass-through to customers. The Fuel Charge

is the primary driver for the costs for which ENGLP seeks to recover and is established by the GGPPA. Accordingly, ENGLP seeks:

- (a) an order (or orders) allowing ENGLP to charge customers a fuel charge on a volumetric basis, in the amount of the Fuel Charge required to be paid pursuant to the GGPPA, effective April 1, 2019;
- (b) an order (or orders) approving or fixing approving just and reasonable rates, effective April 1, 2019, to allow ENGLP to recover the other costs associated with compliance with the GGPPA; and
- (c) an order (or orders) granting final approval to the accounts approved by the OEB on an interim basis, namely the Greenhouse Gas Emissions Administration Deferral Account, the Federal Carbon Charge – Customer Variance Account, and the Federal Carbon Charge – Facility Variance Account.

Volume and Carbon Cost Forecasts

14. As detailed in Exhibit B of the Application, ENGLP's 2019 forecasted customer related volumes subject to the GGPPA is 16,267,237 m³. Applying the 2019 Fuel Charge of \$0.0391/ m³, this results in an associated forecast 2019 customer related cost of \$636,049. However, ENGLP updated this forecast in its responses to Interrogatories from OEB Staff such that the volumes were adjusted to 16,191,551 m³ and the corresponding forecast cost updated to \$634,146¹. The updated

¹ Please see ENGLP's Responses to OEB Staff's Interrogatories dated May 31, 2019 (the "ENGLP IRR") at IRR to OEB-Staff-4 IR for additional details

2019 forecast reflects a volume reduction of 75,686 m³ (from 16,267,237 m³ to 16,191,551 m³) as described in paragraph 15 below.

15. ENGLP received an Exemption Certificate from a Rate 6 customer, the Integrated Grain Processors Cooperative Inc., (“IGPC”), therefore volumes for this customer were excluded from the customer-related volume forecast². Further, IGPC is a mandatory participant and will be participating in the Output-based Pricing System (OBPS) component of the GGPPA. As noted in its response to OEB Staff Interrogatory 4(b), ENGLP received exemption certificates from five commercial greenhouse operators in its service territory. The estimated 2019 volume related to those commercial greenhouse operators is approximately 75,686 m³. ENGLP submitted updated tables in its Interrogatory Responses³.

16. ENGLP has forecasted 2019 facility-related volumes for its Aylmer operations to be 27,023 m³ (an amount that remained unchanged in ENGLP’s Interrogatory Responses), comprised of company-use volumes for (i) unaccounted-for gas (“UFG”); (ii) distribution buildings; and (iii) NGV. As ENGLP noted in its Interrogatory Response to OEB Staff Interrogatory 4(a), ENGLP has assumed UFG to be 0%, resulting in zero carbon charges associated with UFG, until there is further clarity (if any) from the CRA regarding the treatment of UFG. The cost associated with these facility-related volumes is forecast to be \$1,057.

² Please see ENGLP IRR to OEB-Staff-10 (a)

³ Please see ENGLP IRR to OEB-Staff-4

Proposed Charges and Associated Modifications to Rate Schedules

17. As outlined in Exhibit E of the Application, ENGLP proposes to recover the Fuel Charge for 2019 through the implementation of a Federal Carbon Charge of \$0.0391 cents/m³ for customers in Rates 1 through 5, effective April 1, 2019. ENGLP also proposes to charge the Federal Carbon Charge for applicable customers as a separate line item on customers' bills⁴.

18. All customers who have provided ENGLP with an Exemption Certificate will either not be charged the Federal Carbon Charge or, in the case of eligible greenhouse operators, will be charged 20% of the Federal Carbon Charge in accordance with the GGPPA and its regulations.

19. ENGLP proposes to add the Facility Carbon Charge to the current approved charges on customers' bills. As detailed in Exhibit E of the Application, ENGLP proposes to recover Facility Carbon Charge costs from all customers in Rates 1 through 5 effective April 1 using a volumetric charge of 0.0017 cents/m³, which is proposed to be added to the current approved delivery charge for each Rate class. For the customer in Rate 6, ENGLP proposes a fixed monthly charge of \$83.70 per month, and will also be added to the current approved monthly fixed charge for this customer⁵.

20. Finally, ENGLP is proposing to record 2019 administration costs associated with the GGPPA in the Greenhouse Gas Emissions Administration Deferral Account, which will be disposed of as part of a future proceeding (at the OEB's direction, if applicable)⁶.

⁴ Exhibit E, Tab 1, Schedule 1, p.2

⁵ Exhibit E, Tab 1, Schedule 1, p.2

⁶ Exhibit C, Tab 1, Schedule 1. Further, ENGLP advised in ENGLP IRR to OEB-Staff-3 that unless otherwise directed by the OEB, ENGLP intends to treat this account in the same manner as all other deferral and variance accounts and seek disposition of these costs as part of its annual Price Cap IR application.

Need for Deferral and Variance Accounts

21. ENGLP originally proposed in its application to use its existing greenhouse gas-related deferral and variance accounts to record the costs of its obligations under the GGPPA. However, as noted above in paragraph 2, the OEB determined that new accounts, rather than the existing accounts, should be used to record costs related to the GGPPA. As such, the OEB approved, on an interim basis, the establishment of the (i) Greenhouse Gas Emissions Administration Deferral Account effective January 1, 2019; (ii) Federal Carbon Charge – Customer Variance Account effective April 1, 2019; and the (iii) Federal Carbon Charge – Facility Variance Account effective April 1, 2019.

22. ENGLP seeks approval of the above new accounts for the reasons that follow, in accordance with the criteria established in the OEB's *Filing Requirements for Natural Gas Rate Applications*, namely Causation, Materiality and Prudence. As outlined in ENGLP's Interrogatory Responses to OEB Staff IR 8, ENGLP's proposed deferral and variance accounts satisfy the tests of Causation, Materiality and Prudence⁷.

23. With respect to **Causation**, the forecasted expenses associated with compliance with the GGPPA are clearly outside of the base upon which rates were derived. The Fuel Charge has been imposed by the federal government and is entirely beyond ENGLP's control. Additionally, the costs associated with the GGPPA were not contemplated in current rates nor have the costs been included in rates proposed by ENGLP for the 2020 Test Year in EB-2018-0336.

⁷ Please see ENGLP IRR to OEB-Staff-8 IRR response for additional details

24. With respect to **Materiality**, the total forecasted cost of compliance with the GGPPA in 2019, expected to be approximately \$743,000, exceeds the \$50,000 materiality threshold applicable to ENGLP.

25. Finally, with respect to **Prudence**, ENGLP's forecasted costs of compliance are reasonably incurred and represent a cost-effective option for ratepayers, as the costs are a direct result of legislation that is outside the control of management and for which ENGLP is obliged to comply with.

26. For the reasons set out above, ENGLP respectfully requests that the OEB make the following findings, determinations and orders:

- (a) that the costs associated with ENGLP's compliance with the GGPPA be treated as a pass-through to customers;
- (b) that ENGLP's request to charge customers a Federal Carbon Charge on a volumetric basis, in the amount required to be paid pursuant to the GGPPA, be approved;
- (c) that ENGLP's request to recover Facility Carbon Charge costs on a volumetric basis, included in delivery or transportation charges, be approved; and
- (d) that ENGLP's request to establish the (i) Greenhouse Gas Emissions Administration Deferral Account effective January 1, 2019; (ii) Federal Carbon Charge – Customer Variance Account effective April 1, 2019; and the (iii) Federal

Carbon Charge – Facility Variance Account effective April 1, 2019 be approved on
a final basis.

—

ALL OF WHICH IS RESPECTFULLY SUBMITTED.

June 13, 2019



Patrick G. Welsh
Osler, Hoskin & Harcourt LLP
Counsel for EPCOR Natural Gas Limited Partnership