



Enbridge Gas Inc.
50 Keil Drive North
Chatham, Ontario, Canada
N7M 5M1

January 12, 2022

Christine Long
Registrar
Ontario Energy Board
2300 Yonge Street, 27th Floor
Toronto, ON M4P 1E4

Dear Ms. Long:

**Re: EPCOR Natural Gas Limited Partnership
Application for Approval of Franchise Agreements with and Amended Certificates of
Public Convenience and Necessity for the Municipality of Brockton, the Township of
Chatsworth and the Municipality of West Grey
Ontario Energy Board File Number: EB-2021-0269**

Pursuant to Procedural Order No. 1 to the above noted proceeding, Enbridge Gas hereby submits its final submissions with respect to this application.

Should you have any questions on this submission, please do not hesitate to contact me.

Yours truly,

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Encl.

c.c. (email only): Tim Hesselink, EPCOR Natural Gas Limited Partnership
Daniela O'Callaghan, EPCOR Utilities Inc.

ONTARIO ENERGY BOARD

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

AND IN THE MATTER OF the *Municipal Franchises Act*, R.S.O. 1990, c. M.44, as amended;

AND IN THE MATTER OF an application by EPCOR Natural Gas Limited Partnership for an order amending its Certificates of Public Convenience and Necessity to construct works to supply natural gas in the Municipality of Brockton, the Township of Chatsworth and the Municipality of West Grey;

AND IN THE MATTER OF an application by EPCOR Natural Gas Limited Partnership for an order approving the terms and conditions upon which, and the period for which, the Municipality of Brockton, the Township of Chatsworth and the Municipality of West Grey each, by by-law, grant the right to EPCOR Natural Gas Limited Partnership to construct and operate works for the distribution, transmission and storage of natural gas and the right to extend and add to the works in these municipalities.

SUBMISSIONS OF ENBRIDGE GAS INC.

1. These are the submissions of Enbridge Gas Inc. (Enbridge Gas) regarding the application by EPCOR Natural Gas Limited Partnership (EPCOR) for an order approving amendments to its Certificates of Public Convenience and Necessity (CPCNs) for and franchise agreements with the Municipality of Brockton, the Township of Chatsworth and the Municipality of West Grey (collectively, Municipalities).

Franchise Agreements

2. Enbridge Gas holds franchise agreements and CPCNs allowing it to provide gas services to approximately 2,483 customers within the Municipality of Brockton, approximately 752 customers within the Township of Chatsworth and approximately 1,488 customers within the Municipality of West Grey.
3. In its application, EPCOR refers to franchise agreements it “*currently has with the Expansion Project Municipalities, originally executed for the South Bruce Project, and for which ENGLP is requesting the OEB’s approval as part of this application*”¹. While EPCOR has submitted proposed franchise agreements with the Municipalities for approval, Enbridge Gas submits that these franchise agreements cannot be considered in effect for the purpose of EPCOR providing gas distribution services or supply until approved by the Ontario Energy Board (OEB). EPCOR acknowledged this in its response to Enbridge Gas’ interrogatory 2(c).
4. Each of the proposed franchise agreements that have been submitted by EPCOR in its application for OEB approval appear to have an incorrect version of paragraph 4 that is included in the approved [Model Franchise Agreement](#).

¹ Application, paragraph 12

5. The Model Franchise Agreement includes the following:

4. Duration of Agreement and Renewal Procedures

(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.

or

(b) If the Corporation has 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 provided that, if during the 20 year term of this Agreement, the Model Franchise Agreement is changed, then on the 7th anniversary and on the 14th anniversary of the date of the passing of the Bylaw, 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.

(c) At any time within two years prior to the expiration of this Agreement, either party may give notice to the other that it desires to enter into negotiations for a renewed franchise upon such terms and conditions as may be agreed upon. Until such renewal has been settled, the terms and conditions of this Agreement shall continue, notwithstanding the expiration of this Agreement. This shall not preclude either party from applying to the Ontario Energy Board for a renewal of the Agreement pursuant to section 10 of the Municipal Franchises Act.

6. In its proposed franchise agreements, EPCOR has chosen sub-clause 4(a) such that paragraph 4 in each of the proposed franchise agreements states the following:

4. Duration of Agreement and Renewal Procedures

(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) At any time within two years prior to the expiration of this Agreement, either party may give notice to the other that it desires to enter into negotiations for a renewed franchise upon such terms and conditions as may be agreed upon. Until such renewal has been settled, the terms and conditions of this Agreement shall continue, notwithstanding the expiration of this Agreement. This shall not preclude either party from applying to the Ontario Energy Board for a renewal of the Agreement pursuant to section 10 of the Municipal Franchises Act.

7. In fact, each of the Municipalities has been receiving gas distribution services from Enbridge Gas and its predecessors since 1962 / 1963. Enbridge Gas believes that paragraph 4(b) of the Model Franchise Agreement is applicable for each of the proposed franchise agreements and the provisions for allowing amendments on the 7th anniversary and on the 14th anniversary of the date of the passing of the bylaw should be part of EPCOR's franchise agreements approved for these municipalities so that they are consistent with the franchise agreements held by Enbridge Gas for the Municipalities.

8. Similarly, in reference to EPCOR's response to Enbridge Gas interrogatory 2(c), the bylaws that have been passed by the Municipalities and submitted by EPCOR with its application are not valid in respect of EPCOR's application to distribute or supply gas in the Municipalities because the OEB has not yet approved the form of by-law. In order to satisfy the requirements of the *Municipal Franchises Act*, EPCOR ought to submit for OEB approval a new form of by-law that each of the Municipalities would pass to approve the form of franchise agreement ultimately approved by the OEB as part of this application. The new form of franchise agreement should replace and supercede the existing franchise agreements with the Municipalities because the latter were not approved by the OEB.

Certificates of Public Convenience and Necessity (CPCNs)

9. Section 8 of the *Municipal Franchises Act* provides that a CPCN is required prior to the construction of any works to supply natural gas in a municipality. The facilities proposed by EPCOR to supply gas within the Municipalities will be located on territory that is already part of CPCNs held by Enbridge Gas so EPCOR's application appears to require OEB approval of a by-pass.
10. One of the key considerations in determining whether a by-pass approval is appropriate is whether there will be harm to existing ratepayers of the "by-passed" utility – i.e., Enbridge Gas. As long as EPCOR's expanded CPCN rights within the Municipalities are limited to providing service to specific customers within specific lots and concessions for which EPCOR has OEB approval to serve, there should be limited impact on Enbridge Gas' existing ratepayers given the nature of the Enbridge Gas' facilities in these areas.
11. However, only the proposed CPCNs for the Municipality of West Grey (Appendix H) and the Township of Chatsworth (Appendix I) appear to identify specific areas in which EPCOR proposes to construct facilities. The proposed CPCN for the Municipality of Brockton (Appendix G) covers all of the municipality except for a small part in which Enbridge Gas currently has facilities in place, even though EPCOR's proposed facilities (as far as Enbridge Gas knows) do not cover the whole municipality excluding this specific area.
12. EPCOR's position is that information regarding the specific details and locations of proposed facilities is not required (as would typically be provided in a leave to construct application) in order to gain approval by the OEB of approved CPCNs².
13. Given the OEB's recent practice of restricting service areas covered by CPCNs to specific lots and concessions in which proposed facilities will be located³, Enbridge Gas believes that leave to construct-type information is required in order to best describe the CPCN coverage areas. The evidentiary record is not as complete as it would be had EPCOR submitted requests for the approval of franchise agreements and CPCNs as part of a leave to construct application (which EPCOR states will be required for this project⁴).
14. The OEB should deny EPCOR's CPCN request for the Municipality of Brockton at this time and reconsider the request as part of a future leave to construct application by EPCOR so that the specific service areas (described using metes and bounds or some other suitable method) can be properly identified.

JAKO Developments

15. EPCOR submits that it does not have sufficient information available to determine the economic feasibility of connecting customers outside of the proposed project areas and yet states that they are best suited to service these additional areas despite not having any knowledge of Enbridge Gas' plans for the area.⁵
16. Any service to the JAKO Developments subdivision or any other areas should be based on a review of the costs to supply this area by each utility able to provide service and should not be determined by the OEB as part of this application.

² Response to Enbridge Gas Interrogatory 2(b)

³ EB-2020-0232 – Decision and Order - February 11, 2021

⁴ Application, page 6, paragraph 13

⁵ Response to JAKO Developments Inc. Interrogatory 1

17. Enbridge Gas believes that, subject to gathering further information and conducting the appropriate feasibility analysis, it would be competitive to provide the service needed for this or any other development in this area.