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BY EMAIL

January 12, 2022

Ms. Nancy Marconi
Acting Registrar
Ontario Energy Board
2300 Yonge Street, 27th Floor
Toronto, ON M4P 1E4
Registrar@oeb.ca

Dear Ms. Marconi:

**Re: Ontario Energy Board (OEB) Staff Submission
EPCOR Natural Gas Limited Partnership
Application for a new certificate of public convenience and necessity for
each of the Municipality of Brockton, the Municipality of West Grey, and the
Township of Chatsworth
OEB File Number: EB-2021-0269**

Please find attached OEB staff's submission in the above referenced proceeding, pursuant to Procedural Order No. 1.

Yours truly,

Catherine Nguyen
Applications, Natural Gas

Encl.

cc: All parties in EB-2021-0269



ONTARIO ENERGY BOARD

OEB Staff Submission

EPCOR Natural Gas Limited Partnership

**Application for a new certificate of public convenience and necessity for each of
the Municipality of Brockton, the Municipality of West Grey, and the Township of
Chatsworth**

EB-2021-0269

January 12, 2022

1 OVERVIEW

These are OEB staff's submissions on the application filed by EPCOR Natural Gas Limited Partnership (ENGLP) for an order approving new certificates of public convenience and necessity (certificates) for the Municipality of Brockton, the Municipality of West Grey, and the Township of Chatsworth (collectively, the municipalities) to enable ENGLP to bring natural gas service to unserved areas within each of the municipalities. Through the application, ENGLP also requests an order approving natural gas franchise agreements with each of the municipalities and an order directing and declaring that the assent of the municipal electors of the municipalities are not necessary for the franchise agreement by-law.

ENGLP currently holds certificates which are limited to traversing pipeline in the municipalities.¹ At the time ENGLP's certificates were granted for the municipalities, OEB approval of franchise agreements for the municipalities was unnecessary under the exemption provided at section 6 of the *Municipal Franchises Act*.²

In June of 2021, the Ontario government announced certain projects that will receive funding under Phase 2 of its Natural Gas Expansion Program (NGEP) to expand access to natural gas across the province. The "Brockton Project" located throughout the Municipality of Brockton, and in the communities of Elmwood, Vesta, Solway, Glammis, Cargill, Chepstow, Pinkerton, Narva, Greenock, and Riversdale was one of the projects selected for funding under the NGEP.³

As a result of the province's NGEP announcement, ENGLP now seeks OEB approval of new certificates and municipal franchise agreements (franchise agreements) for with the municipalities, such that it will be able to undertake the Brockton Project.⁴

OEB staff supports ENGLP's application for certificates for and franchise agreements with the Municipality of Brockton, the Municipality of West Grey, and the Township of Chatsworth. OEB staff's support is, however, subject to a submission that minor changes must be made to the draft certificates provided with the application before they are approved by the OEB, and that ENGLP have an opportunity in a reply submission to confirm that OEB staff's proposed modifications are necessary.

1.1 The Application

ENGLP filed the application on October 20, 2021, under sections 8 and 9 of the

¹ ENGLP certificates EB-2018-0263

² Application, p.2

³ O. Reg. 451/21: Expansion of Natural Gas Distribution Systems, made under the *Ontario Energy Board Act, 1998*.

⁴ Application, p. 3

Municipal Franchises Act for:

1. An order approving natural gas franchise agreements with the Municipality of Brockton, the Municipality of West Grey, and the Township of Chatsworth
2. An order directing and declaring that the assent of the municipal electors of the Municipality of Brockton, the Municipality of West Grey, and the Township of Chatsworth is not necessary in relation to granting the natural gas franchise agreements
3. An order cancelling ENGLP's existing certificates for the Municipality of Brockton, the Municipality of West Grey, and the Township of Chatsworth and superseding them with new certificates to construct works and supply gas within the municipalities in accordance with the Brockton Project

The by-laws and franchise agreements filed with the application have been passed through third reading and executed, respectively.

ENGLP's current certificates for the Municipality of Brockton, the Municipality of West Grey, and the Township of Chatsworth are limited to constructing pipeline facilities in order to supply gas to the Municipality of Arran-Elderslie, the Municipality of Kincardine and the Township of Huron-Kinloss.⁵

Enbridge Gas Inc. (Enbridge Gas) currently holds certificates to construct works to supply gas to the municipalities, including the areas covered in ENGLP's existing certificates and the service territory requested in the application.⁶ Enbridge Gas is a party to this proceeding.

ENGLP states that it will file a leave to construct application for the Brockton Project at a later date.⁷ ENGLP states that in the interest of efficiency, ENGLP has elected to file the certificate and franchise agreement requests and the leave to construct request as two separate applications.⁸

1.2 The Issues

In OEB staff's view, the application raises the following issues:

1. Franchise Agreements
 - a. Are the franchise agreements as executed by the parties acceptable to the OEB and, if so, when should they become effective?

⁵ ENGLP certificates EB-2018-0263

⁶ Enbridge Gas certificates EB-2009-0090, EB-2007-0819 and EB-2008-0081

⁷ Application, p. 6

⁸ ENGLP response to Enbridge Gas-2(b)

2. Certificates

- a. Should the certificate requests be granted and, if so, for what areas?
- b. Should the OEB grant orders approving the franchise agreements and certificates in this proceeding, or should ENGLP be required to reapply for these authorizations in the leave to construct application for the Brockton Project?

OEB staff provides its submissions on these issues in the following sections.

2 OEB Staff Submission

OEB staff submits that the OEB should approve ENGLP's application for franchise agreements with the municipalities and that they should be made effective on the date of the OEB's decision.

OEB staff submits that the OEB should grant ENGLP's proposed certificates as filed in draft as part of its application, subject to certain minor modifications proposed by OEB staff, which are detailed below. OEB staff submits that the OEB should not further extend the Municipality of West Grey service territory as requested in an intervenor interrogatory from JAKO Developments Inc.

OEB staff submits that ENGLP's franchise agreement and certificate requests can appropriately be heard in this proceeding, separate from the leave to construct application for the Brockton Project.

2.1 Franchise Agreements

Are the franchise agreements as executed by the parties acceptable to the OEB and, if so, when should they become effective?

OEB staff supports ENGLP's application for franchise agreements with the Municipality of Brockton, the Municipality of West Grey, and the Township of Chatsworth.

Under the *Municipal Franchises Act*, the OEB may approve municipal by-laws granting one or more gas utilities the right to distribute gas in a municipality. Any application filed with the OEB for a franchise agreement must also include the draft by-law, the form of the franchise agreement, as well as a resolution from the municipal council. If the application is approved by the OEB, the distributor will then sign the franchise agreement with the municipality and file the executed franchise agreement and by-law with the OEB.

With the application, ENGLP filed franchise agreements and by-laws already executed with the Municipality of Brockton, the Municipality of West Grey, and the Township of Chatsworth prior to receiving OEB approval as to the terms and conditions upon which,

and the period for which, the municipalities are, by by-law, to grant ENGLP the authority to distribute gas therein. In the past, where distributors have filed with the OEB a by-law that had already been approved by the municipality prior to the filing of the distributor's application, the OEB granted the application on the condition that the effective date of the franchise agreement be the date of the OEB's decision and order.⁹

OEB staff submits that the OEB should grant ENGLP's requests relating to the franchise agreements with the municipalities. OEB staff also submits that the OEB's approval be conditional on the franchise agreements taking effect as of the date of the OEB's decision and order for the application (and not, for example, as of the date the agreements were executed by the parties)

2.2 Certificates

Should the certificate requests be granted and, if so, for what areas?

Subject to some minor corrections to the certificates, as filed in draft, OEB staff supports ENGLP's application for new certificates for each of the Municipality of Brockton, the Municipality of West Grey, and the Township of Chatsworth.

With the application, ENGLP filed its current certificates for each of the Municipality of Brockton, the Municipality of West Grey, and the Township of Chatsworth.¹⁰ Each of these certificates is limited to constructing pipeline facilities in certain areas in order to supply gas to the Municipality of Arran-Elderslie, the Municipality of Kincardine and the Township of Huron-Kinloss.

OEB staff submits that ENGLP may have inadvertently omitted portions of the area in which ENGLP is currently authorized to construct pipeline facilities in the Municipality of West Grey and the Township of Chatsworth. Specifically, the area starting at Grey Road 3 continuing east on Grey Road 25 and ending at the Dornoch Meter and Regulator Station within each municipality and township.

OEB staff submits that ENGLP should confirm OEB staff's observation and correct the draft certificates for the Municipality of West Grey and the Township of Chatsworth to include the missing portions of its current authorization in the municipality and township, in its Reply Submission, if applicable. OEB staff notes that, if confirmed, the pipeline route starting at Grey Road 3 continuing east on Grey Road 25 and ending at the Dornoch Meter and Regulator Station remain limited to traversing the Township of Chatsworth and the Municipality of West Grey.¹¹ OEB staff also submits that ENGLP

⁹ See, for example, the OEB's decision and order on Enbridge Gas's request for a franchise agreement renewal with the Town of Petrolia in proceeding EB-2021-0157

¹⁰ Application, Appendix E

should file revised service territory maps for the Municipality of West Grey and the Township of Chatsworth in its Reply Submission, as applicable.

In response to an intervenor interrogatory from JAKO Developments Inc. requesting ENGLP to expand the east border of its proposed service area for the Municipality of West Grey four kilometres to Mulock Road, ENGLP stated:

Where requests for service can be achieved within the EBO 188 Guidelines, ENGLP is supportive of providing natural gas service to additional underserved communities in the area and would welcome the OEB expanding the proposed CPCNs to allow it to do so. Further, ENGLP notes that the inclusion of these areas as part of this Application would reduce the associated regulatory burden involved with filing a stand-alone application in the future.¹²

ENGLP also stated that its ability to connect customers outside of the Brockton Project area would be subject to EBO 188 Guidelines under which a standard test for economic feasibility would be required for these connections.¹³ However, ENGLP does not have sufficient detail to complete a financial feasibility analysis and would also need to confirm that it would be best suited to service these additional areas.¹⁴

OEB staff submits that the OEB should not expand the boundaries of ENGLP's proposed certificate for the Municipality of West Grey east to Mulock Road as part of the current proceeding. OEB staff submits that the OEB should confirm in its decision that any expansion of service outside of the Brockton Project area will require an application for an amended certificate under the *Municipal Franchises Act* upon completion of a financial feasibility analysis and confirmation that ENGLP is in the best position to serve the additional area.

OEB staff submits that it is likely more economic and practical for ENGLP to serve customers in the requested certificate area and the OEB should grant to ENGLP the certificates filed as part of its application, subject to the minor revisions discussed above. If the OEB grants ENGLP's draft certificates, OEB staff recommends that the OEB cancel Enbridge Gas's current certificates for the Municipality of Brockton¹⁵, the Municipality of West Grey¹⁶, and the Township of Chatsworth¹⁷ and replace them with new certificates that reflect the areas listed in ENGLP's new certificates.¹⁸

¹² ENGLP responses to JAKO Developments Inc. interrogatories

¹³ Ibid.

¹⁴ Ibid.

¹⁵ EB-2009-0090

¹⁶ EB-2007-0819

¹⁷ EB-2008-0081

¹⁸ See for example, EB-2020-0232 Decision and Order, February 11, 2021

Should the OEB grant orders approving the franchise agreements and certificates in this proceeding, or should ENGLP be required to reapply for these authorizations in the leave to construct application for the Brockton Project?

ENGLP confirmed in its application that the Brockton Project triggers the requirement for leave to construct pursuant under section 90 (1) of the *Ontario Energy Board Act* and will file a leave to construct application for the Brockton Project at a later date.¹⁹

In response to an interrogatory, ENGLP stated:

It is ENGLP's understanding that there is no requirement that the CPCN and Leave-to-construct be filed together and therefore in the interest of efficiency ENGLP has elected to file these requests as two separate applications. ENGLP does not believe the details of the leave to construct application are required for the OEB to rule on this matter and should the OEB see fit, it has the ability to make any CPCN's granted as part of this Application conditional upon approval of ENGLP's leave to construct.²⁰

OEB staff submits that the franchise agreement and certificate requests are not required to be filed with the leave to construct application for the Brockton Project. ENGLP's proposal for the Brockton Project submitted as part of Phase 2 of Ontario's NGEF, includes the technical and financial details of the Brockton Project.²¹ OEB staff submits that the OEB has the necessary information to grant ENGLP's requests for certificate and franchise agreements. However, OEB staff also submits that the OEB's approval of the certificates should be conditional upon approval of ENGLP's leave to construct application for the Brockton Project. OEB staff submits that including a condition of approval with any OEB order will help ensure that any awarded certificates are not unused.

~All of which is respectfully submitted~

¹⁹ Application, p. 6

²⁰ ENGLP response to Enbridge Gas-2(b)

²¹ EB-2019-0255, ENGLP's proposal for the Brockton Project, filed November 24, 2020