



**EB-2024-0239**

**EPCOR Natural Gas Limited Partnership Inc.**

**Application for approval of a Certificate of Public  
Convenience and Necessity for Norfolk County**

**PROCEDURAL ORDER NO. 2**

**June 5, 2025**

EPCOR Natural Gas Limited Partnership (EPCOR) applied to the Ontario Energy Board (OEB) on August 15, 2024, under section 8(1) of the *Municipal Franchises Act* for a “geographically limited” certificate of public convenience and necessity (CPCN) restricted to Concession 7 - Lots 2 and 3 (excluding municipal addresses 220 and 230 8th Concession Road) and Concession 7 – North Part of Lot 2 in Norfolk County. EPCOR submits that the CPCN would enable it to “supply additional natural gas to its existing large greenhouse customer, 100516320 Ontario Inc. carrying on business as EZ Grow Farms Ltd. (“EZ Grow”)”. EPCOR has also requested that certain information in its application be treated as confidential.

EPCOR holds a municipal franchise agreement with Norfolk County. Given that the EZ Grow Facility is located within Norfolk County, EPCOR submits that it therefore does not require additional franchise agreement approvals in order to supply the additional natural gas to EZ Grow.

**Background**

As proposed in the application, as originally filed, EPCOR would increase the supply of natural gas provided to EZ Grow using a pipeline that would be constructed by a third party, Clearbeach Resources Inc. (Clearbeach), and then sold to EPCOR. The application noted that the gas supplied to EZ Grow would be procured by EPCOR from Clearbeach under the terms of a System Gas Supply Agreement.

The OEB granted intervenor status to Enbridge Gas Inc. (Enbridge Gas) and set the dates for hearing the application.

In its interrogatory responses filed on January 7, 2025, EPCOR confirmed that the pipeline that is the subject of the proceeding has already been constructed by Clearbeach and is operational.

### Summary of Written Submissions

In accordance with Procedural Order No. 1, OEB staff and Enbridge Gas filed their final written submissions on January 22, 2025.

OEB staff submitted that EPCOR is essentially seeking a system bypass and that approval of a bypass is warranted in these circumstances. OEB staff referred to the Natural Gas Facilities Handbook, three considerations the OEB has applied in prior proceedings and four principles regarding system bypass. However, OEB staff also submitted that it would be in the public interest for the OEB to approve the application. OEB staff also noted that there was nothing on the record of this proceeding that appeared to indicate that EPCOR (or Clearbeach) had advised the OEB that the pipeline was in the process of being constructed, or subsequently in the process of being operationalized. OEB staff submitted that, in accordance with the requirements of the *Municipal Franchises Act*, EPCOR (or Clearbeach) should have received OEB approval before initiating construction and operations.

Enbridge Gas also took the view that because the facilities proposed by EPCOR and subsequently constructed by Clearbeach to supply additional gas to EZ Grow are on lands that are already part of the CPCN area held by Enbridge Gas, that EPCOR will require approval of a bypass. However, Enbridge Gas's main concern with the application is that EPCOR breached its "responsibility to ensure that construction did not commence until OEB approval of the [CPCN] was obtained". Enbridge Gas submitted that "it is clear from the wording of section 8 of the *Municipal Franchises Act* that prior OEB approval ... is required before construction proceeds [and] EPCOR should at a minimum be required to explain and justify its and its contractor's premature actions in this regard and the OEB can determine any other appropriate directions to be provided".

EPCOR filed its reply submission on February 12, 2025. EPCOR acknowledged that the construction of the pipeline was atypical but that its ultimate goal was to provide natural gas capacity to the customer in the time frame needed while ensuring compliance with regulatory and contractual requirements. EPCOR indicated that it had an Asset Purchase Agreement with Clearbeach, under which, Clearbeach is the constructor and owner of the pipeline until the asset transfers to EPCOR upon the granting of the CPCN. This Asset Purchase Agreement is conditional upon all necessary regulatory approvals being granted.

EPCOR took the position that while section 8(1) of the *Municipal Franchises Act* accordingly did not apply, it nevertheless applied for the CPCN prior to Clearbeach starting construction for transparency purposes.

### OEB's Request for More Information

On March 27, 2025, the OEB issued a letter to EPCOR, referring to new information provided in its reply submission. The OEB asked EPCOR to provide more information about the approvals requested in this proceeding. In particular, EPCOR had indicated that, as the regulated gas distributor, it “will not acquire the pipeline, and thereby become the owner, until the requisite regulatory approvals have been obtained”<sup>1</sup>.

EPCOR provided its response on April 8, 2025. To clarify, the requests for more information made in the March 27, 2025 letter to EPCOR originated from the OEB panel of Commissioners, not OEB staff as indicated in EPCOR's cover letter.

EPCOR referenced section 8(1) of the *Municipal Franchises Act* and indicated that it applies insofar as EPCOR requires approval of a limited CPCN prior to taking ownership of the new pipeline. Further, this arrangement involves one rate-regulated utility owning a limited purpose asset within another rate-regulated utility's CPCN territory. EPCOR claimed that all stakeholders, including Enbridge Gas and the OEB, benefit from EPCOR applying for and receiving a limited purpose CPCN – so that the location and purpose of gas distribution assets in the region are clearly understood.

### Hybrid Oral Hearing Day

The OEB has considered EPCOR's response of April 8, 2025. The OEB finds that its questions regarding the approvals sought have not yet been satisfactorily answered. As a result, the OEB will re-open the evidentiary phase of the proceeding in view of the statements made in reply submission, to give EPCOR a further opportunity to clarify the evidence and to make a final submission. Therefore, The OEB is making provisions for a hybrid oral hearing day that will consist of an evidentiary phase, a question period, followed by final oral submissions.

In particular, the OEB expects the following questions to be addressed by EPCOR:

1. Why should (and how can) the OEB grant a CPCN to construct a pipeline on an application from a party that is not proposing to construct, and has not constructed, the pipeline? In order to address this question, the OEB needs full

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<sup>1</sup> EPCOR Reply Submission, February 12, 2025, p. 3.

evidence on all the background circumstances that brought EPCOR to the unusual application now before the OEB.

2. What is the nature of the order to be made by the OEB? The proposed geographically limited CPCN<sup>2</sup> addresses construction – not ownership. Is EPCOR proposing to change the words in the proposed CPCN to purchase works to supply natural gas to an existing customer?
3. Does the Asset Purchase Agreement with Clearbeach reference “requisite regulatory approvals” or specifically require a CPCN? If the former, does this Agreement provide any definition to the words “requisite regulatory approvals”? What is the relationship between the Asset Purchase Agreement and the System Gas Supply Agreement with Clearbeach?
4. Please provide the construction schedule dates. When did construction begin and when did the pipeline become operational?

The OEB asks EPCOR to file materials to address these four questions in advance of the hybrid oral hearing day. These written materials and the oral testimony provided at the hybrid oral hearing day will form a part of the record of the proceeding.

The OEB would also be assisted by having EPCOR’s witness panel include a representative from Clearbeach, such that the OEB may hear from Clearbeach directly.

The OEB expects to ask further questions of the EPCOR witness panel during the evidentiary phase of the hybrid oral hearing day. Enbridge Gas and OEB staff will also be provided with an opportunity to ask questions, should they have any. Following a short break in the proceeding, the OEB will provide the parties with the opportunity to make further final submissions.

#### Request for Confidential Treatment

In its application, as originally filed, EPCOR requested confidential treatment for certain information relating to load profiles and energy usage for EZ Grow pursuant to section 4.11 of the Practice Direction on Confidential Filings (Practice Direction) on the grounds that the information is presumptively confidential. EPCOR indicated that the “information would disclose load profiles, energy usage and billing information of a specific customer”. The OEB received no objections to EPCOR’s request for confidentiality treatment of the redacted information.

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<sup>2</sup> EPCOR’s application, Appendix F

The OEB accepts EPCOR's request for confidential treatment of the redacted information. The OEB finds that the redacted information is consistent with the categories of information presumptively considered confidential, as listed in Appendix B of the Practice Direction.

It is necessary to make provision for the following matters related to this proceeding. Further procedural orders may be issued by the OEB.

**IT IS THEREFORE ORDERED THAT:**

1. EPCOR shall file with the OEB, and serve on all parties, responses to the four questions as described above, and any related materials on which it intends to rely at the hybrid oral hearing, by June 17, 2025.
2. A transcribed, hybrid oral hearing day, as described above, will be held on June 20, 2025, starting at 9:30 a.m. in the 25th floor North Hearing Room at the OEB office. The OEB's expectation is that the EPCOR witness panel will appear in-person. If there is some reason why a witness cannot appear in-person, the witness may appear virtually.

Parties are responsible for ensuring that any documents they file with the OEB, such as applicant and intervenor evidence, interrogatories and responses to interrogatories or any other type of document, **do not include personal information** (as that phrase is defined in the *Freedom of Information and Protection of Privacy Act*), unless filed in accordance with rule 9A of the OEB's [Rules of Practice and Procedure](#).

Please quote file number, **EB-2024-0239** for all materials filed and submit them in searchable/unrestricted PDF format with a digital signature through the [OEB's online filing portal](#).

- Filings should clearly state the sender's name, postal address, telephone number and e-mail address.
- Please use the document naming conventions and document submission standards outlined in the [Regulatory Electronic Submission System \(RESS\) Document Guidelines](#) found at the [File documents online page](#) on the OEB's website.
- Parties are encouraged to use RESS. Those who have not yet [set up an account](#), or require assistance using the online filing portal can contact [registrar@oeb.ca](mailto:registrar@oeb.ca) for assistance.
- Cost claims are filed through the OEB's online filing portal. Please visit the [File documents online page](#) of the OEB's website for more information. All

participants shall download a copy of their submitted cost claim and serve it on all required parties as per the [Practice Direction on Cost Awards](#).

All communications should be directed to the attention of the Registrar and be received by end of business, 4:45 p.m., on the required date.

With respect to distribution lists for all electronic correspondence and materials related to this proceeding, parties must include the Case Manager, Natalya Plummer at [Natalya.Plummer@oeb.ca](mailto:Natalya.Plummer@oeb.ca) and OEB Counsel, Lawren Murray at [Lawren.Murray@oeb.ca](mailto:Lawren.Murray@oeb.ca).

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Tel: 1-877-632-2727 (Toll free)

**DATED** at Toronto, **June 5, 2025**

**ONTARIO ENERGY BOARD**

Ritchie Murray  
Acting Registrar