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June 11, 2025

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

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Dear Ms. Marconi:

EB-2025-0090

Sedum Master Inc. – Application for Certification of Public Convenience and Necessity

We are counsel to Sedum Master Inc. ("Sedum") in the above noted matter.

On April 14, 2025, the Ontario Energy Board issued Procedural Order No. 1 for the above noted matter, which set out the process for written submissions. On May 27, 2025, Sedum received Enbridge Gas' written submissions. On May 28, 2025 Sedum received OEB Staff's written submissions.

In accordance with Procedural Order No. 1, please find Sedum's written reply submissions attached.

Sincerely,

Cole Tavener

Cole Tavener

Enclosure

c: Richard J. King (Osler, Hoskin & Harcourt LLP)
Tom Watkinson (Sedum Master Inc.)
Patrick McMahon (Enbridge Gas Inc.)
Natalya Plummer (Ontario Energy Board)
Richard Lanni (Ontario Energy Board)

ONTARIO ENERGY BOARD

EB-2025-0090

IN THE MATTER OF the *Municipal Franchises Act*, R.S.O. 1990, c.M.55, as amended;

AND IN THE MATTER OF an application by Sedum Master Inc. for an Order approving the terms and conditions upon which, and the periods for which, the Corporation of the Township of Blandford-Blenheim is, by by-law, to grant Sedum Master Inc. the right to construct and operate works for the distribution and transmission of natural gas in the Township of Blandford-Blenheim;

AND IN THE MATTER OF an application by Sedum Master Inc. for an Order directing and declaring that the assent of the municipal electors of the Township of Blandford-Blenheim to the by-law is not necessary; and

AND IN THE MATTER OF an application by Sedum Master Inc. for an Order issuing a Certificate of Public Convenience and Necessity to construct works and supply gas to certain areas in the Township of Blandford-Blenheim

**REPLY SUBMISSION
SEDUM MASTER INC.**

REPLY SUBMISSION OF SEDUM MASTER INC.

A. Overview

1. On February 14, 2025, Sedum Master Inc. (“**Sedum**”) filed an application with the Ontario Energy Board (“**OEB**”) pursuant to sections 8 and 9 of the *Municipal Franchises Act* (“**MFA**”) seeking orders for the approval of a franchise agreement with, and a limited certificate of public convenience and necessity (“**CPCN**”) for, the Township of Blandford-Blenheim (the “**Town**”).

2. As noted in the submission of OEB Staff, Sedum owns and operates a greenhouse facility located at 855217 Gobles Road, Princeton, Ontario (Concession 2 N Part Lot 19) (the “**Facility**”). Sedum has been a customer of Enbridge Gas Inc. (“**EGI**”) for many years. However, limitations on EGI’s capacity to supply the Facility with the required volumes of natural gas have proven problematic as Sedum has continued to expand its Facility and grow its business.

3. The applications herein relate to the supply of natural gas for two expansions (that Sedum has completed) via a 4.5 km pipeline from a nearby EGI station to the Facility. Once constructed, Sedum will remain a customer of EGI – i.e., all volumes of gas consumed at the Facility in the future will continue to be delivered via EGI’s system.

4. This reply submission addresses the submissions and arguments made by OEB Staff (May 28, 2025) and EGI (May 27, 2025).

B. Franchise Agreement

5. Sedum has asked the OEB to approve a franchise agreement that contains three changes to the Model Franchise Agreement. In Sedum’s view, the three changes are very minor, and made to more accurately reflect the fact that Sedum is not (and will not) be a rate-regulated, open-access gas distributor. The three very minor changes are:

- (a) The defined term “Gas Company” was changed to “Sedum” throughout (over 50 times). This is a helpful clarification in that it reflects the fact that Sedum is not a gas distributor, and the pipeline that Sedum will build is solely for the purpose of only serving itself (Sedum) and no other customer.
- (b) In the same vein, the references to the “gas system” being for the distribution, storage and transmission of gas has been narrowed to reference only “distribution” – making clear that Sedum is not seeking to do anything other than self-supply via the proposed distribution pipeline. This change is reflected in three places.
- (c) Finally, the references to gas delivery to “inhabitants of the Municipality” by a pipeline “in or through the Municipality” have been deleted and replaced with text to note that the proposed pipeline will deliver gas only to Sedum. This change is found in the definition of “gas system” and sections 2 and 3.

6. OEB Staff and Enbridge take the position that these minor variances from the Model Franchise Agreement should not be permitted – and that Sedum and the Town should be bound by the Model Franchise Agreement without any changes – even changes that: (a) the Town and Sedum agree to and prefer; and (b) provide greater accuracy about the nature of the proposed pipeline and role of Sedum.

7. OEB Staff’s rationale for not permitting any deviation from the exact wording of the Model Franchise Agreement appears to be two-fold:

- (a) *Consistency*: The Model Franchise Agreement has been adhered to across the province, which “is preferable to a piecemeal approach of negotiating terms specific to a franchise”.
- (b) *Public Interest*: The Model Franchise Agreement “meets the public interest by providing fair treatment of both the civic duties of a municipality and a gas distributor’s ratepayers.”

8. With respect to the Consistency rationale, Sedum submits that OEB staff’s argument would only be persuasive for gas distributors that serve members of the public. In that case, the OEB’s practice of uniform terms and conditions governing the contractual relationship between municipality and gas distributor makes sense because: (a) it spares utilities from negotiating a bespoke arrangement with each municipality; (b) it makes clear to municipalities that there is a standard set of terms and conditions setting out the rights and obligations as between a municipality and gas distributor that the should apply province-wide; and (c) it is administratively efficient for the OEB, because it is not required to evaluate bespoke franchise agreements every time a franchise application is made.

9. However, none of these reasons really “fit” the circumstances of the Sedum proposed pipeline. If anything, the minor variations (apart from offering greater accuracy about the nature of the Sedum pipeline) highlight the fact that this is not a standard gas distributor-owned pipeline. And the Town is in favour of these changes. In other words, there may be merit in having this franchise agreement depart from the province-wide standard – even in these very minor ways – to highlight that Sedum is not a gas distributor and the proposed pipeline is not an open access line.

10. With respect to the Public Interest rationale, none of the three minor variations alter the scope of rights and obligations as between the Town and Sedum (as compared to the balance of rights/obligations in the Model Franchise Agreement).

11. EGI's rationale for opposing the applied-for franchise agreement seem to align, for the most part, with those of OEB staff. Sedum submits that the evidence and submissions at paragraph 8, 9 and 10 above offer reasons for preferring the applied-for franchise agreement rather than the Model Franchise Agreement. Moreover, Sedum believes that EGI should prefer the variations to the Model Franchise Agreement being proposed – surely it is in EGI's interest to clarify that Sedum is not acting as a gas distributor within the Town, and that the proposed pipeline is not used for delivery of gas to "inhabitants of the Municipality".

12. EGI does raise one curious argument in its submission – that "Enbridge questions whether the municipality has been informed on issues being raised as part of this proceeding and the concerns about the amendments being requested to the Model Franchise Agreement." Sedum's only response to this is to: (a) reiterate that the applied-for franchise agreement is the preferred version of both Sedum and the Town; and (b) the Town is very supportive of Sedum and its expansion.

C. Certificate of Public Convenience and Necessity

(a) System Bypass

13. EGI believes that Sedum's proposed pipeline amounts to a bypass of the EGI system – initially raising this issue in an information request.¹ In Sedum's response to the information

¹ EGI Information Request 1(h).

request, Sedum explained why this was clearly not a case of system bypass – and referenced the many OEB decisions where the OEB has grappled with issues of bypass (both economic bypass and physical bypass).

14. OEB Staff agrees with Sedum that this is not a case of system bypass, but EGI does not.

15. EGI believes that Sedum’s proposed pipeline amounts to a physical bypass, and relies on the OEB’s landmark decision in the Greenfield Energy Center Limited Partnership (“GEC”) case.² That proceeding, of course, dealt with an application by GEC to construct a pipeline to connect its new electricity generating facility directly to the Vector Pipeline (an international pipeline not regulated by the OEB). As noted in that decision:

The public interest issue before the Board is whether GEC should be allowed to build its own pipeline interconnection with Vector, thereby bypassing the Union distribution system ...³

16. Note that GEC was applying to avoid connecting and taking service from Union Gas – i.e., it would not be supplied by any gas distributor in Ontario, thereby avoiding all gas distribution charges. That is not the case with Sedum’s proposed pipeline. Sedum will continue to be a distribution customer of EGI and continue to receive all its natural gas through EGI’s system. In addition, the Sedum pipeline is not stranding any EGI assets⁴ – indeed, the opposite is true, EGI

² RP-2005-0022/EB-2005-0441/EB-2005-0442/EB-2005-0443/EB-2005-0473, dated January 6, 2006 [“**GEC Decision**”]. Note that Union applied to construct a “competing” pipeline to serve GEC – which was heard as part of the same OEB proceeding.

³ GEC Decision, pp. 23-24.

⁴ The fact that no natural gas distribution assets would be stranded by virtue of GEC connecting to the Vector Pipeline was considered and noted by the OEB in the GEC Decision. The issue of “stranded assets” was more thoroughly canvassed in the OEB’s Review of the Transmission System Code and Related Matters (RP-2002-0120) wherein the OEB was considering transmission system bypass and gross versus net load billing for the purposes of amendments to the Transmission System Code (see section 5: Transmission System Bypass). The

will have to construct assets to accommodate Sedum's Facility expansion and proposed pipeline. And finally, neither EGI nor its ratepayers suffer any harm because of Sedum's proposed pipeline.

17. Simply put, none of the necessary hallmarks of physical bypass (avoidance of the distributor's system, stranded utility assets, or harm to incumbent utility or its ratepayers) are present in this application.

(b) Economic Feasibility

18. A key factor in the OEB's evaluation of a *typical* CPCN application is the economic feasibility of the proposed construction. The OEB has consistently taken the position that existing customers should not subsidize (through higher rates) any premature or non-sustaining extensions of the gas distributor's system.⁵

19. The Sedum application is not a typical CPCN application – i.e., this is not the case of a rate-regulated gas distribution utility expanding into an area not currently served by natural gas. This is, instead, an application by an existing gas user to pay for assets to increase its gas supply (to support greater use of natural gas). Sedum is paying the entire cost of the proposed pipeline – there is no issue of subsidization from existing EGI customers.

(c) Financial and Technical Capacity

20. The *Natural Gas Facilities Handbook* requires that first-time applicants for a CPCN (referred to as “new entrants”) file evidence to enable the OEB to assess whether they have the

concern was that generators could locate in industrial load centres and connect to/serve those loads, thereby stranding existing transmission assets (and ultimately shifting costs to remaining customers).

⁵ EBRO 363-I dated March 19, 1978, p.5.

technical and financial capacity to construct, operate and maintain the gas works.⁶ It is Sedum's submission that the criteria in this section were meant to apply to gas distributors serving members of the public. That is not this case – since Sedum's proposed pipeline would only be used to serve Sedum's Facility. OEB Staff agrees with Sedum on this point. Enbridge does not and makes numerous arguments related to technical, safety and environmental standards that are not relevant to the OEB's determination of this application.

21. The new entrant filing requirements related to financial capacity and technical capacity are meant to provide the OEB comfort that it will not grant the right to construct distribution assets and exclusively supply customers if there is a risk that the applicant is not capable (financially or technically) of doing so – with the result that customers seeking gas service either never get served (because the assets do not get built) or lose service (due to the failure of the distributor to be able to operate and maintain assets once they are built).

22. Sedum's circumstance is entirely different. The only party that would be adversely impacted by a failure to construct, operate and maintain the proposed pipeline is Sedum. Moreover, Sedum is a significant commercial enterprise that has recently carried out a material expansion – Sedum has no incentive to construct, operate and maintain the proposed pipeline in a way that would jeopardize the successful operation of its Facility.

23. The direct analogy to Sedum's proposed pipeline and how the OEB should assess this CPCN application is the OEB's licensing regime for electricity transmission. As with the CPCN filing requirements for new entrants, the OEB application for an electricity transmission licence

⁶ *Natural Gas Facilities Handbook* (EB-2022-0081) dated March 31, 2022, as amended, section 3.8.

requests information about the applicant's technical and financial capability. Indeed, the OEB makes its determination to issue an electricity transmission licence based on whether the applicant has the financial and technical capability to own and operate the specific facilities that are identified in the application.

24. Certain entities that own and operate electricity transmission assets are exempt from having to obtain an OEB licence (and having their technical and financial capability to own/operate such assets evaluated by the OEB). Exemptions are permitted for: (a) electricity customers that own and operate transmission assets solely to self-supply; and (b) generators that self-supply and convey electricity into the grid. That makes sense – these exempted entities (like Sedum) do not serve the public and have every incentive to ensure the proper, reliable operation of the transmission assets. There is, therefore, no need for extensive regulatory scrutiny of the owner/operator of these assets.

25. This is the situation with Sedum. OEB staff's submission agrees:

Given that **Sedum Master will fund the construction of the proposed pipeline** and station work and that **it has no customers other than itself**, OEB staff is of the view that the detailed financial and technical information that would typically be required for a new entrant is not required in this specific circumstance given that **there is no risk to ratepayers** from the approval of the requested certificate.

(emphasis added)

26. For these reasons, the technical and financial capability of Sedum to construct, operate and maintain the pipeline should not be relevant to the OEB's determination in this application. That said, Sedum has provided evidence (largely in responses to information requests) on a variety of issues raised by EGI (although some would go beyond even a standard CPCN application to include considerations normally dealt with in a leave-to-construct proceeding), including:

- (a) Technical: Sedum will comply with all applicable technical licensing and other applicable legal requirements of the Technical Standards and Safety Authority, and any other governmental regulator.⁷ In addition, Sedum supplied additional technical information in its response to EGI Information Request 4.
- (b) Safety: Sedum understands and is aware of its future obligations under the OneCall legislation (the *Ontario Underground Infrastructure Notification System Act, 2012*). As noted in Sedum's response to EGI Information Request 1(f), the legislation effectively deems Sedum (once the proposed pipeline is constructed) as a "member" of the OneCall corporation.
- (c) Construction Schedule: Sedum's construction schedule for the proposed pipeline is dependent upon the timing of the OEB's decision in this proceeding, the processing and receipt of other governmental approvals, and EGI's construction schedule for the station. Sedum's preference is to be able to have the proposed pipeline in service for the coming heating season.⁸
- (d) Environmental: EGI's Information Request 2 included numerous photos of the non-maintained section of Township Road 2, which the proposed pipeline would cross. Apart from being wholly outside the jurisdictional scope of this proceeding, the suggestion seemed to be that Sedum's proposed route was reckless or environmentally damaging. EGI returned to this point, albeit in a more muted way,

⁷ Response to EGI IR 1(c).

⁸ Response to OEB Staff IR 1(f).

in its submission – stating that it remained “concerned” about Sedum’s qualifications to install, operate and maintain a natural gas pipeline “through environmentally sensitive areas”. As noted, the proposed pipeline route has been vetted and approved by the Grand River Conservation Authority, and the permit is able to be renewed at Sedum’s request.

D. GDAR

27. EGI raised the issue of the applicability of the *Gas Distribution Access Rule* (“**GDAR**”) in its Information Request 1(e). In response, Sedum stated that the GDAR would not be applicable to Sedum because the proposed pipeline would not be a “person who delivers gas to a consumer” – instead, the proposed pipeline would solely be used for self-supply. The intent of the GDAR is to ensure (and set out prescriptive rules related to) open access to a gas distributor’s system.

28. Curiously, EGI disagrees with Sedum, and believes that the GDAR does apply to Sedum. Moreover, EGI explicitly states that it will not begin construction of its station or even accept Sedum’s contribution in aid of construction until “Sedum is fully compliant with the Gas Distribution Access Rule (GDAR)” (in addition to a host of other items).

29. This is particularly troublesome for Sedum. OEB staff did not address GDAR in its submission. Sedum therefore requests that the OEB be clear in its decision on the applicability of the GDAR to Sedum’s pipeline. Further, if the OEB agrees with EGI, Sedum requests that the OEB exempt Sedum from the provisions of the GDAR. Sedum is not constructing, operating and maintaining an open access line (and confirmed that it would not sell gas to anyone else or serve another facility in its response to EGI Information Requests 1(j) and (k)). EGI should be supportive of this.

E. Issues Not in Dispute

30. There are two issues that were raised in information requests that are no longer in dispute among the parties:

- (a) Neither OEB staff nor EGI argue that leave-to-construct is required for the proposed Sedum pipeline. OEB staff is explicit on this point, based on Sedum's response to OEB Staff-3.
- (b) Neither OEB staff nor EGI take issue with Sedum's proposed revisions to condition 3 of the CPCN (allowing Sedum to designate a representative to be responsible for fulfillment of any CPCN conditions, and being designated as Sedum's contact person for the OEB).

F. Conclusion – Requested Relief

31. For all of the above reasons, Sedum submits that the OEB grant the following relief:

- (a) an Order pursuant to subsection 9(1) of the MFA approving the applied-for terms and conditions upon which, and the period for which, the Township is, by by-law, to grant Sedum the right to construct and operate works for the distribution and transmission of natural gas;
- (b) an Order pursuant to subsection 9(4) of the MFA directing and declaring that the assent of the municipal electors of the Township is not necessary under the circumstances; and

- (c) an Order pursuant to section 8 of the MFA issuing a Certificate of Public Convenience and Necessity to construct the Proposed Pipeline and supply gas to the Facility in the Township.

ALL OF WHICH IS RESPECTFULLY SUBMITTED.

June 11, 2025

Cole Tavener

Richard King/Cole Tavener
Osler, Hoskin & Harcourt LLP
Counsel to Sedum Master Inc.