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Sent by EMAIL, RESS e-filing

Mr. Ritchie Murray
Acting Registrar
Ontario Energy Board
27-2300 Yonge Street
Toronto, ON M4P 1E4

Dear Mr. Murray:

Re: EB-2024-0239 EPCOR Natural Gas Limited Partnership (“ENGLP”) Application for a Limited Certificate of Public Convenience and Necessity for Norfolk County Response Clarification

Please find enclosed ENGLP's responses to the OEB's additional clarification questions set out in Procedural Order No. 2, dated June 5, 2025.

Based on the questions, ENGLP believes that the responses provide the clarity that the Board was seeking with respect to the application – enabling the Board to make a determination in respect of the application. As you will see, the responses are a mix of evidence and legal argument. On that basis, ENGLP would be prepared to accept a decision based on the record now before the Board (including the responses herein). Given that, and the time it would take for witnesses to prepare and travel some distance to attend the half-day hearing, ENGLP respectfully requests that the Board dispense with the half-day hybrid oral hearing.

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

Yours truly,

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

ENGLP Response:

The factual background to the limited CPCN application in this proceeding is as follows:

- **Customer Request:** In early 2024, an existing customer of ENGLP (EZ Grow Farms Ltd.) requested additional volumes of natural gas for the upcoming winter growing season.
- **Consideration of Options to Serve Customer:** The EZ Grow facility is located at the outer limits of ENGLP's CPCN territory in Norfolk County – close to where ENGLP's CPCN territory abuts Enbridge's CPCN territory.
- Given the location of the EZ Grow facility, expansion of ENGLP's system to provide the required additional gas would have been very costly and the work would not be able to be completed by the 2024-25 winter season. ENGLP then considered whether Enbridge could extend its system in Norfolk County to connect to ENGLP's system (to provide the volumes needed by ENGLP to meet EZ Grow's needs). After discussions with Enbridge, ENGLP determined that would also not be a feasible option from a timing perspective.
- In approximately March 2024, ENGLP (through its discussions with local natural gas producers that supply ENGLP's system) became aware of a potential opportunity to obtain natural gas directly from a natural gas producer (Clearbeach or one of its related companies¹). Clearbeach indicated that they had excess available gas at a nearby station, approximately 2.5 km from a connection point to ENGLP's system at the EZ Grow location. As a result, ENGLP evaluated this option and determined a production line from Clearbeach (the "**Preferred Line**") was the most cost-effective option to meet EZ Grow's needs.
- **Clearbeach-ENGLP Relationship:** Clearbeach provides natural gas to ENGLP at several connection points (i.e., points at which Clearbeach's production lines connect into the ENGLP gas distribution system. ENGLP purchases gas from Clearbeach at these connection points. (ENGLP understands that Clearbeach also supplies Enbridge at several points in southwestern Ontario on a similar basis.) The Preferred Line would be another production line supplying well gas into ENGLP's distribution system.
- **Regulation of Clearbeach:** As a natural gas producer, Clearbeach's production wells are regulated by the Ministry of Natural Resources under the *Oil, Gas and Salt Resources Act* (Ontario). Clearbeach's production lines (i.e., the lines connecting its gas wells to

¹ The Clearbeach group of companies (including On-Energy and Lagasco) own a number of producing gas wells and producer pipelines in southwestern Ontario. They will be referred to herein simply as "Clearbeach".

ENGLP/Enbridge) do not require CPCNs – presumably because the OEB reads “supply” in subsection 8(1) of the *Municipal Franchises Act* (Ontario) to mean supply to an end-use customer. For convenience, subsection 8(1) reads as follows:

*8(1) Despite any other provision in this Act or any other general or special Act, no person shall construct any **works to supply**,*

*(a) **natural gas** in any municipality ...*

without the approval of the Ontario Energy Board, and such approval shall not be given unless public convenience and necessity appear to require that such approval be given. (emphasis added)

- This interpretation is confirmed by virtue of the fact that the only CPCN held by Clearbeach is for a pipeline that runs from a Clearbeach well to an end-use customer (a greenhouse facility owned by Maricann Group).²
- Regulation of the Preferred Line: ENGLP determined that no leave-to-construct would be required for the Preferred Line. In addition, as noted in the evidence in this proceeding, ENGLP already has a franchise agreement for Norfolk County.
- ENGLP then considered whether a CPCN would be required for the Preferred Line. As noted above, production lines connecting gas wells to distribution utilities have not been required to obtain CPCNs. There are, however, two unique issues associated with the Preferred Line that caused ENGLP to further consider whether a CPCN was required:
 - First, the Preferred Line was an extension of Clearbeach’s line that supplied Maricann (the only Clearbeach line subject to a CPCN). The question is whether that fact somehow changed the nature of the Preferred Line to fall within subsection 8(1) of the *Municipal Franchises Act* (Ontario). ENGLP determined that it did not – because the Preferred Line carries well gas to ENGLP’s distribution system, and no customer will be served off the Preferred Line. It is, by definition, a production line.
 - Second, it was determined between Clearbeach and ENGLP that Clearbeach would construct and initially own the Preferred Line, but Clearbeach was not interested in long-term ownership of the Preferred Line. The potential transfer of the Preferred Line from Clearbeach to ENGLP was unique in that ENGLP does not typically own production lines. More importantly, it meant that ENGLP would own distribution pipeline within Enbridge’s service area (since part of the Preferred Line lies within Enbridge’s CPCN territory).³ It is ENGLP’s view that this unique fact

² EB-2017-0289. The CPCN is held by OM Limited Partnership, a partnership between On-Energy and the Maricann Group. Such lines (i.e., producer to end-use customer) also raise the issue of system bypass, which was at play in EB-2017-0289 (and of course, was canvassed extensively in the landmark Greenfield Energy Center LP case – RP-2005-0022/ EB-2005-0441/EB-2005-0442/EB-2005-0443/EB-2005-0473, dated January 6, 2006.

³ While not a perfect analogy, EPCOR holds CPCNs which are limited to a pipeline that traverses certain municipalities (the Municipality of West Grey, the Township of Chatsworth and the Municipality of Brockton) without

does not trigger subsection 8(1) of the *Municipal Franchises Act* (Ontario). However, as noted in the last paragraph of ENGLP's response to OEB staff's clarifying questions of April 8th, ENGLP believes that all interested parties (the OEB, ENGLP and Enbridge) would benefit from having a regulatory instrument (i.e., the limited CPCN) cover the Preferred Line.

- ENGLP's gas distribution system is embedded within Enbridge's system. All ENGLP-owned and Enbridge-owned assets where ENGLP's and Enbridge's systems meet are covered by CPCNs. Many of these CPCNs were renewed (by the previous owner of ENGLP's distribution system, NRG) about ten years ago. This renewal exercise involved a fair amount of collaborative work between NRG and Union Gas. The result, however, is a set of regulatory instruments (the CPCNs) that provide a comprehensive, detailed understanding of the respective "service areas" of ENGLP and Enbridge in these geographic areas.
- ENGLP applied for a limited CPCN to provide that same level of clarity in this application – given the ownership of ENGLP and Enbridge owned assets in close proximity. In addition, the CPCN (and/or accompanying Board decision) could make clear that the purpose of the Preferred Line is solely to supply ENGLP's distribution system and not any customers lying along the route of the Preferred Line (i.e., it would not be an open access distribution line, but a producer line – albeit owned by ENGLP). In the absence of a limited CPCN, there is no regulatory instrument/decision covering the Preferred Line.

OEB Panel Question 2:

What is the nature of the order to be made by the OEB? The proposed geographically limited CPCN 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?

ENGLP Response:

There are two options for the OEB to consider:

- Option 1: Grant the relief requested, with or without amendment to the standard form CPCN (i.e., an amendment that the Preferred Line is to supply ENGLP's distribution system and not any customers or a statement in the OEB's decision).
- Option 2: If the OEB believes that subsection 8(1) of the *Municipal Franchises Act* (Ontario) cannot be read to allow for the making of the order in Option 1, then the OEB can dismiss the application with reasons.

ENGLP's preference is Option 1.

serving any customers: EB-2018-0263. The pipeline was not a producer line, and a leave-to-construct was required.

OEB Panel Question 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?

ENGLP Response:

Under the Asset Purchase Agreement (“**APA**”), the sale of the asset (pipeline) is conditional upon ENGLP obtaining all requisite regulatory approvals. In other words, if a CPCN is required, then it must be obtained prior to closing the transaction. If it is not required, the transaction can close.

The APA defines “Approvals” to mean: “franchises, licences, qualifications, authorizations, consents, certificates, registrations, exemptions, waivers, filings, grants, notifications, privileges, rights, orders, judgments, rulings, directives, permits, and other permits and approvals, including any certificate of public convenience and necessity.”

The System Gas Supply Agreement is the standard agreement that ENGLP uses with Clearbeach. There is currently an interim agreement in place between ENGLP and Clearbeach pursuant to which ENGLP purchases gas that runs through the Preferred Line. This temporary agreement also contemplates the parties closing the transaction under the APA and entering into the System Gas Supply Agreement.

OEB Panel Question 4:

Please provide the construction schedule dates. When did construction begin and when did the pipeline become operational?

ENGLP Response:

The construction of the Preferred Line occurred between October 9 and November 1, 2024.

The regulating station was delivered on site on November 25, 2024 and ENGLP installed the station on temporary stands on December 3, 2024. Commissioning activities, including riser and electrofusion coupling installation, purging, pipeline pressure and leak testing, were completed between December 4 and 6, 2024. The customer regulating station was commissioned and the pipeline became operational on December 9, 2024. That enabled ENGLP to start supplying EZ Grow with gas on that same day.