



Ontario | Commission
Energy | de l'énergie
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DECISION AND ORDER

EB-2024-0239

EPCOR NATURAL GAS LIMITED PARTNERSHIP

Application for certificate of public convenience and necessity to
construct facilities and supply natural gas to the EZ Grow Facility

BEFORE: **David Sword**
 Presiding Commissioner

Fred Cass
 Commissioner

Allison Duff
 Commissioner

November 6, 2025

TABLE OF CONTENTS

1 OVERVIEW 1

2 CONTEXT AND PROCESS 2

3 APPLICATION 3

4 DECISION ON THE ISSUES 5

4.1 IS A CERTIFICATE REQUIRED?..... 5

4.2 SHOULD A CERTIFICATE BE ISSUED AND, IF SO, TO WHOM?..... 8

4.3 WHAT SHOULD BE THE PROCESS TO ISSUE THE CERTIFICATE 11

4.4 HOW COULD THE CERTIFICATE BE TRANSFERRED TO EPCOR 12

5 ORDER 13

1 OVERVIEW

- [1] EPCOR Natural Gas Limited Partnership (EPCOR) filed an application with the Ontario Energy Board (OEB) on August 15, 2024 under section 8 of the *Municipal Franchises Act* for an order granting EPCOR a certificate of public convenience and necessity (certificate).
- [2] EPCOR initially requested a certificate limited in geographic scope to the lands known as Concession 7 – Lots 2 and 3 (excluding municipal addresses 220 and 230 8th Concession Road) in Norfolk County to enable the construction of a pipeline to provide additional volumes of gas to the EZ Grow Greenhouse Facility (Greenhouse). Through the interrogatory process, EPCOR advised that the pipeline has already been constructed by, and is owned by, another party named Clearbeach Resources Inc. (Clearbeach).
- [3] In this Decision and Order, the OEB will issue a certificate to Clearbeach provided that certain information is filed with the OEB in accordance with this Decision and Order. The OEB will not issue a certificate to EPCOR as requested in the application, as EPCOR did not construct and EPCOR does not own the pipeline for which a certificate is required.

2 CONTEXT AND PROCESS

- [4] A notice of hearing was issued on October 15, 2024. The notice of hearing was published online and in local newspapers between October 24, 2024 and November 4, 2024. The notice of hearing was also published on EPCOR's website. Interventions closed on November 4, 2024. Enbridge Gas Inc. (Enbridge Gas), 2670338 Ontario Inc. and 1390204 Ontario Inc. each applied for intervenor status. No objection was received from EPCOR.
- [5] Procedural Order No.1 was issued on November 22, 2024, which, amongst other things, approved Enbridge Gas, 2670338 Ontario Inc. and 1390204 Ontario Inc. as intervenors.¹ OEB staff and Enbridge Gas filed interrogatories on December 13, 2024. EPCOR filed interrogatory responses on January 7, 2025. OEB staff and Enbridge Gas filed written submissions on January 22, 2025 and EPCOR filed a written reply submission on February 12, 2025.
- [6] After submissions were filed, the OEB issued a letter to EPCOR, on March 27, 2025, requesting that EPCOR provide more information regarding the approvals requested in this proceeding. The OEB referenced a statement included in EPCOR's reply submission that section 8(1) of the *Municipal Franchises Act* did not apply in these circumstances.
- [7] EPCOR provided its response to the OEB on April 8, 2025.
- [8] Procedural Order No. 2 was issued on June 5, 2025. The procedural order set the date for an oral hearing. The OEB found that its questions regarding the approvals sought by EPCOR in the proceeding had not yet been satisfactorily answered. As a result, the OEB re-opened the evidentiary phase of the proceeding to give EPCOR a further opportunity to clarify the evidence and to make a final submission.
- [9] The OEB held a transcribed oral hearing on June 20, 2025.

¹ 2670338 Ontario Inc. and 1390204 Ontario Inc. did not submit interrogatories, file a submission or in any way participate in the proceeding

3 APPLICATION

Initial Application

[10] EZ Grow Farms Ltd. (EZ Grow) operates a Greenhouse located at 230 Walsingham Townline Rd. that is currently being served by EPCOR. EPCOR explained that EZ Grow required additional volumes of gas to meet the demands of the winter growing season and to expand and operate its facilities, but that EPCOR was not able to provide the additional volumes of gas through its existing infrastructure.

[11] EPCOR stated that Clearbeach has an excess capacity of gas and agreed to enter into a System Gas Supply Agreement with EPCOR to supply the additional gas volumes and that the most economical and efficient solution from a timing and supply perspective was to construct a new pipeline and supply the additional volumes of gas from EPCOR's existing natural gas distribution infrastructure.

[12] EPCOR's initial application included a request for a certificate limited in geographic scope to the lands known as Concession 7 – Lots 2 and 3 (excluding municipal addresses 220 and 230 8th Concession Road) in Norfolk County to enable the construction of a pipeline to provide the additional volumes of gas required for the Greenhouse.

[13] A portion of the route of the pipeline traverses Enbridge Gas's certificate area but EPCOR submitted that its request for a certificate is limited to the pipeline to supply the Greenhouse, that it has no intention of serving any of Enbridge Gas's customers, and that the certificate request would not interfere with any of Enbridge Gas's interests within its service area.

Updated Evidence

[14] In response to interrogatories about the anticipated timing for the completion and in-service date of the pipeline, EPCOR advised that the pipeline has already been constructed and is owned by Clearbeach.² The pipeline became operational on December 9, 2024, and EPCOR began supplying the additional volumes of gas required to the Greenhouse on that day.³

² EPCOR Response to OEB Staff Question 2), January 7, 2025

³ EPCOR Response to Panel Question 4), June 12, 2025

[15] EPCOR took the position that the pipeline is a production pipeline and as such does not require a certificate.⁴ EPCOR explained that it has 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 a certificate.⁵

[16] EPCOR submitted that section 8 of the *Municipal Franchises Act* applies insofar as EPCOR requires approval of a limited certificate prior to taking ownership of the proposed pipeline.⁶

⁴ EPCOR Response to Panel Question 1), June 12, 2025

⁵ EPCOR Reply Submission, page 3, February 12, 2025

⁶ EPCOR Response to Panel Questions, April 8, 2025

4 DECISION ON THE ISSUES

[17] EPCOR's application raises several questions:

- Is a certificate required?
- Should a certificate be issued and, if so, to whom?
- What should be the process to issue the certificate?
- How could the certificate be transferred to EPCOR?

[18] The OEB addresses each of these questions below.

4.1 Is a Certificate Required?

[19] Section 8 of the *Municipal Franchises Act* provides that no person shall construct any works to supply natural gas in any municipality without the approval of the OEB, and that such approval shall not be given unless public convenience and necessity appear to require that such approval be given. The OEB grants its approval in the form of a certificate.

[20] EPCOR, Enbridge Gas and Six Nations Natural Gas Limited all have existing certificates for parts of Norfolk County.⁷ The pipeline that is the subject of this application traverses part of Enbridge Gas's certificate area.⁸

[21] EPCOR stated that Clearbeach provides natural gas to EPCOR at several connection points and that the pipeline would be another production line that would be supplying well gas into EPCOR's distribution system. EPCOR submitted that production lines connecting gas wells to distribution utilities have not been required to obtain certificates and therefore the pipeline does not require a certificate.⁹

[22] EPCOR stated that the pipeline is an extension of Clearbeach's line that supplies the Maricann Group Incorporated Langton Greenhouse Facility (Maricann Facility), which is the only Clearbeach pipeline that has a certificate.¹⁰

⁷EB-2017-0108-B1; EB-2021-0238

⁸EB-2021-0238

⁹ EPCOR Response to Panel Question 1), June 12, 2025

¹⁰ Ibid

[23] EPCOR argued that the fact that the pipeline is an extension of Clearbeach's line at the Maricann Facility does not mean that the pipeline falls under section 8 of the *Municipal Franchises Act* because the pipeline carries well gas into EPCOR's distribution system and no other customer will be served off the pipeline.¹¹

[24] Clearbeach stated that other than the certificate for the Maricann Facility, it does not hold a certificate for any other part of its system.¹²

[25] EPCOR stated that despite its view that a certificate is not required, there is a practical benefit to obtaining a certificate in this circumstance. EPCOR's distribution system is embedded within Enbridge Gas's system. Currently, there is a detailed set of certificates that provide a comprehensive understanding of the respective "service areas" of EPCOR and Enbridge Gas. EPCOR stated it applied for a limited certificate to provide that same level of clarity given that the ownership of EPCOR and Enbridge Gas assets are in close proximity.¹³

[26] Enbridge Gas submitted that, while the pipeline can be characterized as a production line as it brings natural gas from a local well to a distribution system, it was constructed for the purpose of supplying gas to a customer and could also be considered a supply line within the purview of the *Municipal Franchises Act*.¹⁴

[27] Enbridge Gas further submitted that it did not have any fundamental objections to the application and EPCOR's request either to be granted a certificate or not based on the OEB's interpretation of section 8 of the *Municipal Franchises Act*, but that EPCOR should have apprised the OEB at an earlier date or should have been more explicit about withdrawing its application because of its perspective that a certificate is not required.¹⁵

[28] Enbridge Gas stated that it preferred that a certificate be issued in this case because a pipeline was constructed with the clear purpose of serving an end-use customer from the outset.¹⁶ Enbridge Gas requested that if a certificate is issued, the form of the certificate should be to (i) amend the 2019 certificate for EPCOR in Norfolk County that was issued in the 2017 case to include the geographic

¹¹ EPCOR Response to Panel Question 1), June 12, 2025

¹² Transcript, Clearbeach, Oral Argument, pages 8 and 9

¹³ EPCOR Response to Panel Question 1), June 12, 2025

¹⁴ Transcript, Enbridge Gas, Oral Argument, pages 82-83

¹⁵ Ibid

¹⁶ Transcript, Enbridge Gas, Oral Argument, page 85

area covered by this application; and (ii) also to amend the certificate issued in 2021 for Enbridge Gas in Norfolk County to remove that same geographic area.¹⁷

[29] OEB staff did not support EPCOR's position that the pipeline is a production line for which a certificate is not required. OEB staff submitted that the concept of a production line does not appear in the *Municipal Franchises Act* and that in the decision for the Maricann Facility certificate proceeding, the OEB rejected arguments that lines from the wells to a tie-in station on the customer's property were gathering lines for which a certificate was not required under section 8 of the *Municipal Franchises Act*.¹⁸

[30] OEB staff submitted that the sole purpose of the pipeline is to distribute gas to the Greenhouse and therefore a certificate is required and that the OEB has the authority to grant the certificate.

Findings

[31] The OEB finds that section 8(1) of the *Municipal Franchises Act* applies to the pipeline that has been constructed by Clearbeach and that a certificate is required. The OEB does not accept the argument that the pipeline is a production pipeline. The pipeline was built to serve a customer and built at a connection to another pipeline that has a certificate and provides distribution services. Furthermore, the pipeline does not connect to any wells.

[32] Further, the *Municipal Franchises Act* does not delineate the type of pipeline to which section 8(1) applies.

[33] The OEB notes that this circumstance is similar to the previous Maricann Facility certificate proceeding, where a certificate was required for the pipeline. In that proceeding, OM Limited Partnership (OMLP) applied for a certificate to construct and supply natural gas to the Maricann Facility. To serve that facility, OMLP planned to construct a tie-in station and 3.7 km pipeline, but OMLP only applied for a certificate for the tie-in station. OMLP was of the opinion that the pipeline was not a distribution line and therefore did not fall under the jurisdiction of the OEB. The OEB found that the pipeline was not a gathering system as the sole purpose of the pipeline was to provide distribution services and therefore the pipeline required a certificate. The OEB noted that there was also no mention of

¹⁷ Ibid

¹⁸ Transcript, OEB staff, Oral Argument, page 87

wells being integrated into the system with the new pipeline. The OEB issued separate certificates for the tie-in station and the pipeline.¹⁹

4.2 Should a Certificate be Issued and, if so, to Whom?

[34] EPCOR argued that the OEB can issue a certificate to EPCOR to take effect on the date of transfer of the assets to EPCOR from Clearbeach.²⁰ EPCOR acknowledged that Clearbeach is the owner and constructor of the pipeline and used Aecon Group Inc. as its builder and contractor.²¹ EPCOR further stated that it was not involved in the construction of the pipeline and did not participate in any of the quality assurance work during construction. EPCOR also submitted that it has never taken on any duties or functions of owner/constructor/employer of the pipeline under the *Occupational Health and Safety Act*.²²

[35] EPCOR explained that construction of the pipeline by Clearbeach occurred between October 9, 2024 and November 1, 2024. Commissioning activities were completed between December 4, 2024 and December 6, 2024 and the pipeline became operational on December 9, 2024.²³

Enbridge Gas stated that, for a certificate to be issued to EPCOR, the OEB would likely have to find that EPCOR was somehow involved in the construction of the pipeline, which EPCOR denies, so it may be difficult for the OEB to make that finding.²⁴ Enbridge Gas suggested that the OEB could consider issuing a limited certificate to Clearbeach on condition that it be transferred to EPCOR at the time that EPCOR purchases the pipeline.²⁵

[36] Enbridge Gas submitted that its main concern with the application was that EPCOR breached its “responsibility to ensure that construction did not commence until OEB approval of the [certificate] was obtained”. Enbridge Gas also 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.”²⁶

¹⁹ EB-2017-0289, Decision and Order, pages 3 and 4, June 14, 2025

²⁰ Transcript, EPCOR, Oral Argument, page 76

²¹ EPCOR Written Reply Submission, page 3, February 12, 2025

²² Ibid

²³ EPCOR Response to Panel Question 4), June 12, 2025

²⁴ Transcript, Enbridge Gas, Oral Argument, page 84

²⁵ Transcript, Enbridge Gas, Oral Argument, page 85.

²⁶ Enbridge Gas Written Submission, January 22, 2025

[37] OEB staff submitted that it was appropriate for EPCOR to apply for the certificate. OEB staff noted that, in its application, EPCOR stated that it would be using Clearbeach to construct a new pipeline to supply the required gas and that it was clear that ultimately, while the pipeline was constructed by Clearbeach, it was intended to be operated by EPCOR. OEB staff further submitted that Enbridge Gas is not harmed by EPCOR operating the pipeline and that all participants agree that EPCOR serving the Greenhouse by way of the pipeline is the best solution and noted that the customer already resides in EPCOR's certificate area.²⁷

[38] OEB staff submitted that there was nothing on the record of the 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 further 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.²⁸ However, OEB staff still supported the issuance of a certificate in this circumstance.

[39] EPCOR acknowledged that the construction of the pipeline was atypical but that its ultimate goal was to provide natural gas capacity to the customer within the timeframe needed while ensuring compliance with regulatory and contractual requirements. EPCOR submitted that the OEB can issue a certificate even though construction for the pipeline has been completed. EPCOR argued that the OEB, as an administrative tribunal, has express jurisdiction and implied jurisdiction and that a tribunal should "construe their authority to include all powers which are practically necessary for the accomplishment of the object intended to be secured by the regulatory regime."²⁹ In support of this argument, EPCOR cited section 23 of the *Ontario Energy Board Act, 1998* (OEB Act) and certain Supreme Court of Canada decisions.

[40] In its reply submission, EPCOR conceded that it might be the right approach to issue the certificate to Clearbeach, as had been suggested by Enbridge Gas, and then transfer the certificate to EPCOR if the pipeline gets purchased by EPCOR.³⁰ EPCOR indicated that it was "indifferent" to this option as compared to

²⁷ Transcript, OEB Staff, Oral Argument, page 88

²⁸ OEB Staff Written Submission, January 22, 2025

²⁹ Transcript, EPCOR, Oral Argument, pages 76 and 77

³⁰ Transcript, EPCOR, Oral Argument, pages 93-94.

issuing a certificate to EPCOR that would only take effect if EPCOR was to buy the pipeline from Clearbeach.³¹

Findings

[41] The OEB will not issue a certificate to EPCOR. The OEB finds that the evidence on the record does not support the conclusion that EPCOR used Clearbeach to build the pipeline. EPCOR does not own the pipeline and EPCOR cannot be forced to buy it. EPCOR did not construct and is not proposing to construct anything. The OEB will, therefore, not approve the application as filed.

[42] The OEB will issue a certificate to Clearbeach as the builder and current operator of the pipeline. However, the certificate should be geographically limited as the pipeline traverses an area for which Enbridge Gas holds a certificate.

[43] One issue that was explored in the oral hearing was the ability of the OEB to issue a certificate for a pipeline that has already been constructed. The OEB finds it has the authority to issue a certificate even though the construction of the pipeline has already occurred. The OEB notes that there is precedent for the OEB issuing a certificate after construction – specifically the Greenfield Energy Centre Ltd. Partnership (GEC) proceeding.³²

[44] In the GEC proceeding, Union Gas alleged that GEC had already commenced construction of the natural gas facilities for which it was requesting a certificate. Union Gas submitted that the OEB should take this into consideration with respect to whether or not to grant a certificate. The OEB issued its decision orally during the hearing, stating that it was not authorized to deal with issues of compliance in the context of the certificate proceeding and that the matter of whether or not there had been a breach of the *Municipal Franchises Act* would be reviewed by the compliance department of the OEB, in a process independent of the proceeding.³³

[45] The OEB is exercising its discretion to grant a certificate in this case based, in part, on section 23 of the OEB Act which provides broad order-making powers to the OEB.

[46] Many of the parties supported the granting of a certificate by the OEB. No party opposed the granting of a certificate. OEB staff expressed the view that a

³¹ Transcript, EPCOR, Oral Argument, pages 93-94.

³² EB-2014-0299, Decision and Order, April 2, 2015.

³³ EB-2014-0299

certificate is required under section 8 of the *Municipal Franchise Act* and the OEB has the authority to grant one. Enbridge Gas has also expressed a preference that a certificate be issued because this was a pipeline constructed with the clear purpose of serving an end-use customer from the outset.³⁴ Moreover, granting a certificate to Clearbeach would allow for the delineation of the certificate area of Enbridge Gas and others in the area.

4.3 What Should be the Process to Issue the Certificate

[47] A certificate defines the specific geographic area within a municipality where a utility is permitted to construct natural gas works. The OEB may issue a certificate that is limited to a route along certain defined roads or an area defined by metes and bounds.³⁵ EPCOR has requested an order granting a certificate limited to the metes and bounds of the pipeline route. Section 23 of the *Ontario Energy Board Act, 1998* permits the OEB, when making an order, to “impose such conditions as it considers proper”.

[48] Further to the finding that the *Municipal Franchises Act* applies to the pipeline and a geographically limited certificate is required, the OEB is requiring that the following documents be filed prior to the issuance of the certificate to Clearbeach:

- EPCOR shall file a map of the pipeline that clearly delineates the boundaries of the specific geographical area for the certificate. The OEB finds that this is needed as there remains confusion as to which specific areas are required for the certificate. In its application, EPCOR asked for a certificate that covered Lot 2 and part of Lot 3, Concession 7. However, the maps that were filed as part of the application appear to only show the pipeline on Lot 2.³⁶
- A revised draft certificate shall be filed that reflects the findings in this Decision and Order for the OEB’s review and approval. The draft certificate should explicitly indicate that no customer, other than EZ Grow, will be served by the pipeline.
- For the purposes of this decision, the OEB is using the legal description provided by the applicant. The revised draft certificate shall also include a full and accurate legal description of the specific geographical area

³⁴ Transcript, Enbridge Gas, Oral Argument, page 85.

³⁵ Natural Gas Facilities Handbook, March 31, 2022, page 14

³⁶ See questions asked at oral hearing - Transcript, pages 42-44.

featuring a description of the lot(s), concession(s), including the name of the former Township, and the County.

[49] The OEB finds that placing comprehensive maps on the record of this proceeding will provide clarity for all parties. During the oral hearing, Enbridge Gas indicated that it is willing to file a map showing its revised certificate boundaries (i.e. removing the limited geographic area subject to this certificate). As a result, the OEB is providing for the filing of this map by Enbridge Gas – after EPCOR has filed its updated map and certificate.

4.4 How Could the Certificate be Transferred to EPCOR

[50] EPCOR has expressed its intention to purchase the pipeline from Clearbeach and views that as the preferred approach from an operational perspective. EPCOR has the estimated cost of the asset in rate base, as it was included in the approved capital plan in EPCOR's 2024 rebasing application.³⁷ As such, EPCOR's customers are paying for it through rates.

[51] If Clearbeach proceeds to sell the pipeline to EPCOR, the certificate granted in this application will not automatically transfer as part of that commercial transaction. Rather, an application should be filed with the OEB to request leave to transfer Clearbeach's certificate to EPCOR under section 18 of the OEB Act³⁸

³⁷ EB-2024-0130

³⁸ See, for example, EB-2018-0247, Decision and Order, November 29, 2018.

5 ORDER

THE ONTARIO ENERGY BOARD ORDERS THAT:

[52] EPCOR shall file a map of the metes and bounds of the requested certificate area with the OEB, copying all parties, by **November 20, 2025**. The map is to include a description of the lots and concessions covered by the certificate.

[53] EPCOR shall file a revised certificate reflective of the findings of this decision with the OEB, copying all parties, by **December 4, 2025**. The OEB will review the revised certificate and make any necessary changes before issuing a certificate to Clearbeach.

[54] Enbridge Gas shall file a map showing its revised certificate boundaries in Norfolk County with the OEB, copying all parties, by **December 18, 2025**.

DATED at Toronto November 6, 2025

ONTARIO ENERGY BOARD

Ritchie Murray
Acting Registrar