



Ontario | Commission  
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**BY EMAIL**

January 22, 2025

Ms. Nancy Marconi  
Registrar  
Ontario Energy Board  
2300 Yonge Street, 27<sup>th</sup> Floor  
Toronto, ON M4P 1E4  
[Registrar@oeb.ca](mailto:Registrar@oeb.ca)

Dear Ms. Marconi:

**Re: Ontario Energy Board (OEB) Staff Submission  
EPCOR Natural Resources Limited Inc.  
Request for a Limited Certificate of Public Convenience and Necessity  
OEB File Number: EB-2024-0239**

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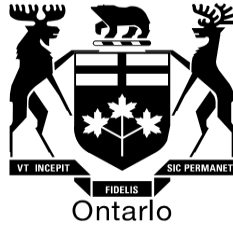
Please find attached OEB staff's submission in the above referenced proceeding, pursuant to Procedural Order No. 1.

Yours truly,

Natalya Plummer  
Advisor, Natural Gas

Encl.

cc: All parties in EB-2024-0239



# **ONTARIO ENERGY BOARD**

## **OEB Staff Submission**

**EPCOR NATURAL GAS LIMITED PARTNERSHIP INC.**

**Request for a Limited Certificate of Public Convenience and Necessity**

**EB-2024-0239**

**January 22, 2025**

## OEB Staff Submission

### Overview

On August 15, 2024, EPCOR Natural Gas Limited Partnership Inc. (EPCOR) filed an application seeking an order from the OEB for a certificate of public convenience and necessity under section 8 of the *Municipal Franchises Act*.

The OEB issued a notice of hearing on October 24, 2024. Enbridge Gas Inc. (Enbridge Gas), 2670338 Ontario Inc. and 1390204 Ontario Inc. each applied for and were granted intervenor status.

As initially framed, EPCOR's request was for a certificate that would be limited in geographical scope to the lands known as Concession 7 – Lots 2 and 3 (excluding municipal addresses 2020 and 230 8th Concession Road) and Concession 7 – North Part of Lot 2 in Norfolk County to enable the construction of a pipeline to provide additional gas volumes to the EZ Grow Greenhouse Facility. EPCOR stated that the pipeline would traverse lands for which Enbridge Gas Inc. already possessed a certificate.

Through the interrogatory process, EPCOR has since advised that the pipeline has already been constructed by, and is owned by, another party named Clearbeach Resources Inc. (Clearbeach). Clearbeach is not a party to this proceeding.

For the reasons set out below, OEB staff submits that it would be in the public interest for the OEB to approve the application.

### Is this a case of system bypass?

EPCOR is currently serving the EZ Grow Greenhouse Facility in Norfolk County but advises that its current infrastructure is unable to meet the additional volumes of natural gas that the facility requires.

As stated in the application:

EZ Grow requires additional volumes of natural gas, and in order to meet this demand, [EPCOR] is proposing to supply the required natural gas by using Clearbeach Resources Inc. ("Clearbeach") to construct a new pipeline at Concession 7 - 1 Lots 2 and 3 (excluding municipal addresses 220 and 230 8th Concession Road) and Concession 7 – North Part of Lot 2 in Norfolk County (the "New Pipeline"), which would traverse Enbridge's [certificate] territory.

And further: Under [EPCOR's] proposed plan, Clearbeach will construct and sell the New Pipeline to [EPCOR] in order to supply the additional volumes of natural gas to EZ Grow. Clearbeach will construct

approximately 2.5 km of polyethylene pipe from its existing gas infrastructure through to EZ Grow. A regulating station will be installed at the EZ Grow Facility to reduce pressure to serve the customer, and provide the necessary information from a billing and gas supply perspective. No OEB approvals are needed for this regulating station, as it is located within ENGLP's Franchise Area and [certificate] territory. ENGLP and Clearbeach will have agreements in place regarding construction and quality specifications/standards for the New Pipeline.

According to EPCOR, Clearbeach has indicated that it has an excess capacity of natural gas for which it would enter into a System Gas Supply Agreement with EPCOR to supply the additional gas volumes to EZ Grow. Having constructed the new pipeline from its existing facilities to EZ Grow, Clearbeach intends to sell the pipeline to EPCOR. The pipeline traverses part of Enbridge Gas's certificate area.

As outlined in the OEB's *Natural Gas Facilities Handbook*, a system bypass occurs when a customer (typically a large industrial customer) seeks to obtain natural gas distribution or transmission service from someone other than the utility that holds the certificate for that territory. The customer may instead seek service from another party (which may be a different natural gas utility) or install and operate its own facilities.

The OEB evaluates each application for a system bypass on its merits. Three questions that the OEB has considered are:

1. Can the incumbent gas distributor meet the operating needs of the customer that is the subject of the system bypass application?
2. Will any of the distributor's assets be stranded?
3. Would allowing a system bypass materially harm existing ratepayers or otherwise not be in the public interest?

The OEB has established the following principles regarding system bypass:

- a) Economic benefit to the customer alone is not sufficient grounds to permit system bypass.
- b) That a system bypass is in the interest of the customer does not negate the possibility that it could also be in the public interest.
- c) If the incumbent gas distributor cannot meet the needs of the customer, and there is no material harm to existing ratepayers, then a system bypass may be granted.
- d) While there may be a lost opportunity in terms of foregone revenues for the incumbent gas distributor and its ratepayers, the OEB has taken the view that there will not be lost revenues for the incumbent gas distributor if the load is incremental.

EPCOR states that it does not consider the certificate request to be a system bypass.<sup>1</sup>

EPCOR and Enbridge Gas each hold a certificate for Norfolk County.<sup>2</sup> OEB Staff notes that a portion of the lands in EPCOR's certificate request is part of Enbridge Gas's certificate territory. In OEB staff's view, EPCOR's application is a request for system bypass. However, OEB staff submits that approval of a system bypass is warranted for the reasons provided below.

*1. Can the incumbent gas distributor meet the operating needs of the customer that is subject of the system bypass application? And, 2. Will any of the distributor's assets be stranded?*

EPCOR is currently servicing the EZ Grow Greenhouse Facility, which is within EPCOR's franchise and certificate territory. EPCOR notes that it has distribution infrastructure in close proximity to the proposed pipeline and that the proposed pipeline is the most economical and efficient solution in terms of time and supply.

EPCOR notes in its application that the EZ Grow Greenhouse Facility required additional gas volumes by November 1, 2024 for the winter growing season. EPCOR states that its current infrastructure is unable to supply the additional requested volume of natural gas required for the EZ Grow Greenhouse Facility and that undertaking upgrades to assets in its certificate territory would be more costly and time-consuming than constructing the proposed pipeline.

EPCOR states that its proposed gas supply option to supply the additional gas volumes to the EZ Grow Greenhouse Facility is \$980,820.<sup>3</sup> EPCOR further states that the first gas supply option Enbridge Gas provided was for \$10 million and that the second gas supply option Enbridge Gas provided was \$2.5 million with a timeline of twelve months for completion.<sup>4</sup> Enbridge Gas's timelines for supplying the additional gas volumes to the EZ Grow Greenhouse Facility would not allow the EZ Grow Greenhouse Facility to have the additional gas volumes it needs in the required timeline.

OEB staff notes that in the certificate proceeding for Metalore Resources Limited, the OEB determined that the certificate request was a system bypass as the incumbent utility held a certificate, but stated that the request was approved because of the significantly higher cost if Enbridge Gas were to provide the service.<sup>5</sup> OEB staff also notes that in the Metalore Resources Limited proceeding the difference between the cost proposals was \$56,000, whereas in this proceeding the cost difference is over \$1 million.

EPCOR states that, in addition to this certificate application, "ENGLP and Clearbeach

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<sup>1</sup> Response to Enbridge Gas Interrogatory, 1-f), January 7, 2024

<sup>2</sup> EB-2017-0108 and EB-2021-0238-H

<sup>3</sup> EPCOR Response to OEB Staff 2-d), January 7 2024

<sup>4</sup> EPCOR Response to OEB Staff 2-e), January 7 2024

<sup>5</sup> EB-2019-0089

will obtain all requisite approvals required under all applicable laws to construct the New Pipeline and facilitate the transfer of the asset to ENGLP to supply gas to EZ Grow”.

In its responses to interrogatories filed on January 7, 2025, EPCOR states that the proposed pipeline is operationally in service as of December 9, 2024, but that the pipeline will not become an EPCOR-owned asset until this hearing is concluded and the OEB has granted a certificate.<sup>6</sup>

*3. Would allowing a system bypass materially harm existing ratepayers or otherwise not be in the public interest?*

EPCOR notes that the certificate request is limited to the area of the proposed pipeline and that the EZ Grow Greenhouse Facility will be the only customer served by the proposed facilities.<sup>7</sup> EPCOR states that it has no intention of supplying gas to any customers in Enbridge Gas’s existing certificate territory and thereby the certificate request would not interfere with any of Enbridge Gas’s interests within the service territory. OEB staff notes that the additional gas volumes to the EZ Grow Greenhouse Facility will be incremental and will not result in lost revenues for Enbridge Gas.

#### OEB Staff Submission

OEB staff submits that approval of a system bypass is warranted because EPCOR is currently servicing the EZ Grow Greenhouse Facility and the request for a certificate is limited to the new 2.5 km pipeline. Furthermore, the evidence on record indicates that Enbridge Gas is not able to meet the operating needs of the EZ Grow Greenhouse Facility at a reasonable cost and within the required timeline.

OEB staff also notes that there does not appear to be anything on the record of this proceeding to indicate that EPCOR (or Clearbeach) advised the OEB (or Enbridge or Norfolk County), that the pipeline was in the process of being constructed, or subsequently in the process of being operationalized, before those two events occurred. In OEB staff’s view, EPCOR (or Clearbeach) should have done so.

#### **Do the facilities require LTC approval?**

Pursuant to section 90 of the *Ontario Energy Board Act, 1998* and O. Reg. 328/03, General, made under that Act, no person shall construct a hydrocarbon line without first obtaining from the OEB an order granting leave to construct the hydrocarbon line if:

1. The proposed hydrocarbon line is more than 20 kilometres in length
2. The proposed hydrocarbon line is projected to cost more than the amount prescribed by the regulation (currently \$2,000,000)
3. Any part of the proposed hydrocarbon line
  - a. Uses pipe that has a nominal pipe size of 12 inches or more, and

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<sup>6</sup> EPCOR Response to OEB Staff 2-b), January 7 2024

<sup>7</sup> EPCOR Response to Enbridge Gas 4-a), January

- b. Has an operating pressure of 2,000 kPa (approx. 290 psig) or more

#### OEB Staff Submission

OEB staff submits that leave to construct approval from the OEB for the proposed pipeline was not required because the pipeline is 2.5 km in length and the estimated capital cost is \$890,949. The pipeline has an operating pressure of 207 kPa and a nominal pipe size of under 12 inches.

#### **Conditions of Approval**

The *Ontario Energy Board Act, 1998* permits the OEB, when making an order, to “impose such conditions as it considers proper.” As part of its interrogatories, OEB staff provided draft conditions of approval that it submitted to EPCOR should be considered by the OEB when determining whether to deny or approve the application.

In its response to interrogatories, EPCOR stated that it does not believe that the conditions are required.

#### OEB Staff Submission

OEB staff submits that since the 2.5 km pipeline has been operationally in service as of December 9, 2024, the draft conditions of approval prepared by OEB staff in its interrogatories to the EPCOR are no longer required.

OEB staff submits that if the OEB grants the application, it should also consider requiring EPCOR to advise the OEB, on the record of this proceeding, of the date on which EPCOR closes its acquisition of the 2.5 km pipeline from Clearbeach.

~All of which is respectfully submitted~