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Sent by EMAIL, RESS e-filing

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

Dear Ms. Marconi:

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

Pursuant to Procedural Order No. 1, please find enclosed ENGLP’s reply to the submissions received from OEB Staff and Enbridge Gas Inc.

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

Yours truly,

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**EPCOR Natural Gas Limited Partnership
Reply Submission
EB-2024-0239**

IN THE MATTER OF the *Ontario Energy Board Act*, 1998, S.O. 1998, c. 15, (Schedule B) as amended;

AND IN THE MATTER OF the *Municipal Franchises Act*, R.S.O. 1990, c. M.44, as amended;

AND IN THE MATTER OF an Application by EPCOR Natural Gas Limited Partnership for an Order for a limited Certificate of Public Convenience and Necessity to supply natural gas in Norfolk County.

Overview

ENGLP notes that in general, both OEB Staff and Enbridge Gas Inc. (Enbridge) do not object to the approval of the application as filed¹².

ENGLP submits that it has taken appropriate steps and performed appropriate due diligence from a contractual and regulatory perspective in order to address the natural gas capacity needs of the customer.

The following comments are submitted in order to provide further clarity to specific items as listed in the OEB Staff and Enbridge submissions.

¹ EB-2024-0239 OEB Staff Submission, January 22, 2025, page 3

² EB-2024-0239 Enbridge Gas Submission, January, 22, 2025, Page 3

Clarification

Reference: Enbridge Submission Page 3

Enbridge Gas interprets EPCOR's application to mean that EPCOR was contracting with Clearbeach to build the pipeline for EPCOR and to contract for gas supply from Clearbeach. In any event, EPCOR is the OEB-regulated gas distributor seeking OEB approval to provide ongoing service pursuant to the requested CPCN. Therefore, it was EPCOR's responsibility to ensure that construction did not commence until OEB approval of the CPCN was obtained.

ENGLP Commentary:

ENGLP did not contract directly with Clearbeach Resources Ltd. (Clearbeach) to build the pipeline. Rather, the pipeline was completed by Clearbeach as the owner/constructor using Aecon as its builder/contractor. ENGLP has an Asset Purchase Agreement (Agreement) with Clearbeach, under which, Clearbeach is the constructor and owner of the pipeline until the asset transfers to ENGLP upon the granting of the CPCN. This Agreement is conditional upon all necessary regulatory approvals being granted. ENGLP was not involved in the construction of the pipeline, nor did it participate in any quality assurance work during construction.

Of note, ENGLP has never taken on any of the duties or functions of owner/constructor/employer for the pipeline under the *Occupational Health and Safety Act* (Ontario). As the regulated gas distributor, ENGLP will not acquire the pipeline, and thereby become the owner, until the requisite regulatory approvals have been obtained.

Clearbeach Contract/ENGLP

Reference: Enbridge Submission Page 3

Enbridge Gas interprets EPCOR's application to mean that EPCOR was contracting with Clearbeach to build the pipeline for EPCOR and to contract for gas supply from Clearbeach. In any event, EPCOR is the OEB-regulated gas distributor seeking OEB approval to provide ongoing service pursuant to the requested CPCN. Therefore, it was EPCOR's responsibility to ensure that construction did not commence until OEB approval of the CPCN was obtained. This is the main concern that Enbridge Gas has with the EPCOR application.

It is clear from the wording of section 8 of the Municipal Franchises Act that prior OEB approval of the CPCN is required before construction proceeds. 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.

ENGLP Commentary:

As Clearbeach is not ENGLP's contractor, ENGLP does not believe it needs to justify this third party's actions but will provide further clarification.

After receiving the request from the customer that they would require significant upgrades in advance of the upcoming winter season (Q4-2024/Q1 2025), ENGLP immediately began to conduct a review of options/costs in order to identify what would be feasible. This review included the satisfaction of capacity, legal, contractual and regulatory requirements.

ENGLP reviewed its internal modelling, consulted with Enbridge Gas, along with the customer and Clearbeach to determine available options that would satisfy the customer's demands.

Construction of the pipeline by Clearbeach was the most practical and cost-effective solution for the customer, which would ensure crucial additional gas delivery in time for the winter season.

Section 8(1) of the *Municipal Franchise Act* provides that "no person shall construct any works to supply ... natural gas in any municipality ... without the approval of the Ontario Energy Board". There are two criteria necessary for this subsection to become operative: (a) it applies to the constructor of the pipeline; and (b) it applies in the case of assets that are supplying customers. Importantly, Clearbeach built and currently owns the asset, and this pipeline was not built to supply any new customer. ENGLP is committed to not supplying customers apart from its existing customer (EZ Grow) once it acquires the new asset. While ENGLP's position is that section 8(1) of the *Municipal Franchise Act* accordingly does not apply, ENGLP nevertheless applied for the CPCN prior to Clearbeach starting construction for transparency purposes to the benefit of the regulator and Enbridge. Accordingly, this ensures that the Board and Enbridge understand the arrangement being entered into and is aware of the assets being constructed.

Project Transparency

Reference: OEB Staff Submission Page 6

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.

ENGLP Commentary:

ENGLP has demonstrated transparency with this project over the course of the year. This has been evident not only in this application, but also in ENGLP's 2024 Gas Supply Plan (EB-2024-0139 - currently awaiting the final OEB Staff report) and Cost of Service filing (EB-2024-0130 – final rate order approved on February 11, 2025).

ENGLP does acknowledge that the construction of this pipeline has been atypical but has continued to work towards its ultimate goal of providing natural gas capacity to the customer in the time frame that suits their business needs while ensuring compliance with regulatory and contractual requirements.

System Bypass

Reference: Enbridge Submission Pages 2, 3

Section 8 of the Municipal Franchises Act provides that no person shall construct any works to supply natural gas in a municipality without the approval of the OEB. Therefore, a CPCN is required prior to the construction of any works to supply natural gas within a municipality. The facilities proposed by EPCOR and subsequently constructed by Clearbeach Resources (Clearbeach) to supply additional gas to EZ Grow Farms are on lands that are already part of the CPCN held by Enbridge Gas so this will require OEB approval of a by-pass.

Regarding the OEB's review of the requested by-pass, Enbridge Gas notes that one of the key considerations in determining whether a by-pass approval is appropriate is whether there will be harm to existing ratepayers of the "by-passed" utility – i.e., Enbridge Gas.⁵ While Enbridge Gas questions the premature construction of the Clearbeach pipeline, as long as the CPCN rights within Norfolk County that are subject of this application are limited to providing additional gas supply to EZ Grow Farms, there should be limited impact on Enbridge Gas' existing ratepayers given the nature of Enbridge Gas' facilities in this area.

Reference: OEB Staff Submission, Pages 3-6

See pages 3-6 for the OEB Staff's analysis on whether this constitutes a system bypass.

ENGLP Commentary: ENGLP's position remains that Clearbeach's construction is not a bypass. A bypass occurs only where the customer is located within the utility's service area, and the customer seeks to obtain supply from a source other than the incumbent utility. That is not the fact scenario at issue here. The customer (EZ Grow) lies within ENGLP's service area -- not within Enbridge's service area. There is no potential harm for Enbridge's ratepayers such that its customers would not receive the benefit of utility revenues from all customers in Enbridge's exclusive area, since EZ Grow is not in Enbridge's service area. Enbridge is not being bypassed and Enbridge's customers have no connection to ENGLP's customer, EZ Grow.

The bypass issue in the natural gas sector has been largely considered since the mid-1980s and has confirmed that bypass applies to a scenario where a customer in a utility's service area seeks to avoid having to take service from that incumbent utility.³ For example, in 2006, Greenfield Energy Centre Limited Partnership (GEC) applied for a physical bypass of the Union Gas Limited system.⁴ In that case, GEC was constructing a new electricity generating station within Union Gas' service territory but sought to connect to a nearby gas transmission line owned and operated

³ EBRO 435 (July 9, 1987: Cyanamid Canada Inc.), EBRO 437/EBO 139 (September 15, 1987: C-I-L Inc.), EBRO 411-III/EBRO 430-II/EBRO 411-I/EBRO 430-2B/EBRO 415/EBRO 404 (May 20, 1988: ICG Utilities (Ontario) Ltd. and Nitrochem Inc.), EBRO 457/EBO 157 (December 1, 1989: C-I-L Inc.), EBRO 458 (May 24, 1990: Northland Power), EBRO 467/EBRO 461 (May 22, 1991: Centra Gas Ontario Inc. and The Algoma Steel Corporation, Limited), EBRO 471 (August 27, 1991: Canadian Pacific Forest Products Limited), EBRO 477 (May 27, 1993: Cardinal Power of Canada L.P.), and EBC 211 (November 29, 1994: Potter Station Power Co. Ltd.).

⁴ RP-2005-0022/EB-2005-0441/EB-2005-0442/EB-2005-0443/EB-2005-0473 (January 6, 2006).

by Vector Pipeline Limited Partnership. By doing so, GEC was seeking to “bypass” the incumbent utility’s distribution system.

Here, EZ Grow is not seeking to bypass Enbridge – EZ Grow has no relationship with Enbridge or Enbridge’s customers. ENGLP is the incumbent gas distributor for EZ Grow. Having ENGLP continue to serve EZ Grow does not somehow amount to a bypass.⁵ In fact, this scenario is a unique circumstance where the incumbent utility – instead of adding expensive assets to its rate base, which would result in greater profits (and higher rates for its customers) – is looking for ways to serve an existing customer expeditiously by securing gas from an alternative, cheaper source, which will benefit EZ Grow and ENGLP’s customers.

All of which is respectfully submitted.

⁵ The question of bypass was also dealt with by the OEB in the context of electricity transmission through several cases in the early 2000s (see RP-2002-0143, RP-2002-0118, RP-2002-0120 - in particular chapter 5 of Phase I, Volume I). These cases dealt with what was and was not considered embedded generation, and what constituted bypass for the purposes of determining net vs. gross load billing. The policy determinations from the cases are now codified in chapter 11 of the *Transmission System Code*.