



ONTARIO ENERGY BOARD

OEB STAFF SUBMISSION

Phase 1

March 24, 2017

South Bruce Expansion Applications

Applications to serve the Municipality of Arran-Elderslie, the Municipality of Kincardine and the Township of Huron-Kinloss with natural gas distribution services

EB-2016-0137 | EB-2016-0138 | EB-2016-0139

INTRODUCTION

EPCOR Southern Bruce Gas Inc. (EPCOR) filed applications with the Ontario Energy Board (OEB) on March 24, 2016 under sections 8 and 9 of the Municipal Franchises Act, R.S.O. 1990, c. M.55, seeking approval for franchise agreements with and Certificates of Public Convenience and Necessity (certificate) for the Municipality of Arran-Elderslie, the Municipality of Kincardine and the Township of Huron-Kinloss (“the South Bruce Expansion Applications”).

A Notice of Hearing was issued on December 21, 2016, and was served on all parties in EB-2016-0004. The notice indicated that the OEB would also be considering issues regarding how franchise agreements and certificates will be considered within the broader framework of natural gas expansion in this proceeding, given the findings from the decision on the OEB’s generic hearing on natural gas expansion.

In Procedural Order No. 1, which was issued on January 5, 2017, the OEB issued an invitation to other parties interested in serving the areas covered by the South Bruce Expansion Applications to notify the OEB of their interest. Union Gas Limited (Union) filed a letter dated January 19, 2017 to notify the OEB of its interest in serving the areas covered by the South Bruce Expansion Applications.

Through Procedural Order No. 2, the OEB stated that it would hear the competing applications together. The OEB also invited submissions on preliminary threshold issues related to the criteria and the draft filing requirements for the supply and rate proposals that the OEB expects to require from EPCOR and Union. This is OEB staff’s submission on the threshold issues and draft filing requirements.

THRESHOLD ISSUES

- 1. Keeping in mind the principles set out in the Decision with Reasons for the generic community expansion proceeding (EB-2016-0004), what should the process for selecting a proponent look like when there are competing proposals for serving a community?**

Recognizing the urgency of the need for the projects covered by the South Bruce Expansion Applications and given the time that has already elapsed since EPCOR’s filing last year, OEB staff is interested in moving this proceeding forward as expeditiously as possible. As such, OEB staff has focused its comments on the steps remaining to complete the current competitive process. OEB staff submits that

the OEB should focus on the criteria and process required to select a successful proponent in the applications currently in front of the OEB, and then refine its findings and process as necessary for application in future proceedings as part of an iterative approach. For example, given that the current proceeding is at a stage where competitors are known, OEB staff has not focused its comments on what the “trigger” for the application process might be in new applications or the logistics of initializing the competitive process (e.g. Should municipalities let the OEB know that it is interested in a competition for gas service? Should a potential proponent alert the OEB that it intends to pursue a franchise agreement or certificate for a certain area well in advance of an application, so that it can be determined if there are other parties interested in serving an area? etc.). In OEB staff’s view, questions such as these are best left until the conclusion of the current applications before the OEB.¹ After the conclusion of these proceedings, lessons learned can be used to inform how this part of the process might best work moving forward.

OEB staff believes that the process must provide, as much as possible, a level playing field for both applicants. OEB staff envisions the selection process as being similar to a standard procurement process, while at the same time aligning with the OEB’s regulatory process. In making its submissions on process, staff has considered the process followed for the OEB’s designation proceeding for the East-West Tie line.² Specifically, OEB staff envisages that the process would have the following characteristics:

- **Filing dates:** OEB staff invites the parties in this proceeding to make submissions regarding the amount of time necessary for proponents to prepare and submit their competing proposals after the filing requirements and process is determined.
- **Strict deadlines:** Strict timelines would be required to ensure fairness in the selection process, and submissions from proponents that miss deadlines would not be considered.
- **Decision criteria:** OEB staff generally supports the decision criteria listed as part of the filing requirements and OEB staff submits that the criteria should be consistent with the titles of the filing requirement sections: organization, technical capability, financial capacity, proposed

¹ Union Gas has filed an application for expansion (EB-2015-0179). In Procedural Order #5, the OEB allowed for expressions of interest from parties to serve the communities identified by Union Gas in its application (Town of Milverton, the Chippewas of Kettle and Stony Point First Nation and Lambton Shores, Prince Township and the Delaware Nation of Moraviantown First Nation).

² EB-2011-0140

community supply, costs of supply and customer rates, schedule, and any other factors. OEB staff does not suggest any weighting for the criteria at this time, to preserve the discretion and the flexibility of the OEB in exercising its judgment for each criterion.

- **Common filing requirements:** OEB staff believes that having common filing requirements is imperative. Common filing requirements facilitates the direct comparison of the details of the projects proposed by the competing proponents.
- **Written process:** OEB staff submits that a written hearing would allow the OEB to control the flow of information more efficiently and fairly than an oral hearing. A written hearing would provide sufficient and fair opportunity for parties to present their evidence and make their position clear to the OEB, while allowing all parties to receive the information filed with the OEB at the same time. With an oral hearing, it is likely that one proponent would have its proposal tested first, potentially placing it at a disadvantage as other proponents could benefit from hearing the types of questions received from parties and the other proponents' responses.
- **Common interrogatories:** To facilitate getting information on the record in a fair and efficient manner, OEB staff believes that interrogatories should be issued only by the OEB to both proponents. This ensures that proponents are treated equally. The OEB could invite intervenors to submit interrogatories to be considered for inclusion in the OEB's interrogatories, ensuring the voices of intervenors are still reflected. The OEB may find it necessary to limit the number of proposed interrogatories that can be submitted.
- **Community presentation meeting:** An option for the review process could be the inclusion of a presentation meeting in the relevant area. Similar to what was done in the East-West Tie process, interested parties from the relevant area could be invited to make oral presentations. OEB staff would be interested in the views of proponents and stakeholders as to whether the process should include such a meeting.

2. Should the funding of this process be treated as a business development cost or a regulatory expense, recoverable from future ratepayers? What other approaches should the OEB consider?

OEB staff submits that it is important to maintain a level playing field for both new entrants and incumbents in terms of the funding of this process. OEB staff believes that the costs of preparing the applications should rightly be considered a business development cost. As such, utilities must separate the specific costs in preparing these applications from its regulated business. The separation of the costs should be demonstrated in the utility's next cost-based rate application.

3. In its Decision with Reasons for the generic community expansion proceeding (EB-2016-0004), the OEB introduced the idea of a rate stability feature for its framework for natural gas expansion:

A minimum rate stability period of 10 years (for example) would ensure that rates applied for are representative of the actual underpinning long-term costs. The utility would bear the risk for that 10-year period if the customers they forecast did not attach to the system.

- **How should a rate stability period be implemented for the South Bruce areas?**
- **Is a 10-year rate stability period too long or too short?**
- **Should proponents have the opportunity to update costs during the rate stability period? If so, what types of costs?**

OEB staff proposes that rate stability periods should be a competitive element of the applications, rather than being standardized by the OEB. Each proponent could propose a rate stability period, which would allow proponents to optimize the length of the rate stability period with the associated risks the proponent is willing to accept. Allowing proponents to propose their own rate stability periods would provide them with the opportunity to be creative and put their best proposal forward, given the specific project. However, OEB staff suggests that rate stability periods should have a minimum term of five years, consistent with an Incentive Regulation Mechanism term.

Similarly, the applications should include the proposal for cost updates during the rate stability term. For example, a proponent might consider fixed rates for eight years with no ability for adjustment; "fixed" base rates for 10 years, but with allowance for an annual inflationary adjustment; levelized rates where the revenue requirement is averaged over a period; or any such other proposal that the

proponent identifies. The proposed cost update schedule should assist the OEB in understanding the allocation of risk between the applicant and ratepayers assumed by each applicant.

OEB staff submits that the length of a proposed rate stability period and the conditions under which rates could be increased would demonstrate the commitment of the proponent to serve the community.

- 4. In expanding natural gas service to new areas, the OEB expects to approve franchise agreements following the results of a certificate competition. The selection process is primarily about finding the best value for consumers over the long term, after analyzing the supply plans and associated costs.**
- **Is there a need for a common format for applications to be able to appropriately assess and compare the value propositions of different proponents – for example through establishing filing requirements?**
 - **If so, please provide comments on the draft filing requirements attached at Schedule C.**
 - **Should the OEB use a Reference Plan based on a set of working assumptions such as long term system demand? What other parameters should be set in a Reference Plan?**
 - **Should applicants have the opportunity to create their own proposals by applying their own demand forecasts, construction phasing, etc. as opposed to a Reference Plan?**

OEB staff submits that there is a need for a common format for applications, and supports the draft filing requirements in Schedule B of Procedural Order No. 2 of this proceeding, with several additions, as set out below.

OEB staff does not support the creation of a Reference Plan for the present applications. OEB staff acknowledges that there could be benefits to the establishment of a Reference Plan as a tool for comparison of applicants for some expansions. However, OEB staff submits that considerable research and effort would need to go into the creation of a Reference Plan if the Plan were developed by the OEB, particularly if the Reference Plan were to be modified for each competitive natural gas expansion proceeding. In addition, the benefits of a Reference Plan are not entirely clear if proponents will not be held to building the Reference Plan, but instead would be proceeding based on their specific

proposal. OEB staff believes that its proposed cost criteria will allow for comparison through some standardized measures, such as cost per kilometer of line constructed, OM&A per customer, and cost per unit of throughput. OEB staff also submits that the OEB should focus on the criteria and process required to select a successful proponent in the applications currently in front of the OEB, and then refine its findings and process as necessary for application in future proceedings as part of an iterative approach.

With respect to the draft filing requirements, OEB staff notes that the EB-2016-0004 decision indicated that a leave to construct hearing, which would include applications for certificates and franchises, would be an appropriate forum for evaluating competing proposals. However, OEB staff submits that the filing of a complete leave to construct application by each competing applicant could be impractical and act as a potential disincentive to competition. For example, to have multiple potential applicants undertake the work to complete the Environmental Report and Indigenous Consultation Report required by the OEB's Environmental Guidelines³ would be unduly costly and could cause disruption and confusion within communities. OEB staff recommends that rather than requiring the filing of a full leave to construct application as part of a competitive process, the OEB should require applicants to demonstrate their capability to complete the activities and prepare the evidence necessary for a leave to construct application. OEB staff has suggested the addition of the section entitled "Technical Capability" to the draft filing requirements to attempt to achieve this goal.

In some cases, a community can be served without construction that would trigger a leave to construct application. In such cases, OEB staff understands that the environmental screening criteria in EBO 188 would apply. OEB staff similarly submits that the filing of a rate application that would be considered complete under the Filing Requirements for Natural Gas Rate Applications by each competing applicant could be impractical and act as a potential disincentive to competition. The proposed filing requirements should still include the requirement to provide details of tariffs and proposed rate structure and the rate stability period with sufficient detail to evaluate proposals. The proposed additions to the filing requirements could also provide evidence sufficient to compare competing applications where no leave to construct is necessary, and where the filing of a complete rate application may be impractical.

³ Environmental Guidelines for the Location, Construction and Operation of Hydrocarbon Pipelines and Facilities in Ontario

OEB staff submits that requiring a description of the applicant's proposed rate structure in section 5.3 would provide helpful detail to understand the proposed customer rates. OEB staff is also of the view that applicants should be required to include a copy of its proposed terms and conditions of service.

Competitive proposals for a rate stability period should be allowed, which would involve the addition of additional requirements under sections 3 and 5.

OEB staff recommends that the draft filing requirements be modified as per Appendix A of this submission.

5. How should the costs of proposals be compared? (e.g. \$/month, \$/system capacity, use of demand day, delivery capacity of the system for comparison)

OEB staff submits that consistent with the EB-2016-0004 decision, the evidence on costs should include any upstream reinforcements that will be triggered by the expansion. Costs for transmission and distribution aspects of the project should be costed separately.

OEB staff notes that the final details of the government's proposal for natural gas grants are not yet available. If a proponent has information on any funding that it anticipates through grant programs, this should be provided. However, OEB staff is of the view that the OEB should evaluate the proposals based on the capabilities and proposals of the proponent and not differentiate based on whether and how much funding is available to a particular proponent. The OEB should be focused on the long-term cost efficiency of the proponents' projects, and the process to be established should be applicable regardless of whether or not grants are available.

OEB staff suggests that for greater clarity, the term 'cost structure' should be replaced with 'revenue requirement' in the cost section of the filing requirements. The total development and construction budget, and the anticipated annual costs of operating and maintaining the line, should be part of the evidence filed by each applicant. OEB staff also recommends the use of cost ratios such as cost per kilometer of line constructed, OM&A cost per customer and cost per unit of throughput. These comparators would assist in comparing proposals with different infrastructure plans for service. OEB staff also suggests that applicants could be

required to provide the OM&A cost, or operating cost, per customer over time, to allow the applicants to demonstrate the efficiencies they will achieve.

Additions to the draft filing requirements in Appendix A have been made to require the filing of this proposed evidence.

6. Should measures be put in place to ensure completion of the proposed projects, and if so, what should these measures be?

OEB staff submits that measures should be put in place to ensure the completion of the proposed projects. Regular reporting based on milestones identified in the proponent's schedule would provide the OEB with oversight of, and the ability to evaluate, the successful proponent's progress. The successful applicant must pursue the provision of service to customers in a timely fashion.

If the proponent fails to keep to the schedule originally provided, depending on the progress of the projects and any extenuating circumstances, the OEB could rescind its approval of the municipal franchise agreement and the certificate granted to the proponent for the area. OEB staff would be supportive of an expiry date if construction had not been initiated within a certain period of time, such as five years.

All of which is respectfully submitted.

Appendix A
OEB Staff Submission

EB-2016-0137
EB-2016-0138
EB-2016-0139

March 24, 2017

DRAFT FILING REQUIREMENTS
FOR
COMPETITIVE COMMUNITY SERVICE APPLICATIONS

When there are multiple parties interested in being granted the same franchise agreement and Certificate of Public Convenience and Necessity to serve an area, the OEB will apply the following decision criteria:

- Organization
- Technical capability
- Financial capacity
- Proposed community supply
- Schedule
- Costs —~~construction and administration/support costs~~
- Other factors

The OEB will require the following information to be filed as part of an applicant's filing. The requirements are separated into three main sections:

- (A) The capability of the applicant to serve the area;
- (B) The applicant's Plan for serving the area; and
- (C) Other factors.

(A) CAPABILITY OF THE APPLICANT

1. Background Information

The applicant must provide the following information:

- 1.1** Contact information for each of the following persons:
- a) the applicant;
 - b) primary representative for the applicant;
 - c) any legal representative;
 - d) any affiliates of the applicant.

Contact information includes the name, postal address, telephone number, and, where available, the email address and fax number of the persons listed above.

- 1.2** Confirmation that the applicant has not previously had a licence or permit revoked and is not currently under investigation by any regulatory body
- 1.3** Confirmation that the applicant is committed to the completion of the development work for the expansion, and to the filing of a leave to construct application for the line, to the best of its ability

2. Organization

- 2.1 An overview of the applicant's relevant utility experience – construction and operations
- 2.2 A description of the applicant's organizational structure and ownership, and a chart to illustrate the structure
- 2.3 Identification and description of the role of any third parties to be used in the applicant's ongoing operations

3. Technical Capability

- 3.1 A description of previous projects of equivalent nature, magnitude and complexity undertaken by the applicant, to demonstrate that it has the technical capability to engineer, plan, construct, operate and maintain the gas distribution system and obtain all necessary environmental and other approvals
- 3.2 A landowner, municipal and community consultation plan, to demonstrate the applicant's ability to conduct successful consultations with landowners, municipalities and local communities. If community consultation has already begun, a description of consultations conducted to date should be filed
- 3.3 An Indigenous consultation plan, to demonstrate the applicant's ability to conduct successful consultations with affected Indigenous communities, as may be delegated by the Crown. The applicant should have already contacted the Ministry of Energy to inquire as to whether the proposed project triggers a duty to consult with Indigenous communities. If no Indigenous communities have been identified, an Indigenous consultation plan need not be filed. If consultation has already begun, a description of consultations conducted to date should be filed
- 3.4 Evidence that the applicant's business practices are consistent with good utility practices and that it possesses or can obtain all the required licenses and permits to function as a gas distribution utility

4. Financial Capacity

- 4.1 Evidence that it has capital resources that are sufficient to develop, finance, construct, operate and maintain safe and reliable service to the proposed area
- 4.2 Evidence of the current credit rating of the applicant, its parent or associated companies
- 4.3 Evidence that the financing, construction, operation, and maintenance of safe and reliable service to the proposed area will not have a significant adverse effect on the applicant's creditworthiness or financial condition

- 4.4 Evidence that adhering to the proposed tariffs and proposed rate structure, including the rate stability period proposed, will not have a significant adverse effect on the applicant's creditworthiness or financial condition

(B) PLAN FOR SERVING THE AREA

5. Proposed Community Supply

The applicant must provide an overview of its proposed supply to the area, including:

- 5.1 A description of the specific areas to be served
- 5.2 A description of assumptions regarding preliminary load forecasts, including penetration rates
- 5.3 A description of the infrastructure that will be required to serve the area, including the interconnection of any new infrastructure with the existing gas distribution system
- 5.4 A statement as to whether a leave to construct application will be triggered by the proposed infrastructure, and if yes, when that application is expected to be filed
- 5.5 A description of the lands that will be impacted by infrastructure and plans to obtain control of this land through an easement, lease, planned purchase, or other agreement
- 5.6 A description of any significant issues anticipated in land acquisition or permitting and a plan to mitigate them
- 5.7 A description of all permits and approvals required, including Environmental Assessments, any Duty to Consult, and regulatory approvals
- 5.8 A map illustrating the planned infrastructure and areas to be served
- 5.9 Identification of municipal and/or community support, if any, and provision of any resolutions passed by the relevant municipality
- 5.10 Proposed Terms and Conditions of Service

6. Costs of Supply and Customer Rates

- 6.1 Evidence of the underlying ~~cost structure~~ revenue requirement expected for serving the area during the rate stability period (OM&A per customer and cost per unit of throughput over the same time period must be included)
- 6.2 A description of any major assumptions underlying the expected ~~cost structure~~ revenue requirement over the rate stability period

- 6.3 A description of the tariffs and proposed rate structure and rates including the rate stability period and conditions under which the rates may change during the rate stability period
- 6.4 A description and costing of any upstream reinforcements that will be triggered by the proposed infrastructure
- 6.5 Budget for developing and constructing the line, with transmission and distributions aspects of the expansion costed separately. Cost per kilometer of line constructed must be included

7. Schedule

- 7.1 The applicant must file a schedule that describes milestones and estimated dates
- 7.2 Proposed reporting requirements

(C) OTHER FACTORS

The applicant should provide any other information that it considers relevant to its application to serve the area.