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Board Secretary
Ontario Energy Board
P.O. Box 2319
2300 Yonge Street, 27th Floor
Toronto, ON M4P 1E4

Attention: Ms. Kirsten Walli, Board Secretary

Dear Ms. Walli:

Subject: Preliminary Issues for Feedback in EB-2016-0137, EB-2016-0138, EB-2016-0139

Pursuant to Procedural Order 5, please find attached comments by Northeast Midstream regarding preliminary issues and the draft filing requirements circulated by the Ontario Energy Board.

Yours truly,

[Original signed by]

Joshua Samuel

Attached

cc All Intervenors

**Preliminary Issues for Feedback in EB-2016-0137, EB-2016-0138, EB-2016-0139
EPCOR Southern Bruce Gas Application**

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?

Northeast Midstream (Northeast) has serious concerns relating to the determination that the Board will entertain multiple leave-to-construct (LTC) applications for the same expansion project, a position not advanced by any intervening party during the Generic Proceeding.

Northeast understands that neither a municipal franchise agreement (MFA) nor a Certificate of Public Convenience and Necessity (Certificate) grants exclusive rights to a gas distributor, and that the Board may authorize multiple gas distributors to operate within a single municipal boundary. Northeast also agrees that the Board should have access to information contained in LTC and rate applications to make an informed ruling whether the MFA and Certificate are in the public interest.

But the Board enters unexplored territory, at least in Ontario, when it says: “The OEB will entertain multiple applications and approve the proposal that best meets the needs of the community and ratepayers... The OEB will publish the leave to construct notice and any proponent that is interesting (sic) in presenting its own proposal to the OEB can intervene or file its own application.”¹

What the Board does not acknowledge in EB-2016-0004 is that the provider (and municipality) have invested significant development capital into the project by the time a provider is ready to file an LTC application. Background rights and intellectual property include municipal support, land options, market surveys, forecast attachment rates, sales plans, cost allocations, rate design, pipeline routing, and upstream gas supply solutions.

Under the new framework, providers will be reticent to engage with municipalities and prosecute an LTC application for an expansion project, which are typically small in scale, with the knowledge that community expansion proceedings could easily deteriorate into a protracted, complex, costly, and uncertain affair. Such risk would be faced by incumbents and new entrants alike, although it would be most damaging for new entrants using shareholder money to finance their development efforts.

There is also the very real issue of community expansion projects simply collapsing under the weight of excessive regulatory costs. Every \$1 million in development costs translates to approximately \$57,000 in annual revenue recovered by customers in the first year.² For an

¹ EB-2016-0004 Decision, p. 28

² Assuming 60/40 debt-to-equity ratio and current Board-approved cost of capital parameters.

expansion project serving 300 customers, this adds \$190 per year to each customer's bill.³ Given the progress of this proceeding and Union's EB-2015-0179, the cost burden associated with the process contemplated by the Board could make several of the proposed projects, which are borderline cases in many respects, simply unfeasible.

To help ensure that projects are developed under a competitive framework and to prevent excessive development costs that weaken project economics, Northeast proposes the following:

1. The municipality should be able to select a natural gas provider, just as it does with other municipal infrastructure projects, such as roads, bridges, water facilities, and buildings.
2. The municipality should make the decision whether to tender the opportunity to expand natural gas service to the community, conduct a request-for-proposals (RFP) process, and choose a successful provider from the respondents.
3. The municipality should be solely responsible for its own expenses in conducting an RFP and for subsequent negotiations with the providers.
4. Providers should be solely responsible for their own expenses in preparing a proposal and for subsequent negotiations with the municipality. If the municipality elects to reject any one or more or all proposals, the municipality should not be liable to any providers for any costs or damages incurred in making a proposal.
5. The provider should then apply to the Board for the requisite approvals and orders.
6. The Board should implement safeguards to protect the public interest against those who might exploit the Board's MFA/LTC approval process under the framework to obstruct, delay or otherwise impede viable projects that have been developed in good faith and meet a real and immediate need to reduce energy costs.

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?

Providers should be solely responsible for their own expenses in preparing a proposal and for costs associated with the subsequent application for approvals and orders from the Board.

Costs incurred by the successful provider, less government grants, should be a regulatory expense recoverable from future ratepayers.

³ The average customer forecast is 302 attachments for the 29 communities identified by Union Gas in EB-2015-0179.

Costs incurred by the unsuccessful provider(s), less of government grants, should be a corporate expense incurred by the provider during the normal course of business.

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.

a. How should a rate stability period be implemented for the South Bruce areas?

Rate stability should be implemented using a multiyear rate mechanism, not by using fixed rates over the term.

b. Is a 10-year rate stability period too long or too short?

The term should be considered on a case-by-case basis. However, ten years seems like a reasonable starting point for expansion projects.

c. Should proponents have the opportunity to update costs during the rate stability period? If so, what types of costs?

Yes, since stand-alone rates would be used, proponents should have the opportunity to update costs during the rate stability period to reflect the actual costs of the service if the Board deems such costs as prudently incurred.

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.

a. 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?

Yes, a common format for applications could be helpful.

b. If so, please provide comments on the draft filing requirements attached at Schedule C.

The draft filing requirements seem fair and reasonable for an application, if the applicant has some assurance that it would be successful.

But it is not realistic to expect a potential new entrant to invest considerable at-risk capital to accumulate, analyze, and organize the market, engineering and economic data just to compete for a relatively small project with a fixed return on capital.

Epcor has submitted that it has committed over \$2.0 million as of March 2016 on system design, market research, rate-making, costing, and regulatory affairs to become the natural gas supplier in the Southern Bruce franchise areas.⁴ Only Epcor can say today whether it would have invested that shareholder money with advance knowledge of where the events have led it.

But future providers will certainly look to the Board's filing requirements for competitive franchise applications and to this proceeding, and will make the calculated assessment whether they can attract the necessary capital in the face of high regulatory uncertainty.

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?

No, the OEB should not use a Reference Plan based on a set of working assumptions such as long term system demand. Demand forecasts, construction phasing and the like will be a function of the technology selection, capital costs, marketing plan, and overall business acumen of the provider, which collectively represents the provider's competitive advantage. Also, who would be responsible for developing a Reference Plan?

d. 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?

Yes, providers should have the opportunity to create their own proposals. See comments above concerning the disadvantages of a Reference Plan.

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

Delivered cost (\$/month on the bill) probably represents the most meaningful cost comparison metric, since the customer will use it to determine whether it is feasible to convert to natural gas.

⁴ EB-2016-0137, Epcor Application for the Municipality of Arran-Elderslie. March 24, 2016, p. 7.

It would also be helpful if providers included stress-tests of certain key assumptions to determine the impact on delivered costs, such as:

- Variance of the total project cost
- Variance of annual operating costs
- Variance of fuel oil, propane and electricity prices
- Variance of conversion rates by customer class
- Variance of gas volume by customer class

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

It would be fair and reasonable for the Board to include an expiry or sunset date in its approvals and orders, subject to stipulations and extension provisions.

Commercial contracts, insurance, and bonding are common methods to protect the public and financial investors against general liability, partially completed projects, negligence and the like. The Board can ensure that such protections are in place, and monitor progress.

All of which is respectfully submitted.