

April 28, 2017

Kirsten Walli
Board Secretary
Ontario Energy Board
2300 Yonge Street
P.O. Box 2319
Toronto, Ontario
M4P 1E4

Dear Ms. Walli:

Re: EB-2016-0137/EB-2016-0138/EB-2016-0139 – EPCOR – Southern Bruce Communities Expansion – Phase I - Submissions of the Consumers Council of Canada

Pursuant to Procedural Order No. 5, dated April 20, 2016, please find attached the Submissions of the Consumers Council of Canada.

Yours truly,

Julie E. Girvan

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CC: Brit Tan, EPCOR
Union Gas
Interested Parties

SUBMISSIONS OF THE CONSUMERS COUNCIL OF CANADA

RE: APPLICATIONS TO SERVE THE MUNICIPALITY OF ARRAN-ELDERSLIE, THE MUNICIPALITY OF KINCARDINE AND THE TOWNSHIP OF HURON-KINLOSS WITH NATURAL GAS DISTRIBUTION

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

INTRODUCTION:

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

On January 5, 2017, in its Procedural Order No. 1, the OEB issued an invitation to other parties interested in serving the areas covered by the South Bruce Expansion Applications asking them to notify the OEB of their interest in doing so. On January 19, 2017, Union Gas Limited (“Union”) filed a letter notifying the OEB of its interest in serving the South Bruce communities.

These Applications are being considered in the context of the Board’s Generic Proceeding on Community Expansion dated November 17, 2016. In that Decision (the “Generic Decision”), the Board made a number of key findings regarding natural gas system expansion in Ontario:

- The OEB determined that it was not appropriate or necessary to subsidize expansion projects, and approved the concept of stand-alone rates, to allow existing distributors and new entrants to propose new rate zones that would cover the costs of serving expansion areas;¹
- The OEB determined that a framework that employs new rate zones would facilitate the entry of new participants and allow for competition. This would be accomplished by considering the proposed rates for a potential service area in a leave to construct hearing. Alternative of competing bids could be considered by the OEB at the same time. The awarding of Franchise rights and Certificates can be considered in conjunction with the Leave to Construct application putting all on a level playing field;²

¹ Decision with Reasons, EB-2016-0004, pp. 18-19

² Ibid, p. 19

- The OEB’s intent is to refine the mechanisms and features of the framework described in the Decision through the adjudication of the initial applications and will seek submissions from the applicants and affected parties on implementation matters within those applications.³

In its Procedural Order No. 2, dated March 3, 2017, the OEB indicated its intent to hear the two competing proposals together in one proceeding and move forward with a two-staged process. The first stage will consider a number of preliminary threshold issues related to the criteria and the filing requirements for the supply and rate proposals its expects to require from Union and EPCOR. The second phase will consider the competing proposals through an oral hearing process. The Board set out a draft issues list and draft filing requirements for comment.

On March 24, 2017, OEB Staff submitted comments on the threshold issues and draft filing requirements. The Consumers Council of Canada (“Council”) has set out below comments on the threshold issues and has taken into account the submissions of OEB Staff.

The Council assumes that once the Board receives comments on the threshold issues it will define the process for Union and EPCOR to file their competing applications. The Council notes that on January 30, 2017, the Ontario Government announced a Natural Gas Grant Program. It remains unclear as to how that program will be rolled out and to what extent it may impact the applications currently before the Board to serve the South Bruce Communities.

THRESHOLD ISSUES:

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

Given the findings in the Generic Decision the Council assumes that the OEB will consider the applications from EPCOR and Union with respect to franchises and certificates, leave to construct and rate proposals at the same time. What is unclear at this point is what the Board will be approving with respect to rates. An important consideration for ratepayers and the Board in assessing the proposals will be the ultimate rate levels and overall bill levels associated with each of those proposals. The Board noted in the Generic Decision that it would consider the proposed rates for a potential service area in the leave to construct proceeding.⁴ Does the Board expect to establish rates in this proceeding? If not, when will the rates be set?

³ Ibid, p. 21

⁴ Ibid, p. 19

The Council submits that the rates that will be ultimately charged to customers should be one of the most important considerations for the Board to consider in deciding which applicant should serve the community. Other considerations are relevant, but one of the critical issues will be which of the applicants can provide the most efficient and cost-effective service to the customers. Obviously, the ability to provide safe, reliable gas service while meeting customer service needs is important, but customers will want to consider how much they will ultimately pay.

The Council has reviewed the submissions of Board Staff and agrees that the process must provide, a level playing field for both applicants. The Board indicated in its Procedural Order No. 2, that it would consider the proposals through an oral hearing process and the Council supports this approach. There may be elements of the hearing that could be dealt with through a written process, but an oral proceeding may well be the best way to thoroughly test the proposals. The Council is of the view that it would be premature at this time to determine that the hearing be strictly limited to a written process.

OEB Staff on the other hand is proposing a process similar to that used for the OEB's designation proceeding for the East-West Tie Line. That proceeding was to select a transmitter to complete the development work for the East West Tie-Line and the Board had six competing proposals. It was not a process about serving end-use customers or setting rates. The East West Tie-Line proceeding restricted interrogatories to some extent (coordinated and culled by OEB Staff) and did not allow for an oral hearing process or cross-examination.

In this case there are two applicants and the outcome of this proceeding will impact the rates customers will pay for natural gas service. The Council of the view that the OEB's existing procedures are the best way to proceed in this case, and will establish a solid basis on which the OEB can make its final decision. Procedural fairness is important and the following steps should form a part of this process:

- Once common filing requirements are finalized the OEB should establish a common deadline for both applicants to file their proposals;
- Intervenors, OEB Staff and the applicants should be given an opportunity to ask interrogatories. These interrogatories should not be restricted as long as they relate to the issues and are relevant to the proceeding. The Council does not support OEB Staff's proposal for them to coordinate the interrogatory process or potentially restrict the questions. Each application will be different and the questions may differ depending upon the evidence filed, and the interests of the various parties to the proceeding;
- Depending upon the outcome of the interrogatory process the Board should hold a Technical Conference. This will allow for clarification of the interrogatory answers and ultimately reduce hearing time;

- The Board should seek input from the parties at this time as to whether or not a written hearing or oral hearing is required. Given the applications will be of a technical nature the Council expects that an oral hearing will be required and the most useful approach to complete the record;
- The Council would support a community meeting where the applicants present their proposals to the community for feedback. This input can be reported back to the Board for its consideration. The Council believes a community meeting is particularly important in this case given the fact that EPCOR was awarded franchise agreements with the South Bruce Communities;
- If the Board decides to proceed with an oral hearing it should take place in the relevant communities; and
- Applicants should be required to file their Argument-in-Chiefs on the same day. Board Staff and intervenors would file their arguments following the applicants. Reply arguments from the applicants should also be filed on the same day.

With respect to decision criteria the Council believes that the Board should consider those set out in the filing requirements. These are important considerations for the Board, but ultimately the Board needs to decide which proponent is best suited to serve the communities. The Board should not and cannot be tied to some decision criteria with a pre-determined weighting. The Board must decide which application best meets the public interest. Using decision criteria can assist the Board in making that decision, but should not restrict the Board in its assessment of the proposals.

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?

The Council submits that the funding for this process should be a business development cost and not a regulatory expense. The Board indicated in the Generic Decision that new expansions should not be subsidized by existing ratepayers. To the extent the Board decides that these costs are recoverable from ratepayers they should be recovered from the ratepayers in the relevant communities.

3. In its Decision with Reasons for the generic community expansion proceeding 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?**

The Council is relatively open with respect to rate stability periods. The customers in the community, however, need some certainty as to what they are signing up for. If the customers have agreed to sign on for gas service at a proposed rate level/ bill impact they need to know how long that rate plan will continue. This has to be a consideration for the Board. If the utility is proposing costs and rates for a 10-year period they should be at risk for those forecasts. To the extent the customers are at risk for increased rates in the future they should be aware of that. It will be up to the applicants to propose rate stability plans for the Board to consider which will depend upon the economics of the project.

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 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?**

The Council supports the filing requirements draft filing requirements as amended by Board Staff. The Council is of the view that in addition, the applicants should provide information on the following aspects of their proposed natural gas service:

- How does the applicant intend to meet customer service needs? What type of access will the customers have to the utility? Will there be utility representatives in the community? What types of programs will be offered to the customers – emergency funding, DSM programs etc.?
- How will the utility ensure it has the capacity to adequately respond to emergency situations?
- What are the utility’s plans for providing gas supply to the community? What are the forecast gas supply costs?
- How does the applicant intend to meet its obligations regarding the Ontario Cap and Trade Program?

The Council has no comments regarding Reference Plans, as it is not clear how such a plan would be used to assess alternative proposals.

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

From the Council’s perspective the OEB will need to determine which applicant can serve the community in the most efficient and cost-effective way. This can be assessed in a number of ways. The first is to require a net present value (“NPV”) analysis. In effect this will indicate which project is the most economic.

From the customers’ perspective the proposed rates will be critical in assessing the alternative proposals. This would include distribution rates as well as total bill impacts (including commodity costs). The Council agrees with Board Staff that the applicants should be required to file the expected revenue requirement for the rate stability period.

Other cost metrics may assist the Board in its assessment of the alternative proposals, but ultimately the rates will be the critical comparator.

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

The Council agrees with OEB Staff that milestones should be proposed by the applicants, and regular reporting to the Board regarding those milestones should be required. If the proponent fails to keep up with the schedule as proposed the OEB will have the right to rescind the franchise agreements and certificates. From the Council's perspective it is will be critical that the chosen utility proceed as quickly as possible to ensure the customers get access to natural gas service on a timely basis.