



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

## **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**

### **PARTIAL DECISION ON THE ISSUES LIST AND PROCEDURAL ORDER NO. 6 June 27, 2017**

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 its franchise agreements with and Certificates of Public Convenience and Necessity for the Municipality of Arran-Elderslie, Municipality of Kincardine and the Township of Huron-Kinloss (“the South Bruce Expansion Applications”). Procedural Order No. 1, which was issued on January 5, 2017, directed 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 notifying the OEB of their interest in serving the areas covered by the South Bruce Expansion Applications.

Through procedural orders, the OEB determined that it would hear the applications to serve the areas in two phases, and granted intervenor status to several parties for each phase of the proceeding. As part of phase 1, the OEB invited parties to file submissions regarding a preliminary Issues List and draft Filing Requirements.

## Jurisdiction Under The Municipal Franchises Act

EPCOR, in its phase 1 submission, argued that the OEB must respect the authority granted in the *Municipal Franchises Act* RSO. 1990 c. M.55 (the MFA) to both municipalities and the OEB, and that the OEB would overstep its authority were it to grant a certificate of public convenience and necessity under that Act to a gas utility other than the one selected by a municipality. The OEB wishes to reiterate its determination in this matter, most recently stated in its letter dated January 17, 2017: the ultimate authority to approve a certificate and approve a gas franchise by-law rests with the OEB.

The provisions of the MFA do not allow a municipality to arrange for construction or operation of natural gas infrastructure without the approval of the OEB. As pointed out by EPCOR, an OEB order approving a by-law under section 9 of the MFA, unlike an order made under section 10, does not become a valid by-law of the municipality. However, on a practical basis, natural gas distribution service will not be available to customers in the municipality unless the municipality reaches an agreement with the gas distributor awarded a certificate by the OEB. The use of the standard municipal franchise agreement (developed and revised by the Association of Municipalities of Ontario in co-operation with gas distributors) provides for conditions which the OEB has ruled to be reasonable. The OEB would need to consider the reasonableness of any proposed departures from the standard franchise agreement.

Customer preference is important to the OEB in the exercise of its powers under the MFA or the *Ontario Energy Board Act*, S.O. 1998, c. 15 Sch. B (the OEB Act). While the municipality has insight into local needs and concerns, the OEB has a broader, provincial mandate. Section 2 of the OEB Act sets out the OEB's objectives in relation to natural gas, which include:

- To protect the interest of consumers with respect to prices and the reliability and quality of gas service
- To facilitate rational expansion of transmission and distribution systems
- To facilitate rational development and safe operation of gas storage
- To promote energy conservation and energy efficiency in accordance with the policies of the Government of Ontario, including having regard to the consumer's economic circumstances
- To facilitate the maintenance of a financially viable gas industry for the transmission, distribution and storage of gas.

This broad mandate applies to the exercise of the OEB's powers under the MFA, or any Act in relation to natural gas. While the rationale for a municipality's preference may be a factor in the OEB's selection of a gas distributor to serve a municipality, it cannot be the sole determinative factor for the OEB, or restrict the OEB's authority to set the terms and conditions under which natural gas distribution infrastructure is constructed and operated to serve consumers in the province.

### **Partial Decision on Issues**

In consideration of the numerous submissions on the issues list and the draft filing guidelines, the OEB has determined that it is appropriate in this case to grant certificates of Public Convenience and Necessity, on a conditional basis (subject to subsequent technical and financial acceptance), to the proponent that demonstrates it has the lowest overall revenue requirement to provide an identified distribution service in the municipalities seeking that service. The primary benefit of the introduction of competition identified in the generic decision is the discipline it instills to control costs and the search for efficiencies in system expansion and operation. All other matters related to cost allocation, rate design and the general management of the utility are ongoing concerns of the OEB which it manages as a matter of course with all regulated entities. The selection criteria can therefore be restricted to a comparison of revenues required for a specific identified service.

The successful proponent would then prepare and seek approval for all other approvals required to deliver and charge customers for distribution services. Affected parties would assist the OEB through their interventions in those applications. This approach avoids the need to compare multi-faceted proposals designed to address a myriad of various, often competing, interests in a selection process.

The OEB determined in the generic decision that stand-alone rates are required in order to ensure newly serviced areas that are not captured by the EBO-188 mechanisms are not cross subsidized by existing customers. Maintaining this policy determination will be an ongoing matter that will be monitored by the OEB through regular reporting and examined in future rate setting proceedings. At this juncture and given the attributes of the rate stability period discussed below, the OEB does not consider it necessary to consider those oversight mechanisms as part of the selection process.

The OEB is issuing a partial decision on Issue #3 and Issue #4 from the Preliminary Issues List in this proceeding to facilitate the commencement of the selection process. The OEB's decision in this regard is described in further detail below. The decision on the remaining issues in Phase I will follow in due course.

**Issue #3**

In the context of this competition, the “rate stability period” is the period of time that the proponent can expect to have its stated revenue requirement available from ratepayers to furnish all the capital and operating requirements that the identified service requires. During this period customers can expect relative rate stability as the proponent’s revenues related to its controllable costs will be capped at its proposed level. The rate stability period may include an allowance for consideration of externally driven, unforeseen events as well as annual financial allowance updates typically allowed by the OEB.

The OEB will establish a rate stability period of ten years for the expansion into South Bruce, as the OEB believes this structure and period of time would best serve customers through the benefits of completion discussed earlier. A standard period eliminates a potential variable between the proponents’ applications that could not be accurately quantified in monetary terms for comparison purposes. A rate stability period places the onus on the proponent to project its potential revenues and bear the risk for the 10-year period if customers do not attach to the system as forecast. The probability of customers switching away from their existing service is inversely impacted by the costs to serve that customer and its ensuing rates and tariffs. A function of the rate stability period is the downward pressure it places on costs due to the potential to increase the overall revenues of the utility.

**Issue #4**

The OEB has determined that ultimately a common format for applications will be required. The OEB will be issuing approved Filing Requirements that will inform interested entities of what will be expected of them in bringing forward servicing proposals in due course.

At this juncture and in this case, the OEB sees merit in establishing common parameters for the proponents to use in determining their respective revenue requirements. The OEB will establish a Common Infrastructure Plan (CIP) as the basis for the proponents to determine their respective revenue requirements. Full consensus between the proponents on the plan’s “fit for purpose” design attributes is not required as the CIP will act as a relative proxy or sample plan to allow the OEB to undertake a comparison of the stated revenue requirements on a set of common parameters. The CIP will be used as the basis for the revenue requirement submissions.

The OEB will require proponents to work with OEB staff to create a CIP to serve the South Bruce area and a standard set of assumptions regarding permissible rate adjustments during the rate stability period. The overarching policy objective of driving efficiencies and lowering controllable costs is to be considered in the identification of permissible rate adjustments.

The proponents and OEB staff must also determine other parameters as necessary to allow the proponents to file an application based on the CIP that will facilitate a meaningful comparison of the proposals and embody the policy objectives pertaining to positive outcomes for customers previously described.

Proponents will be required to base their revenue requirement proposals on the CIP and identified permissible rate adjustment criteria. However, the CIP is a tool for comparison, and will not necessarily represent the final distribution infrastructure which the successful applicant will construct to serve the communities. The successful proponent will be free to ultimately serve additional customers and communities beyond those specified in the CIP during the 10 year rate stability period but will bear the onus to demonstrate that its incremental revenue requirements are aligned on a unit metric basis with its revenue requirement stated for the CIP.

The OEB Staff shall provide a CIP and draft permissible rate adjustment criteria and proposal comparison criteria complete with any commentary it considers to be of assistance to the OEB subsequent to meeting with the proponents. The OEB will consider soliciting responding submissions from intervenors at that time.

It is necessary to make provision for the following matters related to this proceeding. Further procedural orders may be issued by the OEB.

**IT IS THEREFORE ORDERED THAT:**

1. EPCOR Southern Bruce Gas Inc. and Union Gas Limited shall participate in a joint session with OEB staff to determine the technical parameters of the Common Infrastructure Plan for the area covered by the South Bruce Expansion Applications on **July 13, 2017**. Each proponent should come prepared to contribute to the establishment of the parameters described in this decision with a view to obtain the stated objectives. OEB Staff will be in touch with proponents in advance of the joint session on July 13.

2. OEB staff shall provide an update to the OEB on the progress made during the joint session, along with any CIP and draft permissible rate adjustment criteria and proposal comparison criteria as available, by **July 20, 2017**.

All filings to the OEB must quote the file numbers, EB-2016-0137 | EB-2016-0138 | EB-2016-0139, be made in searchable / unrestricted PDF format electronically through the OEB's web portal at <https://www.pes.ontarioenergyboard.ca/eservice/>. Two paper copies must also be filed at the OEB's address provided below. Filings must clearly state the sender's name, postal address and telephone number, fax number and e-mail address. Parties must use the document naming conventions and document submission standards outlined in the RESS Document Guideline found at <http://www.oeb.ca/Industry>. If the web portal is not available parties may email their documents to the address below. Those who do not have internet access are required to submit all filings on a CD in PDF format, along with two paper copies. Those who do not have computer access are required to file 7 paper copies.

All communications should be directed to the attention of the Registrar at the address below, and be received no later than 4:45 p.m. on the required date.

With respect to distribution lists for all electronic correspondence and materials related to this proceeding, parties must include the Case Manager, Azalyn Manzano at [Azalyn.Manzano@oeb.ca](mailto:Azalyn.Manzano@oeb.ca) and OEB Counsel, Michael Millar at [Michael.Millar@oeb.ca](mailto:Michael.Millar@oeb.ca).

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**DATED** at Toronto, **June 27, 2017**

**ONTARIO ENERGY BOARD**

*Original signed by*

Kirsten Walli  
Board Secretary