

June 21, 2018

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

Attention: Ms. K. Walli, Board Secretary

Dear Ms. Walli:

Re: EB-2016-0137/0138/0139 - South Bruce Expansion – EPCOR Motion to Vary Submission of Union Gas Limited

We are legal counsel to Union Gas Limited (“Union”) with respect to the above noted matter and this letter is in response to the letter filed by EPCOR wherein EPCOR brought a motion to review and vary the Ontario Energy Board’s cost award decision in EB-2016-0137/EB-2016-0138 (the “South Bruce Application”) that assigned cost responsibility to EPCOR as the successful proponent in that process.

EPCOR states that its letter should be considered a motion for review and variance under the OEB’s Rules of Practice and Procedure. However, for such a motion to be heard, EPCOR must pass the OEB’s threshold test¹. The cost determination by the OEB is fully within the OEB’s discretion. EPCOR has not raised any new issue or fact that was not previously before the OEB prior to its decision. EPCOR has also not identified any material mistake by the OEB, which if shown to be true, would have materially altered the OEB determination. EPCOR’s submissions are merely the recitation of the OEB’s procedural orders with a conclusion that it does not like the OEB’s decision made in the context of that process. It has not raised any element of unfairness or prejudice in doing so. As such, EPCOR’s motion should be dismissed.

EPCOR states that it was unclear that the costs would be fully borne by the successful proponent. This is not a new fact as Procedural Order No. 8 indicated that the Board reserved the cost determination until the end of the process. EPCOR was free to make submissions on the issue and it did not do so. In any event, even if the result was known, EPCOR fails to assert that it would not have continued to participate in the process if it had understood the basis of cost responsibility from the outset. It is reasonable to conclude that EPCOR would have continued to participate especially since the OEB had limited the scope of interventions and the costs sought

¹ OEB Rules of Practice and Procedure S 42.01. The Threshold Test was considered in the EB-2006-0322/0338/0340 Motions to Review the Natural Gas Electricity Interface Review Decision with Reasons issued May 22, 2007.

to be recovered is approximately \$50,000, much less than the costs of \$ 913,000² shared by distributors including Union in the OEB's Generic Process in EB-2016-0004 (the "Generic Proceeding").

EPCOR asserts that the competitive process was akin to a Generic Proceeding in which all natural gas distributors should share in the costs. EPCOR alludes to the Generic Proceeding as a precedent. However, the Generic Proceeding was a true generic process considering and establishing broad policy aspects of community expansion in which there was no one direct beneficiary. The South Bruce Application is not the same and is not a generic process. The outcome of the process in the South Bruce Application has a clear and direct benefit on one participant, which in this case was EPCOR. As the sole beneficiary of the process it should be responsible for the costs.

On this basis, Union also disagrees with EPCOR's alternative submission that in the event the OEB does not treat the South Bruce Application as a generic process, the costs should be shared as between proponents. However, this fails to recognize the premise underpinning the competitive process. EPCOR initiated this process with its original application. As a result of the OEB's Generic Decision in EB-2016-0004, alternative proposals were invited because of the view that a competing alternative would derive a result that was more in the interest of consumers than EPCOR's singular proposal. This process is no different than any alternative arrangement proposed in a proceeding by either an intervenor or a competing proponent. In the former circumstance the original applicant would pay the cost and, in the latter, the successful party would be responsible for the costs. The OEB's determination in the South Bruce Application is entirely consistent with this process and the EPCOR motion should be denied.

Yours truly,

[original signed by]

Charles Keizer

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² EB-2016-0004 Ontario Energy Board Generic Proceeding on Community Expansion Decision and Order on Cost Awards Schedule A, issued March 28, 2017. Costs were shared by Enbridge Gas Distribution (\$545K), Union Gas Limited (\$366K) and NRG (\$2K).