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June 28, 2018

DELIVERED VIA RESS & COURIER

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

Dear Ms. Walli:

**Re: Southern Bruce Expansion Applications
Applications to serve the Municipality of Arran-Elderslie, the Municipality of Kincardine
and the Township of Huron-Kinloss (the “Southern Bruce Municipalities”) with natural
gas distribution services
EB-2016-0137 | EB-2016-0138 | EB-2016-0139**

Pursuant to Procedural Order No. 11 relating to the motion filed by EPCOR Southern Bruce Gas Inc. (“**EPCOR**”) to vary the cost orders for the Southern Bruce Expansion Applications, this letter comprises the written reply submission of EPCOR in response to the submissions made by Union Gas Limited (“**Union**”) and Enbridge Gas Distribution Inc. (“**Enbridge**”) on June 21, 2018. EPCOR continues to rely on its original submissions dated May 2, 2018 and will not repeat those submissions again in this letter.

Union’s letter submits as a preliminary matter that EPCOR has not met the threshold test for initiating a motion for review and variance. Section 42.01 of the *Ontario Energy Board Rules of Practice and Procedure* requires that a motion for review and variance “set out the grounds that raise a question as to the correctness of the order or decision, which grounds may include: (i) error in fact; (ii) change in circumstances; ...” [Emphasis added]. The Board has held that the grounds for a motion for a review are not limited to those set out in the Rules and include not only errors in fact, but errors in law, jurisdiction and mixed fact and law.¹ In the present case, EPCOR respectfully submits that the Board erred by assigning cost responsibility in the subject proceeding based on how costs have been apportioned in past proceedings for certificates of public convenience and necessity (and contrary to the suggestion in Procedural Order No. 8 that costs would be determined through a separate process after the successful proponent was selected). The subject proceeding differed in key respects from past proceedings for certificates of public convenience and necessity, and included aspects that were expressly intended to establish a framework and guidance for future competitive proceedings. As a result, the Board should have allocated cost responsibility (at least in part) based on how costs are

¹ EB-2006-0322/0338/0340 Decision with Reasons dated May 22, 2007 at para 12.

allocated in generic proceedings, or, in the alternative, based on a new framework for competitive proceedings that allocates costs among all proponents. EPCOR submits that these reasons meet the Board's threshold test for considering the motion.

Union and Enbridge both disagree with EPCOR's characterization of the subject proceeding as, at least in part, generic in nature. Enbridge argues that the generic aspects of expansion of the gas distribution system were considered and addressed in the EB-2016-0004 proceeding, and that the Southern Bruce Expansion Applications are a result of the Board implementing the outcomes of that proceeding. Similarly, Union distinguishes the EB-2016-0004 proceeding from the subject proceeding because there was no one direct beneficiary of the EB-2016-0004 proceeding. To be clear, EPCOR never suggested that the subject proceeding was akin to the EB-2016-0004 proceeding. Certainly, the EB-2016-0004 proceeding was by definition a generic proceeding that established the general parameters of natural gas expansion in Ontario, and the subject proceeding followed those parameters. However, EPCOR's motion reflects the fact that the Board expressly used the subject proceeding (the first of its kind following EB-2016-0004) to establish a framework and guidance that would be used for other similar competitive proceedings in the future. This distinguishes the subject proceeding from the other expansion applications cited by Enbridge. EPCOR respectfully submits that it would be unfair to saddle one company with all of the costs of a generic proceeding that will be used to guide future proceedings across the industry. Instead, EPCOR maintains that the costs of those aspects of the subject proceeding should be apportioned among all rate regulated gas distributors in Ontario.

In the alternative, EPCOR's motion requests that the costs for the subject proceeding be apportioned between EPCOR and Union. Unlike the "alternative arrangements" cited by Union that have arisen in past proceedings, the subject proceeding was an unprecedented competitive process where both EPCOR and Union were identified by the Board as proponents. Costs were incurred by the Board and intervenors to review both companies' proposals. As a result, Union's business decisions about how to participate in the proceeding directly influenced the costs incurred by the Board and intervenors. The Board has held that the costs to participate in a competitive process should be borne by a company's shareholders and should not be recoverable in rates.² EPCOR respectfully submits that it would be unreasonable for EPCOR's shareholders to pay for costs incurred entirely as a result of its competitor's business decisions. Further, requiring all proponents in competitive community expansion applications to contribute to the costs of the process will impose discipline on all proponents to participate reasonably in the process, regardless of the ultimate outcome.

For these reasons, as well as those set out in EPCOR's previous submissions, EPCOR respectfully requests that the Board vary the cost decisions in the subject proceeding to apportion costs among all rate regulated gas distributors in Ontario or, in the alternative, among all proponents who participated in the proceeding.

Sincerely,

[original signed by]

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² EB-2016-0137/0138/0139 Procedural Order No. 8 dated August 22, 2017 at para. 5 on page 11.