



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**

DECISION ON MOTION TO REVIEW COST ORDER AND PROCEDURAL ORDER NO. 12

July 19, 2018

This is a Decision of the Ontario Energy Board (OEB) in response to a filing by EPCOR Southern Bruce Gas Inc. (EPCOR) of a notice of motion to review and vary the cost orders in the OEB's Decision and Order issued on April 12, 2018 in the South Bruce Expansion Applications. The OEB previously ordered EPCOR to pay the costs of the proceeding. The OEB grants the motion and finds that the two potentially successful proponents should equally pay for the costs of the proceeding.

EPCOR filed applications with the Ontario Energy Board (OEB) on March 24, 2016 under sections 8 and 9 of the *Municipal Franchises Act*, seeking approval for its franchise agreements with, and certificate of public convenience and necessity (certificate) for, the Municipality of Arran-Elderslie, Municipality of Kincardine and the Township of Huron-Kinloss.

Consistent with the OEB's new policy to encourage competition in the provision of natural gas distribution service in presently unserved communities¹, the OEB invited other potential providers of natural gas distribution service to notify the OEB of their interest in serving the South Bruce communities. Union Gas Limited (Union Gas) filed a letter dated January 19, 2017, notifying the OEB of its interest. In recognition of the

¹ As set out in the OEB's Decision and Order in the Generic Proceeding on Community Expansion (EB-2016-0004) issued on November 17, 2016.

equal status of both utilities as proponents in the competition, the proceeding was renamed the South Bruce Expansion Applications, and the style of cause changed accordingly.

Following the two phases of the proceeding, the OEB granted EPCOR certificates of public convenience and necessity for each of the Municipality of Arran-Elderslie (except for the geographic area of the former Township of Arran and the former Village of Tara), the Municipality of Kincardine and the Township of Huron-Kinloss, conditional on the approval of its subsequent leave to construct application. The OEB also ordered EPCOR to pay for the costs of the proceeding.

On May 2, 2018, EPCOR filed a motion to vary the cost orders given that “at least parts of the proceeding were generic in nature, will benefit the Board and other utilities competing to serve new areas, and [that] EPCOR understood [the Decision and] P.O. 8 to suggest that the question of who should bear the responsibility for cost awards as being subject to determination via a further process”. EPCOR submitted that the costs of the proceeding should be either apportioned among all rate regulated gas distributors in Ontario, or in the alternative, borne by both EPCOR and Union Gas as proponents who participated in the proceeding.

The Process

The OEB issued Procedural Order No. 11 on June 7, 2018, which made provision for written submissions addressing EPCOR’s submission that the costs of the proceeding should be either apportioned among all rate regulated gas distributors in Ontario, or in the alternative, borne by both EPCOR and Union Gas as proponents who participated in the proceeding.

Union Gas and Enbridge Gas Distribution Inc. (Enbridge Gas) filed submissions on June 21, 2018. EPCOR filed its reply submission on June 28, 2018.

Positions of Parties

Union Gas submitted that EPCOR’s motion should be dismissed as it has not met the threshold test for review and variance under the OEB’s Rules of Practice and Procedure. Union Gas submitted that EPCOR has not raised any new issue or fact that was not previously before the OEB prior to the OEB’s decision, and that EPCOR has not identified any material mistake by the OEB which would have materially altered the OEB’s determination.

Both Union Gas and Enbridge Gas disagreed with EPCOR's characterization of part of the proceeding as generic in nature. Enbridge Gas stated that the generic aspects of the expansion of the gas distribution system had already been dealt with in the Generic Proceeding on Community Expansion (Generic Proceeding), and that the South Bruce Expansion Applications are a result of the OEB implementing the outcomes of the Generic Proceeding. Union Gas also stated that there was no one direct beneficiary in the Generic Proceeding, as opposed to the South Bruce Expansion Applications, of which EPCOR is the sole beneficiary of the process.

Union Gas also disagreed with EPCOR's alternative submission to share the costs equally between both proponents, stating that the OEB's determination is consistent with a process where an alternative arrangement is proposed by either an intervenor or a competing proponent, where either the original applicant pays the cost, or the successful party is responsible for the cost.

Enbridge Gas also submitted that there was no basis for a cost order against Enbridge Gas in respect of a proposed community expansion project where Enbridge Gas did not identify itself as a potential proponent or submit an alternative proposal for the OEB's consideration.

In its reply submission, EPCOR submitted that the OEB has held that the grounds for a motion for 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. EPCOR submitted that the OEB has erred in assigning cost responsibility for the South Bruce Expansion Applications by doing so based on how costs have been apportioned in previous certificate proceedings, given that the South Bruce Expansion Applications differed in key respects from past certificate proceedings, and included aspects that were expressly intended to establish a framework and guidance for future competitive proceedings. EPCOR also noted that the OEB's determination on costs was contrary to the suggestion in Procedural Order No. 8 which stated that costs would be determined in a separate process after the successful proponent was selected.

EPCOR argued that unlike past proceedings in which alternative arrangements were proposed by either an intervenor or a competing proponent, the South Bruce Expansion Applications were an unprecedented competitive process where both EPCOR and Union were both identified by the OEB as proponents. EPCOR submitted that Union's business decisions in terms of participating in the proceeding directly influenced the costs incurred by the OEB and intervenors, and that requiring all proponents in competitive community expansion applications to contribute to the costs of the process

would impose discipline on all proponents to participate reasonably, regardless of the ultimate outcome.

Decision on the Motion

The OEB erred in not establishing a cost awards process following the selection of the successful proponent as indicated in the Decision on Preliminary Issues and Procedural Order No. 8.

EPCOR was correct to have anticipated that a further process regarding the OEB and intervenor costs would be conducted by the OEB.

The OEB accepts EPCOR's argument that with the issuance of Procedural Order No. 3 on March 23, 2017, the nature of its application was altered by the OEB to one of a generic nature that could inform the creation of a framework for competitive natural gas expansion processes.

The OEB finds that the two potentially successful proponents should equally pay for the costs of this proceeding.

In accordance with the Decision and Order issued April 12, 2018, EPCOR filed its response to parties' cost claims on May 4, 2018. The OEB will also provide Union Gas with an opportunity to respond to intervenors' cost claims.

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

THE BOARD ORDERS THAT:

1. Union Gas Limited shall file with the OEB and forward to intervenors any objections to the claimed costs of the intervenors on or before **July 26, 2018**.
2. If Union Gas Limited objects to the intervenor costs, intervenors shall file with the OEB and forward to Union Gas Limited any responses to any objections for cost claims on or before **August 7, 2018**.
3. EPCOR Southern Bruce Gas Inc. and Union Gas Limited shall equally pay any approved intervenor costs.
4. EPCOR Southern Bruce Gas Inc. and Union Gas Limited shall equally pay the OEB's costs incidental to this proceeding upon receipt of the OEB's invoice.

All filings with the OEB must quote the file number **EB-2016-0137 | EB-2016-0138 | EB-2016-0139**, and be made through the OEB's web portal at <https://pes.ontarioenergyboard.ca/eservice/>, and consist of two paper copies and one electronic copy in searchable / unrestricted PDF format. Filings must be received by the OEB by 4:45 p.m. on the stated date. Parties should use the document naming conventions and document submission standards outlined in the RESS Document Guideline found at www.oeb.ca. If the web portal is not available, parties may e-mail their documents to the attention of the Board Secretary at BoardSec@oeb.ca.

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 and OEB Counsel, Michael Millar at Michael.Millar@oeb.ca.

ADDRESS

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

E-mail: boardsec@oeb.ca
Tel: 1-888-632-6273 (Toll free)
Fax: 416-440-7656

DATED at Toronto, **July 19, 2018**

ONTARIO ENERGY BOARD

Original signed by

Kirsten Walli
Board Secretary