Osler, Hoskin & Harcourt LLP
Suite 2500, TransCanada Tower
450 – 1st Street S.W.
Calgary, Alberta, Canada T2P 5H1
403.260.7000 MAIN
403.260.7024 FACSIMILE

OSLER

Calgary
Toronto
Montréal
Ottawa
Vancouver
New York

Sander Duncanson
Direct Dial: 403.260.7078
aduncanson@osler.com
Our Matter Number: 1175408

June 2, 2017

Filed via RESS

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

Attention: Kristi Walli
Board Secretary

Dear Ms. Walli:

Re: EB-2016-0351 – Natural Resource Gas Limited ("NRG")
Argument-in-Chief

Pursuant to Procedural Order No. 3 dated May 26, 2017 in the above noted proceeding, NRG hereby submits its Argument-in-Chief.

Please do not hesitate to contact the undersigned should you have any questions.

Yours truly,

Sander Duncanson
SD:sb

Enclosures

cc: EB-2016-0351 Intervenors

ONTARIO ENERGY BOARD

IN THE MATTER OF the *Ontario Energy Board Act, 1998*, S.O. 1998, c. 15 (Schedule B);

AND IN THE MATTER OF an application by Natural Resource Gas Limited for the relief necessary to transfer its natural gas distribution system to EPCOR Natural Gas Limited Partnership.

EB-2016-0351

Natural Resource Gas Limited

Argument-in-Chief

June 2, 2017

To: Board Secretary
Ontario Energy Board
2300 Yonge Street, 27th Floor
Toronto, ON M4P 1E4

Introduction

1. Natural Resource Gas Limited ("NRG") provides its Argument-in-Chief in accordance with the Ontario Energy Board's ("OEB" or "Board") directions set out in Procedural Order No. 3 dated May 26, 2017.

2. As described in the Application, NRG has entered into an Asset Purchase Agreement with EPCOR Natural Gas Limited Partnership ("EPCOR") whereby NRG has agreed to sell and EPCOR has agreed to purchase NRG's natural gas distribution system in its entirety.[1] To effect this Agreement, NRG seeks the following relief from the Board:

    (a) Leave under section 43 of the *Ontario Energy Board Act, 1998* ("OEB Act") allowing NRG to transfer its natural gas distribution system in its entirety to EPCOR;

    (b) Orders under section 18 of the OEB Act granting leave to NRG to transfer to EPCOR the relevant regulatory agreements, certificates and orders for NRG's distribution system, including all existing franchise agreements, Certificates of Public Convenience and Necessity, and rate orders/schedules (as detailed in the Application); and,

    (c) Such further and other relief as NRG may request or the Board may consider appropriate.

Legal Test for Considering the Application

3. Section 2 of the OEB Act sets out the Board's objectives in relation to natural gas and, among other objectives, provides that the Board must: (a) protect the interests of consumers with respect to prices and the reliability and quality of gas service; and (b) facilitate the maintenance of a financially viable gas industry for the transmission, distribution and storage of gas.

4. In deciding whether or not to grant leave in relation to an application under section 43 of the OEB Act, the Board applies a "no harm" test (first established with respect to electricity distribution transactions in the Board's combined proceeding, RP-2005-0018/EB-2005-0234/EB-2005-0254/EB-2005-0257). The "no harm" test considers whether the proposed transaction will have an adverse effect on the attainment of the OEB's statutory objectives, as set out above. If the proposed transaction has a positive or neutral effect on the attainment of these objectives, the OEB will approve the application.[2]

5. As a result, the legal test for the Board in considering the Application is whether the proposed transaction will result in an adverse effect with respect to the objectives set out

[1] Exhibit 1, Tab 1, Schedule 1, Page 2.

[2] EB-2016-0025/EB-2016-0360 Decision dated December 8, 2016, at 1.

in section 2 of the OEB Act, including with respect to prices for consumers, reliability and quality of gas service, and financial viability of the gas distribution industry in Ontario. If the effects of the proposed transaction are neutral or positive, the Board should approve the Application.

The Application Meets the "No Harm" Test

6. The evidence demonstrates that the "no harm" test is met in these circumstances:

(a) The transaction will not cause consumer prices to increase. Based on EPCOR's underlying cost structure, the costs to serve NRG's customers post-transaction are not expected to be higher than they otherwise would have been with NRG.[3] In addition, over the medium- to long-term, there may be opportunities for EPCOR to reduce some of NRG's underlying cost structures. As a result, NRG's existing customers will not experience price increases as a result of the proposed transaction and may in fact enjoy modest price decreases over the long-term compared to what rates otherwise would be with NRG.[4]

(b) The transaction will not affect the reliability and quality of service. EPCOR's parent company and its subsidiaries have extensive experience as both owner and/or operator in various utility businesses in three Canadian provinces and three U.S. states that provide essential public services. EPCOR has the financial capacity to fund capital projects necessary to ensure system reliability and service quality. In addition, EPCOR will retain NRG's general manager and all non-executive and operations personnel, and will enter into a gas purchase agreement with NRG Corp. to ensure that EPCOR will have access to natural gas from NRG Corp.'s wells as NRG currently does.[5] In combination, these factors will ensure that the reliability and quality of service provided to NRG's customers will not be adversely affected by the transaction.[6]

(c) The transaction will not negatively affect the financial viability of the industry. On the contrary, the transaction will allow a new entrant with strong financial capacity to participate in the Ontario natural gas distribution industry. EPCOR's parent company, EPCOR Utilities Inc. ("EUI"), is a public issuer of debt with high credit ratings. In each of 2015 and 2016, EUI's consolidated revenue was approximately $2 billion, with over $360 million in operating income and over $410 million in

---

[3] Exhibit 1, Tab 1, Schedule 1, Page 4; Exhibit 1, Tab 1, Schedule 4, Page 1.

[4] Exhibit 1, Tab 1, Schedule 4, Page 2; NRG responses to 1-Staff-1(a) and 1-Staff-2(c).

[5] Exhibit 1, Tab 1, Schedule 4, Pages 2-4; NRG response to 1-Staff-4; NRG response to VECC-4.

[6] Exhibit 1, Tab 1, Schedule 1, Page 4; Exhibit 1, Tab 1, Schedule 4, Pages 2-4; NRG response to 1-Staff-15(a).

funds from operations.[7] EUI has confirmed that it will provide all the funding required to complete the asset purchase from NRG and will also provide funding for EPCOR's future capital projects that have been approved by the OEB.[8] As a result, the proposed transaction poses no harm to the financial viability of the gas distribution industry in Ontario.

(d) The transaction will not result in any other harm to the Board's statutory objectives. In addition to the above, section 2 of the OEB Act requires the Board to facilitate rational expansion of gas distribution systems and promote energy conservation and energy efficiency. EPCOR expects to expand services within NRG's existing franchise areas, which would provide more customers with access to natural gas and may benefit existing rate payers through economies of scale in current operations.[9] Further, EPCOR intends to utilize EUI's expertise in demand side management programs to examine opportunities to bring conservation and efficiency programs to NRG's gas business.[10] These factors further support the Board's statutory objectives.

7. Based on the above, customers will not in any way be harmed by the proposed transaction and may in fact benefit over the long-term. Customers will not experience any price increases as a result of the proposed transaction and may in fact enjoy modest price decreases over the long-term compared to what rates otherwise would be with NRG. The reliability and quality of service provided to NRG's customers will not be adversely affected by the transaction. In addition, the proposed transaction poses no harm to the financial viability of the gas distribution industry in Ontario. As a result, the transaction meets the Board's "no harm" test and should be approved by the Board.

Conclusion

8. As the proposed transaction meets the Board's "no harm" test, NRG requests that the Board:

(a) Grant leave under section 43 of the OEB Act allowing NRG to transfer its natural gas distribution system in its entirety to EPCOR;

(b) Issue orders under section 18 of the OEB Act granting leave to NRG to transfer to EPCOR the relevant regulatory agreements, certificates and orders for NRG's distribution system, as detailed in the Application; and,

---

[7] Exhibit 1, Tab 1, Schedule 4, Pages 4-6; NRG response to 1-Staff-5(a).

[8] Exhibit 1, Tab 1, Schedule 4, Pages 4-6; NRG response to 1-Staff-5(a).

[9] Exhibit 1, Tab 1, Schedule 4, Pages 7-8.

[10] Exhibit 1, Tab 1, Schedule 4, Page 8.

(c) Grant such further and other relief as the Board may consider appropriate.

Respectfully submitted,

June 2, 2017
Calgary, Alberta

Sander Duncanson
Osler, Hoskin & Harcourt LLP
Counsel for Natural Resource Gas Limited

cc: EB-2016-0351 Intervenors