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May 2, 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 (the “Southern Bruce Expansion
Applications”)**

In the Decision and Order dated April 12, 2018 (the “**Competitive Process Decision**”) the Board ordered EPCOR Southern Bruce Gas Inc. (“**EPCOR**”) to pay the claimed costs of intervenors and the Board’s costs incidental to the Southern Bruce Expansion Applications.¹ In a non-competitive proceeding, it is clear from the outset that the applicant shall bear the costs of intervenors and the Board. However, in the unprecedented competitive process established by the Board for the Southern Bruce Municipalities, it was not clear to EPCOR that the costs would be fully borne by the successful proponent as the determination of costs amongst proponents or industry had not been previously determined in the proceeding.

In March 2016, EPCOR applied for franchise agreements and corresponding certificates of public convenience and necessity (“**CPCN**”) for the Southern Bruce Municipalities prior to the Board’s decision in EB-2016-0004 (the “**Generic Hearing**”). Initially, it was clear that EPCOR should bear the costs of the franchise and CPCN proceeding. In Procedural Order No. 3 dated March 23, 2017, the Board indicated that:

¹ EB-2016-0137/0138/0139 Decision and Order dated April 12, 2018 at page 14.

“The OEB has changed the style of cause for this proceeding to reflect the status of both EPCOR and Union as proponents in the competition to select a natural gas distributor for areas covered by the South Bruce Expansion Applications.”²

Following the introduction of the Board’s competitive process and the change of style of cause to reflect Union Gas Inc.’s participation in the applications as a proponent, the question of who should bear the costs of the proceeding was no longer clear. EPCOR’s initial applications were for CPCN and franchise agreement approvals and although the CPCNs have been granted to EPCOR, as noted in the Competitive Process Decision, the Board determined it was appropriate to deal with the franchise agreements in a separate proceeding of EPCOR.³ Accordingly, the main purpose of EPCOR’s initial application remains unresolved following the Competitive Process Decision and EPCOR will need to initiate a separate proceeding to deal with a matter it has previously applied for.

In the Decision on Preliminary Issues and Procedural Order No. 8 dated August 22, 2017 (“**PO 8**”), EPCOR understood the Board’s determination that “[t]he OEB considers the activities related to determining business interests and participating in a selection process to be business costs incurred for the potential benefit of shareholders and therefore not recoverable in rates”⁴ to relate to costs borne by the proponents themselves to participate in the competitive process. In PO 8, the Board determined that “[a] cost awards process will be established following the selection of the successful proponent.”⁵ Accordingly, EPCOR anticipated that a further process regarding the costs of the Board and intervenors in the competitive process would follow the Board’s selection of the successful proponent.

The competitive process, which resulted from the Board’s decision in the Generic Hearing, is precedent setting as it was the first of its kind in Ontario and the learnings from this process will benefit the gas industry as a whole and may be replicated in future competitive processes. In correspondence to Union Gas in EB-2015-0179, the Board stated its expectation that the Southern Bruce framework would apply to other community expansion proposals:

“The OEB expects to evaluate Union’s application based on the process established through the first phase of the EPCOR Southern Bruce proceeding (EB-2016-0137/038/0139) . . . The OEB expects that the framework established in the Southern Bruce proceeding will be utilized for review of Union’s community expansion proposals, to the extent there are other parties interested in serving the areas covered by Union’s applications.”⁶

Additionally, in Procedural Order No. 2 dated March 3, 2017, the generic nature of the Southern Bruce Expansion Applications was acknowledged when the Board stated that “[g]iven the generic nature of the preliminary issues to be considered in the first phase of this proceeding, intervenors are welcome to make submissions on the Issues List as they see fit.”⁷ As the Southern Bruce Expansion Applications unfolded, it became clear that both Phase I and Phase II of these applications, which settled preliminary issues and developed other criteria for a competitive process, may serve as a precedent for other community expansion proceedings, contested or otherwise. The process developed by the Board, together with the proponents, provides a framework and guidance for future competitions that all rate

² EB-2016-0137/0138/0139 Procedural Order No. 3 dated March 23, 2017 at para. 1 on page 1.

³ EB-2016-0137/0138/0139 Decision and Order dated April 12, 2018 at para.2 on page 12.

⁴ EB-2016-0137/0138/0139 Procedural Order No. 8 dated August 22, 2017 at para. 5 on page 11.

⁵ EB-2016-0137/0138/0139 Procedural Order No. 8 dated August 22, 2017 at para. 4 on page 2.

⁶ EB-2015-0179, letter from Board Secretary to Union Gas dated March 3, 2017.

⁷ EB-2016-0137/0138/0139 Procedural Order No. 2 dated March 3, 2017 at page 3. In this procedural order, the Board determined that intervenors would not be eligible for costs in Phase I of the proceeding but following correspondence from intervenors, the Board determined in Procedural Order No. 3 that intervenors may apply for cost claims for both phases of the proceeding, with Phase I claims being limited to a total of 8 hours per intervenor.

regulated gas distributors may participate in. Accordingly, EPCOR respectfully submits that the costs of this proceeding should be apportioned among all rate regulated gas distributors in Ontario.

In the alternative, EPCOR submits that the costs of this proceeding should be borne by all proponents who participated in the proceeding. If no other proponent came forward to express interest in the Southern Bruce Expansion Applications, the competitive process would not have been initiated and these costs would not have been incurred. Proponents willing to compete in the competitive regulatory process should be prepared to contribute to the costs of such process. EPCOR believes that this will establish a precedent going forward for other contested community expansion applications to ensure that all proponents in a Board-mandated competitive process financially contribute to the regulatory process in which they participated, regardless of the outcome.

For these reasons, EPCOR requests that the Board consider this letter as a motion to vary the cost orders from the Competitive Decision and Order, on the basis that at least parts of the proceeding were generic in nature, will benefit the Board and other utilities competing to serve new areas, and EPCOR understood PO 8 to suggest that the question of who should bear the responsibility for cost awards as being subject to determination via a further process.

Given the nature of the matter raised in this letter, EPCOR respectfully requests the Board extend the May 4, 2018 date for objections to intervenor cost claims until after the Board has made a determination on the matter raised in this letter.

Please contact the undersigned if you have any questions in regards to the foregoing.

Sincerely,

[original signed by]

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