Ontario Energy Board
Commission de l’énergie de l’Ontario

DECISION AND RATE ORDER

EB-2018-0234

OM LIMITED PARTNERSHIP

Price Cap Incentive Regulation and Rate Application

BEFORE: **Susan Frank**
Presiding Member

Emad Elsayed
Member

November 15, 2018

1 INTRODUCTION AND PROCESS

OM Limited Partnership (OMLP) is a limited partnership between ON-Energy Corporation (ON-Energy) and Maricann Group Incorporated (Maricann). ON-Energy owns and operates 150 natural gas wells and over 300 kilometres of pipeline infrastructure in Elgin and Norfolk Counties. Maricann is a medical marijuana producer and dispenser with over 8,000 registered patients.

On August 13, 2018, OMLP applied to the Ontario Energy Board (OEB) under section 36 of the *Ontario Energy Board Act, 1998* (OEB Act) for an order or orders approving a rate to supply its locally produced natural gas to a new greenhouse facility owned and operated by its affiliate Maricann, effective September 1, 2018 (Application).

The Application followed from a previous application by OMLP for a certificate of public convenience and necessity (certificate) to construct facilities to supply natural gas to the new Maricann greenhouse. In its decision and order regarding the previous application, the OEB advised OMLP that it could not distribute gas without first obtaining a section 36 rate order of the OEB.[1]

In this Application, OMLP requested the OEB to use the cost of service (or revenue requirement) method to approve or fix just and reasonable rates for the test year and proposed a price cap incentive rate-setting (IR) model for the four years following the test year. The test year is the 12-month period beginning the date of commencement of service to the customer. As at October 16, 2018, OMLP estimated that first gas delivery to Maricann would commence on November 5, 2018.[2] OMLP proposed a simplified rate design that consists of a fixed charge of $22,352 per month.

OMLP also requested that the OEB approve OMLP's exemptions in full from both the *Affiliate Relationships Code for Gas Utilities* (ARC) and *Gas Distribution Access Rule* (GDAR).

OMLP requested that if the OEB were unable to provide a decision and order for implementation by OMLP as of September 1, 2018, the OEB declare the proposed rate interim, effective September 1, 2018. The OEB issued an interim rate order in the amount of $22,352 per month effective September 19, 2018.[3]

[1] EB-2017-0289. Decision and Order, issued June 14, 2018.
[2] OEB staff IR #2.
[3] EB-2018-0234. Decision and Interim Rate Order, issued September 19, 2018.

The Application included a letter from Maricann stating that it had reviewed and supports OMLP's rate application.

The OEB issued a Notice of Hearing (Notice) on August 28, 2018. OMLP served and published the Notice as directed. Union Gas (Union) requested intervenor status. The OEB proceeded by way of a written hearing.

Procedural Order No. 1 was issued on September 25, 2018. The interrogatory phase was completed on October 16, 2018. Union Gas and OEB staff filed written submissions on October 30, 2018. OMLP filed its reply submission on November 9, 2018.

2 LEGISLATIVE MANDATE AND TEST

This Application involves a request for a rate order under section 36 of the OEB Act, and exemptions from the ARC and GDAR under the provisions of those rules. Section 36 of the OEB Act provides that the OEB shall make a rate order if the OEB finds that rate is just and reasonable. The OEB reviews the information and proposals in a rate application in order to determine whether the proposals are reasonable for both consumers and the utility. In determining whether OMLP's proposal is just and reasonable, the OEB examined the proposed rate and considered the requested exemptions. Each of these issues is addressed below.

3 PROPOSED RATE

OMLP described the revenue requirement, rate design and Price Cap IR plan underlying their rate request. The requested revenue requirement for the test year is $268,220. The components are Operating, Maintenance & Administration (OM&A) expenses of $210,829, based on a rate base of $692,620, weighted average cost of capital of $22,441, depreciation of $34,473 and income taxes of $477. OMLP proposed a ROE of 9% for the entire 5-year period. OMLP also proposed a simplified rate design resulting in a fixed charge of $22,352 per month which is one twelfth of the annual revenue requirement. This rate framework was based on an agreement between OMLP and its only customer, Maricann.

OMLP proposed a five-year term for the Price Cap IR plan using the typical inflation minus productivity for the 4 years following the test year. OMLP proposed that the productivity factor be set equal to the inflation factor resulting in no change to rates over the 5-year term unless OMLP requires a Y or Z factor adjustment. OMLP proposed a materiality threshold equal to 10% of its approved revenue requirement for the Z factor adjustment to limit the number of adjustments. Consistent with OEB policy, OMLP proposed to include a trigger mechanism with an annual regulatory return on equity dead band of +/- 300 basis points.

Union's submission was critical of OMLP's plan to freeze rates for 5 years. Union suggested that annual changes to the return on equity to match the OEB's capital parameters are required.

Following examination of the inputs and methodology used to calculate the revenue requirement, OEB staff concluded that the revenue requirement is appropriate. OEB staff also concluded that the rate design is appropriate in this case. OEB staff submitted that OMLP's proposed Price Cap IR plan is consistent with OEB policy, and provides a suitable level of protection for Maricann and OMLP.

Findings

The OEB recognizes that OMLP is in a unique situation: it has only one customer and that customer is an affiliated party. Despite this, OMLP has followed the typical OEB approach to calculating revenue requirement including the use of OEB approved parameters for working capital and return on equity. It also used the capital structure approved for other gas utilities in Ontario. The OEB approves the requested revenue requirement for the test year of $268,220.

The normal requirement to calculate the costs allocated to customer classes and different rate structures was avoided by the very simple approach of a fixed monthly charge. This simplified approach is only possible because OMLP has one customer. As the OEB directed in its decision to grant OMLP permission to construct facilities necessary to supply natural gas to Maricann, if OMLP wants to add another customer then an application must be made to the OEB prior to connecting such customer.[4] The OEB's approval of the rate design and the fixed monthly rate of $22,352 is conditional on only one customer being connected to OMLP.

OMLP's adoption of the Price Cap IR plan is both consistent with OEB policy and simplified in its approach resulting in a rate freeze for the 5 years. Only if there are externally driven factors that would result in materially higher costs will OMLP file a rate application requesting a change to rates. The OEB approves the proposed Price Cap IR plan.

The OEB finds that the resulting rate is just and reasonable.

[4] EB-2017-0289 Decision and Order, issued June 14, 2018.

4 REQUESTED EXEMPTIONS

4.1 Affiliate Relationships Code

OMLP requested an exemption in whole from the ARC. The ARC sets out the standards and conditions for the interaction between gas distributors, transmitters and storage companies and their respective affiliated companies. The principal objectives of the ARC are to enhance a competitive market while keeping ratepayers unharmed by the actions of gas distributors, transmitters and storage companies with respect to dealing with their affiliates.

In its application, OMLP asserted that an exemption from the ARC is warranted because it is limited in its operations, and will not have its own employees and accounting services but will instead rely on ON-Energy to provide these services.

Union questioned why a requirement in the ARC for OMLP to protect Maricann's confidential information from an access by ON-Energy should not apply. OMLP responded that the requirement is not relevant because Maricann and ON-Energy each have partial ownership of OMLP and therefore have access to such information. OEB staff expressed no concern about OMLP sharing confidential information about Maricann with ON-Energy.

Union questioned why a requirement in the ARC that states that, where a competitive market exists, a utility shall charge no less than the market price for a particular service should not apply. In this case, the service in question was ON-Energy's sale of gas to Maricann. OMLP responded that the requirement is not applicable because OMLP believes ON-Energy is charging Maricann a competitive market price for gas. OEB staff submitted that this portion of the ARC does not apply and an exemption is not necessary.

OMLP indicated that it did not foresee providing gas service to additional customers in the future using the facilities constructed to serve Maricann. OMLP further confirmed that it is aware that if the OEB were to approve a request for an exemption in whole from the ARC, that such exception may no longer be applicable in the event that OMLP were to begin serving one or more additional customers.

Findings

Section 1.6.3 of the ARC allows the OEB to grant exemptions. The fact that OMLP has only one customer which is a related party reduces the relevance of the ARC. The organizational structure adopted by OMLP results in efficient allocation of resources.

Under the condition that OMLP adds no other customers, the OEB grants OMLP an exemption from the Affiliate Relations Code.

4.2 Gas Distribution Access Rule

OMLP has requested an exemption in whole from the GDAR. GDAR establishes a number of performance standards and measurements for the natural gas industry in Ontario. These service quality requirements include telephone answering performance, billing performance, meter reading performance, service appointment response times, emergency response, customer complaint response, and disconnection / reconnection. GDAR also deals with the establishment of conditions of access to gas distribution services provided by a gas distributor and establishes rules governing the conduct of a gas distributor as such conduct relates to a gas vendor.

In this Application, OMLP asserted that an exemption from the GDAR is warranted because its only customer is a limited partner in OMLP and therefore OMLP will be aware of any service quality issues directly. OMLP proposed no reporting except every five years and only if a rate adjustment is sought.

Union submitted that OMLP should be held to the same reporting and accountability standards required of other regulated gas distributors in Ontario in order to ensure transparency of its performance and operations.

OEB staff submitted that compliance with the GDAR in full is unnecessarily burdensome in this particular case, but that approval of the Application should be subject to certain reporting requirements filed with the OEB in an annual report. OEB staff proposed a list of possible reporting requirements.

In its reply submission, OMLP agreed to file an annual report that meets the reporting requirements identified by OEB staff with one exception. OEB staff proposed that OMLP file audited financial statements annually. OMLP noted that audits are onerous and costly and therefore requested that the OEB instead accept in-house financial statements or Notice to Reader Financial Statements in accordance with the OEB's *Uniform System of Accounts for Class A Gas Utilities*.

Findings

Section 1.5.1 of the GDAR allows the OEB to grant exemptions. The OEB accepts that, given the special situation with only one customer, the majority of GDAR sections do not apply to OMLP. The OEB grants OMLP an exemption from GDAR provided that no other customers are added. However, consistent with the submission by OEB staff, the

OEB does require annual reporting. The OEB also accepts OMLP's submission that audited statements are onerous and costly and should not be required given the circumstances. Accordingly, in-house financial statements or Notice to Reader Financial Statements are acceptable.

For the test year and each of the four years of price cap incentive regulation, the OEB requires OMLP to file an annual report with the OEB that shall:

a) Identify any potential customers that OMLP intends to serve using the facilities constructed to serve Maricann (Facilities)

b) Identify any requests for service that OMLP has received

c) Provide a summary table of OMLP's planned versus actual ROE for each year of the five year IR plan (as applicable) with variance explanations

d) Provide a summary table of Z-Factors and Y-Factors that OMLP has or may request approval of for each year of the five year IR plan (as applicable) with brief rationale for each

e) Provide a brief description of any pending capital projects associated with the Facilities (e.g., purpose, cost, timing and whether a Y-Factor may be requested)

f) Provide a description of any orders or fines imposed by an authority having jurisdiction other than the OEB (e.g., the Technical Standards and Safety Authority) and relating to the Facilities

g) Provide in-house financial statements or Notice to Reader Financial Statements in accordance with the OEB's *Uniform System of Accounts for Class A Gas Utilities*

As a one-time filing, the OEB requires OMLP to file an organization chart illustrating the corporate structure and ownership positions of OMLP and its affiliates.

5 ORDER

THE ONTARIO ENERGY BOARD ORDERS THAT:

1. The proposed fixed charge rate of $22,352 per month shall be effective the date of commencement of service to the customer.
2. OMLP shall notify the OEB of the date of commencement of service to the customer.
3. Each year of the five year IR plan, on or around the anniversary of service commencement to the customer, OM Limited Partnership shall file with the OEB an annual report in accordance with the reporting requirements enumerated in the preceding section.
4. OM Limited Partnership shall pay the OEB’s costs incidental to this proceeding upon receipt of the OEB’s invoice.

DATED at Toronto November 15, 2018

ONTARIO ENERGY BOARD

Original Signed By

Kirsten Walli
Board Secretary