



Ontario Energy Board Commission de l'énergie de l'Ontario

DECISION AND ORDER

EB-2018-0247

EPCOR SOUTHERN BRUCE GAS INC. EPCOR UTILITIES INC. & EPCOR NATURAL GAS LIMITED PARTNERSHIP

**Application for Leave to Transfer EPCOR Southern Bruce Gas Inc.'s
Certificates of Public Convenience and Necessity to EPCOR Natural Gas
Limited Partnership**

BY DELEGATION, BEFORE: Brian Hewson
Vice President
Consumer Protection & Industry Performance

November 29, 2018

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1 INTRODUCTION AND SUMMARY

This is a Decision of the Ontario Energy Board (OEB) regarding an application filed by EPCOR Southern Bruce Gas Inc. (EPCOR Southern Bruce), EPCOR Natural Gas Limited Partnership (ENGLP) and EPCOR Utilities Inc. (EPCOR Inc.) requesting an order under section 18 of the *Ontario Energy Board Act, 1998* (the OEB Act) granting leave to transfer EPCOR Southern Bruce's certificates of public convenience and necessity (certificates) to ENGLP.

2 THE PROCESS

On August 10, 2018, EPCOR Southern Bruce, EPCOR Utilities Inc. and ENGLP applied to the OEB under section 18 of the OEB Act and section 8 of the *Municipal Franchises Act, 1990* for an order granting leave to transfer EPCOR Southern Bruce's certificates to ENGLP.

The OEB issued a Notice of Hearing on September 21, 2018. Union Gas Limited (Union Gas) applied for intervenor status. No objection was received from the applicants. On October 25, 2018, the OEB issued Procedural Order No. 1, which provided for submissions from parties.

Union Gas filed a letter on October 30, 2018, requesting that the deadline to file submissions be extended to explore a number of issues that Union Gas had concerns with, and that the OEB establish an interrogatory process to allow more evidence to be put on the record.

On October 31, 2018, EPCOR Inc. filed a letter in response, requesting that the OEB proceed with written submissions, on the basis that the matters Union raised were largely not relevant to the proceeding; however, EPCOR suggested extending the deadline for Union Gas to file its submissions to November 5, 2018.

In Procedural Order No. 2, which was issued on October 31, 2018, the OEB determined that it would not provide for an interrogatory process, but that it would extend the deadlines for filing submissions.

Union Gas and OEB staff filed submissions on November 5, 2018. The applicants filed a reply submission on November 9, 2018.

3 BACKGROUND

In its decision and order issued on April 12, 2018¹, the OEB granted EPCOR Southern Bruce the certificates for the Municipality of Arran-Elderslie, the Municipality of Kincardine and the Township of Huron-Kinloss (South Bruce Decision). These certificates were granted conditionally, subject to the filing and approval of a leave to construct application. EPCOR Southern Bruce is a wholly-owned indirect subsidiary of EPCOR Inc.

ENGLP is another wholly-owned indirect subsidiary of EPCOR Inc., and currently owns and operates the former Natural Resource Gas Limited's (NRG) natural gas distribution system in Aylmer, Ontario. ENGLP is EPCOR Inc.'s primary operating entity in Ontario. ENGLP's general partner is EPCOR Ontario Utilities Inc., and its sole limited partner is EPCOR Power Development Corporation, both of which are also subsidiaries of EPCOR Inc.

¹ EB-2016-0137 / EB-2016-0138 / EB-2016-0139

4 SUBMISSIONS OF THE PARTIES

The applicants have submitted that the purpose of the requested transfer is to achieve a consolidation of the businesses of ENGLP and EPCOR Southern Bruce, in order for EPCOR Inc. to achieve certain efficiencies in operating its gas distribution assets in Ontario. The applicants also submit that with the transfer of the certificates, ENGLP will assume any applicable obligations of EPCOR Southern Bruce related to the South Bruce Decision. The applicants submitted that the transfer of the certificates will result in no harm to ratepayers, nor will the transfer affect the development or safe operation of natural gas storage and distribution in Ontario.

The applicants stated that the ENGLP personnel who currently operate the former NRG distribution system have the necessary experience and expertise to assist with the development and operation of the Southern Bruce project. The applicants also stated that ENGLP will maintain separate business units and rate tariffs for the former NRG gas distribution system operated by ENGLP in the Aylmer region and the future gas distribution system in the Southern Bruce area.

Union Gas submitted that “while section 18 of the Ontario Energy Board Act states that no authority given by the OEB under this or any other Act shall be transferred or assigned without leave of the OEB”, it questioned whether the OEB could approve the applicants’ request without also considering 1) whether an application under section 43 of the OEB Act was required, 2) the implications of EPCOR LP assuming responsibility for service to the Southern Bruce municipalities, and 3) specific conditions or restrictions that should be set out in an OEB order providing for the transfer of the certificates.

Union Gas also submitted that the application to transfer the certificates for the Southern Bruce municipalities did not address the certificates and franchise agreements that would be required for areas in the Township of Chatsworth, the Municipality of West Grey, the Municipality of Brockton, the County of Bruce and the County of Grey in which EPCOR Southern Bruce would have to install assets to provide service to the Southern Bruce municipalities, as well as the leave to construct that is a condition of the certificates that are the subject of this application. Union Gas also submitted that the OEB should ensure that the preceding conditions imposed on, and obligations of, EPCOR Southern Bruce be explicitly made part of any certificate transfer.

OEB staff submitted that the application does not require consideration under section 43 of the OEB Act or the *Municipal Franchises Act, 1990* as it is essentially the transfer of authorizations that have already been granted. OEB staff submitted that all of the approvals requested can be granted pursuant to section 18 of the OEB Act. OEB staff noted in its submission that ENGLP had filed with the OEB a leave to construct application for works to supply natural gas in the Municipality of Arran-Elderslie, the Municipality of Kincardine, and the Township of Huron-Kinloss on September 20, 2018. OEB staff submitted that the OEB should approve the transfer of EPCOR Southern Bruce's certificates to ENGLP, and agreed that ENGLP has the experience and expertise necessary to safely develop and operate the Southern Bruce project and store and distribute natural gas in Ontario. In OEB staff's opinion, ratepayers and other natural gas utilities in Ontario would not be adversely affected by the approval of the certificate transfer.

The applicants, in reply submitted that section 43 of the OEB Act does not apply because no gas distribution system has been built yet in the certificate area, while section 18 applies because the certificates are an authority given by the OEB. The applicants acknowledged the obligations and conditions imposed in the South Bruce Decision, and submitted that despite the fact that certain conditions were imposed in the South Bruce Decision, this should not in and of itself hinder a transfer application, especially since the applicants have explicitly committed to assuming and continuing any obligations of EPCOR Southern Bruce, and where the primary temporal condition of the filing of the leave to construct application by October 12, 2018 has already been met. The applicants submitted that this proceeding had a single issue, which was to transfer the certificates for the Southern Bruce Municipalities, and that the applicants would address any other franchise agreement or certificate approvals required for the gas distribution system to pass through in a separate proceeding.

5 OEB FINDINGS

The OEB authorizes EPCOR Southern Bruce to transfer to ENGLP all of EPCOR Southern Bruce's certificates (including all associated conditions). The OEB has considered the submissions regarding the transfer of certificates and finds that section 18 of the OEB Act is the appropriate section for the purpose of authorizing a transfer of a certificate of public convenience and necessity. The section contemplates that the necessary authorization has been granted by the OEB to the party requesting a transfer. The certificates in question are clearly authorizations granted by the OEB in the Southern Bruce Decision. It is the OEB's finding that no other legislative provision needs to be considered for the purposes of granting leave to transfer the certificates.

The issue in this application is whether the party, ENGLP, to whom the authority would be transferred, is acceptable for the purpose of carrying out the authority that was originally granted to EPCOR Southern Bruce by the OEB. The OEB notes that ENGLP has been approved by the OEB to own and operate a gas distribution system, which is exactly what is contemplated by the OEB's granting of the certificates to EPCOR Southern Bruce. The OEB therefore finds that ENGLP is qualified to carry out the activities for which the certificates were granted to EPCOR Southern Bruce.

In respect of the other issues raised by Union in its submissions, the OEB finds that the transfer of the certificates to ENGLP does not in any way alter or affect the conditions that were attached to the certificates by the OEB in the South Bruce Decision. In that regard, the OEB notes that an application for leave to construct has been filed with the OEB by EPCOR Southern Bruce, and that any other certificates required to serve the the Municipality of Arran-Elderslie, the Municipality of Kincardine and the Township of Huron-Kinloss will need to be granted by the OEB before ENGLP constructs works.

6 ORDER

THE BOARD ORDERS THAT:

1. EPCOR Southern Bruce Gas Inc. is granted leave to transfer to EPCOR Natural Gas Limited Partnership the certificates of convenience and necessity issued by the OEB, and the authority granted thereunder, in the following proceedings:

EB-2016-0137, dated April 12, 2018

EB-2016-0138, dated April 12, 2018

EB-2016-0138, dated April 12, 2018

2. EPCOR Natural Gas Limited Partnership shall pay the OEB's costs of and incidental to, this proceeding immediately upon receipt of the OEB's invoice.

DATED at Toronto November 29, 2018

ONTARIO ENERGY BOARD

Original Signed By

Brian Hewson
Vice President, Consumer Protection & Industry Performance