



Enbridge Gas Inc.
50 Keil Drive North
Chatham, Ontario, Canada
N7M 5M1

June 3, 2019

Ms. Kirsten Walli
Board Secretary
Ontario Energy Board
2300 Yonge Street, 27th Floor
Toronto, ON M4P 1E4

Dear Ms. Walli:

**Re: EPCOR Natural Gas Limited Partnership
Southern Bruce Leave-to-Construct Application
Ontario Energy Board File No. EB-2018-0263**

Pursuant to Procedural Order No. 2 to the above noted proceeding, Enbridge Gas Inc. hereby files its final written submissions with respect to the application and evidence of EPCOR Natural Gas Limited Partnership.

Should you have any questions on this submission, please do not hesitate to contact me.

Yours truly,

[Original Signed By]

Patrick McMahon
Specialist, Regulatory Research and Records
pmcmahon@uniongas.com
(519) 436-5325

Encl.

c.c. (email only): Bruce Brandell, EPCOR Utilities Inc.
Richard King, Osler, Hoskin & Harcourt LLP
Dana Bissoondatt, EPCOR Utilities Inc.

ONTARIO ENERGY BOARD

IN THE MATTER OF the Ontario Energy Board Act, 1998, S.O. 1998, c. 15, (Schedule B) as amended and the *Municipal Franchises Act*, R.S.O. 1990, c. M.55, as amended;

AND IN THE MATTER OF an application by EPCOR Natural Gas Limited Partnership under section 90 of the *Ontario Energy Board Act* for an order or orders granting leave to construct natural gas distribution pipelines and ancillary facilities to serve the Municipality of Arran-Elderslie, the Municipality of Kincardine and the Township of Huron-Kinloss;

AND IN THE MATTER OF an application by EPCOR Natural Gas Limited Partnership for orders approving the terms and conditions upon which, and the period for which, the Corporation of the County of Bruce, the Corporation of the County of Grey, the Corporation of the Municipality of Arran-Elderslie, the Corporation of the Municipality of Brockton, the Corporation of the Municipality of Kincardine, the Corporation of the Municipality of West Grey, the Corporation of the Township of Chatsworth and the Corporation of the Township of Huron-Kinloss each, by by-law, grant the right to EPCOR Natural Gas Limited Partnership to construct and operate works for the distribution, transmission and storage of natural gas and the right to extend and add to the works in the County of Bruce, the County of Grey, the Municipality of Arran-Elderslie, the Municipality of Brockton, the Municipality of Kincardine, the Municipality of West Grey, the Township of Chatsworth and the Township of Huron-Kinloss;

AND IN THE MATTER OF an application by EPCOR Natural Gas Limited Partnership under section 8 of the *Municipal Franchises Act* for an order or orders granting a Certificate of Public Convenience and Necessity to EPCOR Natural Gas Limited Partnership for the construction of works and the right to extend and add works in the County of Bruce, the County of Grey, the Municipality of Brockton, the Municipality of West Grey and the Township of Chatsworth;

AND IN THE MATTER OF an application by EPCOR Natural Gas Limited Partnership for orders directing and declaring that the assent of the municipal electors of each of the Corporation of the County of Bruce, the Corporation of the County of Grey, the Corporation of the Municipality of Arran-Elderslie, the Corporation of the Municipality of Brockton, the Corporation of the Municipality of Kincardine, the Corporation of the Municipality of West Grey, the Corporation of the Township of Chatsworth and the Corporation of the Township of Huron-Kinloss to the by-law is not necessary.

SUBMISSIONS OF ENBRIDGE GAS INC.

A. Overview

1. These are the submissions of Enbridge Gas Inc. ("Enbridge") regarding the February 27, 2019 application by EPCOR Natural Gas Limited Partnership ("EPCOR") for various orders related to leave to construct, franchise agreements and certificates of public convenience and necessity to allow them to supply natural gas to the Southern Bruce Municipalities.
2. From a regulatory perspective, any company regulated by the Ontario Energy Board should be required to follow the same legislated requirements as any other regulated utility.

3. In the proposed franchise agreements submitted as part of EPCOR's application, "gas system" is defined as "such mains, plants, pipes, conduits, services, valves, regulators, curb boxes, stations, drips or such other equipment as the Gas Company may require or deem desirable for the distribution, storage and transmission of gas in or through the Municipality". The proposed franchise agreements were developed to align with the Model Franchise Agreement and stipulate that each franchise agreement is subject to the provisions of all regulating statutes and all municipal by-laws of general application.

B. EBO 188 and Public Interest

4. EPCOR is mandated to provide new or upgraded natural gas services to economically feasible residential and commercial / industrial customers pursuant to the Ontario Energy Board's Distribution System Expansion Report issued on January 30, 1998 (EBO 188) in which feasibility is quantified by determining the value of a project's revenues against its costs (the Profitability Index or PI).
5. The OEB, through EBO 188, expects utilities to maintain a PI of 1.0 or greater for their total project portfolio. Each project must meet a PI of at least 0.8 to minimize cross-subsidization among customers across all projects. This ensures project costs are recovered from customers that directly benefit. Without this approach to system expansion, the utility would not collect enough revenue to fund its projects, and the shortfall would need to be recovered from all other customers.
6. The EBO 188 feasibility test is designed to ensure that existing customers do not subsidize new customers on a discounted cash flow basis over the life of the assets provided to serve new customers. Inherent in this feasibility testing methodology is a temporal subsidy where new customers are subsidized by existing customers for a period of time until the revenues provided by the new customers exceed the cost of serving them.
7. In response to Enbridge's IR #6, EPCOR states that a discounted cash flow analysis in accordance with the parameters laid out in EBO 188 was not completed for the proposed project. Without such an economic analysis, it is not clear how the OEB can determine whether the construction of the proposed project is in the public interest

B. Regulatory Compliance

8. In response to OEB Staff's IR #1(b), EPCOR states that it is not seeking leave to construct the 178 km of NPS 2 and 4-inch polyethylene pipeline that will be used to provide gas distribution services within the Southern Bruce Municipalities.
9. When it was granted Certificates of Public Convenience and Necessity ("CPCNs") related to providing gas distribution service to the Southern Bruce Municipalities, EPCOR was directed to file a leave to construct application to serve the areas covered by the Southern Bruce expansion applications on or before October 12, 2018.¹ This includes the distribution systems proposed to be installed within the Southern Bruce municipalities.
10. The *Ontario Energy Board Act* specifies leave to construct requirements for natural gas pipelines:

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

"90 (1) No person shall construct a hydrocarbon line without first obtaining from the Board an order granting leave to construct the hydrocarbon line if,

- (a) the proposed hydrocarbon line is more than 20 kilometres in length;*
- (b) the proposed hydrocarbon line is projected to cost more than the amount prescribed by the regulations;*
- (c) any part of the proposed hydrocarbon line,*
 - (i) uses pipe that has a nominal pipe size of 12 inches or more, and*
 - (ii) has an operating pressure of 2,000 kilopascals or more; or*
- (d) criteria prescribed by the regulations are met."*

11. In November 2015, the Ontario Energy Board issued a high level, plain language guideline document that is intended to assist new entrants interested in distributing natural gas in the province of Ontario. The Guidelines for Gas Expansion in Ontario echoes the requirements under the *Ontario Energy Board Act* with respect to leave to construct:

"Construction of a hydrocarbon distribution line that meets any of the following criteria requires that the gas distributor apply for a leave to construct and secure approval from the OEB (OEB Act section 90):

- The diameter of pipe is 12 inches or greater*
- An operating pressure of an amount equal to greater than 2,000 kilopascals*
- The cost of project is greater than or equal to \$2,000,000*
- The length of pipe required exceeds 20 km"²*

12. The Ontario Energy Board's Environmental Guidelines for the Location, Construction and Operation of Hydrocarbon Pipelines (2016) states the following:

"Any person or company planning to construct hydrocarbon transmission facilities within Ontario, must apply to the OEB for authorization, pursuant to section 90 (1) and of the Act. Under section 90(1) leave to construct must be obtained if the proposed hydrocarbon pipeline is more than 20 kilometres in length; is projected to cost more than the amount prescribed by the regulations (presently \$2 million); and any part of the proposed hydrocarbon line (i) uses pipe that has a nominal pipe size of 12 inches or more, and (ii) has an operating pressure of 2,000 kilopascals or more.

[...]

Certain hydrocarbon pipeline projects do not require approval from the OEB. Projects under federal jurisdiction that require approval from the National Energy Board do not require leave to construct from the Ontario Energy OEB. A OEB order authorizing construction of a transmission line (leave to construct) is not required for the relocation or reconstruction of a pipeline, unless the size of the line is changed or additional land is required, as set out in section 90(2)."³

13. The Ontario Energy Board repeated these same requirements in its Decision with Reasons dated November 17, 2016 in the Generic Proceeding on Community Expansion (EB-2016-0004):

² EB-2015-0156 - Ontario Energy Board - Guidelines for Gas Expansion in Ontario, page 5

³ Ontario Energy Board - Environmental Guidelines for the Location, Construction and Operation of Hydrocarbon Pipelines (2016), pages 4-5

“Construction of a natural gas distribution line that meets any of the following criteria requires that a gas distributor apply for a leave to construct and secure approval from the OEB (OEB Act section 90):

- The diameter of pipeline is 12 inches or greater*
- An operating pressure greater than 2,000 kilopascals*
- The cost of the project is greater than \$2,000,000*
- The length of the pipeline exceeds 20 kilometers”⁴*

14. EPCOR’s proposed distribution system is more than 20 km in length and has a projected cost higher than the \$2 million threshold prescribed by O. Reg 328/03 so there is a requirement to obtain leave to construct for its proposed distribution system.
15. Pipeline operators in Ontario are required to have a Pipeline Integrity Management Program to ensure that proper controls are in place to mitigate safety risks. This includes in-line pipeline inspections, records of the pipeline history, operation manuals, and documentation required to develop and implement the integrity management program. An emergency response program is also required as is financial assurance that demonstrates a pipeline operator’s capability to respond to leaks and spills under the *Environmental Protection Act*. There was no evidence submitted by EPCOR addressing these regulatory requirements.
16. Recent decisions by the Ontario Energy Board with respect to CPCNs have resulted in limitations being placed on allowed service areas based on metes and bounds information in lots and concessions for those parts of municipalities being served. The CPCNs awarded to EPCOR should contain the same service areas limitations as those required for other gas distributors.
17. Contrary to EPCOR’s response to Enbridge IR #4(c), the Duration of Agreement and Renewal Procedures clause (Clause 4) of the franchise agreements proposed between EPCOR and the Municipality of Arran-Elderslie, the Municipality of Brockton, the Township of Chatsworth, the Municipality of West Grey, the County of Bruce and the County of Grey should refer to sub-clause 4(b) of the Model Franchise Agreement because Enbridge already provides gas distribution services within these municipalities. The franchise agreements should contain the clause 4(b) which allows for automatic updates to the franchise agreements on the 7th and 14th anniversaries of the effective dates.
18. Several of EPCOR’s proposed franchise agreements have been dated and “executed” prior to OEB approval. OEB directions to other gas distributors have been clear that municipalities are only supposed to put proposed franchise agreements through 1st and 2nd readings prior to submitting them to the OEB so that the municipality is finalizing its bylaw and executing the final approved version of the franchise agreement. The effective date triggers when EPCOR will be allowed to commence work within the municipalities. The guidelines followed by gas distributors in Ontario have been that the effective date of franchise agreements is the later of the OEB Decision and Order approving the franchise agreement or the date of the 3rd and final reading of the municipal bylaw approving the franchise agreement.

⁴ EB-2016-0004 - Generic Community Expansion - Decision with Reasons (November 17, 2016), page 8

C. Environmental Assessment

19. In response to OEB Staff's IR #16, EPCOR states that the proposed distribution systems within the Southern Bruce Municipalities were not included within the study area of the Environmental Report. EPCOR states that the distribution systems will be constructed in compliance with the environmental screening criteria as described in Appendix B the Ontario Energy Board Guidelines for Assessing and Reporting on Natural Gas System in Ontario.
20. The Ontario Energy Board Guidelines for Assessing and Reporting on Natural Gas System in Ontario does not contain environmental screening criteria. These Guidelines state that utilities shall apply environmental screening criteria to determine when significant features may be impacted during the construction or the operation of the facility. Corresponding planning, documentation, and reporting requirements are to be applied depending on the impacts expected as determined through the screening process. Once the study area for the project is determined, a regional officer of the utility who is familiar with the study area and has been trained in environmental matters, shall identify potential impacts through the screening process and determine the level of planning required. Depending on the significance of the potential impacts anticipated, the planning requirements may involve environmental specialists of the utility, external consultants or other affected parties.
21. There has been no clear evidence presented by EPCOR on why the distribution systems that form an integral part of the proposed project were not included within the study area of the Environmental Report.

D. Conditions of Approval

22. In response to OEB Staff's IR #21, EPCOR is proposing the elimination of conditions of approval related to cost reporting.
23. The requirement to file a Post-Construction Financial Report that includes a variance analysis of project cost, schedule and scope compared to the estimates filed in a leave to construct application is a standard condition of approval that has been part of leave to construct approvals for many years in order to allow the OEB to ensure that the work undertaken matches the proposed work that was deemed to be in the public interest and that the work has been undertaken in a responsible and efficient manner based on established benchmarks.
24. Given the OEB's practice of requiring a post-construction verification of the economics of a project, it should not be EPCOR's responsibility to determine what information will be useful or relevant for the OEB's regulation of EPCOR's operations.

E. Conclusions

25. EPCOR should be required to follow the same legislated requirements as any other regulated utility.
26. The OEB should ensure that the economic feasibility of EPCOR's total project achieves the minimum PI thresholds in order to meet the requirements of the OEB's guidelines for assessing and reporting on natural gas system expansion in Ontario.
27. EPCOR should be required to follow the regulatory requirements associated with leave to construct approvals for systems used to provide gas distribution services within the Southern Bruce Municipalities.
28. EPCOR should be required to provide metes and bounds information in lots and concessions for those parts of the Southern Bruce Municipalities as well as the Municipality of Brockton, the Municipality of West Grey and the Township of Chatsworth that are associated with this leave to construct application. EPCOR should also be required to provide metes and bounds information in lots and concessions for those parts of the lower-tier municipalities within the County of Bruce and the County of Grey that are associated with this leave to construct application and not already addressed in other proposed CPCNs.
29. Franchise agreements for the Municipality of Arran-Elderslie, the Municipality of Brockton, the Township of Chatsworth, the Municipality of West Grey, the County of Bruce and the County of Grey approved for EPCOR should include a Duration of Agreement and Renewal Procedures clause (Clause 4) should refer to sub-clause 4(b) of the Model Franchise Agreement and allows for automatic updates to the franchise agreements on the 7th and 14th anniversaries of the effective dates.
30. The effective dates of franchise agreements approved for EPCOR should be the later of the date of the OEB Decision(s) and Order(s) approving the franchise agreements or the dates of the 3rd and final readings of the municipal bylaws approving the franchise agreements.
31. EPCOR should be required to include its proposed distribution systems within the study area of the Environmental Report.
32. The Conditions of Approval for the proposed leave to construct should contain a requirement to file a Post-Construction Financial Report that includes a variance analysis of project cost, schedule and scope compared to the estimates filed in the leave to construct application.
33. The OEB's approval of EPCOR's application should be conditional upon EPCOR providing proof that it is fully compliant with all regulatory and safety-related requirements as required by other natural gas utilities regulated by the Ontario Energy Board.