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

Dear Ms. Walli:

EB-2018-0331: Applications for the disposition of Cap and Trade-related Deferral and Variance Accounts for the period 2016-2018

Re: Reply of EPCOR Natural Gas Limited Partnership

Further to Procedural Order No. 4 dated April 25, 2019, please find enclosed the Reply of EPCOR Natural Gas Limited Partnership associated with the above file.

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

Yours very truly,



Patrick G. Welsh

c (email only): Susannah Robinson/Daniela O'Callaghan, *EPCOR*
Richard King, *Osler, Hoskin & Harcourt LLP*
Applicants & List of Intervenors in EB-2018-0331

ONTARIO ENERGY BOARD

IN THE MATTER OF the *Ontario Energy Board Act, 1998*, S.O. 1998, c. 15, as amended (the “**Act**”);

AND IN THE MATTER OF an Application by EPCOR Natural Gas Limited Partnership for the disposition of Cap and Trade-Related Deferral and Variance Accounts for the period 2016-2018.

**WRITTEN REPLY OF
EPCOR NATURAL GAS LIMITED PARTNERSHIP**

Background

1. On February 21, 2019, EPCOR Natural Gas Limited Partnership (“**ENGLP**”) filed an application with the Ontario Energy Board (the “**OEB**”) seeking approval for the disposition of its cap-and-trade-related deferral and variance accounts for the period 2016 to 2018 (the “**Application**”). In accordance with Procedural Order No. 4 dated April 25, 2019, OEB Staff provided written submissions (the “**Staff Submissions**”) regarding ENGLP’s application and interrogatory responses (filed on May 31, 2019). Procedural Order No. 4 provided ENGLP with an opportunity to reply, and ENGLP offers the following comments.

2. Based on ENGLP’s review of the Staff Submissions, there are two main issues for discussion in this Reply:

- (a) OEB Staff identified an issue with ENGLP’s 2018 Greenhouse Gas Emissions Impact Deferral Account (the “**GGEIDA**”) balance and requested that ENGLP address the discrepancy in this Reply; and

- (b) OEB Staff submitted that ENGLP should not recover its 2016 actual administration costs in the GGEIDA on the basis that the OEB's Decision and Order dated September 21, 2017 established the GGEIDA to track administration costs effective January 1, 2017.

3. In this Reply, ENGLP will

- (a) provide clarification regarding the 2018 GGEIDA balance in order to address the discrepancy identified by OEB Staff; and
- (b) explain why ENGLP should be allowed to claim its 2016 actual administration costs balance.

2018 GGEIDA Balance Discrepancy

4. OEB Staff observed in the Staff Submissions that “there may be a discrepancy in the 2018 GGEIDA balance”, pointing to the 2018 actual administration costs in one interrogatory response showing as \$105,380 and in another showing as \$103,369.¹ OEB Staff suggested that “this discrepancy should be addressed in [ENGLP’s] Reply Argument in this proceeding.”²

5. The difference between the two amounts discussed above – \$2,011 – is attributable to the calculation of interest. Specifically, the amount of \$105,380 was provided in response to Interrogatory OEB-STAFF-1, where OEB Staff specifically directed interest to be calculated to September 30, 2019. Conversely, the amount of \$103,369, which was provided in response to

¹ OEB Staff Submission, EB-2018-0331 (June 21, 2019) (the “**Staff Submissions**”) at p. 3.

² Staff Submissions at p. 3.

Interrogatory OEB-STAFF-3, was calculated in accordance with the Application, with interest calculated to April 30, 2019. ENGLP also notes OEB Staff's comment that "EPCOR Gas may need to extend the time period for its interest calculation from April 30, 2019 to align with the OEB's decision in this proceeding."³

6. ENGLP submits that its time period for the interest calculation should be extended to September 30, 2019, in accordance with the calculations set out in its interrogatory response to OEB-STAFF-1. As such, ENGLP submits that the appropriate amount is \$105,380, with the total balance for 2018 in the GGEIDA calculated to be **\$106,258**.⁴ Attached as Schedule A to this Reply is a revised interrogatory response to OEB-STAFF-3, which includes a note indicating the change in interest calculation.

2016 Actual Administration Costs

7. In the Staff Submissions, OEB Staff argued that ENGLP should not recover its 2016 actual administration costs, in the amount of \$25,182, because the OEB's Decision and Order related to the 2017 Compliance Plans dated September 21, 2017 directed ENGLP to establish the GGEIDA to track administration costs effective January 1, 2017, and that ENGLP would have needed a deferral account effective January 1, 2016 in order to recover the 2016 administration costs.

8. ENGLP does not agree with OEB Staff's comments in this regard and views Staff's position as unduly punitive. As ENGLP explained in its interrogatory response to OEB-STAFF-1, the 2016 costs identified in the GGEIDA were incurred to plan and prepare for the cap and trade

³ Staff Submissions at p. 2.

⁴ Interrogatory Responses of ENGLP, EB-2018-0331 (May 31, 2019) (the "**ENGLP IRR**"), OEB-STAFF-1 at p. 5.

program and to ensure that the required processes were in place for the 2017 implementation date, and are therefore directly attributable to compliance and administration matters for 2017.⁵ ENGLP also explained that the costs were prudently incurred in 2016 in order to effectively administer and manage the cap and trade program, such that it is reasonable to include these costs in the GGEIDA.

9. ENGLP submits that unlike a deferral account for capital costs, which form part of the rate base and for which profits can be earned on, the costs associated with the cap and trade program (including the 2016 actual administration costs) are essentially a commodity-related charge, for which a utility should be kept revenue-neutral except in the most extraordinary circumstances (e.g., imprudence in procuring supply). Simply put, given the pure pass-through nature of these costs, Board Staff's position would be punitive in nature – with neither ENGLP nor its predecessor NRG having committed any “wrong” warranting such a penalty.

10. In its Decision and Order in EB-2016-0330 which, among other things, established the GGEIDA, the OEB determined that the proposed administrative costs related to 2017 cap and trade compliance obligations were consistent with established expectations and that the assessment of such 2017 cap and trade compliance costs would be assessed as part of the 2019 proceeding:

The OEB accepts the Gas Utilities' proposed Customer-Related Obligation Costs and Facility-Related Obligation Costs for the purposes of finalising the 2017 rates. The OEB finds that the administrative costs proposed by the each of the Gas Utilities to meet their 2017 cap and trade compliance obligations are consistent with the expectations established in the Cap and Trade Framework.

The actual costs for each of the Gas Utilities to meet their cap and trade compliance obligations will be assessed for cost-effectiveness and reasonableness when they are filed as part of the 2019 Compliance Plan proceeding. Decisions

⁵ ENGLP IRR, OEB-STAFF-1 at p. 2.

around disposition of any variance accounts will be made in that proceeding and not as part of a Deferral and Variance Account application.⁶

Nowhere in the above decision did the OEB disallow any costs incurred in 2016 for compliance with the utility's 2017 cap and trade obligations. In fact, the OEB explicitly acknowledged that flexibility is required because the cap and trade program was new at the time: "The OEB recognises that the cap and trade program is new and that the Gas Utilities will be able to refine their cost estimates over time with experience."⁷ With respect to the disposition of amounts in the GGEDIA, the OEB noted that deferring the decision to 2019 allowed the OEB more time and information to consider the issues:

The OEB finds that the disposition amounts and methods will be determined in the 2019 Compliance Plan proceeding where the accounts will be examined in the context of the cap and trade program, and not through the utility DVA applications. This disposition decision is deferred to allow the OEB to have more time and information to consider the issues.⁸

Consequently, ENGLP submits that it is appropriate for the OEB to apply a degree of flexibility regarding the administration expenses associated with 2017 cap and trade compliance which were incurred in 2016, as this is consistent with the OEB's Decision and Order.

11. ENGLP notes further that OEB Staff did not object to the nature or the substance of the administration costs incurred in 2016. Rather, OEB Staff's concern appeared to lie with the fact that the GGEIDA was made effective January 1, 2017. Staff's position is purely technical, and does in no way question the necessity or prudence of the costs.

⁶ Decision and Order, EB-2016-0330 (September 21, 2017) at p. 16.

⁷ Decision and Order, EB-2016-0330 (September 21, 2017) at p. 16.

⁸ Decision and Order, EB-2016-0330 (September 21, 2017) at p. 37.

12. Staff's position is also *contra* precedent. In EB-2016-0262, the OEB recognized and allowed for the recording (and ultimate recovery) of historic costs associated with developing and seeking approval for the Wataynikaneyap Transmission Project by way of a deferral account. The Project's proponent had sought an effective date for the requested deferral account of August 26, 2016 but also sought to recover related costs dating back to 2008.⁹ The OEB ultimately allowed the recording of certain costs (not from 2008, but from 2010 onward) in a deferral account, and did so by designating the effective date of the accounting order and the deferral account to be November 23, 2010 in order to allow for recovery of such costs.¹⁰

13. ENGLP submits that the most efficient use of the OEB's limited time is to review and assess the 2016 administration costs, which amount to \$25,182 and were incurred for the purposes of compliance with ENGLP's 2017 obligations, in this proceeding.¹¹ Should the OEB deem it necessary, ENGLP submits that the OEB should amend the effective date of the deferral account to be January 1, 2016. In the alternative, ENGLP respectfully requests that the OEB provide further direction to ENGLP to commence a proceeding to record and recover the cap-and-trade administration costs incurred in 2016.

14. For the reasons set out above and in materials previously submitted to the OEB, ENGLP respectfully requests that the OEB approve ENGLP's application to dispose and recover the cap-and-trade-related balances in the GGEIDA, along with the Greenhouse Gas Emissions Compliance

⁹ Wataynikaneyap Power LP - Applicant Argument in Chief, EB-2016-0262 (February 3, 2017) at pp. 6, 10.

¹⁰ Ontario Energy Board – Decision & Order, EB-2016-0262 (March 23, 2017) at pp. 4, 7-8.

¹¹ Details of ENGLP's 2016 administrative costs can be found in ENGLP's Supplemental Evidence and Application, EB-2018-0331 (February 21, 2019), at Appendix A, p. 13.

Obligation – Customer-Related (GGECO-Customer-Related) and Greenhouse Gas Emissions
Compliance Obligation – Facility Related (GGECO-Facility Related) accounts.

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ALL OF WHICH IS RESPECTFULLY SUBMITTED.

July 19, 2019



Patrick G. Welsh
Osler, Hoskin & Harcourt LLP
Counsel for EPCOR Natural Gas Limited Partnership

SCHEDULE “A” – REVISED IRR TO OEB-STAFF-3



OEB-STAFF-3

Reference: Appendix A – GGEIDA p. 13-15

Preamble: EPCOR outlines its monthly expenses in its cap and trade GGEIDA.

Request:

- (a) Based on its 2017 monthly admin expenses outlined on pages 13-15, please summarize EPCOR's 2017 actual costs in the sub-categories outlined in the table below.

Please include EPCOR's 2017 cost forecasts (as per its 2017 cap and trade compliance plan). If additional sub-categories are required, please modify and complete the table.

	Forecast 2017 Costs	Actual 2017 Costs
Salaries and Wages		
Consulting		
External Legal Counsel		
Revenue Requirement on Capital Costs		
Outreach and Education		
OEB Costs		
Interest		
Other		
Total		

- (i) For EPCOR's 2017 actual costs in relation to its salaries and wages, please identify the number of FTEs.
- (ii) If there is a variance between 2017 forecast vs. actual costs, please explain the reasons for the difference.
- (b) Based on its 2018 monthly expenses outlined on pages 13-15, please summarize EPCOR's 2018 actual costs in the sub-categories outlined in the table below.

Please include EPCOR's 2018 cost forecasts (as per its 2018 cap and trade compliance plan). If additional sub-categories are required, please modify and complete the table.



	Forecast 2018 Costs	Actual 2018 Costs			
		Pre-Revocation (Jan 1-Jul 3)	Post-Revocation (Jul 4-Sep 30)	Oct - Dec	Total
Salaries and Wages					
Consulting					
External Legal Counsel					
Revenue Requirement on Capital Costs					
Outreach and Education					
OEB Costs					
Interest					
Other					
Total					

Response:

(a) Completed table provided below.

	Forecast 2017 Costs	Actual 2017 Costs
Salaries and Wages		
Consulting	80,000	82,960
External Legal Counsel	10,000	35,426
Revenue Requirement on Capital Costs		-
Outreach and Education	5,000	-
OEB Costs		582
Interest		747
Other	5,000	5,171
Total	100,000	124,886

- (i) The number of FTEs associated with the administrative expense in 2017 is zero (0).
- (ii) The actual expenses exceeded the forecast primarily due to the cost of external legal counsel which required a higher level of effort to assist EPCOR to develop and prepare this new regulatory application.

(b) Completed table provided below.

	A	B	C	D	E
	2018 F Costs	Pre-Revocation (Jan 1-Jul 3)	2018 Actual Costs Post-Revocation (Jul 4-Sep 30)	Oct - Dec	Total
1 Salaries and Wages	28,000				
2 Consulting	76,500	37,980	11,330	-	49,310



3	External Legal Counsel	12,000	36,316	7,021	4,183	47,520
4	Revenue Requirement on Capital Costs	-	-	-	-	-
5	Outreach and Education	2,500	-	-	-	-
6	OEB Costs		463	-	-	463
7	Interest ¹	6,000	1,297	994	4,804	7,094
8	Other	32,000	516	478	-	993
9	Total	157,000	76,571	19,822	8,986	105,380

Note 1: revised to include interest calculated to September 30, 2019 from April 30, 2019.

- (i) The number of FTEs associated with the administrative expense in 2017 is zero (0).
- (ii) Overall actual costs were \$53,631 lower than forecast,
- Salaries and Wages were \$28,000 lower than forecast as the additional 0.3 FTE was not hired.
 - Consulting costs were \$27,190 lower than forecast due to the termination of the program in July.
 - Legal costs were \$35,520 higher than forecast due to incurring costs to wind down the Cap & Trade program and assistance with this filing.
 - Other costs were \$31,007 lower than forecast, custom software was not developed as a result of program termination in July.
- (iii) Notwithstanding the repeal of O. Reg. 144/16, EPCOR continued to incur external legal expenses related to the wind-down of the Ontario Cap & Trade program, including, for example, the current Board process to clear the DVA associated with the Cap & Trade program. Upon closer review of counsel invoices over the fall of 2018, ENGLP believes that certain external legal expenses more closely related to the assessment of the Federal carbon pricing program on ENGLP's operations were inadvertently included on pages 14 and 15. These costs have been removed and the amounts have been updated accordingly.

The resulting adjustments are as follows:

- The \$2,133 shown as accruing in September 2018 related to time and expenses incurred in July 2018 (the invoice was paid in September 2018),



including in relation to the wind-down of the program and the OEB's correspondence thereto in EB-2017-0245.

- The \$680 shown for October 2018 and the \$6,334 shown for December 2018 have been removed.
- The \$11,020 showing in December 2018 has been reduced to \$4,182.50 and relates to expenses incurred in relation to this proceeding as shown in the updated pages of Appendix A and C, which are included in OEB Staff IR-3 Attachment 1.