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Ontario Energy Board
2300 Yonge Street
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Attention: Ms Kirsten Walli
Board Secretary

Dear Sirs/Mesdames:

**EPCOR Natural Gas Limited Partnership Application for Rates 2020
(EB-2018-0264 – South Bruce)**

We are counsel to EPCOR Natural Gas Limited Partnership (“EPCOR”) in the above-noted proceeding. In accordance with Procedural Order No. 3, this letter sets out EPCOR’s submissions on the draft issues list attached as Schedule A to Procedural Order No. 3.

Background

EPCOR’s primary concern with most of the disputed issues is that, as currently worded, they assume that the Board should apply the same level of regulatory scrutiny to EPCOR’s application as it would to a conventional rate application. However, this rate application is unique, and the culmination of a long process (including a generic proceeding) that selected EPCOR to supply natural gas to the South Bruce region based on a competitive Common Infrastructure Plan (“CIP”) selection process.¹ The basic premise underpinning the CIP process was straightforward – that requiring the two utilities to compete for the right to serve South Bruce by taking the risk on a ten-year revenue requirement in their CIP proposals would push the competing utilities to control costs. This would not only benefit ratepayers but would also obviate the need for the same level of regulatory scrutiny applied to typical rate applications (where no competitive forces are at play). This has been EPCOR’s understanding throughout:

¹ EB-2016-0137/138/139, Decision and Order, South Bruce Expansion Applications, April 12, 2018 (“CIP Decision”).

In the generic proceeding establishing the competitive framework:

“Competing utility companies would be incented to provide rates favourable to customers in order to be selected as the preferred proponent of the expansion project ... The utility would bear the risk for the 10-year period if the customers they forecast did not attach to the system. At present, once an expansion is approved, the utility bears little long-term risk if its forecasts were overly optimistic, or its actual costs higher than expected. The cost is absorbed into rates and paid for by other ratepayers. ... As mentioned above, the rate stability feature of the framework introduces a discipline that significantly reduces the need to scrutinize a proponent’s projected revenues. ...”²

In establishing the specific CIP parameters for South Bruce:

“The primary benefit of the introduction of competition identified in the generic decision is the discipline it instills to control costs and the search for efficiencies in system expansion and operation.”³

“I’m speaking for the Panel. It was the same panel that wrote the generic decision, so I understand what our thinking is here ... [I]n a competitive process, the essence of the generic decision [is] that we would be relying on competition to take care of a lot of those things which we typically look under the hood for, in the rolling up of these numbers to come in with a revenue requirement ... it’s whoever feels that they have the risk tolerance and the lowest price. That’s the competitive force of itself.”⁴

“The common assumptions of the CIP should be explicitly included in each proponent’s proposal to ensure that proponents are adhering to their agreement. However, the OEB does not expect proponents to disclose those competitively derived elements that build up the revenue requirement. ... The proponents agree to three comparison criteria: \$/m³, number of customer years and cumulative volume ... The successful proponent will be held to the comparative criteria agreed to when filing its rates application.”⁵

And finally, in the CIP Decision itself:

“To facilitate the selection of a successful proponent to service the South Bruce Municipalities, the OEB established a Common Infrastructure Plan (CIP) which would serve as a relative proxy to allow the OEB to

² EB-2016-0004, Decision with Reasons, Generic Proceeding on Community Expansion, November 17, 2016.

³ EB-2016-0137/138/139, Partial Decision and Procedural Order No. 6, June 27, 2017.

⁴ *Ibid*, Hearing Transcript, former Vice Chair Quesnelle, p. 62, August 2, 2017.

⁵ *Ibid*, Decision on Preliminary Issues and Procedural Order No. 8, August 22, 2017, pp. 3 and 4.

undertake a comparison of the proponents' stated revenue requirements on a set of common parameters."⁶

"... the OEB will require EPCOR to demonstrate that forthcoming leave to construct and rates applications are consistent with its CIP proposal."⁷

EPCOR's CIP, inclusive of its ten-year revenue requirement, was based on a number of parameters and common assumptions⁸, each of which were approved by the Board in advance of the submission of the competing CIP. In addition, EPCOR's CIP proposal included competitive forecasts as determined by EPCOR (e.g., customer attachment rates), each of which underlie EPCOR's CIP model and ten-year revenue requirement that were accepted by the Board.

The Board determined that "Taking all elements of the CIPs into consideration, the OEB finds that the EPCOR CIP is most favourable to customers, and therefore EPCOR is granted certificates of public convenience and necessity for the South Bruce municipalities."⁹

In EPCOR's view, it made its CIP proposal on the understanding that its ten-year revenue requirement was fixed, and to be taken as a whole. It was never meant to be a revenue requirement cap, capable of having individual cost items subject to further review and reduction. If this were done, it would alter the elements on which CIP proposals were created and undermine the entire competitive nature of the CIP process.

EPCOR assumes that this is what the Board meant in its Procedural Order No. 3 in this proceeding:

The OEB further reminds parties that the OEB accepted the commitments made by EPCOR Southern Bruce as part of the Common Infrastructure Plan (CIP) process. EPCOR Southern Bruce was required to reflect these commitments in its rates application. The OEB will not be revisiting the overall commitments (with the exception of any proposed adjustments) that were made in the CIP process.

Given this, and as detailed below, EPCOR is proposing the wording "consistent with the EPCOR's CIP proposal" to replace "appropriate" (the wording typically used in Board-approved issues list for typical rate proceedings). In EPCOR's view, this wording more

⁶ *Ibid*, Section 1, page 1 (emphasis added).

⁷ *Ibid*.

⁸ EB-2018-0264, Exhibit 1, Tab 2, Schedule 1, Table 1-1, page 11 of 64.

⁹ *Ibid*, Section 4.2, page 11 (emphasis added).

accurately reflects the CIP process to date, and the relevant test to be met for a number of the draft issues in this application.

Specific Issues

Draft issues 2(a), (b), (d); 3(a), (b), (c); 4(b); and 8(a), (b), (c), (d), (e) relate specifically to elements of the approved ten-year revenue requirement. In the CIP proceeding, “[t]he OEB [did] not expect detailed cost information, which builds up to the revenue requirement, to be provided.”¹⁰ Consequently, EPCOR’s CIP proposal did not include detailed cost information. EPCOR only provided that information in the current rate application to support a cost allocation study and establish the rate base that underpins EPCOR’s ten-year revenue requirement. This rate base that will serve as an input when EPCOR files a cost-of-service application for the period subsequent to the rate stability period. However, as discussed above, the Board has approved the ten-year revenue requirement in EPCOR’s CIP, on which EPCOR is taking conversion and other risks and, therefore, the test should be whether these elements are consistent with the revenue requirement in EPCOR’s CIP proposal, not whether on an individual basis they are appropriate. EPCOR’s proposed wording for these draft issues is included in Appendix 1 to this letter, and reflects the submissions in the Background section above.

Regarding **draft issue 2(c)**, EPCOR submits that determination of the final value of any Contribution in Aid of Construction (“CIAC”) that EPCOR pays to Enbridge Gas is outside the scope of this application. There are two potential Contributions to consider:

- The value of any CIAC related to Enbridge’s Owen Sound reinforcement project will be determined in the leave to construct application for that project that Enbridge is expected to file shortly.
- The final value of any CIAC that EPCOR makes to Enbridge for construction of the custody transfer station at Dornoch will be determined by Enbridge, once that project is complete.

The cost impacts of these CIACs was specifically excluded from EPCOR’s CIP revenue requirement (as were all upstream transportation costs). Consequently, the final values should be flowed through to ratepayers as EPCOR is not expected to take risk associated with this rate component. A decision in this application as to whether the values of the current forecasts of these CIACs are appropriate could result in some amounts being “trapped” at the utility level, with EPCOR reimbursing Enbridge but unable to flow the costs through to ratepayers. As a result, it is unclear how the quantum of any CIACs (currently unknown) can be addressed in this application. Moreover, EPCOR has a vested

¹⁰ EB-2016-0137/138/139, Decision of Preliminary Issues and Procedural Order No. 8, August 22, 2017, Infrastructure Specifications, page 4.

interest in ensuring any assessed CIACs are as low as possible, because such costs would drive up distribution costs (as a result of the cost pass-through) and potentially impact conversion rates.

EPCOR is, however, of the view that its proposal as to the mechanism for recovery the final value of any contributions is an issue that is appropriately addressed in this application. EPCOR's proposed wording for this draft issue is included in Appendix 1 to this letter.

Draft Issues 5 (a) and (b) address the revenue deficiency resulting from the change in construction schedule driven by a change in a common assumption in the CIP process used to determine EPCOR's revenue requirement. As the framework regarding the determination of the approved ten-year revenue requirement and the bundle of common assumptions that supported that determination are an integral component of the CIP process, any adjudication related to a revenue deficiency must be tied directly back to the CIP. EPCOR's proposed re-wording for draft issue 5(a) and deletion of issue 5(b) is based on the submissions above that the adjustment be assessed on the basis of the CIP process and not whether any adjustment is appropriate. See Appendix 1 this submission for EPCOR's proposed changes.

Draft issue 6(b) is more complex. In arriving at a customer attachment forecast in its CIP proposal (which was one of the fundamental inputs used to determine EPCOR's ten-year CIP revenue requirement), EPCOR made certain assumptions regarding the cost competitiveness of natural gas versus existing energy sources:

EPCOR forecasts attaching a total of 5,278 customers over the 10-year rate stability period based on a conversion rate of 60% for residential customers and 65% commercial customers. This is supported by formal survey results for residents and extensive face to face meetings with commercial customers and augmented with the results of a commercial survey.¹¹

In order to create the incentive for customers to convert to natural gas, EPCOR must therefore have the flexibility to charge a tariff that is based on its understanding as to what the delta from existing energy sources must be. This results in a more "market" based tariff rather than one that is primarily based on cost allocation and revenue to cost ratios. EPCOR notes that after the ten-year rate stability period it will file a rates application with a proposed tariff that will be supported by a cost-of-service methodology. EPCOR's proposed wording for this draft issue is included in Appendix 1.

¹¹ EB-2016-0137/38/39, EPCOR Southern Bruce Common Infrastructure Plan Application, Tab 2, Executive Summary, paragraph 13, page 5 of 41

Draft issue 7(a) addresses the deferral and variance accounts (“DVAs”) proposed by EPCOR. In its evidence, EPCOR has proposed the establishment of 13 DVAs. A number of those accounts would be considered customary for any gas utility (e.g., Purchased Gas Commodity Variance Account). However, several of the proposed accounts are specific to the common assumptions used to support EPCOR’s CIP proposal (e.g., Energy Content Variance Account). EPCOR is therefore proposing to split draft issue 7(a) into two parts, with one part addressing accounts that are more customary to gas distributors and one part addressing accounts that are specific to the common assumptions used to support EPCOR’s CIP proposal. EPCOR’s proposed wording for this draft issue is included in Appendix 1.

Draft Issue 10(a), and particularly the wording “implementation of EPCOR’s tariff”, could be interpreted to include almost any issue related to the application, including the two that are specifically identified. As a result, EPCOR proposes that the issue be reworded to include only issues specifically identified by a party and approved by the Board. As to the two specific issues currently identified: (i) EPCOR notes that the proposed effective date was an identified assumption in the competitive CIP process (and should therefore be tied back to the CIP); and (ii) the concept of rate smoothing through the use of rate riders as proposed by EPCOR is not addressed in the CIP, and while it goes to the issue of the attractiveness of the service versus alternatives (i.e., customer conversion), EPCOR agrees that other factors could also be considered in arriving at a conclusion. EPCOR’s proposed wording for this draft issue is included in Appendix 1.

Draft issue 11 (a) is not relevant to this proceeding, and EPCOR is proposing that it be removed. As set out in Procedural Order No. 3, it would require the Board to assess and determine whether EPCOR has “engaged and consulted” with both “key stakeholders” and “First Nation and Métis communities”. Further, as drafted the issue would require the Board to assess and determine whether EPCOR has “undertaken consultation to ensure Indigenous rights and interests” have been considered and addressed vis-à-vis the rate application. There is no obligation in the Board’s *Filing Requirements for Natural Gas Rate Applications* (“Filing Requirements”) to carry out any engagement or consultation with “key stakeholders”. Moreover, EPCOR submits that its rate application does not trigger the duty to consult (“DTC”) indigenous communities.

With respect to the Filing Requirements, these do contain customer engagement obligations to advise the Board about a utility’s outreach to its customers regarding, *inter alia*, informing customers of utility plans and proposals in its rate application (e.g., project costs and expected benefits), communications sent to customers, feedback received from customers, etc. Of course, EPCOR does not have customers in South Bruce to provide information to or receive feedback from, however, it did undertake surveys as part of its overall consideration of the project and that information has been provided. On the cost side, EPCOR is taking all risk associated with customer connections. Moreover, no person in South Bruce is obligated to take service from EPCOR.

With respect to the DTC, this is triggered where the Crown contemplates conduct with the potential to adversely affect existing or asserted Aboriginal and treaty rights. Often, the Crown conduct that triggers the DTC is the granting of a permit/approval enabling a project to proceed (e.g., a leave-to-construct decision that would authorize the construction of facilities on lands subject to the exercise of treaty rights or an outstanding claim). The only Crown conduct here is the issuance of a decision to allow EPCOR to charge gas distribution rates to persons who wish to connect to EPCOR's distribution system proposed in its CIP. In the ten-year rate stability period outlined in the CIP (and this application), EPCOR's system will not serve any indigenous community. Even if it did, connection to EPCOR's system (and thereby payment of EPCOR rates) would be voluntary. Consequently, any possible outcome of this rate application has no potential to adversely impact any existing or asserted Aboriginal or treaty rights. This is to be contrasted with EPCOR's leave-to-construct ("LTC") application in respect of South Bruce where the approval that was recently granted by the Board¹² has the potential to impact the aboriginal and treaty rights of, *inter alia*, the Saugeen Ojibway Nation ("SON"). The DTC was appropriately a relevant issue adjudicated upon by the Board in the LTC proceeding. In that regard, EPCOR is working cooperatively with the SON in connection with the activities authorized by the Board's decision and of interest to the SON (e.g., archaeological monitoring).

Yours very truly,



Richard King

¹² EB-2018-0263, Decision and Order, EPCOR South Bruce LTC, July 11, 2019.

EPCOR PROPOSED ISSUES LIST

EPCOR Natural Gas LP Southern Bruce - 2019-2028 Custom IR Application EB-2018-0264

Issue 1: Administration

- a) Has EPCOR Southern Bruce complied with the OEB directives from the Common Infrastructure Plan (CIP) process (EB-2016-0137/ EB-2016-0138/ EB-2016-0139)?
- b) Are EPCOR Southern Bruce's proposed rates consistent with its CIP, and where there are departures are such departures appropriate?

Issue 2: Rate Base and Utility System Plan

- a) Is the level of planned capital expenditures consistent with EPCOR's CIP proposal? and appropriate in that the rationale for planning and pacing choices is adequately explained giving due consideration to:
 - ◆ Customer feedback and preferences
 - ◆ Benchmarking of costs
 - ◆ Reliability and service quality
 - ◆ Impact on distribution rates
 - ◆ Trade-offs with Operating, Maintenance & Administration (OM&A) spending
 - ◆ Government mandated obligations;
 - ◆ The objectives of EPCOR Southern Bruce and its customers
 - ◆ The Utility System Plan
- b) Is EPCOR Southern Bruce's proposed working capital allowance during the rate stability period consistent with EPCOR's CIP proposal and appropriate?
- c) Is the amount EPCOR Southern Bruce's proposal for recovery of the Contribution in Aid of Construction paid to Enbridge Gas for upstream transmission reinforcement and EPCOR Southern Bruce's proposal for recovery of those costs appropriate?
- d) Is EPCOR Southern Bruce's proposal to waive new customer connection costs consistent with EPCOR's CIP proposal and appropriate?

Issue 3: Operating Revenue

- a) Is EPCOR Southern Bruce's proposed Distribution Revenue during the rate stability period consistent with EPCOR's CIP proposal and appropriate, giving due consideration to:
 - a. External funding
 - b. Municipal tax holidays
- b) Is EPCOR Southern Bruce's proposed Non-Distribution Revenue for the rate stability period consistent with EPCOR's CIP proposal and appropriate?
- c) Are EPCOR Southern Bruce's proposed Other Revenues during the rate stability period consistent with EPCOR's CIP proposal and appropriate?

Issue 4: Operating Expenses

- a) Is EPCOR Southern Bruce's forecasted gas supply, transportation and storage costs and proposal for recovery of those costs for the rate stability period appropriate?
- b) Are EPCOR Southern Bruce's shared services costs consistent with EPCOR's CIP proposal and appropriate?

Issue 5: Revenue Deficiency/Sufficiency

- a) Is EPCOR Southern Bruce's proposal to recover an additional \$1.764 million due to changes in construction schedule consistent with EPCOR's CIP proposal and the associated rate rider calculation consistent with EPCOR's CIP proposal and appropriate?
- b) ~~Is the adjusted revenue requirement appropriate?~~

Issue 6: Cost Allocation and Rate Design

- a) Are the proposed rate classes appropriate?
- b) Are EPCOR Southern Bruce's proposed cost allocation, rate design and revenue to cost ratios ~~appropriate and~~ consistent with EPCOR's CIP proposal?
- c) Are EPCOR Southern Bruce's proposed rates appropriate?

~~d) Are EPCOR Southern Bruce's proposed service charges appropriate?~~

Issue 7: Proposed Deferral and Variance Accounts

- a) Are the following EPCOR Southern Bruce's proposed deferral and variance accounts appropriate?
- a. Purchased Gas Commodity Variance Account ("PGCVA")
 - b. Gas Purchase Rebalancing Account ("GPRA")
 - c. Storage and Transportation Variance Account Rates 1, 6 & 11 ("S&TVA Rates 1, 6 & 11")
 - d. Transportation Variance Account Rate 16 ("TVA Rate 16")
 - e. Unaccounted for Gas Variance Account ("UFGVA")
 - f. Greenhouse Gas Emissions Administration Deferral Account
 - g. Federal Carbon Charge – Customer Variance Account ("FCCCVA")
 - h. Federal Carbon Charge – Facility Deferral/Variance Account ("FCCFVA")
 - i. Regulatory Expense Deferral Account ("REDA")
- b) Are the following EPCOR Southern Bruce's proposed deferral and variance accounts consistent with EPCOR's CIP proposal?
- a. Municipal Tax Variance Account ("MTVA")
 - b. Energy Content Variance Account ("ECVA")
 - c. Contribution in Aid of Construction Variance Account ("CIACVA")
 - d. External Funding Variance Account ("EFVA")
- c) ~~b)~~ What other deferral and variance accounts are required?
- d) ~~e)~~ Should EPCOR Southern Bruce's proposed Federal Carbon Charge and related deferral and variance accounts be addressed in this application or as a separate stand-alone application?

Issue 8: Incentive Rate Setting Proposal

- a) Is EPCOR Southern Bruce's proposed Custom Incentive Rate (IR) plan during the rate stability period consistent with EPCOR's CIP proposal ~~and appropriate?~~
- b) Is the proposed 10-year term for the Custom IR plan ~~appropriate~~ consistent with EPCOR's CIP proposal?
- c) Is EPCOR Southern Bruce's proposed annual adjustment mechanism consistent with EPCOR's CIP proposal ~~and appropriate?~~
- d) Is the exclusion of:
 - i. A productivity and stretch factor consistent with EPCOR's CIP proposal ~~and appropriate?~~
 - ii. An earnings sharing mechanism consistent with EPCOR's CIP proposal ~~and appropriate?~~
 - iii. An earnings dead-band off-ramp consistent with EPCOR's CIP proposal ~~and appropriate?~~
- e) ~~e)~~ Is EPCOR Southern Bruce's request for availability of an Incremental Capital Module consistent with EPCOR's CIP proposal ~~and appropriate?~~

Issues 9: Score Card

- ~~a)~~ a) Is EPCOR Southern Bruce's proposed Score Card appropriate?

Issue 10: Implementation

- ~~a)~~ a) Is EPCOR Southern Bruce's proposal for implementation ~~(including its proposed a January 1, 2019 effective date and its~~ consistent with EPCOR's CIP proposal?
- b) Is EPCOR Southern Bruce's proposal for rate riders for recovery from and after this effective date) consistent with EPCOR's CIP proposal and appropriate?

Issue 11: Stakeholder Engagement

- a) Has EPCOR ~~effectively engaged and consulted with key stakeholders and First Nations and Métis communities? Has EPCOR undertaken consultation to ensure Indigenous rights and interests in the application have been considered and addressed?~~