

ONTARIO ENERGY BOARD

EPCOR Natural Gas Limited Partnership

Application for gas distribution rates and other charges
for the period from January 1, 2019 to December 31, 2028

Industrial Gas Users Association (IGUA)

Reply Argument on Draft Issues List

General Comments

1. EPCOR's view of the appropriate scope of inquiry into its 10 year Customer Incentive Rate (CIR) plan filing is that its CIR is to be evaluated only in respect of its consistency with its late 2016 Common Infrastructure Plan (CIP) proposal, which CIP was the basis for the Board's awarding of the South Bruce gas expansion franchise to EPCOR. EPCOR's view is premised on the Board's direction as part of the CIP proceeding decision that the Board "*will require EPCOR to demonstrate that forthcoming leave to construct and rates applications are consistent with its CIP proposal*".¹
2. This view confuses necessity with sufficiency.
3. While it is *necessary* that EPCOR's rates proposal be consistent, in some key respects, with its CIP proposal, such consistency is not *sufficient* to conclude that the proposed rates are necessarily just and reasonable.
4. EPCOR's proposed issues formulation for this rates proceeding is thus overly, and incorrectly, narrow. Whether EPCOR's rates proposal is consistent with its CIP is an

¹ EB-2016-0137/EB-2017-0138/EB-2017-0139, *Decision and Order*, April 12, 2018, page 11, bottom, as referenced in EPCOR's July 23rd issues list submissions herein, page 3, top.

appropriate inquiry, perhaps even a necessary inquiry in some key respects, but not a sufficient inquiry.

5. EPCOR summarizes the rationale for its view as follows^{2,3}

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 the CIP proposals were created and undermine the entire competitive nature of the CIP process.

6. EPCOR supports its view on the appropriate scope of the current proceeding with a number of excerpts from the CIP process. The flaw in EPCOR's reliance on these excerpts is that they relate to the Board's intentions for, and conduct of, the CIP process. The CIP process Hearing Panel's statements regarding the structure and scope of the CIP process are not determinative of the appropriate scope of the instant proceeding to establish rates.
7. There is an excerpt from the CIP process that actually did address a post-CIP rates proceeding⁴ [emphasis added]:

The OEB recognizes that submissions were made by the proponents on permissible annual revenue updates at the hearing. The OEB does not consider the setting of rate-making parameters for the purpose of establishing comparable CIP proposals to be determinative of any element of the future rate-making scheme for the successful proponent. How the revenue requirement will be recovered, including the actual permissible annual revenue updates, will be decided later with the full participation of affected intervenors. All of the following parameters that involve rate making assumptions should be considered in that context.

8. EPCOR's statement that the 10 year CIP revenue requirement "was never meant to be a revenue requirement cap, capable of having individual cost items subject to further review

² EPCOR July 23rd submission on draft issues list, page 3.

³ We struggle to see how review, or even reduction, of individual CIP cost items would "undermine the entire competitive nature of the CIP process". That process is complete, and there is a winner. The current rate approval process is a different one. We do acknowledge, however, that reconsideration of some of the basic CIP parameters agreed to by EPCOR and endorsed by the Hearing Panel in the CIP proceeding could present difficulties for EPCOR in execution of its competitively obtained franchise, and this could be argued to be inappropriate. Neither of these results, however, is a foregone conclusion.

⁴ EB-2016-0137/EB-2017-0138/EB-2017-0139, Procedural Order No. 8, page 3.

and reduction” is not self-evident considering something else that the Hearing Panel in the CIP process said⁵ [emphasis added]:

In the context of this competition, the “rate stability period” is the period of time that the proponent can expect to have its stated revenue requirement available from ratepayers to furnish all the capital and operating requirements that the identified service requires. During this period customers can expect relative rate stability as the proponent’s revenues related to its controllable costs will be capped at its proposed level. The rate stability period may include an allowance for consideration of externally driven, unforeseen events as well as annual financial allowance updates typically allowed by the OEB.

9. EPCOR might certainly argue, at the end of the day, that the overall revenue requirement put forward by EPCOR as the basis for its CIP \$/m³ comparison criterion should be accepted in setting rates for the next decade (whether or not fully supported by the much more extensive “underlying details that support the revenue requirement (e.g. OM&A, capital expenditure, return on capital) that were not quantified during the CIP proceedings but have been detailed in this Application”⁶). Others might even agree. That result, however, is not self-evident and is reasonably at least subject to consideration.
10. It is trite to observe that, as a matter of law, the current Hearing Panel is not bound by a previous Hearing Panel’s determination.
11. The current Hearing Panel might be persuaded on the evidence in this application to consider adjustments (beyond those proposed by EPCOR) to the 10 year revenue requirement to be made “available from ratepayers to furnish all the capital and operating requirements that the identified service requires”.
12. The current Hearing Panel might at least be persuaded to consider the adjustments proposed by EPCOR in light of a now further detailed revenue requirement and expected revenue sufficiency in considering the amount of risk ultimately being assumed by EPCOR and, in that context, the appropriateness of, for example;
 - (a) an Earnings Sharing Mechanism;
 - (b) an off ramp; or

⁵ EB-2016-0137/EB-2017-0138/EB-2017-0139, Procedural Order No. 6, page 4, top.

⁶ Exhibit 1, Tab 2, Schedule 1, page 14, paragraph 11.

- (c) an adjustment to the CIP determined revenue “cap” to account for any schedule delay driven revenue deficiency.
13. As pointed out by Staff in their July 23rd submissions on the draft issues list (page 3, emphasis added);

The fact that a party believes that the “answer” to a particular question is clear does not mean that it should not form part of the issues list. If something is not on the issues list, that generally means parties cannot ask any questions about it or make any submissions on it. Issues should only be excluded from the issues list, therefore, if the panel is certain that the matter has no relevance to the proceeding.

14. The current Hearing Panel is being asked to approve a 10 year rate plan for a brand new gas distribution system to be constructed and operated by a (relatively) new entrant. It is respectfully submitted that the Panel should exercise caution, at this early stage in the proceeding, in pre-determining, through exclusion from consideration, the nuanced implications of a first of its kind competitive CIP process begun in late 2016 and concluded based on filings made in October, 2017 on how the Board should now set rates that will apply to new gas customers commencing in late 2019 or in 2020 and for the ensuing decade.

Reply on Specific Issues

Issue 2: Rate Base and Utility System Plan

15. EPCOR takes the position that the scope for review of its planned capital expenditures should be whether the total level of expenditure is consistent with its CIP proposal. In other words, despite having filed a Utility System Plan, we understand EPCOR to be asserting that if the total level of capital expenditure underlying its revenue requirement for the 10 year test period is the same as the total level of capital expenditure underlying its CIP revenue requirement, that fact is determinative of this issue.
16. OEB Staff take the position that “*it is not only the quantum of proposed investments that need to be reviewed but there are a number of other factors against which the proposed capital investments need to be examined*” (as are detailed in Staff’s submission).
17. In Procedural Order No. 6 of the CIP proceeding (page 3, emphasis added) the Board stated:

The primary benefit of the introduction of competition identified in the generic decision [on natural gas expansion] is the discipline it instills to control costs and the search for efficiencies in system expansion and operation. All other matters related to cost allocation, rate design and the general management of the utility are ongoing concerns of the OEB which it manages as a matter of course with all regulated entities.

18. Staff's position on issue 2a) is consistent with Board oversight of "*the general management of the utility*", a function which the CIP Hearing Panel eschewed from the CIP proceeding specifically but acknowledged for the future more generally. IGUA supports Staff's position on draft issue 2a), and supports the wording of the issue as included on the draft issues list.
19. In respect of issue 2b), Staff has pointed out that upstream charges and capital contributions were not considered in the CIP proceeding, and so the working capital allowance attributable to these costs was also not considered in the CIP proceeding. Staff concludes that the consideration of this issue includes "appropriateness" as well as consistency with EPCOR's CIP proposal. We agree with Staff.
20. In respect of issue 2c), we agree with EPCOR's proposed change to the draft issue (conceptually supported in OEB Staff as well). Since there is no evidence before the Board regarding the Contribution in Aid of Construction for Enbridge Gas' upstream transmission reinforcement, the focus of the issue in this proceeding is properly on EPCOR's proposal for recovery of upstream costs, and the "appropriateness" of that proposal.
21. In respect of issue 2d) – related to EPCOR's proposal to waive new customer connection costs – we do not believe that this proposal was in fact articulated in the CIP process. In any event, as pointed out in OEB Staff's July 23rd submissions, EPCOR's intentions for allocation and eventual recovery of these costs was certainly not considered in the CIP process, and are properly matters for consideration in this process, in determining the appropriateness of EPCOR's proposed rates. IGUA strongly supports the inclusion of the "appropriateness" standard in the final scope of this issue.

Issue 5: Revenue Deficiency/Sufficiency

22. EPCOR asserts that its proposal to recover incremental, relative to its CIP proposal, revenue to recover costs resulting from a change to its construction schedule as a result

of the actual timing of OEB approvals need not be evaluated for appropriateness, but merely for consistency with its CIP.

23. Of course, the delay was not contemplated by the CIP, so any resulting costs are, by definition, not consistent with the CIP. Accordingly, the Board must now consider whether provision for additional revenue to recover such costs is appropriate, and if so what that revenue should be.
24. Further, now that the Board has more complete information on the “*underlying details that support the revenue requirement (e.g. OM&A, capital expenditure, return on capital)*” that were not quantified during the CIP proceedings but have been detailed in this Application⁷, this Hearing Panel is in a position to consider an updated and more fully supported revenue forecast, and whether such forecast as compared to the CIP revenue requirement renders EPCOR’s proposal to depart from the CIP revenue requirement appropriate.
25. IGUA thus supports the wording of issues 5a) and 5b) as drafted.

Issue 6: Cost Allocation and Rate Design

26. EPCOR did not file information on cost allocation, rate design or revenue to cost ratios in its CIP proposal. While it has now filed that information, it asserts that rates need not be set on the basis of that information. Rather, it asserts⁸:

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.

27. This is a novel proposition, with which IGUA strongly disagrees. IGUA will ask the Board to expressly and carefully consider whether this is appropriate. Issue 6b) must remain as drafted.

⁷ Exhibit 1, Tab 2, Schedule 1, page 14, paragraph 11.

⁸ EPCOR July 23, 2019 Draft Issues List Submission, page 5.

28. EPCOR has proposed striking out issue 6d) regarding other service charges altogether. EPCOR cannot have other service charges without having them approved by the Board. It is not clear whether EPCOR is proposing to levy any other service charges, and if not whether and how costs for other services should be included in rates. In order to address this topic issue 6d) should remain, and should remain as drafted.

Issue 8: Incentive Rate Setting Proposal

29. As part of the CIP proceeding the Board directed a 10 year rate stability period, and incorporated certain rate escalation parameters into the CIP driven revenue requirement based on which EPCOR was chosen for the South Bruce gas expansion franchise. It did not, however, consider a full Customer Incentive Rate (CIR) plan as is currently being proposed by EPCOR.
30. While we agree that consistency with EPCOR's CIP is a relevant consideration for evaluation of EPCOR's CIR plan, while such consistency may be, in key respects, necessary, it is not sufficient.
31. The various components of issue 8 are properly formulated in the draft issues list and should remain as formulated. As noted earlier in this submission, a critical excerpt from the CIP process directly on point is the following⁹ [emphasis added]:

The OEB recognizes that submissions were made by the proponents on permissible annual revenue updates at the hearing. The OEB does not consider the setting of rate-making parameters for the purpose of establishing comparable CIP proposals to be determinative of any element of the future rate-making scheme for the successful proponent. How the revenue requirement will be recovered, including the actual permissible annual revenue updates, will be decided later with the full participation of affected intervenors.

32. The instant proceeding is the proceeding in which the manner in which the revenue requirement will be recovered and the actual permissible annual revenue updates should be decided, with the full participation of affected intervenors.

⁹ EB-2016-0137/EB-2017-0138/EB-2017-0139, Procedural Order No. 8, page 3.

Issue 10: Implementation

33. EPCOR expresses what we understand to be two concerns in respect of issue 10 as drafted.¹⁰
34. One concern is that the language (our emphasis) *“implementation (including its proposed January 1, 2019 effective date)”* is too broad, and could be argued to include almost any issue related to the application. That was not the intention, nor do we believe it is the result, but we do not object to EPCOR’s proposal to replace this language with a more exclusive reference to EPCOR’s proposed January 1, 2019 effective date and associated proposed rate riders.
35. The second concern is that the proposed effective date was an identified assumption in the competitive CIP process, *“and should therefore be tied back to the CIP”*. In this assertion EPCOR seems to be advocating a pre-determination that its proposed effective date for rates and provision for collection of its revenue requirement as the same date assumed in the CIP is necessarily appropriate, regardless of when it actually attaches customers or begins to provide gas service. While a legitimate issue for consideration, the predetermination implied in EPCOR’s issues list position is inappropriate.
36. The effective date in the CIP was set for the purposes of ensuring that CIP comparisons between EPCOR and (then) Union Gas were derived and calculated on a comparable basis. It can be reasonably argued that has nothing to do with the actual implementation date. Apart from consistency with the CIP, the Hearing Panel in the current application must consider whether setting rates (including riders) to recover revenue as of January 1st even though EPCOR will not have any customers until, at the earliest, December, is appropriate.

¹⁰ EPCOR July 23rd draft issues list submissions, page 6.

37. Accordingly, subject to a change in wording to refer to the January 1, 2019 proposed implementation date and associated rate riders for recovery from and after this effective date, as distinct from implementation at large, IGUA supports the draft wording for issue 10 and opposes EPCOR's proposed modifications.

ALL OF WHICH IS RESPECTFULLY SUBMITTED by:



GOWLING WLG (CANADA) LLP, per:

Ian A. Mondrow
Counsel to IGUA

July 30, 2019

TOR_LAW\ 10007658\1