ONTARIO ENERGY BOARD

ONTARIO ENERGY BOARD STAFF
REPLY SUBMISSION
ON PROPOSED ISSUES LIST

EPCOR Natural Gas Limited Partnership (Southern Bruce) 2019-2028
Rates Application
EB-2018-0264

July 30, 2019

1. Background

Parties to this proceeding were unable to agree on a proposed issues list circulated by OEB staff that included comments and suggestions from all parties. Parties did agree on the proposed wording of a few issues but a majority of them remained unresolved. In Procedural Order (PO) No. 3, the OEB determined that it will proceed by way of written submissions and allow parties to file initial submissions and reply on other parties' initial submissions. Parties were further directed to provide submissions only on the disputed issues.

EPCOR Southern Bruce, OEB staff, Anwaatin Inc. (Anwaatin) Industrial Gas Users Association (IGUA), School Energy Coalition (SEC) and Vulnerable Energy Consumers Coalition (VECC) filed initial submissions on the proposed issues list. This is OEB staff's reply submission on the proposed issues list.

2. Reply to Submissions of IGUA, VECC and SEC

IGUA, VECC and SEC supported the proposed issues list that was included in PO No. 3. SEC noted that the wording of the proposed issues anchors the proceeding in the context of EPCOR Southern Bruce's Common Infrastructure Plan[1] (CIP) and at the same time provides the OEB the necessary and legally required flexibility to vary from the CIP as may be proposed by a party (including the applicant), if deemed appropriate.

SEC suggested that an issue regarding the appropriateness of Operating, Maintenance and Administrative costs (OM&A) should be added using similar language regarding consistency with EPCOR Southern Bruce's CIP proposal and its appropriateness. SEC did not provide any reasons for adding the issue of OM&A costs.

OEB staff in its initial submission provided a detailed discussion and its position on each of the issues. One of the issues dealt with the appropriateness of shared services costs. As part of that discussion, OEB staff argued that EPCOR Southern Bruce assumed certain OM&A costs in the CIP process in order to derive the revenue requirement and the OEB, in accepting the revenue requirement, also implicitly accepted the OM&A costs underpinning the revenue requirement. EPCOR Southern Bruce further confirmed that its next rebasing application will reflect actual OM&A costs and not the OM&A costs assumed in the CIP proposal and escalated or inflated.[2] Since the OM&A costs in this

[1] EB-2016-0137/0138/0139
[2] Response to OEB Staff IR#13

application do not underpin the proposed rates (with the exception of certain adjustments proposed by EPCOR Southern Bruce)[3], OEB staff is of the opinion that the OEB does not need to opine on or approve OM&A costs in order to determine rates in this proceeding.

3. Submission of EPCOR Southern Bruce

EPCOR Southern Bruce has not disputed the content of most issues (with the exception of Issue 11: First Nations and Metis consultation). The main point of contention is the use of the word “appropriate”. EPCOR Southern Bruce’s primary concern is that, as currently worded, the description of the issues assume that the OEB should apply the same level of regulatory scrutiny to the application as it would do to a conventional rate application. EPCOR Southern Bruce noted that its application is unique and it was selected as the successful proponent to provide service to South Bruce based on its proposal in the CIP. In EPCOR Southern Bruce’s view, it made its CIP proposal on the understanding that its ten-year revenue requirement was fixed, and to be accepted as a whole; it was never meant to be a revenue requirement cap, capable of having individual cost items subject to further review and possible reduction. EPCOR Southern Bruce submitted that altering the underlying elements of the CIP proposal would undermine the entire competitive nature of the CIP process.

OEB staff understands EPCOR Southern Bruce’s position but disagrees that the OEB does not require to assess the appropriateness of the issues in question. OEB staff also notes that a number of issues that are subject to review in a typical cost of service application are in fact excluded from the proposed issues list. These matters include load forecasts, distribution revenue forecasts, customer attachment forecasts, OM&A costs and the cost of capital.

EPCOR Southern Bruce has suggested the removal of the word “appropriate” for Issues 2(a, b and d), 3(a, b and c), 4(b) and 8(a, b, c, d and e). EPCOR Southern Bruce’s view is that the OEB has approved the ten-year revenue requirement in the CIP on which EPCOR Southern Bruce is taking conversion and other risks. Therefore the test should be whether these elements are consistent with the revenue requirement in EPCOR Southern Bruce’s CIP proposal and not whether on an individual basis they are appropriate.

[3] LEAP funding

OEB staff disagrees with this view. The test of appropriateness is applied to ensure that the request is prudent, aligned with OEB policies, rules, guidelines and filing requirements, and will achieve the OEB's objective of setting just and reasonable rates. A number of issues for which EPCOR Southern Bruce has suggested removal of the word "appropriate" are in fact required to ensure that the test of appropriateness is met. Including the test of appropriateness does not imply that the OEB will not take into account the CIP and determinations made in the Southern Bruce expansion proceeding.[4] It merely provides the OEB with the required flexibility to take into account other considerations such as the evidence, parties' positions on the issues, applicable OEB policies and guidelines to make an informed decision on the issues before it. OEB staff in its submission has discussed each of the issues below and provided a rationale for inclusion of the word "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

EPCOR Southern Bruce has suggested that the above issue be changed to:

a) Is the level of planned capital expenditures consistent with EPCOR's CIP proposal?

OEB staff has already provided the rationale for the description of this issue in its initial submission. EPCOR Southern Bruce was not required to provide the quantum of capital expenditures as part of the CIP process. In other words, the reasonableness of the

[4] EB-2016-0137/0138/0139

capital expenditures has not been reviewed in any other application. EPCOR Southern Bruce has filed a Utility System Plan (USP) as part of this application. It was not filed in the Southern Bruce expansion proceeding.[5] The OEB's Natural Gas Filing Requirements provides details on the type of information required in the USP to support the proposed capital expenditures including information on the planning process, engineering plan, long-term economic and planning assumptions, selection and prioritization of investments, linkages to the gas supply plan and, linkages and trade-offs between capital projects and ongoing operating costs.[6] The filing requirements further state that the USP must provide a description of quantifiable continuous improvements, cost savings or efficiency gains that are expected to be achieved over the Price Cap Incentive Regulation (IR) term and the means by which those improvements, savings and efficiencies will be achieved.[7] In other words, 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. OEB staff therefore submits that the wording as originally proposed is necessary to capture all the elements as described in the filing requirements.

For Issue 2(c), OEB staff agrees with the position of EPCOR Southern Bruce. The value of any Contribution in Aid of Construction (CIAC) related to Enbridge Gas' Owen Sound Reinforcement project will be determined in Enbridge Gas' upcoming Owen Sound Reinforcement leave to construct application. EPCOR Southern Bruce in its submission has argued that a decision in this application as to whether the amount of the current forecasts of these CIACs are appropriate could result in some amounts being "trapped" at the utility level, with EPCOR Southern Bruce reimbursing Enbridge Gas but unable to flow the costs through to ratepayers.

OEB staff in its initial submission proposed the following wording to the issue:

2 (c) Is EPCOR Southern Bruce's proposal to recover costs related to the amount of the Contribution in Aid of Construction paid to Enbridge Gas for upstream transmission reinforcement appropriate?

EPCOR Southern Bruce in its submission has proposed the following wording:

[5] EB-2016-0137/0138/0139
[6] Fling Requirements for Natural Gas Rate Applications, February 16, 2017, pgs.21-23
[7] *ibid*

2(c) Is EPCOR Southern Bruce's proposal for recovery of the Contribution in Aid of Construction paid to Enbridge Gas for upstream transmission reinforcement appropriate?

The proposed wording on Issue 2(c) under both proposals above are similar and either one is acceptable to OEB staff.

For a number of other issues, EPCOR Southern Bruce has removed the word "appropriate". The appropriateness of the issues has been discussed in detail in OEB staff's initial submission. OEB staff will not reiterate its initial submission, but will emphasize the main points on each issue that deal with appropriateness and respond to the arguments raised by EPCOR Southern Bruce in its submission.

2 (b) Is EPCOR Southern Bruce's proposed working capital allowance during the rate stability period consistent with EPCOR's CIP proposal and appropriate?

Issue 2(b) relates to working capital allowance and EPCOR Southern Bruce has opposed the use of the word "appropriate". In its application, EPCOR Southern Bruce has estimated a working capital allowance for non-distribution costs.[8] Non-distribution costs which refer to upstream charges and capital contributions paid to Enbridge Gas were not considered or reviewed in the Southern Bruce expansion proceeding.[9] Upstream costs were not part of the CIP proposal. The OEB needs to determine whether the working capital allowance for non-distribution costs is appropriate, a matter that was not part of the CIP or included as any underlying cost in the CIP revenue requirement.

2 (d) Is EPCOR Southern Bruce's proposal to waive new customer connection costs consistent with EPCOR's CIP proposal and appropriate?

EPCOR Southern Bruce has again opposed the use of the word appropriate. EPCOR Southern Bruce has proposed to waive customer connection charges. However, EPCOR Southern Bruce will incur costs to connect customers and it is necessary to understand how these costs have been allocated to the different rate classes and if they are capitalized, whether they will be recovered in some future period. OEB staff submits that it is necessary to understand the impact of EPCOR Southern Bruce's proposal in

[8] Exhibit 2, Tab 1, Schedule 1, p.6
[9] EB-2016-0137/0138/0139

light of the factors outlined above. The use of the word “appropriate” is therefore required.

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?

For all issues under Issue 3, EPCOR Southern Bruce has argued for excluding the word “appropriate”. For Issue 3(a), OEB staff notes that external funding and municipal contributions were expressly excluded from the CIP. The OEB in the Southern Bruce expansion proceeding instructed applicants to exclude government grants, municipal contributions and CIACs from the CIP.[10] To limit the review now to consistency with the CIP does not make sense as these elements were excluded from the CIP process. The OEB needs to determine the appropriateness of the calculations that adjust for these items in the revenue requirement.

For Issue 3(b), OEB staff in its initial submission argued that it is not required as it is already covered under Issue 4(a) that deals with gas supply, storage and transportation costs. The wording of Issue 4(a) was agreed to by all parties.

Issue 3(c) relates to Other Revenues. In its application, EPCOR Southern Bruce has proposed Other Revenues to be $0. Since the applicant has used $0 in its application, it can be assumed that the CIP also used $0 for Other Revenues. However, EPCOR Southern Bruce itself has forecasted Other Revenues of $31,851 during the first three years but has requested $0 in its application.[11] In other words, EPCOR Southern Bruce agrees that it will receive actual revenues related to miscellaneous charges (bill re-print, account changes, cheque return-NSF etc.). The question of whether $0 for Other Revenues is appropriate is certainly a valid issue in this proceeding.

[10] EB-2016-0137/0138/0139, Decision and Order, April 12, 2018, p.9
[11] Exhibit 3, Tab 1, Schedule 1, p.15

EPCOR Southern Bruce has forecasted $31,851 during the first three years when attachments will be fewer. Other Revenues will likely be higher in later years once EPCOR Southern Bruce achieves a critical mass. The OEB needs to establish an amount representing Other Revenues which will serve as a baseline for future reference.

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?

The wording for issue 4(a) has been agreed to by all parties. Issue 4(b) refers to shared services costs. Although EPCOR Southern Bruce has suggested removing the word appropriate from Issue 4(b), OEB staff in its initial submission suggested deleting this issue from the Issues List, the reasons for which were provided in the initial submission and referenced earlier in this document while discussing SEC's submission on OM&A costs.

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 and the associated rate rider calculation consistent with EPCOR's CIP proposal and appropriate?
b) Is the adjusted revenue requirement appropriate?

In its submission, EPCOR Southern Bruce has reworded issue 5(a) and deleted issue 5(b).

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 appropriate?

EPCOR Southern Bruce's proposed approach is based on the view that the adjustment should be assessed on the basis of the CIP proposal and not whether any adjustment is appropriate. By modifying the issue, EPCOR Southern Bruce appears to assume that its request has been validated and the question before the OEB is whether the calculation of the rate rider is appropriate. The CIP process did not envision any delays in construction or delay in approval of the leave to construct. Any delay in construction has occurred after the CIP process. Although the underlying calculation to determine the revenue deficiency related to delays may be based on the CIP, it does not imply that the OEB cannot determine the appropriateness of the proposed recovery. The OEB definitely needs to assess the appropriateness of the claimed revenue deficiency and also determine whether it is appropriate for EPCOR Southern Bruce to be able to claim the entire revenue deficiency.

EPCOR Southern Bruce noted in its evidence that there was a ten month delay in receipt of the leave to construction decision. As a result, EPCOR Southern Bruce was proposing to true up the revenue requirement to recover lost revenues related to the delay in receiving leave to construct approval from the OEB.[12] OEB staff notes that the OEB has not yet opined in this proceeding as to the cause of the delay. The funding to EPCOR Southern Bruce for expansion of natural gas in South Bruce under the Natural Gas Grant Program (NGGP) was suspended by the provincial government.[13] It was later restored through Bill 32 which received Royal Assent on December 6, 2018 and Ontario Regulation 24/19. In response to an interrogatory, EPCOR Southern Bruce confirmed that the cancellation of the NGGP impacted the construction schedule as the project was not economically feasible without external funding and as a result the leave to construct application for the project was placed in abeyance.[14] The proposed wording of EPCOR Southern Bruce assumes that it is eligible for the true up and the matter before the OEB is calculation of the rate rider. OEB staff is of the view that this is a matter that the OEB should decide as part of this proceeding, and submits that the wording should remain the same as in the original proposed issues list.

Issue 5(b) refers to the appropriateness of the adjusted revenue requirement. EPCOR Southern Bruce has argued to remove this issue from the Issues List. OEB staff disagrees. The revenue requirement as approved in the Southern Bruce expansion proceeding is subject to a number of adjustments that were not considered in that proceeding. This includes external funding, municipal contributions, LEAP funding, gas supply, transportation and upstream reinforcement costs.[15] The OEB will need to determine the appropriateness and calculation of the proposed adjustments. For example, gas supply, transportation and upstream reinforcement costs were not part of the CIP process. The appropriateness of these costs and the adjustment to the revenue

[12] Exhibit 6, Tab 1, Schedule 1, p.2
[13] The Natural Gas Grant Program was discontinued and EPCOR Natural Gas LP was informed that there would be no transfer payments in September 2018.
[14] Response to OEB Staff IR#20
[15] Exhibit 1, Tab 2, Schedule 1, p.31, Table 1-4

requirement needs to be determined in this proceeding. It is also possible that the OEB may direct further adjustments such as for Other Revenues which are now included as $0 in the application. OEB staff therefore submits that the issue of whether the adjusted revenue requirement is appropriate is a valid issue in this proceeding and should be included in the Issues List.

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?

The wording and scoping of issues 6 (a, c and d) were agreed to by all parties to the proceeding.

With respect to issue 6(b), EPCOR Southern Bruce submitted that the issue is more complex than it seems. EPCOR Southern Bruce made certain assumptions regarding the cost competitiveness of natural gas versus existing energy sources. In order to create the incentive for customers to convert to natural gas, EPCOR Southern Bruce has submitted that it requires the flexibility to charge a tariff that is cost competitive to existing energy sources. This has resulted in a more "market based" tariff as compared to a tariff that is based on cost allocation and revenue to cost ratios.

OEB staff does not necessarily disagree with this. However, the details of any cost allocation and rate design methodology require a further review before establishing final rates. This is because the CIP process did not establish rates for individual rate classes nor did it discuss revenue to cost ratios.[16]

In its initial submission, OEB staff referred to EPCOR Southern Bruce's evidence that its cost allocation proposal is based on the CIP, the Aylmer natural gas distribution system and management judgement. The applicant further noted in its evidence, "Therefore the results of the cost allocation study must be interpreted with caution as, even to one decimal place, they reflect current best estimates."[17] Clearly the assumptions underpinning the allocation of costs and the derivation of revenue to cost ratios need to

[16] Exhibit 7, Tab 1, Schedule 1, p.2
[17] Exhibit 7, Tab 1, Schedule 1, p.3

be reviewed and tested. Considering that this is an inaugural rates proceeding, the OEB needs to determine the appropriateness of the revenue to cost ratios.

Accordingly, OEB staff submits that the wording of Issue 7(b) should remain unchanged.

Issue 7: Proposed Deferral and Variance Accounts

a) Are EPCOR Southern Bruce's proposed deferral and variance accounts appropriate?
b) What other deferral and variance accounts are required?
c) 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 7(a) deals with the appropriateness of the proposed deferral and variance accounts. EPCOR Southern Bruce has proposed to split Issue 7(a) into two parts, with one part addressing accounts that are more customary to natural gas distributors and the second part addressing accounts that are specific to the common assumptions used in EPCOR Southern Bruce's CIP proposal. While it has included the word "appropriate" for the customary deferral and variance accounts in 7(a), it has excluded "appropriate" from 7(b).

7 (b) Are the following EPCOR Southern Bruce's proposed deferral and variance accounts consistent with EPCOR's CIP proposal?

i. Municipal Tax Variance Account (MTVA)
ii. Energy Content Variance Account (ECVA)
iii. Contribution in Aid of Construction Variance Account
iv. External Funding Variance Account

OEB staff notes that EPCOR Southern Bruce did not provide any information on the above deferral and variance accounts in the Southern Bruce expansion proceeding nor were they approved in that proceeding. The OEB assesses deferral and variance accounts based on causation, materiality and prudence, and then determines whether it is appropriate to establish them. EPCOR Southern Bruce in its submission has argued that it has assumed the risk on a ten-year revenue requirement. Deferral and variance accounts typically reduce the risk for the utility. It is necessary to understand the rationale for these accounts based on the overall risk that EPCOR Southern Bruce has assumed under the CIP proposal.

For example, EPCOR Southern Bruce has requested the MTVA. The evidence indicates that the Southern Bruce municipalities will provide a financial contribution equal to the value of the municipal property tax that would be recovered on the natural gas distribution infrastructure during the ten-year rate stability period.[18] In other words, EPCOR Southern Bruce will be getting a break on property taxes. It is not clear why any remaining municipal taxes are not recoverable under OM&A like other utilities. If EPCOR Southern Bruce did not include municipal property taxes in the OM&A costs underlying the CIP, an argument could be that EPCOR Southern Bruce should have been aware that these costs are typically included in OM&A expenses. Another account is the ECVA. Differences in energy content would normally be captured in the volume of gas delivered (a pass through cost). A lower energy content would require higher volumes and vice versa. OEB staff submits that parties and the OEB should be able to explore the rationale for these deferral and variance accounts and determine if they are appropriate using the OEB's criteria of causation, materiality and prudence. OEB staff therefore submits that the wording of the issue should remain as described in the proposed issues list.

The description of issues 7 (b) and (c) have been agreed to by all parties.

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?
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) Is EPCOR Southern Bruce's request for availability of an Incremental Capital Module consistent with EPCOR's CIP proposal and appropriate?

[18] Exhibit 3, Tab 1, Schedule 1, p.10

Issue 8 refers to the ratemaking framework proposed for the next nine years after rebasing. EPCOR Southern Bruce has submitted that the word “appropriate” should be removed for all the sub-issues under this category.

In the Southern Bruce expansion proceeding, the OEB accepted the CIP proposal that included a cumulative revenue requirement for the 10-year rate stability period.[19] The OEB in that proceeding did not determine a ratemaking framework for the 10-year period. The appropriateness of the proposed ratemaking framework and its different elements are certainly valid areas of discussion and within the purview of the OEB hearing panel in this proceeding. This is a key component of the Natural Gas Filing Requirements for rate applications. By excluding the ability of the OEB to determine the appropriateness of a ratemaking framework, OEB staff submits that the OEB’s flexibility to adjudicate on this matter would be reduced.

OEB staff in its initial submission on the proposed issues list provided a detailed discussion on each element of the Custom IR framework and a rationale for determining their appropriateness.[20] OEB staff submits that the OEB and parties to the proceeding should be able to examine the appropriateness of the proposed ratemaking framework including all the related elements such as term of the plan, productivity factor, stretch factor, earnings sharing mechanism, off-ramp, Y-factors, Z-factor and capital factor.

Issue 10: Implementation

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

In its submission, EPCOR Southern Bruce has suggested that Issue 10 be divided into two sub-issues.

a) Is EPCOR Southern Bruce’s proposal for a January 1, 2019 effective date consistent with EPCOR Southern Bruce’s CIP proposal?

b) Is EPCOR Southern Bruce’s proposal for rate riders for recovery from and after the effective date consistent with EPCOR Southern Bruce’s CIP proposal and appropriate?

[19] EB-2016-0137/0138/0139
[20] OEB Staff Submission, July 23, 2019

For the revised Issue 10(a), EPCOR Southern Bruce submitted that the proposed effective date was an identified assumption in the competitive CIP process and should therefore be tied back to the CIP. OEB staff submits that Issue 10(a) should also state "appropriate"

a) Is EPCOR Southern Bruce's proposal for a January 1, 2019 effective date consistent with EPCOR Southern Bruce's CIP proposal and appropriate?

In the Southern Bruce expansion proceeding, the OEB required the proponents to develop competing proposals using the same parameters for comparison purposes.[21] The proposal of the two proponents included the specific 10-year period starting in 2019 and the OEB, in selecting the winning proponent, accepted all the elements in the proposal. Although the OEB accepted the 2019 year as the starting year of the CIP, the effective date in this context is different as the applicant is seeking to recover lost revenues from the effective date even though the first customer is only expected to be connected in November 2019. The appropriateness of the effective date is a valid issue in this proceeding considering that EPCOR Southern Bruce filed its rates application after the effective date (April 2019) and it is seeking to recover lost revenues as a result of a delay in leave to construct approval that is being attributed to a delay in OEB decisions (discussed in an earlier section of this submission). The OEB needs to determine if the request is appropriate and if so, what should be the effective date.

OEB staff has no concerns with respect to the revised Issue 10(b).

4. Submission of Anwaatin

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?

EPCOR Southern Bruce in its submission argued that the issue was not relevant to the proceeding and should be removed. EPCOR Southern Bruce submitted that the rate application does not trigger the duty to consult indigenous communities.

[21] EB-2016-0137/0138/0139, Decision and Order, April 12, 2018, p.8

Anwaatin's submissions on proposed Issue 11 focus on two distinct issues: 1) the rights of Indigenous peoples as natural gas rate payers in EPCOR Southern Bruce's service territory, and 2) the Constitutional rights of Indigenous peoples.

The rights of Indigenous peoples as natural gas rate payers

OEB staff agrees that, although EPCOR Southern Bruce's system will not (in the near term) serve any reserve lands, it will serve some number of off-reserve Indigenous consumers. OEB staff agrees that these consumers, like any other consumers, should be engaged by EPCOR Southern Bruce on issues relevant to the proceeding. OEB staff believes that this is already covered under proposed Issue 2, which states (in part): "Is the level of planned capital expenditures consistent with EPCOR's CIP proposal and appropriate on that the rationale for planning and pacing choices is adequately explained giving consideration to: customer feedback and preferences […]" However, to the extent the OEB believes that a more explicit drafting of this issue is appropriate, OEB staff does not oppose presenting this as a stand-alone issue.

The Constitutional rights of Indigenous peoples

OEB staff continues to rely on its submission filed on July 23, 2019.

It is not disputed that Indigenous peoples have Constitutionally protected Aboriginal and treaty rights. Nor is it disputed that where the Crown contemplates action that may adversely affect these rights the duty to consult is engaged, which may result in a duty to accommodate. In the current case, however, no party has pointed to any specific Aboriginal or treaty rights that could potentially be affected by the application. OEB staff appreciates that this is only the issues list stage of the proceeding, the purpose of which is to determine what "questions" are in play. However, absent the identification and articulation of what Aboriginal or treaty rights are in play, and how they could be adversely affected by this application to set just and reasonable rates, OEB staff does not support the inclusion of the proposed issue on the final issues list.

– All of which is respectfully submitted –