



EPCOR Natural Gas Limited Partnership

**Application for Natural Gas distribution rates and other
charges for the period January 1, 2019 to December 31, 2028**

**DECISION ON ISSUES LIST
August 20, 2019**

EPCOR Natural Gas Limited Partnership (EPCOR Natural Gas LP) filed a custom incentive rate making application with the Ontario Energy Board (OEB) on April 11, 2019 under section 36 of the *Ontario Energy Board Act, 1998*, S.O. 1998, c. 15, (Schedule B), seeking approval for new gas distribution rates to be effective January 1, 2019 and for each following year through to December 31, 2028.

In 2018, the OEB selected EPCOR Natural Gas LP as the successful proponent for the South Bruce gas distribution project.¹ The process was competitive and the selection was made on the basis of a Common Infrastructure Plan (CIP) including a cumulative revenue requirement, forecasted attachments and an overall rate per cubic meter for the 10-year rate stability period.

EPCOR Natural Gas LP is an Ontario limited partnership with its head office in the Town of Aylmer. EPCOR Natural Gas LP is a wholly owned indirect subsidiary of EPCOR Utilities Inc., based in Edmonton, Alberta. EPCOR Natural Gas LP operates a natural gas distribution business in two service areas in Ontario: the Aylmer franchise area (previously known as Natural Resource Gas Limited) and a new franchise area in South Bruce (EPCOR Southern Bruce).

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

The OEB issued a Notice of Hearing on April 18, 2019. In Procedural Order (P.O.) No. 1 issued on May 21, 2019, the OEB approved a list of interveners and scheduled various steps in the proceeding including a settlement conference.

On July 12, 2019, OEB staff filed a letter advising the OEB that the parties were not able to reach an agreement on a draft issues list. However, OEB staff did provide a proposed issues list that included suggestions from all parties and identified the issues that were agreed to by all parties. In P.O. No. 2 issued on July 12, 2019, the OEB cancelled the settlement conference scheduled for July 15 and 16, 2019. The OEB issued P.O. No. 3 on July 16, 2019, inviting parties to file written submissions only on the disputed issues and reply arguments on other parties' submissions.

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

Overall Position of Parties

In the submissions on the issues lists, intervenors and OEB staff generally supported the wording in the proposed issues list. SEC in its submission noted that the wording of the proposed issues anchors the proceeding in the context of EPCOR Southern Bruce's CIP and at the same time provides the OEB the necessary and legally required flexibility to vary from the CIP, if deemed appropriate. IGUA argued that it is necessary that EPCOR Southern Bruce's application be consistent with its CIP proposal, however this was not sufficient to conclude that the application is necessarily just and reasonable. Hence, the wording of "appropriate" was required for majority of the issues. OEB staff in its submission discussed each of the issues and barring a few revisions to some of the issues, supported the proposed issues list.

EPCOR Southern Bruce, in its submission argued that its application has largely been predetermined through the CIP process² and as a result the same level of regulatory scrutiny applied to conventional rate applications should not apply in this application. EPCOR Southern Bruce submitted that its 10-year revenue requirement that was approved as part of the CIP process was based on a number of parameters and common assumptions, each of which were approved by the OEB in advance of the submission on the competing CIP. In EPCOR Southern Bruce's view, it made its CIP proposal on the understanding that its ten-year revenue requirement was to be taken as

² EB-2016-0137/0138/0139

a whole with individual cost items not subject to further review and reduction. If this were done, EPCOR Southern Bruce argued that it would alter the elements on which the CIP proposal were created and undermine the competitive nature of the CIP process. For these reasons, EPCOR Southern Bruce proposed the wording “consistent with EPCOR Southern Bruce’s CIP proposal” to replace “appropriate”, a term commonly used in OEB approved issues lists.

OEB staff in reply submitted that 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. OEB staff further submitted that the use of the word “appropriate” for each of the issues 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.

SEC and IGUA in reply submitted that the current hearing panel was not bound by a previous hearing panel’s determination. IGUA submitted that the OEB should exercise caution at such an early stage in the proceeding to exclude issues for consideration that will set rates for new gas customers for the next decade.

Findings

The OEB understands that there are unique aspects to this rate application given the CIP. A number of cost parameters and rate components have been determined through a prior OEB approved process (competition for the franchise of South Bruce).³ P.O. No. 3 stated that the OEB “will not be revisiting the overall commitments (with the exception of any proposed adjustments) that were made in the CIP process”. As part of the CIP, the OEB established a 10-year revenue requirement and rate stability period for EPCOR Southern Bruce following a competitive process. EPCOR Southern Bruce is expected to take on cost risks with respect to that revenue requirement. The OEB’s assessment of elements of the revenue requirement in this proceeding will be to the extent that they are consistent with the CIP. The OEB will not be re-adjudicating whether the revenue requirement or commitments made as part of the CIP are appropriate. The OEB has therefore removed the words “and appropriate” from several of the issues.

³ EB-2016-0137/0138/0139 Decision and Order, April 12, 2018.

Some matters were not addressed as part of the process for determining the CIP. The OEB has retained these issues.

OEB staff circulated a proposed issues list on July 11, 2019 and noted that the parties agreed upon Issues 1 (a and b), 4(a), 6 (a, c and d), 7 (b and c) and 9(a). The OEB has not amended these agreed upon issues.

The OEB has attached the final issues list as Appendix A. Specific details of amendments are listed below.

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?

Issues 1 (a and b) were agreed to by all parties. The OEB accepts the proposed wording of the issues.

Issue 2: Rate Base and Utility System Plan

Proposed Issues

- 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 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?

For Issues 2 (a, b, and d), EPCOR Southern Bruce argued that this application should be reviewed based only on the CIP proposal. Intervenors and OEB staff submitted that the wording of "appropriate" should remain.

OEB staff in its submission noted that as part of the CIP, EPCOR Southern Bruce did not provide the quantum of capital expenditures or a Utility System Plan (USP). This information is provided in the current application and it was therefore necessary to establish if the capital expenditures were appropriate in the context of OEB's filing requirements and the planning process and information required as part of the USP. IGUA in reply supported this view.

OEB staff further noted that in Issue 2(b), the working capital included non-distribution costs, which was not considered in the CIP process. EPCOR Southern Bruce in its reply agreed with OEB staff and proposed a reworded issue addressing the working capital allowance associated with the non-distribution costs.

For Issue 2(c), OEB staff, IGUA and EPCOR Southern Bruce agreed that the quantum of Contribution in Aid of Construction (CIAC) to be paid to Enbridge Gas Inc. for any upstream transmission reinforcement cannot be addressed in this application and therefore the reference to the appropriateness of the quantum can be removed.

With respect to Issue 2(d) that deals with customer connection charges, IGUA and OEB staff submitted that the CIP process did not go into such details and it was necessary to understand how actual connection costs will be allocated. EPCOR Southern Bruce in reply argued there was no need to probe capital costs as the utility is assuming the risk for the first ten years.

OEB Amendments on Issue 2

The OEB has removed the detailed list of considerations for the capital expenditures. Capital expenditures form part of the revenue requirement approved as part of the CIP.

As discussed earlier, the OEB has removed “and appropriate” from Issues 2 (a, b and d).

For Issue 2(c), the OEB accepts the revision proposed by EPCOR Southern Bruce for the Contribution in Aid of Construction. What is relevant in this proceeding is the proposal for recovery. The actual quantum of the Contribution in Aid of Construction is expected to be an issue in a future leave to construct proceeding to be filed by Enbridge Gas Inc.⁴

Issue 3: Operating Revenue

Proposed Issues

- 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 argued that the issues should be reviewed only in context of the CIP proposal. Intervenors submitted that the wording of “appropriate” should remain in all issues. OEB staff submitted that wording of “appropriate” should remain for Issue 3 (a and c).

In its application, EPCOR Southern Bruce categorized the recovery of upstream transportation and gas supply costs as non-distribution revenues. For issue 3(b), OEB staff submitted that this issue was not required as it is captured under Issue 4(a) that deals with forecasted gas supply, transportation and storage costs.

⁴ Enbridge Gas Inc. is expected to file a leave to construct application for reinforcement of the Owen Sound pipeline.

With respect to Other Revenues (Issue 3c), OEB staff submitted that EPCOR Southern Bruce had proposed Other Revenues of \$0 in its application. However, EPCOR Southern Bruce itself had forecasted Other Revenues of \$31,851 during the first three years. According to OEB staff, the question of whether \$0 for Other Revenues was appropriate was certainly a valid issue in this proceeding.

OEB Amendments on Issue 3

The OEB has removed “and appropriate” from Issue 3 (a, b and c). The OEB concludes that these were matters determined as part of the CIP, as previously discussed. Non-distribution revenues were not a consideration for the CIP and therefore the OEB has retained Issue 3(b).

Issue 4: Operating Expenses

Proposed Issues

- 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 in Issue 4(a) was agreed to by all parties, and the OEB agrees this is a relevant issue to consider in this proceeding.

Shared services is an aspect of Operating, Maintenance and Administrative (OM&A) costs. For Issue 4(b), OEB staff submitted that the cumulative revenue requirement in the CIP assumed certain OM&A costs and these were implicitly approved by the OEB through the approval of the 10-year revenue requirement. The OM&A costs in this application therefore do not have a bearing on rates. Accordingly, OEB staff submitted that OM&A type costs such as shared services do not need to be included in the issues list. EPCOR Southern Bruce in reply supported OEB staff’s submission on this issue.

SEC on the other hand supported the proposed wording on shared services and suggested adding a similarly worded issue for OM&A costs.

OEB Amendments on Issue 4

The OEB approves the wording of Issue 4(a). For Issue 4(b), the OEB has determined that “and appropriate” is not required as shared services are an aspect of OM&A that is part of the CIP. However, the OEB also concludes that it is relevant to consider whether the OM&A is consistent with the CIP. Issue 4(b) has been amended accordingly.

Issue 5: Revenue Deficiency/Sufficiency

Proposed Issues

- 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 application, EPCOR Southern Bruce proposed to true up the \$75.6 million revenue requirement to address the delay in the review of its leave to construct application. EPCOR Southern Bruce submitted that any adjudication related to revenue deficiency must be tied directly back to the CIP as the deficiency was driven by a change in common assumptions in the CIP. The applicant proposed rewording Issue 5(a) and deleting Issue 5(b) as it was already covered under Issue 1(a).

Intervenors and OEB staff submitted that the wording on the proposed issues list should remain unchanged for Issues 5 (a and b). IGUA argued that the delay and the associated cost was not contemplated in the CIP; therefore the OEB in this application must consider whether recovery of additional revenues is appropriate. OEB staff in its submission argued that EPCOR Southern Bruce has assumed that it is eligible for a true up and ratepayers are liable for all recoveries related to the delay. OEB staff submitted that the OEB in this proceeding has not determined the cause of the delay.

With respect to Issue 5(b), OEB staff submitted that the revenue requirement as approved in the CIP was subject to a number of adjustments that were not considered in that proceeding. This included external funding, municipal contributions, LEAP funding, gas supply, transportation and upstream reinforcement costs.⁵ OEB staff submitted that the OEB in this proceeding will need to determine if the proposed adjustments are appropriate and if all adjustments have been included.

⁵ Exhibit 1, Tab 2, Schedule 1, p.31, Table 1-4

OEB Amendments on Issue 5

Issue 5 relates to adjustments and amendments to the revenue requirement that was approved as part of the CIP. The adjustments were not considered in the South Bruce Expansion proceeding. The OEB is of the opinion that the appropriateness of the adjustments are properly before the OEB in this proceeding. The proposed wording of Issues 5 (a and b) are therefore retained.

Issue 6: Cost Allocation and Rate Design

Proposed Issues

- 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?

All parties agreed to the wording and scoping of Issues 6 (a, c and d), and the OEB agrees these are relevant issues to consider in this proceeding.

With respect to Issue 6(b), OEB staff and IGUA submitted that EPCOR Southern Bruce did not file information on cost allocation, rate design or revenue to cost ratios in the CIP proposal. OEB staff submitted that the cost allocation study has made a number of assumptions which need to be reviewed and tested; the proposed wording should therefore be retained.

EPCOR Southern Bruce in reply submitted that the issue should be reviewed based solely on the CIP proposal. The applicant argued that it requires the flexibility to charge a tariff that is cost competitive to existing energy sources, thus creating incentives for customers to convert to natural gas.

OEB Amendments on Issue 6

The OEB accepts the wording of issues 6 (a, c and d). The OEB notes that issues regarding cost allocation, rate design and revenue to cost ratios were not considered as part of the competitive process to establish the CIP. Issue 6(b) is therefore in scope of this proceeding and the proposed wording shall be retained.

Issue 7: Proposed Deferral and Variance Accounts

Proposed Issues

- 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?

In its application, EPCOR Southern Bruce requested a number of deferral and variance accounts (DVAs), some of which are typical to gas distribution utilities while some are unique to this application.

For Issue 7(a), EPCOR Southern Bruce proposed to split the proposed Issue 7(a) into two parts, with one part addressing the accounts that are customary to gas distributors and the other part addressing the accounts that were related to support EPCOR Southern Bruce's CIP proposal. Accordingly, EPCOR Southern Bruce suggested the following:

- 7 (a) Are the following EPCOR Southern Bruce's proposed deferral and variance accounts appropriate?
 - a) Purchased Gas Commodity Variance Account
 - b) Gas Purchase Rebalancing Account
 - c) Storage and Transportation Variance Account Rates 1, 6 & 11
 - d) Transportation Variance Account Rate 16
 - e) Unaccounted for Gas Variance Account
 - f) Greenhouse Gas Emissions Administration Deferral Account
 - g) Federal Carbon Charge – Customer Variance Account
 - h) Federal Carbon Charge – Facility Deferral/Variance Account
 - i) Regulatory Expense Deferral Account

7 (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
- d) External Funding Variance Account

Intervenors and OEB staff submitted that the wording remain unchanged from the proposed issues list. OEB staff in its reply submission noted that the OEB had not reviewed or approved any of the DVAs as part of the CIP process. OEB staff submitted that the OEB must review the accounts based on causation, materiality and prudence. OEB staff further submitted that it was necessary to understand the rationale for the DVAs based on the overall risk that EPCOR Southern Bruce has assumed under the CIP proposal.

All parties agreed to the proposed wording of Issues 7 (b and c).

OEB Amendments on Issue 7

The OEB agrees that there are two different aspects to the proposed DVAs. There are proposed DVAs related to the general obligations of being a gas distributor that were not considered as part of the CIP. There are also proposed DVAs more directly related to the CIP that were not considered in the competitive process establishing the revenue requirement. The OEB has determined that the appropriateness of all the DVAs is in scope of this proceeding. The OEB has therefore created new Issues 7 (a and b). Accordingly, Issue 7 has been renumbered. The OEB accepts the originally worded Issues 7 (b and c).

Issue 8: Incentive Rate Setting Proposal

Proposed Issues

- 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?

For all issues under Issue 8, EPCOR Southern Bruce argued that the issues should be reviewed only on the basis of the CIP proposal and the word "appropriate" should be removed from each of the issues. Intervenors and OEB staff submitted that the CIP did not consider a comprehensive rate making framework, and the appropriateness of the framework and its elements need to be reviewed by all parties. Therefore, the wording of "appropriate" should remain. OEB staff submitted that if a review of appropriateness is excluded, it would reduce the OEB's flexibility to adjudicate on this matter.

In its initial submission, OEB staff provided a detailed discussion on each of the elements of the Custom IR plan. With respect to the Incremental Capital Module (ICM), OEB staff noted that according to the OEB's ICM Policy, the ICM is a funding mechanism available to distributors whose rates are established under a Price Cap IR regime.⁶ The ICM and Advanced Capital Module mechanisms are not available for utilities setting rates under Custom IR.⁷ Since EPCOR Southern Bruce has requested a Custom IR framework, OEB staff argued that it would not be eligible for an ICM. Accordingly, OEB staff suggest replacing ICM with "capital factor" for this issue.

OEB Amendments on Issue 8

Issues related to the incentive rate-setting framework are related to how EPCOR Southern Bruce's proposals are consistent with the CIP. The words "and appropriate" have therefore been removed from 8 (a, b, c, d and e). To the extent that any aspect of the Custom IR framework⁸ was not considered as part of the CIP, the appropriate consideration is whether this new aspect is consistent with the CIP.

⁶ Report of the Board: New Policy Options for the Funding of Capital Investments: The Advanced Capital Module, EB-2014-0129, September 18, 2014.

⁷ Handbook for Utility Rate Applications, October 13, 2016, p.27

⁸ A minor amendment was made to Issue 8a) to define the term of Custom Incentive Rate-setting (Custom IR).

In the South Bruce Expansion proceeding, the OEB established a rate stability period of 10 years and proponents were expected to take the revenue risk if the forecasted customers did not attach to the system.⁹ The OEB also determined that the rate stability period would include an annual financial allowance update. As part of the CIP, the OEB made allowance for inflationary adjustments to capital and OM&A costs during the rate stability period. In other words, the OEB in the South Bruce Expansion proceeding considered the revenue requirement for the entire 10-year period and considered the basic rate framework for the 10-year period including annual adjustments in order to compare the competing proposals. The OEB however, noted in that proceeding, “How the revenue requirement, including allowed inflation, will be recovered will be decided later with the full participation of affected ratepayers”.¹⁰ Issues of rate design and cost allocation have therefore been retained under Issue 6.

The OEB agrees that it is in scope of the proceeding to consider whether the request for an ICM is consistent with the CIP. This consideration can take into account the OEB’s policies with respect to ICMs. The term of the proposed ratemaking framework is aligned with the rate stability period established by the OEB in the South Bruce Expansion proceeding and the cumulative revenue requirement for the 10-year period approved in that proceeding. The OEB further notes that the applicant is assuming the risk for any capital cost overruns to connect the forecasted number of customers during the rate stability period.

Issue 9: Score Card

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

Issue 9(a) was agreed to by all parties. The OEB accepts the proposed wording.

⁹ Procedural Order No. 6, EB-2016-0137/38/39, June 27, 2017, p.4

¹⁰ Decision on Preliminary Issues and Procedural Order No. 8, EB-2017-0137/38/39, August 22, 2019, p.8

Issue 10: ImplementationProposed Issue

- 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 suggested that Issue 10 be divided into two sub-issues.

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

10(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?

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.

IGUA in reply argued that EPCOR Southern Bruce assumed that the effective date and the recovery of lost revenues from the effective date was appropriate regardless of when it actually attaches customers or begins to provide gas service. IGUA submitted that the pre-determination implied in EPCOR Southern Bruce's description of the issue was inappropriate.

With respect to the revised issue 10(a), OEB staff noted that the effective date used in the CIP proposal was in a different context as compared to the current rate application. OEB staff submitted that the appropriateness of the effective date is a valid issue in this proceeding as the applicant is seeking to recover lost revenues from January 1, 2019 even though the first customer is expected to be connected in November 2019. OEB staff had no concerns with EPCOR Southern Bruce's revised Issue 10(b).

OEB Amendments on Issue 10

The effective date was established as part of the CIP. What is in scope of this proceeding is whether EPCOR Southern Bruce's proposal is consistent with the CIP, and whether the rate riders for recovery of EPCOR Southern Bruce's proposal are appropriate. The OEB accepts the splitting of Issue 10 and the revised wording as proposed by EPCOR Southern Bruce.

Issue 11: Stakeholder Engagement

Proposed Issue

- 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?

Anwaatin in its submission argued that the OEB should approve the issue as suggested by it in the proposed issues list. Anwaatin submitted that the *Handbook for Utility Rate Applications* expressly requires the OEB to consider customer engagement, including whether and how customer input has informed planning and whether the utility's plans deliver benefits that addresses customer needs and preferences.

With respect to the broader issue of "engagement", OEB staff was supportive of efforts by a utility to engage with those that are impacted by its applications (i.e. ratepayers). OEB staff in its submission noted that the issue appears to be adequately covered under Issue 2: "customer feedback and preferences."

OEB staff argued that leave to construct applications have direct "land" impacts and it is in this context that the OEB typically addresses Indigenous consultation. Anwaatin was an intervenor in EPCOR Southern Bruce's leave to construct proceeding.¹¹ The OEB considered submissions on Indigenous consultation in the leave to construct proceeding and determined that the duty to consult (DTC) had been sufficiently discharged for the purposes of EPCOR Southern Bruce's leave to construct application.¹² Absent a clear explanation from Anwaatin regarding exactly what Aboriginal or treaty rights are

¹¹ EB-2018-0263

¹² EB 2018-0263, Decision and Order, p. 12.

potentially at play in the current application, OEB staff did not support the addition of an issue relating to the duty to consult.

EPCOR Southern Bruce in its submission opposed the addition of the issue and submitted that its rate application does not trigger the DTC.

Anwaatin in reply disagreed with OEB staff. Anwaatin submitted that indigenous peoples, including those living off reserve who hold Treaty rights within the service area, have traditional aboriginal rights in and around the land that may be impacted by the CIP that is being implemented through this proceeding. Anwaatin submitted that administrative tribunals like the OEB have a constitutionally enshrined duty to consult indigenous communities if the decision maker or proponent is contemplating conduct that might adversely affect a treaty or aboriginal right that an indigenous community has or credibly asserts. Whether such a right exists or is credibly asserted in the context of this proceeding has not yet been tested. Anwaatin therefore submitted that the DTC is an appropriate issue in this proceeding.

In its reply submission, OEB staff noted that no party had pointed to any specific Aboriginal or treaty rights that could potentially be affected by the application. 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 did not support the inclusion of the proposed issue on the final issues list.

OEB Amendments on Issue 11

The OEB concludes that stakeholder engagement is an important activity and it is relevant to consider how EPCOR Southern Bruce has engaged with and sought input from key stakeholders, First Nations and Metis communities. This aspect of Issue 11(a) has therefore been retained.

This is a rate application resulting from a competitive process to establish the CIP. This competitive process had numerous intervenors, including Anwaatin. No specific Aboriginal or treaty rights have been identified as being potentially adversely affected by this application, the purpose for which is setting just and reasonable rates. This is not a proceeding for leave to construct a natural gas pipeline. A separate leave to construct proceeding was held for the natural gas pipelines to South Bruce¹³, for which Anwaatin

¹³ EB-2018-0263

also was an intervenor. The OEB will therefore not include the second part of issue 11(a) on the issues list.

THE ONTARIO ENERGY BOARD THEREFORE ORDERS THAT:

1. The approved Issues List is attached as Schedule A to this Decision.

DATED at Toronto, August 20, 2019

ONTARIO ENERGY BOARD

Original signed by

Kirsten Walli
Board Secretary

Schedule A

Decision on Issues List

EPCOR Natural Gas Limited Partnership

EB-2018-0264

Approved Issues List

August 20, 2019

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 Southern Bruce's CIP proposal?
- b) Is EPCOR Southern Bruce's proposed working capital allowance during the rate stability period consistent with EPCOR Southern Bruce's CIP proposal and any proposed working capital allowance related to non-distribution costs appropriate?
- 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?
- d) Is EPCOR Southern Bruce's proposal to waive new customer connection costs consistent with EPCOR Southern Bruce's CIP proposal?

Issue 3 Operating Revenue

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

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 OM&A costs including shared services costs consistent with EPCOR Southern Bruce's CIP proposal?

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 Southern Bruce'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 Southern Bruce'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?
 - i. Purchased Gas Commodity Variance Account (PGCVA)
 - ii. Gas Purchase Rebalancing Account (GPRA)
 - iii. Storage and Transportation Variance Account Rates 1, 6 & 11 (S&TVA Rates 1 6 & 11)
 - iv. Transportation Variance Account Rate 16 (TVA Rate 16)
 - v. Unaccounted for Gas Variance Account (UFGVA)
 - vi. Greenhouse Gas Emissions Administration Deferral Account
 - vii. Federal Carbon Charge - Customer Variance Account (FCCCVA)
 - viii. Federal Carbon Charge - Facility Deferral/Variance Account (FCCFVA)
 - ix. Regulatory Expense Deferral Account (REDA)
- b) Are the following EPCOR Southern Bruce's proposed deferral and variance accounts consistent with EPCOR Southern Bruce's CIP proposal and appropriate?
 - i. Municipal Tax Variance Account (MIYA)
 - ii. Energy Content Variance Account (ECVA)
 - iii. Contribution in Aid of Construction Variance Account (CIACVA)
External Funding Variance Account (EFVA)
- c) What other deferral and variance accounts are required?

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

Issues 9 Score Card

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

Issue 10 Implementation

- 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?

Issue 11 Stakeholder Engagement

- a) Has EPCOR Southern Bruce effectively engaged with and sought input from key stakeholders and First Nations and Métis communities?