

# **DECISION AND ORDER ON COST AWARDS**

**EB-2018-0264**

## **EPCOR NATURAL GAS LIMITED PARTNERSHIP (SOUTHERN BRUCE)**

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

**BEFORE: Lynne Anderson**  
Presiding Member

**Robert Dodds**  
Vice Chair and Member

**Cathy Spoel**  
Member

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**March 5, 2020**

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## INTRODUCTION AND SUMMARY

This is a decision of the Ontario Energy Board (OEB) on cost claims filed with respect to an EPCOR Natural Gas Limited Partnership (EPCOR Southern Bruce) proceeding.

EPCOR Southern Bruce filed a custom incentive rate making application with the 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 rates that EPCOR Natural Gas charges for gas distribution, to be effective January 1, 2019 and for each following year through to December 31, 2028.

The OEB granted Anwaatin Inc. (Anwaatin), the Industrial Gas Users Association (IGUA), School Energy Coalition (SEC) and Vulnerable Energy Consumers Coalition (VECC), intervenor status and cost award eligibility.

On November 19, 2019, the OEB issued its Decision and Order in which it set out the process for intervenors to file their cost claims, for EPCOR Southern Bruce to object to the claims and for intervenors to respond to any objections raised by EPCOR Southern Bruce.

The OEB received cost claims from Anwaatin, IGUA, SEC and VECC. On January 16, 2020, EPCOR Southern Bruce filed a letter stating that it had no objections to the cost claims received from SEC and VECC. However, EPCOR Southern Bruce stated that Anwaatin's cost claim included time billed to address issues that were out of scope for a rate proceeding and could have been addressed in the prior leave-to-construct application. With respect to IGUA's cost claim, EPCOR Southern Bruce stated that IGUA had significantly exceeded the claims of all other intervenors (more than double the amount claimed by any other intervenor) and the total hours claimed were disproportionate in comparison. EPCOR Southern Bruce suggested that the OEB consider IGUA's cost claim in relation to the SEC and VECC claim. In support of this, EPCOR Southern Bruce provided an overview of the cost claims in relation to interrogatories, the issues conference, Alternative Dispute Resolution (ADR) and argument.

In response to EPCOR Southern Bruce's comments, IGUA argued that additional time was spent as a result of taking the lead in the negotiations on the settlement conference phase of the proceeding. IGUA stated that with respect to all phases of this proceeding - interrogatory/hearing preparation, settlement conference and argument - IGUA was the only intervenor which focused to any significant extent on EPCOR's proposed rates. IGUA further stated that at the outset of its Final Argument, it focused its own substantive participation on only the two issues which directly affected IGUA's members

in the South Bruce franchise area. IGUA submitted that they were responsible in their participation, ensuring that costs incurred were constrained to the issues of direct, and in large measure unique, impact on IGUA's constituents. IGUA argued that this application was the first of its kind and there was no OEB precedent for setting rates for an expansion to an entirely new gas distribution franchise under the OEB's recently articulated gas service expansion policy.

Anwaatin, in response to EPCOR Southern Bruce's comments, argued that the OEB did not find that the issues raised and conditions proposed by Anwaatin were beyond the scope of the Proceeding in its November 28, 2019, Decision and Order. Anwaatin stated that effective engagement with First Nations and Metis communities was explicitly included as Issue 11(a) in the OEB-approved issues list and Anwaatin's submissions over the course of the Proceeding were specifically directed at assisting the OEB in considering and deciding upon the effectiveness of EPCOR South Bruce's engagement with First Nations and Metis communities. Anwaatin submitted that the number of hours claimed in the "Issues Conference" category in relation to the number of hours claimed by other intervenors in the same category was simply a categorization issue. Anwaatin claimed hours related to submission to the Board and correspondence with manifold parties on several drafts of the Issues List in the "Issues Conference" category while other intervenors appear to have claimed time for similar activities in the "ADR – Settlement Conference" or "Other Conferences" categories. Anwaatin stated that considerable time was required to be invested to ensure that Issue 11(a) captured engagement with First Nations and Metis communities.

## Findings

The OEB has reviewed the claims filed to ensure that they are compliant with the OEB's Practice Direction on Cost Awards.

The OEB defined the scope of this proceeding through the Decision on Issues List. This made clear that the OEB would not be re-adjudicating the revenue requirement or commitments made as part of the competitive process on the Common Infrastructure Plan (CIP) for the South Bruce gas distribution project.

The OEB finds the hours claimed by Anwaatin for issues preparation, argument preparation, other conferences and case management excessive. The OEB is reducing the hours claimed by Anwaatin by 20%, allocated proportionally between Ms. DeMarco and Mr. McGillivray. Parties reached a settlement on many of the issues in this proceeding, which the OEB accepted. The unsettled issues included other revenues, cost allocation, incremental revenue deficiency related to delays, the effective date for

rates, certain deferral and variance accounts, the availability of an incremental capital module and engagement with First Nations and Métis communities. Anwaatin's argument focussed on only one of these issues. Given the limited scope of this proceeding, as defined by the Issues List, and the limited scope of Anwaatin's argument, the OEB does not find Anwaatin's claim reasonable.

The OEB also finds the hours claimed by IGUA to be excessive. The OEB recognizes the lead role of IGUA during settlement discussions, and therefore has not reduced the time associated with the settlement process. However, the OEB is reducing the hours for argument preparation by 30 hours. Given the defined scope of the proceeding, the OEB concludes that time spent on argument preparation that is three or four times higher than other intervenors should not be fully funded.

The OEB approves the claims by SEC and VECC.

#### **THE ONTARIO ENERGY BOARD ORDERS THAT:**

1. Pursuant to section 30 of the *Ontario Energy Board Act, 1998*, EPCOR Southern Bruce shall immediately pay the following amounts to the intervenors for their costs:

• Anwaatin Inc.	\$14,370.89
• Industrial Gas Users Association	\$27,406.51
• School Energy Coalition	\$13,150.94
• Vulnerable Energy Consumers Coalition	\$13,720.08

**DATED** at Toronto March 5, 2020

**ONTARIO ENERGY BOARD**

*Original signed by*

Christine E. Long  
Registrar and Board Secretary