



DECISION AND ORDER ON APPLICATION WITHDRAWAL REQUEST

EB-2022-0246

ONTARIO ENERGY BOARD

**Application for leave to construct natural gas pipelines in the
Municipality of Kincardine, the Township of Arran-Elderslie, the
Municipality of Brockton and the Municipality of West Grey**

BEFORE: Michael Jannigan
Presiding Commissioner

Robert Dodds
Commissioner

David Sword
Commissioner

January 9, 2024



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1 OVERVIEW

EPCOR Natural Gas Limited Partnership (EPCOR) applied to the Ontario Energy Board (OEB) under sections 90 and 97 of the *Ontario Energy Board Act, 1998*, S.O. 1998, c.15, (Schedule B) (OEB Act), for an order granting leave to construct approximately 34.1 km of Nominal Pipe Size (NPS) 4-inch polyethylene (PE) natural gas distribution pipeline and approximately 46.5 km of NPS 2-inch PE natural gas distribution pipeline in the Municipality of Kincardine, the Township of Arran-Elderslie, the Municipality of Brockton and the Municipality of West Grey (Project). The proposed pipelines would supply natural gas to approximately 423 new customers who currently do not have access to natural gas service. The Project qualified for financial support under the government of Ontario's Natural Gas Expansion Program.

EPCOR also applied for various other related approvals, including those related to land-use agreements, Municipal Franchise Agreements, and the establishment of a new variance account. EPCOR intended to charge customers to be served by the proposed project the same rates that it charges its customers in its Southern Bruce rate zone.

2 PROCESS

The OEB issued the Notice of Hearing on July 24, 2023.

The OEB issued Procedural Order No. 1 on August 30, 2023. Enbridge Gas Inc. (Enbridge Gas) and Environmental Defence (ED) were approved as intervenors, and ED was granted eligibility to apply for an award of costs. The OEB subsequently approved the Municipality of Brockton as an intervenor.¹

The OEB issued Procedural Order No. 2 on October 24, 2023. The OEB ordered that a one-day, virtual, transcribed technical conference be held on November 14, 2023. The OEB ordered that written responses to all undertakings from the technical conference be served on all intervenors by November 28, 2023.

The OEB issued Procedural Order No. 3 on November 24, 2023, after the technical conference. The OEB approved EPCOR's request for an extension to the due date for one of its undertakings to December 5, 2023, and ordered that the proceeding would be placed into abeyance on that date. At that time, the OEB was considering a motion by ED for a review of the OEB's determination to not allow ED to file evidence in a number of Enbridge Gas Inc. leave to construct proceedings,² and the OEB considered it prudent to provide direction on ED's request to file evidence in the current proceeding after the OEB considered the motion to review in the other cases. EPCOR filed the balance of its undertaking responses on November 28, 2023.

The proceeding was placed in abeyance on December 5, 2023.

EPCOR then filed a letter on December 22, 2023, in which it requested approval to withdraw its leave to construct application for the Brockton project pursuant to Rule 20.01 of the OEB's *Rules of Practice and Procedure*.

¹ Due to a system error, the Municipality of Brockton's intervention request went unnoticed until September 7, 2023, at which time the OEB granted the intervention request by way of a letter issued that day.

² The motion to review was assigned OEB file no. EB-2023-0313.

3 DECISION ON WITHDRAWAL

In its letter of December 22, 2023, in which it requested approval to withdraw the Brockton project application, EPCOR explained that unexpected procedural delays have impacted its ability to order materials in time for the 2024 construction season. In addition, EPCOR has received updated information regarding increased demand for natural gas above that originally forecasted and used to design the project. As a result, EPCOR will need to review and reassess the information in the application, before determining whether to submit a new leave to construct application. EPCOR submitted that its withdrawal request does not adversely affect the procedural interests of any party, nor is it contrary to the public interest. Other than appropriate compensation of costs in accordance with the OEB's *Practice Direction on Cost Awards*, EPCOR requested that the OEB approve the request to withdraw the application without conditions.

Findings

Rule 20.01 of the OEB's *Rules of Practice and Procedure* provides:

20.01 An applicant or appellant may withdraw an application or appeal:

- (a) at any time prior to the hearing, by filing and serving a notice of withdrawal signed by the applicant or the appellant, or his or her representative; or
- (b) at the hearing with the permission of the OEB.

Rule 20.03 provides that the OEB may impose conditions on any withdrawal or discontinuance, including costs, as it considers appropriate.

The OEB approves EPCOR's request to withdraw its Brockton project application. The OEB finds that the withdrawal does not adversely affect the procedural interests of any party, nor is it contrary to the public interest. The OEB's approval is subject to the condition that EPCOR pay ED's reasonably incurred costs, as determined by the OEB, and the OEB's costs incidental to this proceeding.

It is necessary to make provision for the following matters related to this proceeding.

4 ORDER

THE ONTARIO ENERGY BOARD ORDERS THAT:

1. The OEB approves EPCOR Natural Gas Limited Partnership's request to withdraw its application subject to EPCOR Natural Gas Limited Partnership's payment of Environmental Defence's reasonably incurred costs, as determined by the OEB, and the OEB's costs incidental to this proceeding.
2. Environmental Defence shall file with the OEB and forward to EPCOR Natural Gas Limited Partnership its cost claim in accordance with the OEB's *Practice Direction on Cost Awards* on or before **January 16, 2024**.
3. EPCOR Natural Gas Limited Partnership shall file with the OEB and forward to Environmental Defence any objections to the claimed costs on or before **January 23, 2024**.
4. If EPCOR Natural Gas Limited Partnership objects to Environmental Defence's costs, Environmental Defence shall file with the OEB and forward to EPCOR Natural Gas Limited Partnership its responses, if any, to the objections to cost claims on or before **January 30, 2024**.
5. EPCOR Natural Gas Limited Partnership shall pay the OEB's costs incidental to this proceeding upon receipt of the OEB's invoice.

Parties are responsible for ensuring that any documents they file with the OEB, such as applicant and intervenor evidence, interrogatories and responses to interrogatories or any other type of document, **do not include personal information** (as that phrase is defined in the *Freedom of Information and Protection of Privacy Act*), unless filed in accordance with rule 9A of the OEB's [Rules of Practice and Procedure](#).

Please quote file number **EB-2022-0246** for all materials filed and submit them in searchable/unrestricted PDF format with a digital signature through the [OEB's online filing portal](#).

- Filings should clearly state the sender's name, postal address, telephone number and e-mail address.
- Please use the document naming conventions and document submission standards outlined in the [Regulatory Electronic Submission System \(RESS\) Document Guidelines](#) found at the [File documents online page](#) on the OEB's website.

- Parties are encouraged to use RESS. Those who have not yet [set up an account](#), or require assistance using the online filing portal can contact registrar@oeb.ca for assistance.
- Cost claims are filed through the OEB's online filing portal. Please visit the [File documents online page](#) of the OEB's website for more information. All participants shall download a copy of their submitted cost claim and serve it on all required parties as per the [Practice Direction on Cost Awards](#).

All communications should be directed to the attention of the Registrar at the address below and be received by end of business, 4:45 p.m., on the required date.

With respect to distribution lists for all electronic correspondence and materials related to this proceeding, parties must include the Case Manager, Ritchie Murray at ritchie.murray@oeb.ca.

Email: registrar@oeb.ca

Tel: 1-877-632-2727 (Toll free)

DATED at Toronto January 9, 2024

ONTARIO ENERGY BOARD

Nancy Marconi
Registrar