unionGas
An Enbridge Company

April 27, 2017

Ms. Kirsten Walli
Board Secretary
Ontario Energy Board
2300 Yonge Street, 27th Floor
Toronto, ON M4P 1E4

Dear Ms. Walli:

Re: EPCOR Southern Bruce Gas Inc.
Applications for Approval of Franchise Agreements and CPCNs
Board File Nos. EB-2016-0137, EB-2016-0138, EB-2016-0139

Pursuant to Procedural Order No. 5 in the above noted proceedings, Union Gas hereby submits its comments regarding the procedural issues and the draft filing requirements circulated by the Ontario Energy Board.

Should you have any questions on these submissions, please do not hesitate to contact me.

Yours truly,

[Original signed by]

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Encl.

c.c. (email only): Bruce Brandell, EPCOR Southern Bruce Gas
Britt Tan, EPCOR Utilities Inc.
Registered Intervenors
Charles Keizer, Torys

Preliminary Issues for Feedback

1. Keeping in mind the principles set out in the Decision with Reasons for the generic community expansion proceeding (EB-2016-0004), what should the process for selecting a proponent look like when there are competing proposals for serving a community?

The regulatory process for selecting a proponent to provide natural gas service to a community where service does not currently exist will need to recognize that the competitive landscape will restrict when information that is competitive in nature is made public. For example, proponents are very likely to be reluctant to provide expected capital costs, customer forecasts and rate proposals until such time as all competing parties release the same information.

The selection process should be triggered by a proponent notifying the Board that it is developing a proposal to provide natural gas service to an area. This notification would occur once the proponent is confident of their intent to submit a leave to construct and rates application to the Board to service the area. The notification should include a high level summary of the project but should not include information that would be commercially sensitive.

For this reason, the notification should only address the following components:

- A description of the unserved area to be served.
- A description of the proximity to pre-existing natural gas distribution systems.
- The date that the proponent would be prepared to submit a Leave-to-Construct (LTC) and rates application. Union proposes that the LTC submission date be set at 60 days from the date of filing the notification in order for competing parties to have time to prepare an application for the project.
- The potential number of customers (i.e., total number of homes and businesses located within the area in which the system will be constructed).

Upon receipt of a notification that a party is interested in serving a previously unserved area, the Board would create a docket for the project and issue a procedural order to solicit interest from other parties in serving the area, asking that indications of interest be filed within a two week period. The procedural order should also indicate that any party who indicates interest must be prepared to file a leave to construct and rates application for their proposal to service all or part of the project area in the same timeframe as that noted in the initial proponent's notification.

If other parties indicate intent to submit competing applications, the Board should issue a procedural order which indicates the date upon which the leave to construct and rates applications from competing parties must be filed.

Due to the competitive nature of this process, all leave to construct and rates applications should be filed with the Board on the same date and the Board should control how and when any related information is made publicly available.

With respect to providing service to the Southern Bruce municipalities, the Board will need to address issues related to the Natural Gas Grant Program recently announced by the Ontario government. According to the program guidelines released on April 21, 2017, applications to the Grant Program must be made by July 31, 2017 by the natural gas distributor or supplier proposing to serve an unserved community.

Grant applications will be assessed by Infrastructure Ontario and various ministries in the Ontario government. Decisions related to approvals of grants are not expected until Fall 2017 and will be conditional on the proposed projects receiving all applicable leave to construct, franchise agreement and Certificate of Public Convenience and Necessity approvals from the Ontario Energy Board. Leave-to-construct and rates applications are expected to be submitted to the Ontario Energy Board within 6 months of receiving conditional approval.

While it will not have a role in the awarding of funding under the Natural Gas Grant Program, the Board must determine how it will address the impact of the Natural Gas Grant Program within leave to construct and rates applications. The Board must decide whether it wants to wait until conditional grants are approved by the Province before directing proponents to submit leave to construct and rates applications (which will have an impact on construction schedules) or establish a placeholder grant level that each proponent will use in the economic analyses within their applications.

Once leave to construct and rates applications have been filed, the Board would proceed to adjudicate the review of the applications through its normal process (publication of notice, intervenor registration, information request process, etc.).

Union does not agree with Board's Staff's submission that information requests should only be issued by the Board to both proponents. While Board Staff suggests that the Board could invite intervenors to submit information requests to be considered for inclusion in the Board's information requests, in Union's view, competing parties should not be precluded from directing information requests to other project proponents.

Further submissions regarding evaluation criteria are provided later in this submission.

In their March 24, 2017 submission, Board Staff suggested that a presentation meeting could be held in the area proposed to be served at which interested parties from the relevant area would be invited to make oral presentations. Any leave to construct and rates application should include evidence of all consultations held within the area proposed to be served and that all interested parties should be given an opportunity to make submissions to the Board as part of the review process. In keeping with the Board's Consumer Engagement Framework, a community meeting would be a good forum for consumers and stakeholders in the area proposed to be served to speak directly to the Board panel that is reviewing the application(s) similar to what was done during the process used by the Board to designate an electricity transmitter to undertake development work for the East-West Tie electricity transmission line (EB-2011-0140).

2. **Should the funding of this process be treated as a business development cost or a regulatory expense, recoverable from future ratepayers? What other approaches should the OEB consider?**

   The funding of this process should be treated as a business development cost that is recoverable from future ratepayers.

   This is comparable to the provisions of the Board's Framework for Transmission Project Development Plans which states that only the transmitter that is successful in being designated as a transmitter to undertake development work on enabler facilities and network expansions will be able recover the costs of preparing a plan. This is comparable to the more usual business model in which proponents prepare proposals or bids at their own cost and own risk.

3. **In its Decision with Reasons for the generic community expansion proceeding (EB-2016-0004), the OEB introduced the idea of a rate stability feature for its framework for natural gas expansion:**

   > ***A minimum rate stability period of 10 years (for example) would ensure that rates applied for are representative of the actual underpinning long-term costs. The utility would bear the risk for that 10-year period if the customers they forecast did not attach to the system.***

   - **How should a rate stability period be implemented for the South Bruce areas?**
   - **Is a 10-year rate stability period too long or too short?**
   - **Should proponents have the opportunity to update costs during the rate stability period? If so, what types of costs?**

   In Union's view, a rate stability period or mechanism does not imply a rate freeze. Proponents should have the ability to update rates to reflect Board-approved costs on an ongoing basis as a result of new capital investments (over-achievement of the customer forecast, future extensions of the system being proposed, etc.), O&M cost changes, gas supply costs, costs associated with government initiatives such as cap & trade, price cap adjustments, etc. New gas distribution customers within the Southern Bruce municipalities should expect rates to be no more variable than the rates charges to existing gas customers in Ontario.

   Trying to predict forward costs for a 10 year period could introduce a high level of variability in the competing proposals and make it much more difficult for the Board to assess the value proposition being offered to the new customers. For example, expected inflation rates and allowances for unforeseen events like tax changes would be very difficult for a proponent to predict and factor into the economics of a project.

Union agrees with Board Staff's submission that rate stability periods and related mechanisms should be a competitive element of the applications rather than being standardized by the Board. Each proponent should be allowed to propose a rate stability period which would allow them to optimize the length of the rate stability period with the associated risks the proponent is willing to accept.

Any rate stability feature should adhere to the generally accepted ratemaking principle of ensuring rate predictability and stability. This principle requires rates to remain stable (i.e., not vary significantly from one test year to the next) and predictable, at least to the extent practical.

Union recognizes that all ratepayers have concerns about rate impact certainty and stability, especially those that are making investments to switch to natural gas from an alternate fuel. At the same time, fair and reasonable rate structures require revenue stability for the utility in order to justify investments and an appropriate allocation of total costs of service among the different customers.

From Union's perspective, the intent of the Board's rate stability feature is to protect ratepayers from risk. There are other ways to protect ratepayers. Expansion area ratepayers can be protected from paying for capital or operating costs in excess of those approved to install the system and from under-achievement of forecasted new customer connections. If the successful proponent is prevented from "correcting" rates to reflect these variables after the project enters service, there may not be a need for a formal rate stability period. Imposing a means of preventing these corrections from being reflected in future rates would provide a large measure of the stability and predictability the Board is looking to put in place. The Board could protect against these circumstances by disallowing any costs found not to be prudently incurred through the construction period from entering rate base at any time in the future, and ensuring that revenue forecasts that underlie future rate applications continue to reflect the initial approved customer forecast.

4. In expanding natural gas service to new areas, the OEB expects to approve franchise agreements following the results of a certificate competition. The selection process is primarily about finding the best value for consumers over the long term, after analyzing the supply plans and associated costs.

- **Is there a need for a common format for applications to be able to appropriately assess and compare the value propositions of different proponents – for example through establishing filing requirements?**
- **If so, please provide comments on the draft filing requirements attached at Schedule C.**
- **Should the OEB use a Reference Plan based on a set of working assumptions such as long term system demand? What other parameters should be set in a Reference Plan?**
- **Should applicants have the opportunity to create their own proposals by applying their own demand forecasts, construction phasing, etc. as opposed to a Reference Plan?**

In its EB-2016-0004 Decision with Reasons, the Board indicated that the initial rates required to finance a service expansion would be part of the economic test information required within a leave to construct application for a service expansion and that this would all be considered prior to awarding a Certificate of Public Convenience and Necessity and approving a franchise agreement.

There is a need for a common format for applications so that competing applications can be compared on the basis of the criteria as outlined by the Board in its draft filing requirements and the addition of "technical capability" as proposed by Board Staff:

- Organization
- Technical capability
- Financial capacity
- Proposed community supply
- Schedule
- Costs
- Other factors

In addition to the decision criteria identified by the Board and Board Staff, proponents should be required to provide proof of operational capability to provide services to be offered to customers.

Establishing filing requirements would provide a consistent basis upon which the Board could evaluate the completeness of an application. Please refer to Union's comments later in this submission on the draft filing requirements.

With respect to the need for a Reference Plan, a balance needs to be established that would provide the Board a measure of consistency spanning the applications while at the same time allowing for innovation and creative approaches on the part of each proponent. Union agrees with Board Staff's submission that the benefits of a Reference

Plan are not entirely clear if proponents will not be held to building the Reference Plan, but instead would be proceeding based on their specific proposal.

There should be some consistency across the competing applications with respect to the use of EBO 188 criteria for economic evaluations, or compelling evidence to support any differences along with evidence that quantifies the differences in outcomes, as well as capital structure / rate of return, depreciation rates, normalized average consumption and normalized weather assumptions, commodity costs, cost allocation methodology and rate design.

Union does not agree with Board Staff’s submission that the filing of a complete leave to construct application by each competing applicant could be impractical and that multiple environmental assessments and formal Indigenous Consultation Reports could cause confusion within communities. Capital cost estimates and resulting rate proposals must be comprehensive. This requires details on all costs that are expected to be incurred as a result of findings from environmental assessments and consultations. Not completing environmental assessments prior to estimating total project costs would undermine confidence in the accuracy of estimated costs.

Union agrees with Board Staff that there may be instances where a leave to construct application would not be required to allow a community to be served (based on the criteria used to determine the requirement for a leave to construct application).

Union also agrees with Board Staff’s submission that the filing of a complete rates application pursuant to the Filing Requirements for Natural Gas Rate Applications by each competing applicant would be impractical but applications to provide service to unserved areas still need to include details of tariffs, proposed rates and rate structure, terms and conditions of service and the rate stability period with sufficient detail to allow the Board to evaluate proposals. Please refer to Union’s comments later in this submission on the draft filing requirements.

5. How should the costs of proposals be compared? (e.g. $/month, $/system capacity, use of demand day, delivery capacity of the system for comparison)

The primary comparison should be based on the expected delivery costs (with components broken out) as well as the total bill to the forecasted customers over the life of the assets. Two key comparisons should be made: (1) the net present value of the delivery charges and total bill to all attached consumers; and (2) the net present value of the delivery charges and total bill for an average residential customer. While other metrics such as capital and O&M cost per customer provide useful information, comparisons of delivery charges and total bills will allow the Board to see the impact that total capital, O&M, commodity costs and facilities costs will have on customers. The Board cannot make a determination on the public interest of a service extension proposal without knowing the proposed rates and resulting impacts to customers.

Union agrees with Board Staff’s submission that the evidence on costs should include any upstream reinforcements that will be triggered by the expansion and that details of revenue requirements and relevant cost ratios should be included within the cost section of the filing requirements. Union agrees that the total development and construction budget, and the anticipated annual costs of operating and maintaining the distribution system, should be part of the evidence filed by each applicant.

While cost factors are important, the Board will need to include other factors in its evaluation including level of service, long term plans, timelines and customer assistance programs (e.g., DSM, emergency financial assistance, etc.).

6. Should measures be put in place to ensure completion of the proposed projects, and if so, what should these measures be?

There should be a requirement to have the system available to serve customers within one year of the proposed in-service date, contingent on receipt of any necessary Aid-to-Construction and municipal permits granted by the anticipated construction start date. Annual reporting of progress to initiate service to the forecasted customer base would provide the Board with an indication of the proponent’s forecasting and marketing abilities.

Union agrees with Board Staff’s submission that if the proponent fails to keep to the schedule originally provided, the Board should rescind its approval of the municipal franchise agreement and the Certificate of Public Convenience and Necessity granted to the proponent for the area. While Union agrees with Board Staff’s support of an expiry date to the leave to construct if construction had not been initiated within a certain period of time, this period of time should be 2 years rather than Board Staff’s suggested 5 years.

<u>Draft Filing Requirements for Competitive Franchise /</u>
<u>Certificate of Public Convenience and Necessity Applications</u>

When there are multiple parties' interested in being granted the same franchise agreement and Certificate of Public Convenience and Necessity to serve an area, the OEB will apply the following decision criteria:

- **Organization**
- **Financial capacity**
- **Proposed community supply**
- **Schedule**
- **Costs - construction and administration/support costs**
- **Other factors**

In addition to these decision criteria, proponents should be required to provide proof of operational capability to provide services to be offered to customers.

Union agrees with Board Staff's suggestion to add a "technical capability" criteria to the Board's decision criteria and the suggestion to replace the "costs" criteria with one that addresses revenue requirements. Relevant components of the revenue requirement (e.g., capital costs, forecasted customers and volumes, etc.) will need to be filed in support of the rates being proposed.

The OEB will require the following information to be filed as part of an applicant's filing. The requirements are separated into three main sections:

1. **The capability of the applicant to serve the area;**
2. **The applicant's Plan for serving the area; and**
3. **Other factors to support the expansion.**

(A) CAPABILITY OF THE APPLICANT

1. Background Information

The applicant must provide the following information:

1.1 Contact information for each of the following persons:

a) **the applicant;**
b) **primary representative for the applicant;**
c) **any legal representative;**
d) **any affiliates of the applicant.**

Contact information includes the name, postal address, telephone number, and, where available, the email address and fax number of the persons listed above.

1.2 Confirmation that the applicant has not previously had a licence or permit revoked and is not currently under investigation by any regulatory body.

2. Organization

2.1 An overview of the applicant's relevant utility experience - construction and operations

Relevant experience should primarily focus on experience as a natural gas distributor in North America.

2.2 A description of the applicant's organizational structure and ownership, and a chart to illustrate the structure

This description should include:

- a clear outline of the party who will be accountable to operate the new system, the structure that is in place for reporting between the operator and owner (if not the same party);
- an outline of the relevant capabilities of the operator; and
- the organizational structure of the operator (i.e., people, roles and location).

2.3 Identification and description of the role of any third parties to be used in the applicant's ongoing operations

Proponents should be required to provide details of any party involved in utility operations on a contractual basis.

2.4 Evidence that the applicant's business practices are consistent with good utility practices and that it possesses or can obtain all the required licenses and permits to function as a gas distribution utility

This section of evidence should include proof of operational and technical capability to provide services to be offered to customers as well as possession of all required licenses and permits.

One element of the Board's mandate is the requirement to "*facilitate the maintenance of a financially viable gas industry for the transmission, distribution and storage of gas*"[1], and the Board's mission is "*to promote a viable, sustainable and efficient energy sector that serves the public interest and assists consumers to obtain reliable energy services that are cost effective*".[2]

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[1] Ontario Energy Board Act, 1998, Part 1, Section 2.5;
[2] OEB Web Site: http://www.ontarioenergyboard.ca/OEB/Industry/About+the+OEB/What+We+Do

Prior to Board approval of leave to construct applications, franchise agreements and Certificates for new service areas, the Board should ensure that any proponent will be capable of meeting minimum requirements of a gas distribution utility in Ontario which include but are not limited to the following:

1. Demonstrated operational / technical capability including:
   - Licensed by TSSA as a natural gas distributor
   - Demonstrated experience as a natural gas distribution company
   - A distribution system design that will deliver acceptable levels of reliability
   - An existing safety and loss management system that provides for the protection of people, the environment, and property.

2. Ability to meet core expectations that the Board has for existing gas distribution utilities in Ontario. Examples include but are not limited to:
   - Meet and report on Service Quality Requirement Performance Metrics per the Gas Distribution Access Rule (GDAR)
   - Certify compliance with Affiliated Relationships Code (ARC) requirements
   - Deliver Demand Side Management (DSM) programs
   - Meet GDAR requirements including requirements with respect to marketers
   - Provide low income emergency financial assistance (LEAP funding)
   - Deliver a plant damage prevention program
   - Comply with government policy mandates (e.g., Cap and Trade Program)

3. Provision of the following:
   - Conditions of Service
   - Information for 5 historical years on its service quality performance and measurement requirements comparable to requirements in the GDAR
   - Outage experience and statistics
   - An overview of call centre infrastructure and related resourcing, as well as evidence on call centre performance
   - An overview of leak survey practices if not covered in Operations Management System or system integrity
   - A list of all miscellaneous non-energy charges
   - A comprehensive Operations Management System

3. Financial Capacity

The applicant must demonstrate that it has the financial capability necessary to develop, construct, operate and maintain safe and reliable service to customers in the proposed area. To that end, the applicant shall provide the following:

3.1 Evidence that it has capital resources that are sufficient to develop, finance, construct, operate and maintain safe and reliable service to the proposed area

3.2 Evidence of the current credit rating of the applicant, its parent or associated companies

3.3 Evidence that the financing, construction, operation, and maintenance of safe and reliable service to the proposed area will not have a significant adverse effect on the applicant's creditworthiness or financial condition

Prior to approving a leave to construct, rates, a franchise agreement or Certificate of Public Convenience and Necessity to provide service to any areas within Ontario that do not currently have access to natural gas, the Board should be satisfied that the proponent has access to sufficient capital to complete the project as well as operate the distribution utility for an initial period until such time as the annual revenues from customers are sufficient to cover annual operating costs. To demonstrate that they are financially able to provide service to customers, a proponent should have to show how they expect to finance the operation. In order to assess this, the Board needs to know the funding required to construct and to operate the system.

While credit worthiness is one measure to determine if a proponent has the necessary financial viability, the Board should also review the proponent's financial plan specific to the proposed expansion and operation. Being able to test assumptions around costs, rates, timing and extent of customer conversions and sensitivity to variation in those assumptions would be critical to demonstrate financial viability.

Proponents should be required to demonstrate that they have an appropriate level of insurance coverage.

The Board should consider whether it would be appropriate to require proponents to file quarterly and/or annual financial statements prior to approving a leave to construct, franchise agreement or Certificate.

In the absence of the Board considering these types of requirements, Union would be concerned with how the Board can fulfil the "viability, sustainability and efficiency of the natural gas energy sector" component of its mission. If the Board's expectations of proponents are not the same as expectations of existing gas distribution utilities, then the ability of existing utilities to compete on a level playing field with new entrants to extend service to new areas would be seriously jeopardized.

Union agrees with Board Staff's submission that evidence should be submitted verifying that the proposed tariffs, proposed rate structure and proposed rate stability period will not have a significant adverse effect on the applicant's creditworthiness or financial condition.

(B) PLAN FOR SERVING THE AREA

4. Proposed Community Supply

The applicant must provide an overview of its proposed supply to the area, including:

4.1 A description of the specific areas to be served

4.2 A description of the infrastructure that will be required to serve the area, including the interconnection of any new infrastructure with the existing gas distribution system

4.3 A description of the lands that will be impacted by infrastructure and plans to obtain control of this land through an easement, lease, planned purchase, or other agreement

4.4 A description of any significant issues anticipated in land acquisition or permitting and a plan to mitigate them

4.5 A description of all permits and approvals required, including Environmental Assessments, any Duty to Consult, and regulatory approvals

4.6 A map illustrating the planned infrastructure and areas to be served

The Proposed Community Supply section should address requirements for a leave to construct application including:

- Class location, material specs, MOP, hoop stress of steel supply lines, and material specifications to be used for plastic lines (MD vs HD plastic and related MOP).
- Customer forecast by type and year.
- Normalized average consumption assumptions.
- Discounted cash flow analysis results including categorized revenues and costs by year, and a list of all key DCF input assumptions
- Results of all consultations.
- Proposed terms and conditions of service

The evidence submitted should include an operational plan for servicing the area post-construction and details of how emergency response will be handled, who handles customer issues, meter changes, inspections, infractions and leak management. If a gas supply plan has not already been filed with the Board, evidence should include the gas supply plan and an assessment of risks inherent in the plan.

The map illustrating the planned infrastructure and areas to be served should clearly identify the timing for placing the infrastructure in-service.

Union agrees with Board Staff's submission that evidence related to customer and load forecasts should include descriptions of assumptions regarding preliminary load forecasts and including penetration rates.

Union agrees with Board Staff's submission that identification of municipal and/or community support, if any, and provision of any resolutions passed by the relevant municipality should be included in the application.

5. Costs of Supply and Customer Rates

5.1 Evidence of the underlying long term cost structure expected for serving the area

Union agrees with Board Staff's submission to replace "cost structure" with "revenue requirement" and to include relevant revenue-to-cost ratios in these filing requirements.

Proponents should be required to describe all costs to supply natural gas to new service areas and all customer service provisions of that supply as well as how these costs are to be determined and calculated. At the same time, proponents should provide details of all sources of funding for the project.

Capital costs for the project by type and year should be included and split between pipeline and service attachments. These costs should include costs for upstream distribution and transmission system reinforcement and costs related to the need for planned future capital reinforcement investment earlier than would otherwise be expected (i.e., accelerate reinforcement to within three years following the year the expansion is put into service).

Evidence required to be submitted should also include:

- Gas Supply, Transportation and Storage Costs
- Lost and Unaccounted for Gas
- Operating, Maintenance, and Administrative Support Costs
- Depreciation expense
- Capital Structure, Debt/Equity Ratios and Rates of Return
- Taxes
- Upstream Reinforcement Requirements
- Sources of funding

5.2 A description of any major assumptions underlying the expected cost structure

5.3 A description of the tariffs and proposed rates

Union agrees with Board Staff's submission that the filing of a complete rates application pursuant to the Filing Requirements for Natural Gas Rate Applications by each competing applicant would be impractical as long as applications still include details of tariffs, proposed rate structure, terms and conditions of service and the rate stability period with sufficient detail to evaluate proposals.

Included in the evidence submitted should be the following:

- Volume Forecast by rate class / customer group
- Normalized Average Consumption for each rate class / customer group
- Number of customers by rate class / customer group
- Definitions of rate classes / customer groups
- Average annual total bill by rate class

6. Schedule

6.1 The applicant must file a schedule that describes milestones and estimated dates

6.2 Proposed reporting requirements

(C) OTHER FACTORS

The applicant should provide any other information that it considers relevant to its application to serve the area.

This section should include details of requests for approval of deferral and/or variance accounts.