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BY EMAIL and RESS

April 27, 2016
Our File: EB20160004

Ontario Energy Board
2300 Yonge Street
27th Floor
Toronto, Ontario
M4P 1E4

Attn: Kirsten Walli, Board Secretary

Dear Ms. Walli:

Re: EB-2015-0003 – Natural Gas Community Expansion – Rule 27.03 Request

We are counsel to the School Energy Coalition ("SEC"). Pursuant to the Board's direction given at the April 26th Pre-Hearing Conference, SEC provides its requests for the Board to order certain parties to provide full and adequate interrogatory responses pursuant to Rule 27.03 of the *Rules of Practice and Procedure*, specifically:

- i. R13.SouthBruce.SEC.3
- ii. R13.SouthBruce.SEC.4
- iii. S4, EPCOR.SEC.7
- iv. S4, EPCOR.SEC.8
- v. S4, EPCOR.SEC.12
- vi. S4, EPCOR.SEC.13
- vii. S4, EPCOR.SEC.14
- viii. S4, EPCOR.SEC.15
- ix. S16.Union.SEC.8¹

SEC submits the information requested in these interrogatories is relevant to the issues in this generic proceeding, and material to the determinations under consideration by the Board.

¹ See Appendix A for a copy of each listed interrogatory response.

A. South Bruce and EPCOR Interrogatory Responses

i. General Comments

SEC requested information from the Municipality of Kincardine, Municipality Arren-Elderslie, and the Township of Kinloss (collectively “South Bruce”) and EPCOR Utilities Inc. (“EPCOR”) regarding the Request for Information (“RFI”) process that ultimately led to the signing of Franchise Agreements, and the Franchise Agreements themselves. The information is directly relevant to Issues 3-4, 8 and 9.

South Bruce and EPCOR are active participants in this proceeding. They have both filed significant evidence which advocates for a competitive selection process for Franchise Agreements (Issue 8-9), and a framework for provincial ratepayer subsidization of new entrants (Issues 3-4). South Bruce, specifically, filed as evidence a report whose purpose was to describe the process it implemented that led to Franchise Agreements with EPCOR, and why they believe their competitive process has significant benefits and should be a model for the Board.

SEC asked interrogatories to better understand the process that actually occurred, what information South Bruce ultimately used to choose EPCOR, and what range of submissions it received on specific issues referenced in the evidence. SEC also asked questions to EPCOR regarding the process in which it participated, and the terms it offered that resulted in their winning bid. Most of these interrogatories South Bruce and EPCOR refused to answer.

SEC submits that a generic process does not mean that specific proposals for expansion should not been considered. Those proposals provide an essential context for any generic framework that the Board may create as a result of this proceeding. In fact, providing that context, and promoting their specific model, is the foundation of the South Bruce and EPCOR evidence.

ii. Interrogatories Relevant to Issues 3-4, 8 and 9

SEC is not seeking in this proceeding any relief regarding the Municipal Franchise Agreements entered into between EPCOR and South Bruce. That is for the panel hearing those specific applications.

However, that does not mean those agreements have no relevance in this proceeding. They are clearly relevant to the Board’s determination of the issues in this proceeding relating to a generic provincial framework for community expansion, on which South Bruce and EPCOR are providing an important point of view. SEC does not believe the parties can properly make submissions, nor can the Board determine Issue 8, which asks whether there should be conditions or changes made to the Municipal Franchise Agreements to reduce barriers to expansion², without looking at the only agreement that has been signed between a municipality on the list of potential community expansion opportunities, and a new entrant.

SEC submits, the Board cannot determine these issues in a vacuum. Specific projects are important to determine the generic issues, even if those projects will ultimately be approved/not approved in a subsequent proceeding. That is why Union and Enbridge have provided evidence and answered interrogatories regarding specific potential community expansion projects, even though those projects will be subject to leave to construct proceedings at some future date.

² *Decision and Procedural Order No. 2, Schedule B - Issues List:*

8. Should the OEB consider imposing conditions or making other changes to Municipal Franchise Agreements and Certificates of Public Convenience and Necessity to reduce barriers to natural gas expansion?

The information requested is also directly relevant to Issue 9 which is all about determining if there are processes that should be implemented to encourage new entrants, including specifically “issuance of Request for Proposals to enter into franchise agreements”.³ A theoretical discussion of the benefits and drawbacks of any such competitive process is of limited use. Understanding the actual process undertaken by the only example to date in Ontario is much more useful. This is precisely the reason that South Bruce has filed a report outlining the process in the first place.⁴ South Bruce cannot provide evidence about the virtues of its competitive process and then on the other hand refuse to answer relevant questions about it.

Furthermore, the information requested is also relevant to Issues 3 and 4⁵, related to any cross-utility subsidy framework for community expansion which the Board may consider establishing. If the Board is going to have all natural gas ratepayers in the province subsidize new entrants (which is being proposed by both South Bruce⁶ and EPCOR⁷), it is relevant to ensure that the process of their selection to sign a Franchise Agreement, incorporates the best interests of both new and existing province-wide ratepayers. Information regarding what type of information South Bruce actually considered in its determination is relevant and helpful to determine the parameters of any such framework.

iii. Other Rationales For Refusals Should Be Rejected

In addition to the issue of relevance, South Bruce has refused to provide responses on the basis that the proposals received in response to the RFI process are both strictly confidential and commercially sensitive. While the responses may be confidential and/or commercially sensitive, that is not a reason for refusing to respond to an interrogatory. Rather, in the appropriate case it is a basis for seeking confidentiality protection pursuant to the Board’s *Practice Direction on Confidential Filings*. Even if South Bruce has a confidentiality agreement in place with those parties who participated in the process, the Board has on countless occasions ruled that it is not bound by such agreements, and that is no reason for non-disclosure in any proceeding in which the signatory participates.⁸

³ *Decision and Procedural Order No. 2*, Schedule B - Issues List:

9. What types of process could be implemented to facilitate the introduction of new entrants to provide service to communities that do not have access to natural gas. What are the merits of these processes and what are the existing barriers to implementation? (e.g. issuance of Request for Proposals to enter into franchise agreements).

⁴ Pre-filed evidence of South Bruce, Report by Kincardine, Arran-Elderslie and Huron-Kinross, and Dr. Lawrence Murphy, *The Approach & Competitive Solicitation Process Undertaken by the Municipalities to Facilitate the Expansion of Natural Gas Services to Southern Bruce Count*, at p.2

⁵ *Decision and Procedural Order No. 2*, Schedule B - Issues List:

3. Based on a premise that the OEB has the legal authority described in Issue #1, what are the merits of this approach? How should these contributions be treated for ratemaking purposes?

4. Should the OEB consider exemptions or changes to the EBO 188 guidelines for rural, remote and First Nation community expansion projects?

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⁶ See South Bruce Pre-Filled Evidence (Exhibit R13), i) Report of John Todd (Elenchus Research Associates), *Mechanisms for Supporting Natural Gas Community Expansion Projects*, and ii) Report of Bruce Bacon (BLG), *Rural Rate Assistance as a Ratemaking or Rate Recovery Approach Which The OEB Should Consider When Assessing The Generic Hearing Issues Related to Natural Gas System Expansion*

⁷ See EPCOR Pre-Filled Evidence (Exhibit R4), Expert Evidence e of Adonis Yachew (Charles River Associates Inc), p.12-13, p.23-24, adopted as EPCOR’s own position in response to S4.EPCOR.SEC.5

⁸ See for example, *Decision on Phase 1 Partial Decision and Order: Production of Documents* (EB-2011-0140), June 14 2012, at p.3, *Procedural Order No. 4* (EB-2013-0115), March 19 2014 at p.4, Motion Hearing Transcript, October 23 2012 (EB-2012-0031) at p. 28.

EPCOR has also refused to provide this information claiming, in addition to the issue of relevance, that the information is beyond the matters addressed in Dr. Yatchew's evidence. SEC submits the Board should reject this rationale for refusing to answer relevant questions. First, Dr. Yatchew's evidence addresses essentially all issues. Appendix A to his report provides responses to all issues on the Issues List with the exception of issue 2 which asks a purely legal question. Second, Dr. Yatchew answered many other interrogatories posed about or directly asked of EPCOR without any hesitation when the answers appeared to benefit EPCOR.⁹

iv. Specific Submissions

S13.SouthBruce.SEC.3 The interrogatory requests the RFI responses from the successful proponent, EPCOR only. Seeing the actual response will allow parties and the Board to have a sense of what information can realistically be provided at such an early stage in the process. For example, what type of granularity in costs and rates did EPCOR provide South Bruce (if at all), did it offer to provide a revenue stream back to the municipalities, did it say that it required a subsidy to undertake the expansion at all. These are important types of information to help the Board and the parties understand any process that may be established or permitted by the Board under Issue 9.

S13.SouthBruce.SEC.4 The interrogatory seeks information about the submissions it received from all proponents, regarding a number of specific areas that South Bruce itself said are the benefits of its competitive solicitation process, specifically a) the role of subsidies, b) the scope and certainty of customer rate estimates, and c) system design and costs.¹⁰ South Bruce's evidence in these areas is too vague to be of much use in understanding if the RFI actually provided benefits in these areas. The interrogatory requests information about the actual specific submissions received on these various claimed benefits. To be clear, the interrogatory does not seek copies of the actual submissions, nor did it require South Bruce to identify those proponents.

S4.EPCOR.SEC.7. The interrogatory asked if EPCOR's proposal to South Bruce included any subsidization or shareholder contribution and if so to provide details. This is clearly relevant to the issue of the need and structure of any subsidy from existing ratepayers across the province, or from anyone else (Issues 3-4).

S4.EPCOR.SEC.8 Same request made as S13.SouthBruce.SEC.3.

S4.EPCOR.SEC.12 EPCOR's Franchise Agreements signed with each of the South Bruce municipalities provide for a unique feature, an annual fee paid by EPCOR to the municipalities of 1% of its gross distribution revenue.¹¹ Union and Enbridge have both stated that neither has ever paid

⁹ See S4.EPCOR.Staff.1, S4.EPCOR.Staff.4, S4.EPCOR.Staff.5, S4.EPCOR.Staff.6, S4.EPCOR.Staff.7, S4.EPCOR.Staff.8, S4.EPCOR.Staff.9, S4.EPCOR.Staff.14, S4.EPCOR.BOMA.1, S4.EPCOR.BOMA.3, S4.EPCOR.BOMA.4, S4.EPCOR.Enbridge.1, S4.EPCOR.Enbridge.3, S4.EPCOR.CCC.3, S4.EPCOR.CCC.5, S4.EPCOR.IGUA.1, S4.EPCOR.IGUA.6, S4.EPCOR.SEC.5, S4.EPCOR.SEC.11, S4.EPCOR.Union.1, S4.EPCOR.Union.3

¹⁰ Pre-filed evidence of South Bruce, Report by Kincardine, Arran-Elderslie and Huron-Kinloss, and Dr. Lawrence Murphy, *The Approach & Competitive Solicitation Process Undertaken by the Municipalities to Facilitate the Expansion of Natural Gas Services to Southern Bruce Count*, at p.9-10

¹¹ For example see EB-2016-0138, Schedule D, Franchise Agreement Between The Municipality of Kincardine and EPCOR Utilities, section 5: (Appendix B)

5. Annual Fee. Following commencement of operation of the gas system, Gas Company shall pay an annual fee to the Corporation equivalent to 1% of the gross revenue derived by Gas Company for natural gas supplied for consumption within the Municipality minus the natural gas commodity costs incurred by Gas Company in connection with such supply, earned in the preceding calendar year (the "Annual Fee"). The Annual Fee will be payable within 120 days following the end of each calendar year.

such a fee to a municipality for the right to operate in its territory.¹² The interrogatory asks if the fee will be recovered from ratepayers or shareholders. The regulatory treatment of this unique feature of a Franchise Agreement is relevant to Issue 8, which specifically asks about imposing conditions, and changes to them. If the fee is to be recovered from ratepayers it may very well be appropriate to make it a condition that such a fee not be allowed in Franchise Agreements.

S4.EPCOR.SEC.13 The interrogatory sought to understand if EPCOR's Franchise Agreements with the South Bruce include a provision for an Incremental Tax Equivalent ("ITE") for 10 years. Since similar proposals have been made by Union and Enbridge, SEC sought to understand EPCOR's approach. This issue is clearly relevant to issue 4.

S4.EPCOR.SEC.14 The interrogatory sought any reports and analysis conducted by EPCOR regarding potential rates for South Bruce customers. This information is relevant to Issue 9, in providing evidence about how a competitive process may or may not be beneficial to ratepayers of expansion communities. SEC seeks to understand if EPCOR's expected rates for South Bruce will be more or less than Union's. The answer to that question may help determine if the competitive process was a success, and should be replicated or even required.

S4.EPCOR.SEC.15 The interrogatory sought information regarding the estimated PI for each of the South Bruce municipalities into which it is expanding. For the same reasons as mentioned above, the information is relevant to helping to determine if the competitive process was a success. Union has provided evidence with respect to its forecasted PI for its proposed projects including Kincardine¹³ (part of South Bruce). EPCOR should likewise be required to do so.

B. Union Gas

S15.Union.SEC.8 The interrogatory requested Union's forecast annual natural gas consumption for each of the next 40 years on a per customer basis (i.e. average use per customer) for three customer types (residential, commercial industrial). Union refused on the basis that it was outside the scope of the Issues List.

SEC disagrees. The interrogatory is directly related to Issues 10¹⁴ and 11¹⁵ regarding the impact of the announced cap and trade program, as well as Issue 4 regarding changes to EBO 188. The interrogatory is seeking information regarding Union's own projections of average use per customer over time, which is likely to change due to cap and trade.

While Union is correct that the Board is not seeking to address broader issues surrounding cap and trade, and the resulting rate impacts, the information requested will allow the Board to understand where Union expects natural gas consumption to trend. If there are significant declines in average customer consumption over the next 40 years (the length of the PI analysis in EBO 188) then it calls into question the appropriateness of the calculation itself, which currently is based on the same

¹² S3.EGDI.SEC.25, S15.Union.SEC.10

¹³ Union Pre-filed Evidence (EB-2015-0179) Ex.A, Tab 1, Appendix D, p.1-6

¹⁴ *Decision and Procedural Order No. 2*, Schedule B - Issues List:

10. How will the Ontario Government's proposed cap and trade program impact an alternative framework that the OEB may establish to facilitate the provision of natural gas services in communities that do not currently have access?

¹⁵ *Decision and Procedural Order No. 2*, Schedule B - Issues List:

What is the impact of the Ontario Government's proposed cap and trade program on the estimated savings to switch from other alternative fuels to natural gas and the resulting impact on conversion rates?

consumption in year 1 as year 40. It also calls into question the appropriateness of any form of subsidization of natural gas expansion, if ultimately those assets may be stranded because of consumption reductions due to cap and trade.

SEC notes that it made the same request to Enbridge in an interrogatory, and Enbridge responded without any objection.¹⁶

C. Summary

SEC submits the Board should order South Bruce, EPCOR and Union to provide full responses to the interrogatories posed as they are relevant to the issues in this generic proceeding.

Yours very truly,
Jay Shepherd P.C.

Original signed by

Mark Rubenstein

cc: Wayne McNally, SEC (by email)
All parties (by email)

¹⁶ S3.EGDI.SEC.10

A

1 **South Bruce Interrogatory Responses**

2 **EXHIBIT S13**

3 **Exhibit R13.South Bruce.SEC.3**

4 Reference: Municipalities Report, p.9

5 **Interrogatory:**

6 Please provide a copy of the responses to the initial RFI and second phase of the RFI by the
7 successful proponent EPCOR.

8 **Response:**

9 The proposals received by the municipalities in response to the RFI process that was conducted
10 are strictly confidential and commercially sensitive. In addition, these proposals are not directly
11 relevant to the issues this Board panel is considering in this EB-2016-0004.

1 **South Bruce Interrogatory Responses**

2 **EXHIBIT S13**

3 **Exhibit R13.South Bruce.SEC.4**

4 Reference: Municipalities Report, p.9

5 **Interrogatory:**

6 Regarding all those proponents who responded to the RFI, please provide information regarding
7 the various submissions made regarding:

8 a) The role of subsidies

9 b) Customer rates estimates

10 c) System design and costs

11 **Response:**

12 The proposals received by the municipalities in response to the RFI process that was conducted
13 are strictly confidential and commercially sensitive. In addition, the content of the proposals
14 received by the municipalities relating to the three items cited in this question are not directly
15 relevant to the issues this Board panel is considering in this EB-2016-0004.

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Exhibit S4.EPCOR.SEC.7

Request:

Did EPCOR's successful proposal to the South Bruce municipalities include any proposal for subsidization or a shareholder contributions? If so, please provide details.

Response:

EPCOR's Franchise Applications regarding the South Bruce municipalities have been filed with the Board and have been assigned their own docket numbers. The Applications will be addressed by the Board in a manner that it deems appropriate, in future proceedings. EPCOR's Applications are not at issue in the current generic proceeding, and the requested Application-specific information is well beyond the scope of the issues defined by the Board for this generic proceeding. In addition, the information sought is beyond both the scope of Dr. Yatchew's written evidence and the matters he is appearing before the Board to address. As such, Dr. Yatchew respectfully declines to provide the requested information.



Exhibit S4.EPCOR.SEC.8

Reference: South Bruce evidence, Municipalities Report, p.9

Request:

Please provide a copy of the responses provided by EPCOR to South Bruce's initial RFI and second phase of the RFI.

Response:

Dr. Yatchew understands that EPCOR's responses to the South Bruce RFI resulted in the franchise agreements which are the subject of the Applications referenced in the response to EUI-SEC-007. Dr. Yatchew respectfully declines to provide the requested information for reasons outlined in the response to that interrogatory.



Exhibit S4.EPCOR.SEC.12

Reference: EB-2016-0137/138/139, Franchise Agreement, section 5

Request:

EPCOR has filed applications for approval of its Franchise Agreements with the Municipalities of Arran-Elderslie, Kinkarden and Huron-Kinloss. In each of those Franchise Agreements, EPCOR has agreed to pay each municipality an annual fee equivalent to 1% of the gross revenue derived by it for natural gas supplied for consumption within the municipality net of the commodity costs of supply. Will EPCOR seek to recover that that annual fee from ratepayers or will that be a shareholder expense?

Response:

See the response to Exhibit.S4.EPCOR.SEC.7.

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Exhibit S4.EPCOR.SEC.13

Reference: EB-2016-0137/138/139, Franchise Agreement, section 6

Request:

EPCOR's proposed Franchise Agreements with the Municipalities of Arran-Elderslie, Kinkarden and Huron-Kinloss include an ITE for 10 years each. Please explain why EPCOR believes that is the appropriate term length.

Response:

See the response to Exhibit S4.EPCOR.SEC.7.

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Exhibit S4.EPCOR.SEC.14

Request:

Please provide any report or analysis conducted by EPCOR regarding potential rates for South Bruce customers.

Response:

See the response to Exhibit S4.EPCOR.SEC.7.



Exhibit S4.EPCOR.SEC.15

Request:

What is EPCOR's estimated PI for the each for its expected natural gas expansion into each of the Municipalities of Arran-Elderslie, Kinkarden and Huron-Kinloss. Please provide all calculations.

Response:

See the response to Exhibit S4.EPCOR.SEC.7.

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UNION GAS LIMITED

Answer to Interrogatory from
School Energy Coalition (“SEC”)

Reference: p. 35

Please provide Union’s forecast of annual natural gas consumption for each of the next 40 years, on a per customer basis for the average:

- a) Residential customer
 - b) Commercial customer
 - c) Industrial customer
-

Response:

This question is outside the scope of the Board-approved Issues List for this proceeding. The Issues List relates to a generic proceeding that was initiated by the Board on its own Motion. Further, the Board in its Decision and Procedural Order No.2 (dated March 9, 2016) stated that, *“it does not expect this proceeding to deal with the broader issues around cap and trade and the resulting rate impact of the program on all customers.”* Rather, the Board is looking for *“directional impacts on how the cap and trade impact comparisons to alternative fuels and not a thorough quantitative analysis.”*

The impact of greenhouse gas emissions (“GHG”) on overall throughput is out of scope.

B

Franchise Agreement

THIS AGREEMENT effective this 22nd day of February, 2016

BETWEEN:

THE MUNICIPALITY OF KINCARDINE hereinafter called the "Corporation"

- and -

EPCOR UTILITIES INC. hereinafter called the "Gas Company"

WHEREAS the Gas Company desires to distribute, store and transmit gas in the Municipality upon the terms and conditions of this Agreement;

AND WHEREAS by by-law passed by the Council of the Corporation (the "By-law"), the duly authorized officers have been authorized and directed to execute this Agreement on behalf of the Corporation;

THEREFORE the Corporation and the Gas Company agree as follows:

Part I - Definitions

1. In this Agreement:

- a. "decommissioned" and "decommissions" when used in connection with parts of the gas system, mean any parts of the gas system taken out of active use and purged in accordance with the applicable CSA standards and in no way affects the use of the term 'abandoned' pipeline for the purposes of the Assessment Act;
- b. "Engineer/Road Superintendent" means the most senior individual employed by the Corporation with responsibilities for highways within the Municipality or the person designated by such senior employee or such other person as may from time to time be designated by the Council of the Corporation;
- c. "gas" means natural gas, manufactured gas, synthetic natural gas, liquefied petroleum gas or propane-air gas, or a mixture of any of them, but does not include a liquefied petroleum gas that is distributed by means other than a pipeline;
- d. "gas system" means such mains, plants, pipes, conduits, services, valves, regulators, curb boxes, stations, drips or such other equipment as the Gas Company may require or deem desirable for the distribution, storage and transmission of gas in or through the Municipality;
- e. "highway" means all common and public highways and shall include any bridge, viaduct or structure forming part of a highway, and any public square, road allowance or walkway and shall include not only the travelled portion of such highway, but also ditches, driveways, sidewalks, and sodded areas

forming part of the road allowance now or at any time during the term hereof under the jurisdiction of the Corporation;

- f. "Model Franchise Agreement" means the form of agreement which the Ontario Energy Board uses as a standard when considering applications under the Municipal Franchises Act. The Model Franchise Agreement may be changed from time to time by the Ontario Energy Board;
- g. "Municipality" means the territorial limits of the Corporation on the date when this Agreement takes effect, and any territory which may thereafter be brought within the jurisdiction of the Corporation;
- h. "Plan" means the plan described in Paragraph 7 of this Agreement required to be filed by the Gas Company with the Engineer/Road Superintendent prior to commencement of work on the gas system; and
- i. whenever the singular, masculine or feminine is used in this Agreement, it shall be considered as if the plural, feminine or masculine has been used where the context of the Agreement so requires.

Part II - Rights Granted

2. To provide gas service:

The consent of the Corporation is hereby given and granted to the Gas Company to distribute, store and transmit gas in and through the Municipality to the Corporation and to the inhabitants of the Municipality.

3. To Use Highways

Subject to the terms and conditions of this Agreement the consent of the Corporation is hereby given and granted to the Gas Company to enter upon all highways now or at any time hereafter under the jurisdiction of the Corporation and to lay, construct, maintain, replace, remove, operate and repair a gas system for the distribution, storage and transmission of gas in and through the Municipality.

4. Duration of Agreement and Renewal Procedures

- a. Unless terminated earlier in accordance with subsections (d), (e), (f) or (g) below, if the Corporation has not previously received gas distribution services, the rights hereby given and granted shall be for a term of 20 years from the date of final passing of the By-law.
- b. At any time within two years prior to the expiration of this Agreement, either party may give notice to the other that it desires to enter into negotiations for a renewed franchise upon such terms and conditions as may be agreed upon. Until such renewal has been settled, the terms and conditions of this Agreement shall continue, notwithstanding the expiration of this Agreement. This shall not preclude either party from applying to the Ontario Energy Board

for a renewal of the Agreement pursuant to section 10 of the Municipal Franchises Act.

- c. For greater certainty, upon the expiration or termination of this Agreement, the gas system remains the sole property of the Gas Company.
- d. The Corporation may terminate this Agreement by written notice to Gas Company, effective on such date as is specified in such notice, if the Gas Company fails to notify the Corporation in writing of its intention to proceed with the filing of a Leave to Construct (as defined below) application in respect of the gas system, within 60 days of the later of: (i) the GH Date (as defined below); and (ii) the date on which the Province of Ontario provides to the Gas Company a decision in writing regarding access to the Natural Gas Access Loans or Natural Gas Economic Development Grants in respect of the gas system (the “**Funding Date**”).
- e. The Corporation may terminate this Agreement by written notice to Gas Company, effective on such date as is specified in such notice, if the Gas Company fails to file an application pursuant to Section 90 of the *Ontario Energy Board Act, 1998* for leave to construct the gas system (“**Leave to Construct**”) within 180 days of the latest of: (i) the date of expiry of any appeal or review period applicable to the Ontario Energy Board’s decision (or of any subsequent appeal or review) regarding the generic proceeding before the Ontario Energy Board, EB-2016-0004; (ii) the date of final disposition of any appeal or review of the Ontario Energy Board’s decision regarding such generic proceeding (the later of the dates referenced in (i) and (ii) being the “**GH Date**”); and (iii) the Funding Date.
- f. The Corporation may terminate this Agreement by written notice to Gas Company, effective on such date as is specified in such notice, if the Gas Company’s application for Leave to Construct the gas system is not approved by the Ontario Energy Board without material variation and the Gas Company has failed to submit a new or revised application for Leave to Construct the gas system within 180 days of the date of the Ontario Energy Board’s decision regarding the Leave to Construct application.
- g. The Corporation may terminate this Agreement by written notice to Gas Company, effective on such date as is specified in such notice, if the Gas Company has not achieved financial close (as that term may be defined or otherwise agreed to by the parties) within twelve (12) months of obtaining approval of its Leave to Construct application.
- h. The Corporation may terminate this Agreement by written notice to Gas Company, effective on such date as is specified in such notice, if the gas system is not constructed, in operation and serving the Municipality on or before December 31, 2023 (the “**Cliff Date**”), provided the Gas Company shall be granted an additional two (2) year period after the Cliff Date to complete construction and put the gas system into operation to serve the Municipality if and only if the Gas Company has been issued Leave to Construct, achieved financial close and commenced construction of the gas system prior to the Cliff Date and the Gas Company continues to demonstrate that it has and is using

reasonable commercial efforts to complete construction and commence operations of the gas system within such two year period.

- i. If the Corporation terminates this Agreement, Gas Company will promptly make an application to the Ontario Energy Board to surrender or cancel any related approval for the Agreement or a Certificate of Public Convenience and Necessity.

Part III - Conditions

5. Annual Fee. Following commencement of operation of the gas system, Gas Company shall pay an annual fee to the Corporation equivalent to 1% of the gross revenue derived by Gas Company for natural gas supplied for consumption within the Municipality minus the natural gas commodity costs incurred by Gas Company in connection with such supply, earned in the preceding calendar year (the “**Annual Fee**”). The Annual Fee will be payable within 120 days following the end of each calendar year.
6. Tax Rebate. The Corporation will rebate to Gas Company, the Corporation’s respective municipal portion of any property or similar taxes, including without limitation payable in relation to ownership or use of or rights in relation to land, buildings, structures or pipelines, paid by Gas Company pursuant to the *Ontario Assessment Act* directly or indirectly to or for the benefit of the Corporation for the first 10 years of operation of the gas system in the Municipality. In respect of years after the 10th year of operation of the gas system in the Municipality, the above rebates shall cease and the Corporation shall be entitled to directly or indirectly collect said taxes from Gas Company.
7. Approval of Construction
 - a. The Gas Company shall not undertake any excavation, opening or work which will disturb or interfere with the surface of the travelled portion of any highway unless a permit therefor has first been obtained from the Engineer/Road Superintendent and all work done by the Gas Company shall be to his satisfaction.
 - b. Prior to the commencement of work on the gas system, or any extensions or changes to it (except service laterals which do not interfere with municipal works in the highway), the Gas Company shall file with the Engineer/Road Superintendent a Plan, satisfactory to the Engineer/Road Superintendent, drawn to scale and of sufficient detail considering the complexity of the specific locations involved, showing the highways in which it proposes to lay its gas system and the particular parts thereof it proposes to occupy.
 - c. The Plan filed by the Gas Company shall include geodetic information for a particular location:
 - i. where circumstances are complex, in order to facilitate known projects, including projects which are reasonably anticipated by the Engineer/Road Superintendent, or
 - ii. when requested, where the Corporation has geodetic information for its own services and all others at the same location.

- d. The Engineer/Road Superintendent may require sections of the gas system to be laid at greater depth than required by the latest CSA standard for gas pipeline systems to facilitate known projects or to correct known highway deficiencies.
- e. Prior to the commencement of work on the gas system, the Engineer/Road Superintendent must approve the location of the work as shown on the Plan filed by the Gas Company, the timing of the work and any terms and conditions relating to the installation of the work.
- f. In addition to the requirements of this Agreement, if the Gas Company proposes to affix any part of the gas system to a bridge, viaduct or other structure, if the Engineer/Road Superintendent approves this proposal, he may require the Gas Company to comply with special conditions or to enter into a separate agreement as a condition of the approval of this part of the construction of the gas system.
- g. Where the gas system may affect a municipal drain, the Gas Company shall also file a copy of the Plan with the Corporation's Drainage Superintendent for purposes of the Drainage Act, or such other person designated by the Corporation as responsible for the drain.
- h. The Gas Company shall not deviate from the approved location for any part of the gas system unless the prior approval of the Engineer/Road Superintendent to do so is received.
- i. The Engineer/Road Superintendent's approval, where required throughout this Paragraph, shall not be unreasonably withheld.
- j. The approval of the Engineer/Road Superintendent is not a representation or warranty as to the state of repair of the highway or the suitability of the highway for the gas system.

8. As Built Drawings

The Gas Company shall, within six months of completing the installation of any part of the gas system, provide two copies of "as built" drawings to the Engineer/Road Superintendent. These drawings must be sufficient to accurately establish the location, depth (measurement between the top of the gas system and the ground surface at the time of installation) and distance of the gas system. The "as built" drawings shall be of the same quality as the Plan and, if the approved pre-construction plan included elevations that were geodetically referenced, the "as built" drawings shall similarly include elevations that are geodetically referenced. Upon the request of the Engineer/Road Superintendent, the Gas Company shall provide one copy of the drawings in an electronic format and one copy as a hard copy drawing.

9. Emergencies

In the event of an emergency involving the gas system, the Gas Company shall proceed with the work required to deal with the emergency, and in any instance where prior

approval of the Engineer/Road Superintendent is normally required for the work, the Gas Company shall use its best efforts to immediately notify the Engineer/Road Superintendent of the location and nature of the emergency and the work being done and, if it deems appropriate, notify the police force, fire or other emergency services having jurisdiction. The Gas Company shall provide the Engineer/Road Superintendent with at least one 24 hour emergency contact for the Gas Company and shall ensure the contacts are current.

10. Restoration

The Gas Company shall well and sufficiently restore, to the reasonable satisfaction of the Engineer/Road Superintendent, all highways, municipal works or improvements which it may excavate or interfere with in the course of laying, constructing, repairing or removing its gas system, and shall make good any settling or subsidence thereafter caused by such excavation or interference. If the Gas Company fails at any time to do any work required by this Paragraph within a reasonable period of time, the Corporation may do or cause such work to be done and the Gas Company shall, on demand, pay the Corporation's reasonably incurred costs, as certified by the Engineer/Road Superintendent.

11. Indemnification

The Gas Company shall, at all times, indemnify and save harmless the Corporation and the members of the municipal council, the officers, employees and agents of the Corporation from and against all claims, including costs related thereto, for all damages or injuries including death to any person or persons and for damage to any property, arising out of the Gas Company operating, constructing, and maintaining its gas system in the Municipality, or utilizing its gas system for the carriage of gas owned by others. Provided that the Gas Company shall not be required to indemnify or save harmless the Corporation from and against claims, including costs related thereto, which it may incur by reason of damages or injuries including death to any person or persons and for damage to any property, resulting from the negligence or wrongful act of the Corporation, its servants, agents or employees.

12. Insurance

- a. The Gas Company shall maintain Comprehensive General Liability Insurance in sufficient amount and description as shall protect the Gas Company and the Corporation from claims for which the Gas Company is obliged to indemnify the Corporation under Paragraph 11. The insurance policy shall identify the Corporation as an additional named insured, but only with respect to the operation of the named insured (the Gas Company). The insurance policy shall not lapse or be cancelled without sixty (60) days' prior written notice to the Corporation by the Gas Company.
- b. The issuance of an insurance policy as provided in this Paragraph shall not be construed as relieving the Gas Company of liability not covered by such insurance or in excess of the policy limits of such insurance.

- c. Upon request by the Corporation, the Gas Company shall confirm that premiums for such insurance have been paid and that such insurance is in full force and effect.

13. Alternative Easement

The Corporation agrees, in the event of the proposed sale or closing of any highway or any part of a highway where there is a gas line in existence, to give the Gas Company reasonable notice of such proposed sale or closing and, if is feasible, to provide the Gas Company with easements over that part of the highway proposed to be sold or closed sufficient to allow the Gas Company to preserve any part of the gas system in its then existing location. In the event that such easements cannot be provided, the Corporation and the Gas Company shall share the cost of relocating or altering the gas system to facilitate continuity of gas service, as provided for in Paragraph 14 of this Agreement.

14. Pipeline Relocation

- a. If in the course of constructing, reconstructing, changing, altering or improving any highway or any municipal works, the Corporation deems that it is necessary to take up, remove or change the location of any part of the gas system, the Gas Company shall, upon notice to do so, remove and/or relocate within a reasonable period of time such part of the gas system to a location approved by the Engineer/Road Superintendent.
- b. Where any part of the gas system relocated in accordance with this Paragraph is located on a bridge, viaduct or structure, the Gas Company shall alter or relocate that part of the gas system at its sole expense.
- c. Where any part of the gas system relocated in accordance with this Paragraph is located other than on a bridge, viaduct or structure, the costs of relocation shall be shared between the Corporation and the Gas Company on the basis of the total relocation costs, excluding the value of any upgrading of the gas system, and deducting any contribution paid to the Gas Company by others in respect to such relocation; and for these purposes, the total relocation costs shall be the aggregate of the following:
 - i. the amount paid to Gas Company employees up to and including field supervisors for the hours worked on the project plus the current cost of fringe benefits for these employees,
 - ii. the amount paid for rental equipment while in use on the project and an amount, charged at the unit rate, for Gas Company equipment while in use on the project,
 - iii. the amount paid by the Gas Company to contractors for work related to the project,
 - iv. the cost to the Gas Company for materials used in connection with the project, and

- v. a reasonable amount for project engineering and project administrative costs which shall be 22.5% of the aggregate of the amounts determined in items (i), (ii), (iii) and (iv) above.
- d. The total relocation costs as calculated above shall be paid 35% by the Corporation and 65% by the Gas Company, except where the part of the gas system required to be moved is located in an unassumed road or in an unopened road allowance and the Corporation has not approved its location, in which case the Gas Company shall pay 100% of the relocation costs.

Part IV - Procedural and Other Matters

15. Municipal By-laws of General Application

The Agreement is subject to the provisions of all regulating statutes and all municipal bylaws of general application, except by-laws which have the effect of amending this Agreement.

16. Giving Notice

Notices may be delivered to, sent by facsimile or mailed by prepaid registered post to the Gas Company at its head office or to the authorized officers of the Corporation at its municipal offices, as the case may be.

17. Disposition of Gas System

- a. If the Gas Company decommissions part of its gas system affixed to a bridge, viaduct or structure, the Gas Company shall, at its sole expense, remove the part of its gas system affixed to the bridge, viaduct or structure.
- b. If the Gas Company decommissions any other part of its gas system, it shall have the right, but is not required, to remove that part of its gas system. It may exercise its right to remove the decommissioned parts of its gas system by giving notice of its intention to do so by filing a Plan as required by Paragraph 7 of this Agreement for approval by the Engineer/Road Superintendent. If the Gas Company does not remove the part of the gas system it has decommissioned and the Corporation requires the removal of all or any part of the decommissioned gas system for the purpose of altering or improving a highway or in order to facilitate the construction of utility or other works in any highway, the Corporation may remove and dispose of so much of the decommissioned gas system as the Corporation may require for such purposes and neither party shall have recourse against the other for any loss, cost, expense or damage occasioned thereby. If the Gas Company has not removed the part of the gas system it has decommissioned and the Corporation requires the removal of all or any part of the decommissioned gas system for the purpose of altering or improving a highway or in order to facilitate the construction of utility or other works in a highway, the Gas Company may elect to relocate the decommissioned gas system and in that event

Paragraph 14 applies to the cost of relocation.

18. Use of Decommissioned Gas System

- a. The Gas Company shall provide promptly to the Corporation, to the extent such information is known:
 - i. the names and addresses of all third parties who use decommissioned parts of the gas system for purposes other than the transmission or distribution of gas; and
 - ii. the location of all proposed and existing decommissioned parts of the gas system used for purposes other than the transmission or distribution of gas.
- b. The Gas Company may allow a third party to use a decommissioned part of the gas system for purposes other than the transmission or distribution of gas and may charge a fee for that third party use, provided
 - i. the third party has entered into a municipal access agreement with the Corporation; and
 - ii. the Gas Company does not charge a fee for the third party's right of access to the highways.
- c. Decommissioned parts of the gas system used for purposes other than the transmission or distribution of gas are not subject to the provisions of this Agreement. For decommissioned parts of the gas system used for purposes other than the transmission and distribution of gas, issues such as relocation costs will be governed by the relevant municipal access agreement.

19. Franchise Handbook

The Parties acknowledge that operating decisions sometimes require a greater level of detail than that which is appropriately included in this Agreement. The Parties agree to look for guidance on such matters to the Franchise Handbook prepared by the Association of Municipalities of Ontario and the gas utility companies, as may be amended from time to time.

20. Agreement Binding Parties

This Agreement shall extend to, benefit and bind the parties thereto, their successors and assigns, respectively. Any assignment of this Agreement or any Party's rights or obligations under this Agreement requires the prior written consent of the other Party, acting reasonably except in the case of the Gas Company who may assign this Agreement to a wholly owned (other than any non-voting securities owned by officers of Gas Company) subsidiary or affiliate without prior written consent, provided that: (a) the original Gas Company must unconditionally and irrevocably guarantee, in a form satisfactory to the Corporation, acting reasonably, the obligations and liabilities to be assumed by such subsidiary or affiliate; and (b) such subsidiary or affiliate must also be

assigned and assume any related agreements between the Corporation and the Gas Company.

[Signature page follows.]

IN WITNESS WHEREOF the parties have executed this Agreement effective from the date written above.

EPCOR Utilities Inc.

Per: "Original signed by Bruce Brandell"
Name: Bruce Brandell
Title: Director, Commercial Services

THE MUNICIPALITY OF KINCARDINE

Per: "Original signed by Anne Eadie"
Name: Anne Eadie
Title: Mayor