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Our File No. 231915
Date June 20, 2016

RESS

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

Attention: Kristen Walli
Board Secretary
boardsec@ontarioenergyboard.ca

Dear Ms. Walli:

**Re: CPA Evidence
EB-2016-0004**

We are counsel to the Canadian Propane Association (the “CPA”), an intervenor in this proceeding.

Enclosed are CPA’s written submissions and book of authorities, in accordance with the Decision and Procedural Order No. 3, issued by the Board on May 30, 2016.

Yours truly,



Laura Brazil

/cs
Attach.

cc by email: Intervenors in EB-2016-0004 and EB-2015-0179

ONTARIO ENERGY BOARD

EB-2016-0004

**Application under the Ontario Energy Board's own motion to consider
potential alternative approaches to recover costs of expanding natural
gas service to communities that are not currently served**

**SUBMISSIONS OF THE
CANADIAN PROPANE ASSOCIATION**

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I. SUMMARY OF CPA'S POSITION

1. The Canadian Propane Association (“CPA”) submits that the mandate of the Ontario Energy Board (“OEB”) is to act independently of government and in accordance with the objectives laid out in the *Ontario Energy Board Act, 1998* (“OEB Act”),¹ unless directed to do otherwise pursuant to a statutory instrument. Such mandate does not extend to being a redistributor of wealth for social policy purposes. That is the mandate of government, and it has not been delegated to the OEB in this case. The proposed subsidy mechanism is a program for the redistribution of wealth, and unlike other OEB-sanctioned subsidies related to electricity, the proposed gas subsidy is not the subject of a legislative amendment, regulation, or a Ministerial Directive, all of which would represent the granting of legislative authority at law. In fact, the proposed amendment is in direct contravention of the OEB’s statutory objectives to facilitate rational expansion (not irrational expansion) and to protect customers with respect to price (not non-customers). An informal letter from the Minister to the Chair is not a legal instrument and does not convey the legislative authority to depart from the statutory objectives set out in the OEB Act.
2. The OEB is an economic regulator. It conducts economic tests and performs economic assessments. The government, in its role as a formulator of social policy, will from time to time attribute specific economic value to the societal benefits associated with its social policy. This is the basis of the government’s taxation and budgeting process. Social costs and benefits related to projects under the OEB’s jurisdiction can and should be assessed and considered by the OEB, by incorporating into its economic assessment the quantified economic value which has been attributed to those social benefits by the government.
3. None of the reasons or justifications for system expansion that were advanced in this proceeding actually exist in this case:
 - (a) Customers did not actually request system expansion. Some “non-customers” may have inquired, but no “customers”. Further, what those non-customers asked for is not system expansion, but free or partially free system expansion. They can have system expansion now if they want it, but given the costs, it turns out they don’t actually want it. What they want is a freebie. Finally, the OEB’s mandate is not to do whatever customers or non-customers want. It has a responsibility to do whatever is in the broader public interest and not favour any local group.
 - (b) Government did not actually ask for this proceeding or for the OEB to expand the gas system. There was no directive or direction; just “encouragement”. There was no discussion in the Minister’s letter of proceeding to construct expansion projects; just “plans to examine opportunities to facilitate...”. There was no contemplation at all of uneconomic projects; only a mention of “rational

¹ *Ontario Energy Board Act, 1998*, SO 1998, c 15, Schedule B.

expansion” to “more communities”. Not once did the Minister indicate a desire to promote uneconomic projects, or call for departures from the OEB’s role as an economic regulator under EBO 188.

- (c) Natural gas service to rural and remote communities is not actually cheaper than the existing energy service (be it propane, electricity, oil or wood). It is only cheaper if you choose to ignore the capital costs associated with bringing gas service to the communities, and then compare that against the all-in costs (including capital costs) of delivering propane, electricity, etc. If comparing all-in costs (\$17,000 to \$25,000 per natural gas customer), natural gas is the most expensive option, which explains why, when left to the free market, the communities have elected to remain on propane, electricity, etc.
- (d) In the aggregate, natural gas is not actually better for the environment than the current energy supplies in these communities. GHG emissions from natural gas are somewhere between -4% and +18% better than propane, but 300% worse than electricity. So if natural gas replaces propane and electricity in these communities, the aggregate net effect will be a material increase in GHG emissions.
- (e) Natural gas service is not actually better for the economy:
 - (i) Any job gains in the gas sector are offset by job losses in the propane sector.
 - (ii) Communities which neighbour those selected for gas service but will not themselves receive gas service will suffer significant economic harm because their cost of propane service will increase, or may be eliminated altogether (if the regional market is no longer sufficient to justify propane service), leaving those neighbouring communities with no energy options at all.
 - (iii) Economic interests are not served by having the OEB pick winners and losers among two competing energy suppliers by subsidizing one but not the other. Particularly when one considers LNG service, which involves Liquid Natural Gas (“LNG”) trucks competing with propane trucks to serve the same customers, a subsidy to one and not the other will simply put the currently more competitive option out of business. The fact that propane delivery trucks and community distribution centres can profitably operate without a subsidy suggests that LNG delivery trucks and distribution systems should also be able to operate without a subsidy. If they cannot, then they must be the less economic option and should not be supported, since there are private sector propane providers willing to provide the equivalent service without a subsidy. Why would we subsidize one competitor when another competitor is willing to serve without a subsidy?

- (iv) Any “economic multiplier” or “ripple effect” will apply the same way whether money is spent on gas or propane; whether savings are in the hands of expansion customers or returned to existing customers; and whether jobs are increased in the gas sector or lost in the propane sector.
 - (v) Each new piece of equipment represents an increase in the risk of stranded assets, particularly given the uncertainty around the future of fossil fuel consumption. While this may be unavoidable to some extent, the difference between converting to gas is as follows:
 - (1) With gas expansion service subsidized by ratepayers, if the risk comes to fruition and assets are stranded, that loss is borne by gas ratepayers, forcibly and against their will.
 - (2) With continuing propane service, if the risk comes to fruition and assets are stranded, that loss is borne by propane sector investors and shareholders, who voluntarily chose to invest and bear the risk of loss.
4. The proposed framework before the OEB relies on certain assumptions being true, including that the burden on existing ratepayers will not be “undue”. However, under the proposed framework, in order for the OEB to determine in each Leave to Construct application whether the burden is undue, it has to rely on the connection forecasts. If the connection forecasts are wrong, then the shortfall will ultimately fall to existing customers, and could result in a burden which the applicant had promised would not be undue, but turns out to be undue. How confident is the OEB in these forecasts? Is the OEB willing to risk approving what turns out to be an irreversible undue burden on the basis of the forecasts as presented? The evidence suggests that such Local Distribution Companies (“LDCs”) forecasts are rarely if ever correct. Further, they have never underestimated the number of connections. The trend is to overstate the forecasted connections, thereby understating the subsidy burden. The OEB should not approve a framework which functions only if the LDC forecasts are right, particularly given the record of forecasting errors, and the fact that the LDCs are not willing to stand behind their own forecasts at all and assume part of the risk for forecasting errors. This is indicative of how much they trust their own forecasts.
5. Both LDCs suggested that the proposed framework represents a “balance”. However, a framework where one group pays and the other group benefits is a straight win-lose, not a balance. The fact that the increased cost to the first group is “reasonable” does not make this a balanced proposal, as there is still one group that pays but does not benefit, and another group that receives a benefit for which it did not pay.
6. Union hypocritically claims that the principles underpinning its own framework are not just and reasonable if applied for the benefit of another utility, but are just and reasonable if applied for the benefit of Union.

<u>Union's Position</u>	<i>Change the parties:</i>	<u>CPA's Position</u>
<p><i>Imposing a charge on <u>Union's customers</u> for purposes of subsidizing <u>another utility's cost</u> of service would be contrary to the established ratemaking principle of "benefits follow cost". <u>Union's customers</u> would be incurring costs without receiving any corresponding benefits. On the flip side, <u>another utility's customers</u> would be receiving a benefit without incurring any corresponding costs. To establish rates on this basis would not be consistent with the just and reasonable standard. This would be comparable to having <u>Union's customers</u> pay more to subsidize an industrial customer's cost of labour. It is unrelated to any aspect of the service to <u>Union's customers</u>.²</i></p>	<p><i>Union's customers ➔ existing customers</i></p> <p><i>Another utility's customers ➔ new customers</i></p>	<p><i>Imposing a charge on <u>existing customers</u> for purposes of subsidizing <u>new customers' cost</u> of service would be contrary to the established ratemaking principle of "benefits follow cost". <u>Existing customers</u> would be incurring costs without receiving any corresponding benefits. On the flip side, <u>new customers</u> would be receiving a benefit without incurring any corresponding costs. To establish rates on this basis would not be consistent with the just and reasonable standard. This would be comparable to having <u>existing customers</u> pay more to subsidize an industrial customer's cost of labour. It is unrelated to any aspect of the service to <u>existing customers</u>.</i></p>

The CPA submits that the principles outlined by Union in its evidence, as set out in the left-hand column above, are correct and should be applied by the OEB. However, principles do not change just because you change the names of the parties. Therefore, the principles set out above in the right-hand column, which are identical to those in the left-hand column other than the party names, must similarly be applied by the OEB to the LDCs.

7. The CPA submits that the OEB should reject the subsidy-based frameworks as proposed by Union and Enbridge, for all of the reasons herein. However, if the OEB still wants to find a way to consider applications for uneconomic projects, the CPA has set out an alternative framework for consideration. It relies on the standard economic regulator test as outlined in EBO 188. However, it allows for the revenue side of the equation to reflect benefits that have not typically been considered under EBO 188, based on the quantification of an economic value for those benefits as assigned by anyone who values those additional benefits.

² EB-2016-0004, Evidence of Union Gas, Exhibit A, Tab 1, Page 4 of 38.

II. THE OEB HAS NO MANDATE OR JURISDICTION TO ENGAGE IN REDISTRIBUTION OF WEALTH

A. The OEB's mandate does not include the redistribution of wealth or taxation powers

8. The OEB is a creature of statute and derives its jurisdiction and its mandate from the OEB Act.
9. The relevant gas-related objectives of the OEB, as set out in the OEB Act, include:
 - (a) facilitating rational expansion of transmission and distribution systems;³ and
 - (b) protecting the interests of consumers with respect to prices.⁴

The OEB's statutory objectives, as they relate to gas, do not include the redistribution of wealth or the imposition of a tax.

10. The redistribution of wealth and the imposition of a tax are not mandated by the "facilitating rational expansion" objective, as the mechanism proposed in this matter is only proposed and only necessary for irrational expansion projects; rational expansion projects have been approved by the OEB on a regular basis without any such subsidy or tax.
11. Nor is the redistribution of wealth and the imposition of a tax mandated by the "protecting the interests of consumers" objective, since the proposed mechanism is exclusively intended to assist and support Ontarians who are not gas consumers. Union Gas agreed that the more precise description for these individuals is "non-customers".⁵
12. The redistribution of wealth is not among the OEB's powers or objectives. Redistribution of wealth is the mandate of the provincial government, to be implemented through taxation and budget measures or other measures having "clear and unambiguous authorization from the legislature".⁶
13. The courts have ruled that that the OEB "is an economic regulator, rather than a formulator of social policy."⁷ Social policy objectives are "to be met through other

³ OEB Act, Section 2 (3), Book of Authorities of the CPA, Tab 1.

⁴ OEB Act, Section 2 (2), Book of Authorities of the CPA, Tab 1.

⁵ Transcript Vol. 6, page 201.

⁶ *Re Eurig Estate*, [1998] 2 SCR 565, at para 40, Book of Authorities of the CPA, Tab 2.

⁷ *Advocacy Centre for Tenants Ontario v. Ontario Energy Board*, 293 DLR (4th) 684 at para 49 (Ont Sup Ct (Div Ct)), Book of Authorities of the CPA, Tab 3.

mechanisms and programs legislated by the provincial Legislature and/or Parliament, for example, by refundable tax credits and social assistance.”⁸

B. The proposed subsidy is a mechanism for the redistribution of wealth, or a tax

14. The Supreme Court of Canada describes a “tax” as having the following characteristics:
- (a) it is enforceable by law;
 - (b) it is levied by a public body;
 - (c) it is intended for a public purpose; and
 - (d) it is imposed under the authority of the legislature.⁹
15. A subsidy charge imposed by the OEB, as proposed by Union and Enbridge, is a tax, as:
- (a) it is enforceable by law (decisions of the OEB are enforceable under the OEB Act).
 - (b) it is levied by a public body, being the OEB (it is collected by a private LDC, but the decision to levy it rests with the OEB); and
 - (c) it is intended for a public purpose, being the general “public good” of expanding natural gas service to unserved communities. The Supreme Court determined that if the charge does not “incidentally” result in surplus revenues, but rather was intended for that very purpose, then it satisfies this third test.¹⁰ In the present case, the proposed subsidy will not incidentally provide funds which can be used to advance the government’s public policy objective, but rather is designed for that very purpose. Union’s own economic experts confirmed that the proposed scheme represents a redistribution of wealth from homeowners currently with gas service to homeowners who obtain gas service, since the former’s wealth will fall while the latter’s wealth will increase.¹¹

The proposed subsidy therefore satisfies the first three characteristics of a tax.

⁸ *Advocacy Centre for Tenants Ontario v. Ontario Energy Board*, 293 DLR (4th) 684 at para 47 (Ont Sup Ct (Div Ct)), Book of Authorities of the CPA, Tab 3; Exhibit S2.CPA.BoardStaff.1, page 2 of 7.

⁹ *Re Eurig Estate*, [1998] 2 SCR 565, at para 15, Book of Authorities of the CPA, Tab 2.

¹⁰ *Re Eurig Estate*, [1998] 2 SCR 565, at para 20, Book of Authorities of the CPA, Tab 2.

¹¹ Transcript Vol. 2, pages 93-94.

16. Further, the courts have determined that a tax is “a levy to raise revenue for general purposes, while a fee is a levy to charge for services directly rendered.”¹² Charging existing consumers for the purpose of subsidizing gas expansion to new rural or remote customers is not a charge for services directly rendered. It is a tax to raise revenue for the general purpose of gas expansion: the beneficiaries of that gas expansion cannot even be identified at the time the charge is levied, because neither the OEB nor the LDC knows yet who, if anyone, will choose to connect to the new system.

C. The proposed subsidy lacks clear and unambiguous authorization from the legislature

17. The proposed subsidy fails to satisfy the fourth requirement of a tax: it is not properly imposed under the authority of the legislature. According to the Supreme Court, the Constitution provides that the authority to impose a tax must originate with a clear and unambiguous authorization from the legislature to do so.¹³ In the present case, the legislature could have amended the OEB Act to provide for such a subsidy, or the Minister could have issued a Directive under the authority of the OEB Act. But neither of these occurred in this case.
18. Union’s own evidence in the original EB-2015-0179 proceeding confirms Union’s understanding that a Ministerial Directive is required. In its “Program Outline Options”¹⁴ [see below], Union presents three alternative options for a rural and northern Ontario expansion program (Options A, B and C). Under each of their three options, Union describes the actions that the Government of Ontario would be required to take and states that Ministerial Directives to the OEB are required. The CPA agrees with Union’s position that a formal and legally mandated Ministerial Directive is necessary in order to implement any of Union’s proposals. However, no such Ministerial Directive has been issued.

¹² *Canadian Assn of Broadcasters v R*, 2005 FC 1217 at para 8, Book of Authorities of the CPA, Tab 4.

¹³ *Re Eurig Estate*, [1998] 2 SCR 565, at para 40, Book of Authorities of the CPA, Tab 2.

¹⁴ EB-2015-0179, Exhibit JT1.10, Attachment 1, Page 1, filed by Union 2015-12-22.

**Rural and Northern Ontario Affordable Energy Infrastructure Program
 Program Outline Options**

Total Investment	<ul style="list-style-type: none"> \$700M gross capital over 5 years Up to 47,000 customers in over 80 communities connected 	<ul style="list-style-type: none"> \$400M gross capital over 5 years Up to 40,000 customers in over 40 communities connected 	<ul style="list-style-type: none"> \$400M gross capital over 5 years Up to 40,000 customers in over 40 communities connected
Stakeholder	Option A	Option B	Option C
Expansion Area Customer	<ul style="list-style-type: none"> Construction contribution totalling \$1,000-\$2,000 through volumetric rate rider, plus Cost of converting equipment averaging \$3,500 		
Municipality	<ul style="list-style-type: none"> Minimum economic contribution (aid) valued at present value of pipeline tax contributions, collected up front or annually until communities meet economic thresholds, and credited against rate base when collected Option to provide incremental funding to improve project economics 		
Gas Utility	<ul style="list-style-type: none"> \$300M capital invested over 5 years 	<ul style="list-style-type: none"> \$200M capital invested over 5 years 	<ul style="list-style-type: none"> \$200M capital invested over 5 years
Government of Ontario	<ul style="list-style-type: none"> Direct Funding: \$400M grant over 5 years, and Directives to OEB to allow for: <ul style="list-style-type: none"> Cross Subsidization of new expansions from existing ratepayers provided resulting annual delivery cost impact is limited to 0.5% increase, and Capital pass through to allow recovery in rates, including any expected municipal and customer contributions, prior to end of IR period, and Modified community and portfolio economic thresholds, and Expansion area customer construction contributions collected through a volumetric rate rider, applied until communities meet economic thresholds, and credited against rate base annually when collected 	<ul style="list-style-type: none"> Direct Funding: \$200M grant over 5 years, and Directives to OEB to allow for: <ul style="list-style-type: none"> Cross Subsidization of new expansions from existing ratepayers provided resulting annual delivery cost impact is limited to 1.0% increase, and (\$3.50/year for residential customers) and Capital pass through to allow recovery in rates, including any expected municipal and customer contributions, prior to end of IR period, and Modified community and portfolio economic thresholds, and Expansion area customer construction contributions collected through a volumetric rate rider, applied until communities meet economic thresholds, and credited against rate base annually when collected 	<ul style="list-style-type: none"> Direct funding: \$100M grant over 5 years, and Directives to OEB to allow for: <ul style="list-style-type: none"> Cross Subsidization of new expansions from existing ratepayers provided resulting annual delivery cost impact is limited to a 1.5% increase, and Capital pass through to allow recovery in rates, including any expected municipal and customer contributions, prior to end of IR period, and Modified community and portfolio economic thresholds, and Expansion area customer construction contributions collected through a volumetric rate rider, applied until communities meet economic thresholds, and credited against rate base annually when collected

January 24, 2014

19. The proposed charge to be levied on existing customers is a tax, but may not be levied without clear and unambiguous authorization from the legislature. In the present case, the legislature could have amended the OEB Act to provide for such a subsidy, or the Minister could have issued a Directive under the authority of the OEB Act. But it did not do so.
20. This is not to suggest that all subsidies approved or imposed by the OEB are invalid. Subsidies related to the affordability of electricity are legitimate as they in fact have the clear and unambiguous authorization from the legislature, through statutory provisions in the *Electricity Act, 1998*¹⁵ and the OEB Act which explicitly call for discounts, special rates, and corresponding rate adjustments for other customers, as well as explicit provisions authorizing Ministerial Directives which in turn establish subsidies. For

¹⁵ *Electricity Act, 1998*, SO 1998, c 15, Schedule A.

example, the Ontario Electricity Support Program is a subsidy which is specifically and explicitly mandated by Section 79.2(2) of the OEB Act.¹⁶

21. Various intervenors suggested that the intent of the proposed subsidy in this matter is to reduce the expansion and conversion payback period in order to encourage gas conversion. This is analogous to the government's efforts to reduce the payback period for solar projects in order to encourage the adoption of solar technology, which was achieved by way of a subsidy charged to all electricity ratepayers (the Global Adjustment) and paid to solar adopters. However, that subsidy was implemented and authorized by way of legislation, via Sections 25.33 and 25.35 of the *Electricity Act, 1998*.¹⁷ No such explicit authorization exists in respect of the present proposed gas expansion subsidy.
22. In the absence of legislative authority or Ministerial Directive such as exists for electricity subsidies, the OEB therefore has no jurisdiction to impose a subsidy which does not represent a fee for service and is therefore equivalent to a tax.
23. Even if such a mechanism for subsidies to effect the redistribution of wealth is within the constitutional jurisdiction of the OEB, the CPA submits that it is beyond the OEB's mandate and the OEB should decline to take on the role of a redistributor of wealth in the absence of a legally binding direction from the government to do so.

D. Postage stamp rate mechanisms are not analogous to wealth redistribution subsidies

24. Some intervenor panels argued that the existence of postage stamp ratemaking suggests that subsidies of all kinds are within the OEB's mandate and jurisdiction. The logic does not follow.
25. Postage stamp rates are necessary because, according to Enbridge, trying to determine a precise rate for each customer "would be administratively burdensome to the point where it wouldn't be worthwhile".¹⁸ However, the same reason cannot be said to justify the present Enbridge and Union proposals. The request for a subsidy on existing customer bills is not for the purpose of relieving some unmanageable administrative burden. In fact, it adds administrative complexity. If administrative simplicity were the goal, the proposed subsidy would be rejected outright, in favour of alternatives which are far simpler:

¹⁶ OEB Act, Section 79.2(2), Book of Authorities of the CPA, Tab 1.

¹⁷ *Electricity Act, 1998*, SO 1998, c 15, Schedule A, Section 25.33 and 25.35, Book of Authorities of the CPA, Tab 6.

¹⁸ Transcript Vol. 1, page 41.

- (a) If the government were to simply pay a subsidy from general revenues to the LDC to pay for system expansion, that would be administratively simpler, as agreed by Union's economic experts.¹⁹
 - (b) If the LDC were to establish a single new rate class for "Uneconomic Expansion Customers" so that those who benefit from expansions pay for expansions (just as Union has separate "north" and "south" rate classes), that would be administratively simpler.
26. To suggest that postage stamp ratemaking somehow indicates that the OEB has a mandate to impose complex subsidies whose primary purpose is to redistribute wealth and benefits from one class to another (as opposed to the postage stamp purpose of avoiding unmanageable administrative burden) is misleading and wrong.

III. THE OEB IS AN ECONOMIC REGULATOR

27. According to the OEB's own Resource Guide on Energy Regulation,

Regulation of electricity and gas utilities is a form of "economic regulation". Laws, regulations and other requirements have been designed to address the natural monopoly position of these energy companies, acting as a substitute for the economic forces that would normally influence them in a competitive market. In that way, economic regulation of the activities of monopoly service providers protects the interests of consumers."²⁰

28. As confirmed in *Advocacy Centre for Tenants Ontario v. Ontario Energy Board*, the OEB "is an economic regulator, rather than a formulator of social policy."²¹ The OEB should consider factors and tests that can be reduced to an economic valuation.
29. That is not to say, however, that social benefits cannot be considered by the OEB. To the extent that social benefits can be reduced to or assigned an economic value, then the OEB is entirely capable of including that quantified value in its economic tests. It is the government's role, however, to determine and assign that economic value, and the government does so regularly by using the tax and budget tools at its disposal. If, for example, the government proceeds to spend \$230 million to achieve the benefits associated with the expansion of natural gas service, then that will be representative of the value it attributes to those benefits.
30. Union agrees that the OEB's considerations should be limited to economic evaluations only. Mr. Kitchen, the Director of Regulatory Affairs with Union Gas, testified in this proceeding that "if it turns out that our proposal doesn't make sense from an economic

¹⁹ Transcript Vol. 2, page 95.

²⁰ EB-2016-0004, Evidence of CPA, Exhibit 1, Tab 1, Page 2 of 2, filed 2016-03-21.

²¹ 293 DLR (4th) 684 at para 49 (Ont Sup Ct (Div Ct)), Book of Authorities of the CPA, Tab 3.

perspective, then the Board would turf it.”²² This supports a statement made by Union’s President in an interview, in which he said that “the way we grow is by developing and expanding our system where it makes economic sense.”²³ Enbridge’s President made a similar statement in a speech: “What I am suggesting is that we look at opportunities where natural gas makes economic sense”.²⁴

31. The OEB should continue to limit its assessments to factors which can be economically quantified. Where the factor at issue is a social policy or social benefit, it is the government’s role to determine the economic value of that social good, through tax or budgetary measures. The OEB can then consider that economic value as a factor in its process, thereby including the social benefits while not departing from its established role as an economic regulator which approves projects that make economic sense.

IV. NONE OF THE STATED REASONS FOR SYSTEM EXPANSION ACTUALLY EXIST

A. Customers did not actually ask for system expansion

32. Witnesses of both Enbridge and Union suggested that their efforts to proceed with uneconomic gas expansion projects are in response to demands from their customers for such expansion.
33. Firstly, the individuals and groups that Enbridge and Union referred to are not in fact customers, and to identify them as customers is misleading. On cross-examination, it was clarified that they are in fact more precisely described as “non-customers”.²⁵
34. The OEB has no mandate to simply do what customers ask, nor a mandate to do what non-customers ask. In fact, the OEB should not make any decision which favours the interests of any one group over others. According to the court, proposals must “be considered in light of the general public interest and not local or parochial interest.”²⁶ The OEB’s mandate is defined by the objectives laid out in Section 2 of the OEB Act, which include:
 - (a) facilitating rational expansion of transmission and distribution systems;²⁷ and

²² Transcript Vol. 5, page 193.

²³ EB-2016-0004, Evidence of CPA, Exhibit 6, Tab 6, Page 2 of 6, filed 2016-03-21.

²⁴ EB-2016-0004, Evidence of CPA, Exhibit 5, Tab 5, Page 5 of 7, filed 2016-03-21.

²⁵ Transcript Vol. 6, page 201.

²⁶ *Union Gas Ltd. v. Dawn (Township)* (1977), 76 DLR (3d) 613 at para 29 (Ont Div Ct), Book of Authorities of the CPA, Tab 5.

²⁷ OEB Act, Section 2 (3), Book of Authorities of the CPA, Tab 1.

(b) protecting the interests of consumers with respect to prices.²⁸

35. The proposed system expansions are not “rational expansion” projects. To the contrary, rational expansion projects are those that satisfy the current EBO 188 economic test as projects which will, in the aggregate, pay for themselves and are therefore economically rational. The current proceeding was launched in order to consider whether there are reasonable ways to fund irrational projects – those for which the costs outweigh the benefits and therefore would not be built on the basis of rational decision-making.
36. Nor does the proposed rate mechanism “protect the interests of consumers” with respect to prices. “Consumers” are those who consume natural gas. Union and Enbridge have cleverly called these “existing consumers”, but in fact all “consumers” are “existing consumers” and vice versa. The only impact on consumers in the Union and Enbridge proposals is to increase prices, in exchange for no incremental service or benefit. Not only do the proposals not protect the interests of consumers with respect to prices, they actually harm consumers with respect to prices, which is in direct violation of the statutory objective set out in the OEB Act.
37. Further, it is imprecise to say that non-customers are asking for expanded service. In fact what they are asking for is free or partially free service. There is nothing surprising or unique in that – who wouldn’t want something for free? However, they do not actually value gas service as highly as Enbridge and Union would make it appear. When asked to actually pay for the cost of gas service, they no longer want gas service.²⁹ They do not believe it is worth the cost. They do not value gas service highly enough to actually pay for it. If it is free or partially free, they want it. But if they have to demonstrate the value they attribute to gas service, that value is low.

B. Government did not actually order system expansion

38. Several witnesses suggested that the Government asked or ordered the OEB to expand the gas system to rural and remote communities where such expansion is economically irrational. The Government did no such thing.
39. The letter from the Minister to the OEB Chair reads as follows [emphasis added]:

“I am writing to you today to encourage the Board to continue to move forward on a timely basis on its plans to examine opportunities to facilitate access to natural gas services to more communities, and to reiterate the government’s commitment to that objective. I appreciate your

²⁸ OEB Act, Section 2 (2), Book of Authorities of the CPA, Tab 1.

²⁹ Transcript Vol. 1, pages 52-53.

continued support to ensure the rational expansion of the natural gas transmission and distribution system for all Ontarians.”³⁰

40. Nowhere in this letter did the Minister ask the OEB to solicit applications, or depart from EBO 188, or provide exemptions, or approve subsidies and rate increases. Nor did the Minister ever ask the OEB to determine “how” to expand natural gas or to settle on a framework for the expansion of natural gas. Nor did the Minister ask the OEB to facilitate applications for uneconomic irrational expansion; to the contrary, the Minister made sure to reiterate that the OEB should “ensure the rational expansion” of the system, as required by section 2(3) of the OEB Act.
41. To read the Minister’s letter as asking the OEB to figure out “how” to expand the gas system would be both inaccurate and indicative of prejudgment. It would assume that expansion is necessary and appropriate and should be the end result. The purpose of this or another generic hearing might perhaps be to determine whether expansion is necessary and appropriate, but that should not be the conclusion of the OEB going in to this hearing. Evidence has been presented in this hearing to suggest that such a premise is wrong – that more gas pipelines are perhaps not necessary or appropriate or rational. The Panel should not start its deliberations from the premise that uneconomic conversion to gas in rural communities is a set goal, and all we are trying to do is figure out how best to do it. That may be the conclusion that comes out of this hearing, if the evidence supports it, but it should not be the conclusion going in.
42. There were several assertions by witnesses that the uneconomic expansion of natural gas distribution is government policy. It is not. Government policy is reflected by legislation, regulations, budgets, and Ministerial Directives. None of those exist in this case. The government has mused about possible expansion and the consideration of potential options, but such musings cannot be said to be official policy.
43. In any event, the OEB is an independent agency precisely because government musings and policy change all of the time, whereas quasi-judicial evidence-based economic regulation is supposed to be based on more. The OEB is not a ministry or a government department, and is not supposed to act on the shifting government musings of the day. The OEB is required to act when government policy is set out in legislative or regulatory amendments or in a formal Ministerial Directive issued pursuant to a statutory authority. If the government wishes to direct the OEB to act, it has statutory mechanisms to do so. The government exercised those mechanisms when it wanted subsidies and uneconomic renewable projects to be approved for electricity. The government has not elected to exercise those mechanisms in the present case. They have not taken the legal steps available to them to indicate that they want the OEB to act on a set government policy.

³⁰ EB-2015-0179, Exhibit A, Tab 1, Appendix A, Page 1 of 6, filed by Union 2015-07-23.

44. Rather, the wording of the Minister's letter and the absence of any legal instruments suggests that the government wants the OEB to continue to do its job and to consider potential rational expansions in its capacity as an economic regulator. If and when the government wants the OEB to do something different, the OEB can expect to receive a Ministerial Directive, not a letter.

C. Natural gas service is not actually cheaper when all costs are considered

45. Natural gas service for the rural and remote communities in question is only cheaper if someone else pays for it.
46. The total cost of delivering natural gas to a community includes the following costs:
- (a) capital investments for the equipment associated with commodity exploration, production and refining ("**Fixed Commodity Costs**");
 - (b) variable costs to operate the commodity-related capital equipment described above ("**Variable Commodity Costs**");
 - (c) capital investments for the equipment associated the delivery of the commodity ("**Fixed Delivery Costs**"); and
 - (d) variable costs to operate the delivery-related capital equipment described above ("**Variable Delivery Costs**").
47. If someone else pays the Fixed Delivery Costs for natural gas, but not the Fixed Delivery Costs for propane or electricity, then of course natural gas will be cheaper. But similarly if someone else paid the Fixed Delivery Costs for propane or electricity, then they would likely be cheaper than gas.
48. Put another way, if propane fell from the sky such that there was no delivery cost, propane would be the cheapest form of energy. If nuclear power plants could be constructed for free, then electricity would be the cheapest form of energy. If Oprah Winfrey gave away geothermal systems, then geothermal would be the cheapest. And if the OEB eliminates the cost of distribution pipelines by making someone else pay on the customer's behalf, then natural gas is the cheapest.
49. In short, anything is cheaper if someone else pays for it. But it is a circular argument to say that gas should be subsidized because it is cheaper, when it is only cheaper because it has been subsidized.
50. If we consider the real costs, not those that conveniently ignore the Fixed Delivery Costs, then:

- (a) Under the Enbridge proposal, about 16,000 customers will be served for \$410,000,000, for a Fixed Delivery Cost of \$25,625 per customer.³¹ If you don't just ignore that cost, then it becomes clear that natural gas is neither the cheapest option, nor is it even cost competitive.
 - (b) Under the Union proposal, about 9,000 customers will be served for \$153,000,000, for a Fixed Delivery Cost of \$17,000 per customer.³² If you don't just ignore that cost, then it becomes clear that natural gas is neither the cheapest option, nor is it even cost competitive.
51. When comparing the actual all-in costs – the amounts that would have to be spent going forward to supply different forms of energy to the same customers (regardless of who might pay those costs) – it becomes clear that natural gas is among the most expensive options. Existing supplies of propane and electricity are much cheaper because the additional Fixed Capital Costs going forward are close to zero. In communities currently served by propane, as between propane and gas, propane is much cheaper. This is evidenced by the fact that, in a market unobstructed by economic interference from the OEB, propane has so far prevailed. In communities currently served by electricity, as between electricity and gas, electricity is much cheaper. This is evidenced by the fact that, in a market unobstructed by economic interference from the OEB, electricity has so far prevailed.
52. If a public policy decision is made that rural customers' energy costs are too high and there is a policy desire to use a subsidy mechanism to bring those costs down, then so be it. The government has made no such decision, but if it were to, then why would we choose to subsidize the most expensive option – the one option that requires massive Fixed Capital Cost spending (natural gas)? Why not subsidize the cheaper option – the one that does not require further Fixed Capital Cost spending (existing propane or electricity), and reduce rural customers' energy costs that way with a smaller subsidy requirement?

D. Natural gas is not actually better for the environment

53. There was no evidence presented which asserted that natural gas consumption is less GHG-intensive than electricity or geothermal energy, given Ontario's supply mix. In fact, the evidence suggests that GHG emissions from natural gas are significantly higher than electricity and geothermal, by a factor of between 3x and 11x.³³

³¹ Transcript Vol. 4, page 173.

³² Transcript Vol. 4, page 173.

³³ EB-2016-0004, Evidence of Ontario Geothermal Association, page 23 of 56, filed 2016-03-21.

54. There were mixed opinions on whether natural gas is more or less GHG-intensive than propane. The figures appeared to depend on what types of emissions were included and at what point in the production, delivery and consumption chain. The range appeared to be somewhere between propane being 4% better than natural gas,³⁴ to natural gas being 18% better than propane.³⁵ The figure relied on by CPA's expert, Mr. Goobie was that set out in the PERC Report, which is a middle-of-the-road figure that has natural gas at 4% better than propane.³⁶ In all scenarios, the margin was not significant.
55. So natural gas is between -4% and 18% better than propane, but 300% worse than electricity. In the aggregate, replacing current supplies with natural gas will have a net negative impact on the environment.

E. Natural gas is not actually better for the economy

- (a) No net job gains
56. References were made to the jobs to be generated by expansion of the natural gas system. However, any such job gains would be offset by job losses in the propane sector. Direct and indirect employment in the Ontario propane industry is between 3,660 and 6,100 jobs.³⁷
- (b) Economic harm to neighbouring rural and remote communities
57. Replacing propane with gas in Community X will have negative economic consequences beyond Community X. It will have a severe impact on neighbouring communities around Community X who are served by propane (call them Communities Y and Z). When Community X gets gas service, Communities Y and Z still need propane because they were not part of the expansion project. But the cost to deliver propane to Communities Y and Z increases, because that cost must now be borne solely by customers in Communities Y and Z (no longer by Community X). So their propane costs will increase to account for the loss of propane customers in Community X, and they don't have the option of switching. So while the intent of the expansion may have been to reduce energy costs, in fact total energy costs for the region are likely to increase.³⁸
- (c) Picking winners and losers among competing services
58. Natural gas and propane are competing energy sources, with competing suppliers and investors who are competing for the same customers. To subsidize one competitor and not the other is to use legislative powers to skew the market and pick winners and losers.

³⁴ EB-2016-0004, Evidence of Ontario Geothermal Association, page 23 of 56, filed 2016-03-21.

³⁵ Transcript Vol. 2, page 116.

³⁶ EB-2016-0004, Evidence of CPA, Exhibit 9, Tab 9, Page 19 of 27, filed 2016-03-21.

³⁷ EB-2016-0004, Evidence of CPA, Exhibit 9, Tab 9, Page 14 of 27, filed 2016-03-21.

³⁸ EB-2016-0004, Evidence of CPA, Exhibit 9, Tab 9, Page 16 of 27, filed 2016-03-21.

A perfectly viable market competitor will be put out of business because a quasi-judicial authority decided impose the equivalent of a tax on a captive audience and to use those proceeds to fund its competitor.

59. This anti-competitive behaviour is no more evident than in Enbridge's proposal to have the OEB subsidize the delivery of LNG. Both propane and LNG have similar delivery methods to similar potential customers. Effectively, the proposal is to have two delivery trucks travelling the same highway in a bid to deliver energy supplies to the same customers in the same towns, but one of those trucks would have its costs subsidized under the OEB's authority, and the other would not. There is no benefit whatsoever to subsidizing LNG trucks over propane trucks. It is pure market interference to support one energy trucking company over another energy trucking company. The capital costs associated with LNG delivery include the purchase of trucks and the installation of short-distance distribution pipe. The capital costs associated with propane delivery include the purchase of trucks and the construction of service and distribution centres. No evidence has been presented to suggest that such LNG delivery costs are any greater than propane delivery costs, or that the payback period for such investment is any greater than the payback period for similar propane investments. Since propane delivery costs are clearly capable of being borne by the market and subject to a reasonable payback period for investors, then one must conclude that LNG delivery costs are as well. The entire basis for this proceeding, which was the assertion that the capital costs to install long distance pipe to remote communities is not economic in the absence of a subsidy, simply does not apply to LNG projects, since there is no high-capital long distance pipe.
60. The CPA urges the OEB, at the very least, to reject the proposal to subsidize LNG projects and the associated trucking delivery costs, which can clearly be recovered from customers without a subsidy since the propane industry has been doing exactly that.
61. Once LNG projects have been eliminated from the proposal, the CPA then urges the OEB to reconsider the submissions of Enbridge and Union and the minimum average or rolling profitability index thresholds to confirm that such thresholds are being achieved as mandated by the OEB (whether 1.0 as the CPA would propose, or 0.5 as Enbridge has proposed).
 - (d) No difference in economic multiplier
62. It was asserted by Union's economic expert that the savings realized by new customers on their energy bills (such savings being the result of having other customers pay a subsidy for their benefit) would have an impact on the greater economy which is greater than the amount actually saved, due to the "multiplier" effect.³⁹

³⁹ Transcript Vol. 2, page 95.

63. While the concept of a multiplier effect is not disputed, the testimony of Union's expert is misleading because it reflects a multiplier for moneys saved by new customers but fails to reflect a multiplier for moneys lost by existing customers or for moneys lost by propane distributors. Whether the amount of the proposed subsidy remains in the hands of existing customers (the "no subsidy" scenario) or is transferred into the hands of new customers (the "subsidy" scenario), it will be saved and/or spent, and part of the amount spent will be re-spent. The economic impact will reflect the multiplier effect in both cases, so there is no concrete advantage in this respect to imposing a subsidy versus imposing no subsidy. Similarly, in the subsidy scenario, additional revenues accrue to gas sector companies, whereas in the no subsidy scenario, those same revenues accrue to propane sector revenues. In either case, the larger economic impact will reflect a multiplier effect – although, if Union and Enbridge are to be believed, and propane bills are in fact higher than gas bills, then presumably the propane option will have a greater positive impact on the economy when the multiplier effect is considered. Finally, if the non-subsidized propane industry is unable to compete with a subsidized gas expansion project, the economic losses will similarly be multiplied, as set out in the PERC report as referenced by Mr. Goobie.⁴⁰
64. In any event, simply injecting more money into the economy is not a virtue in and of itself. If it were, then the OEB would be urged to raise electricity prices as high as possible in order to inject more money into the sector and reap the benefit of the multiplier effect.
- (e) Increase in stranded assets and transfer of risk to ratepayers
65. Ontario's climate change strategy includes a reduction in the use of high-carbon fossil fuels.⁴¹ That includes a reduction of both propane and natural gas use. If such a fossil fuel reduction strategy is achieved, consumption levels may lead to an underutilization of capital infrastructure, for both propane and natural gas.
66. In the propane sector, the losses associated with such forfeited capital investment will be borne entirely by propane industry shareholders – shareholders who have voluntarily invested their money and accept that investments may be lost.
67. In the natural gas sector, the LDCs insist that the losses associated with such forfeited capital investment should be borne entirely by ratepayers – ratepayers who have not volunteered to invest their money and not volunteered to accept investment losses.
68. The CPA's primary quarrel is not with the suggestion that natural gas investors should not bear the financial risk; while that does seem odd and abusive of ratepayers, it is not

⁴⁰ EB-2016-0004, Evidence of CPA, Exhibit 9, Tab 9, Page 13 of 27, filed 2016-03-21.

⁴¹ EB-2016-0004, Evidence of Ontario Geothermal Association, page 18 of 56, filed 2016-03-21.

the main target of our concern. Rather, our question is, given this very different allocation of risk as between propane and natural gas:

- (a) Why would the OEB increase the potential stranded assets associated with the natural gas sector by approving the uneconomic and irrational construction of new pipe which will add to the stranded asset losses to be borne by ratepayers? Increasing the pool of potential stranded assets for which ratepayers are on the hook would appear to contravene the OEB statutory objective “to protect the interests of consumers with respect to prices”.
- (b) Why would the OEB facilitate the creation of increased risk to be borne by captive natural gas ratepayers when there are clearly free market propane investors voluntarily willing to bear that risk? It does not make sense to force ratepayers to bear the risk when there are propane investors willing to voluntarily take on that risk.

V. UNION AND ENBRIDGE PROPOSALS ARE NOT RELIABLE

- 69. Based on the foregoing, natural gas is neither cheaper nor better, either environmentally or economically, for rural and remote regions. However, even if we assume that natural gas is cheaper and better, the proposed frameworks presented by Union and Enbridge should not be adopted by the OEB if the evidence presented as fact is not accurate or reliable. The OEB can not base such an important and long-lasting framework on inaccurate submissions.
- 70. All of the key data presented by the LDCs is dependent on the accuracy of their conversion forecasts. If the conversion forecasts are wrong, then the SES, ICE, surcharge, subsidy, tax, jobs, environmental benefit and PI figures are all wrong.
- 71. The conversion forecasts are based in large part on the individual conversion and connection costs. All parties in the proceeding tended to agree that if the payback period for an individual consumer’s conversion costs are too great, they will not convert, and according to Enbridge, “that would undermine the feasibility of the project.”⁴² The OEB should not be considering projects where the feasibility is at risk. As a result, the OEB should not be considering expansion projects unless the conversion costs, and therefore the payback periods, the connection rates, and the project feasibility, are reasonably accurate and certain.
- 72. Unfortunately, that level of certainty, accuracy and reliability is not available to the OEB in this case.

⁴² Transcript Vol. 1, page 179.

73. There were a variety of competing and changing figures for actual conversion costs presented to the OEB throughout the proceeding. The OEB had evidence before it affirming that conversion would cost the customer \$200 - \$400,⁴³ \$2,170 - \$3,000,⁴⁴ or \$3,075 - \$3,850,⁴⁵ or \$1,525 - \$11,000.⁴⁶
74. It does not matter which figures might be correct. What matters is that there is significant uncertainty. Uncertainty about conversion costs means uncertainty about conversion rates.
75. This uncertainty about conversion rates is further supported by the fact that, as a general rule, LDC connection forecasts for conversion-based projects have been wrong. As the OEB heard, LDC forecasts were wrong in Maine; they were wrong in New Brunswick; they were wrong in Red Lake. Enbridge attempted to blame the forecast errors in New Brunswick on the fact that it was a new gas market and the price of gas was tied to oil. Presumably Enbridge was aware of those facts and based its forecasts on those very facts. Accurate known facts incorporated into a forecasting model are not an explanation for forecasting errors. They knew the facts and were still not able to accurately forecast connection rates. Unfortunately, such forecasts are often materially wrong, and therefore cannot be relied upon by the OEB.
76. Interestingly, Union even demonstrated their propensity for forecasting errors in this proceeding. They used a 50% conversion factor to derive their figures (including their figures for subsidy and surcharge amounts).⁴⁷ Yet they also reported that from May to December 2015, they received 1,850 calls requesting service, of which 350 were considered feasible. But only 120 of those actually connected.⁴⁸ Of the 350 people who called to request service where service was considered feasible, only 120, or 34% of them, actually connected. And yet, even though their own most recent experience in the previous year is that 34% was the actual conversion rate, they still brought the OEB a proposal based on an estimated 50% conversion rate. The CPA admits that figures do look better at 50% than at 34%. The profitability index does not look as bad; the surcharge does not look as bad; and most importantly the subsidy to be paid by existing customers (who must continue paying until all costs, plus Union's return on equity, are recouped) does not look as bad as it will actually be once the true conversion rate is revealed.

⁴³ Transcript Vol. 6, page 205.

⁴⁴ EB-2016-0004, Evidence of CPA, Exhibit 10, Tab 10, Page 3 of 6, filed 2016-03-21.

⁴⁵ EB-2016-0004, Evidence of CPA, Exhibit 10, Tab 10, Page 5 of 6, filed 2016-03-21.

⁴⁶ EB-2015-0179, Evidence of Union Gas, Exhibit A, Tab 1 UPDATED, page 20 of 47, filed 2015-12-14.

⁴⁷ Transcript Vol. 4, page 173.

⁴⁸ Transcript Vol. 4, page 167.

77. The LDCs are asking the OEB to consider their projects based on the magnitude of the benefit to the new communities and the magnitude of the burden on existing customers. They are asking the OEB to depart from the long-standing “costs follow benefits” principle on the basis that the burden is small and not “undue”. But that assessment is based on the forecasts as presented. If those forecasts are wrong, as they usually are (interestingly, not a single example was presented in which more customers connected than were forecast), then the forecasted “burden” on existing customers is also wrong, and it may turn out to be an undue burden after all. However, the framework as proposed does not cap the burden on existing customers to a “reasonable” or “not undue” amount. To the contrary, the LDCs have put forward a framework in which existing customers will pay the entire difference between project costs, and ICE/new customer revenues. If the ICE or new customer revenues are less than forecasted, there is no limit on how much of a burden the existing customers will bear. The LDCs say that the burden is minimal and not undue, but in fact it is limitless under their proposed model.
78. Uncertainty about conversion rates means there is uncertainty about the size of the actual burden that existing customers will bear. That means that there is no way for the OEB to know, at the time of specific project approval, whether that burden will be undue or not.
79. The OEB should not approve a framework which functions to prevent undue burdens only if the LDC forecasts are correct, particularly given the record of forecasting errors, and the fact that the LDCs are not willing to stand behind their own forecasts at all and assume part of the risk for forecasting errors. This is indicative of how much they trust their own forecasts.

VI. NO LEGIMITATE REASON WAS PRESENTED

A. Proposed “balance” does not exist

80. If natural gas is not cheaper, not better for the environment, not better for the economy, then what benefit is there in proceeding? Both LDCs were asked this question in various ways at various times throughout the hearing, and both responded that their proposal delivers a reasonable “balance”. But neither LDC was able to clarify what the balance was on the existing customer’s side of the ledger. Enbridge, in response to Board Staff, confirmed that the benefit to the existing customer “is that it doesn’t cost too much”.⁴⁹ Union, in response to Mr. Elson, argued that “lowering the bills of some people by raising the bills of other people” makes their proposal “well-balanced”.⁵⁰ That is not balance. That is a straight win-lose. Existing customers pay more than their share, while expansion customers pay less than their share. Existing customers bear the burden, while expansion customers reap the benefit.

⁴⁹ Transcript Vol. 1, pages 26-27.

⁵⁰ Transcript Vol. 5, page 182.

B. LDC self-interest

81. If the cost savings from switching to natural gas are as significant as the forecasts suggest, then a rational expansion customer will happily pay their forecasted share of the entire project cost. But there are two problems:
- (a) The forecasts are unreliable. So the expansion customer's share of the project cost is uncertain, and may end up exceeding the cost savings. Potential new customers will not convert on this basis. They will not accept liability for the risk of ineptitude or negligence by the LDC's forecasting department. The LDCs also aren't willing to accept liability for the risk of ineptitude or negligence by their own forecasting department. So the LDCs want to find someone else to bear the risk of ineptitude or negligence by the LDC's forecasting department. They want the OEB to compel existing customers to take on that risk.
 - (b) Even if the expansion project's costs could be fully recouped from new customers, Union advises that the real barrier to customer connection is the in-home conversion cost.⁵¹ The smart thing for the LDCs would have been to seek a subsidy for those costs, rather than for expansion project costs. But the LDCs did not propose that, because in-home conversion cost payments go to private contractors, and not to the LDC. Even though it makes less sense, the LDCs would only support a plan which has the subsidy payments going to them.

C. LDC hypocrisy

82. Interestingly, Union rejects EPCOR's proposal for the very same reasons as CPA rejects Union's proposal. But Union appears to believe that while those reasons are valid when directed at another utility, they are not valid when directed at Union.
83. Union makes the following statement in its evidence:

Imposing a charge on Union's customers for purposes of subsidizing another utility's cost of service would be contrary to the established ratemaking principle of "benefits follow cost". Union's customers would be incurring costs without receiving any corresponding benefits. On the flip side, another utility's customers would be receiving a benefit without incurring any corresponding costs. To establish rates on this basis would not be consistent with the just and reasonable standard. This would be comparable to having Union's customers pay more to subsidize an industrial customer's cost of labour. It is unrelated to any aspect of the service to Union's customers.⁵²

⁵¹ Transcript Vol. 5, page 122.

⁵² EB-2016-0004, Evidence of Union Gas, Exhibit A, Tab 1, Page 4 of 38.

If we just change the names of the parties, by replacing “Union’s customers” with “existing customers”, and replacing “another utility’s customers” with “new customers”, the statement reads as follows:

Imposing a charge on existing customers for purposes of subsidizing new customers’ cost of service would be contrary to the established ratemaking principle of “benefits follow cost”. Existing customers would be incurring costs without receiving any corresponding benefits. On the flip side, new customers would be receiving a benefit without incurring any corresponding costs. To establish rates on this basis would not be consistent with the just and reasonable standard. This would be comparable to having existing customers pay more to subsidize an industrial customer’s cost of labour. It is unrelated to any aspect of the service to existing customers.

The CPA agrees with Union’s statement of principle in its entirety. In Union’s own words, the Union proposal would not be consistent with the just and reasonable standard.

VII. REQUESTED SUBSIDY-BASED FRAMEWORK SHOULD BE REJECTED

84. The OEB should reject the subsidy-based framework as proposed by Union and Enbridge.
85. Subsidies of the type proposed are, in the absence of legislative authority, beyond the OEB’s jurisdiction.
86. Even if they are within the OEB’s jurisdiction, they are inconsistent with the OEB’s mandate, as described by the objectives set out in Section 2 of the OEB Act.
87. Even if they are within the Board’s mandate, the OEB should refuse to approve them in the manner requested, as the justification for such a significant departure from the principles of economic regulation has not been demonstrated to exist, and the evidence to support any such justification is too uncertain to act upon.
88. If the Board does elect to depart from its traditional role as an economic regulator, the OEB should nonetheless reject the following two components of the requested framework:

A. LNG projects should be excluded

- (a) LNG projects should not be eligible for consideration under the proposed subsidy-based framework. Communities to be served by LNG do not require expensive long distance delivery pipelines. Rather, the product is delivered to the community by truck, exactly as propane is currently delivered. The viability of the propane service suggests that delivery can be implemented without a subsidy.
- (b) Further, to subsidize one truck-based delivery system but not the competing system is contrary to all free market principles and would result in putting one type of private sector energy supplier out of business in favour of a competing type of private sector energy supplier.

B. Return on equity should be disallowed for the subsidized portion

- (a) Under the proposed framework, existing Enbridge customers will pay \$123,000,000 more, while Enbridge's dividend to its shareholder will increase in real dollars. If \$123,000,000 more in capital will be deployed, and if Enbridge earns its ROE on deployed capital, then even at the same ROE rate, the increased capital amount will mean a greater return in real dollars. In effect, the OEB would be taking extra money from existing ratepayers and giving it to Enbridge shareholders. Taking money from existing ratepayers in order to pay for pipeline equipment and labour and debt is one thing; taking money from existing ratepayers to give to shareholders is quite another. Better to eliminate the ROE on the subsidy portion, so that existing customers can perhaps pay the actual cost of the capital spend but not the bonus to shareholders.
- (b) Enbridge threatened that if the ROE were reduced, there are more lucrative places for Enbridge shareholders to spend their money. So what? There are also more lucrative places for ratepayers to spend \$123,000,000. That's \$123,000,000 that ratepayers will have to invest in unprofitable gas distribution pipelines which pay them a 0% return, instead of being able to invest that \$123,000,000 in new technologies for GHG reduction (which is also a government policy), or in their own retirement savings (which is also a government policy), or in Ring of Fire infrastructure projects (which is also government policy), or in schools and hospitals (which are arguably for the greater "public good" than gas pipelines). Why is "the most lucrative investment" a factor for Enbridge's shareholder but not a factor for Enbridge's ratepayers?
- (c) The OEB has a legal duty to protect Ontario customers when it comes to pricing. It has no legal duty to ensure the construction of uneconomic projects. The OEB can and should provide some price relief to customers by refusing to add an ROE component to the already oppressive subsidy amount. If Enbridge decides, as a result, not to proceed with expansion projects that (i) it sought permission to construct, and (ii) it has argued should be built because they are for the public good, then that is Enbridge's option. There is no obligation on them to build. The OEB will have given them approval to build if they wish. The rest is up to them.

VIII. CPA'S PROPOSED FRAMEWORK

- 89. In lieu of the forced-subsidy framework proposed by Union and Enbridge, which should be rejected outright for the reasons above, the CPA proposes an alternate framework for the OEB's consideration. To be clear, the CPA is not suggesting that the OEB needs to choose between one framework or the other. The CPA's position is that the Union/Enbridge framework should be rejected, and that may mean that uneconomic projects do not proceed, which would be a rational and reasonable result. However, if the OEB then wanted to consider whether there are any other ways that expansion projects

could still be assessed, the OEB could consider the framework described below for the consideration of uneconomic expansion projects.

90. The CPA framework allows for the OEB to recognize and include in its assessment any value attributed to the project by any party. This would include the value of social benefits such as environmental advantages or regional economic development or the value of “choice” or the value of goodwill, whether attributed by government, by new customers, or by the LDC and its shareholders. At the same time, it places a numeric economic value on all of these attributes, so that the OEB can perform an economic evaluation of costs and benefits the way it always has, but incorporating the net social benefits.

A. Step 1: Confirm that the project is an “uneconomic” expansion

91. Expansion projects which are economic on their own and would pass the current project and rolling PI tests established in EBO 188 should continue to be assessed, approved and funded in accordance with EBO 188. Only “uneconomic” projects should be reconsidered on the basis of the framework set out below, rather than rejected outright.

B. Step 2: Allow for government subsidies

92. Determine if there are net social benefits (societal benefits minus societal costs) and the economic valuation of any such benefits. This is the traditional role of government, whose job it is to formulate social policy, to determine how much that social objective is worth, and to use the taxation or budgetary process to pay such costs as are merited to achieve such social objectives. In deciding how much to spend on achieving a social objective, the government is essentially pricing the associated benefit (since the market value is whatever someone is willing to pay for it). So if the government is willing to spend \$100 million of taxpayer funding on a project, then that indicates the government believes that the benefits arising from the project are worth \$100 million. Therefore whatever economic value the government has committed to the project is the economic value of the net social benefit.
93. The OEB should take that social benefit value, as determined by government, and include it in the OEB’s economic evaluations. So for example, as a very rudimentary example, if a project in Step 1 had a cost of \$100,000 but revenues of \$70,000, it might have a PI of 0.7 and would fail the EBO 188 test in Step 1. However, if the government felt there was a societal benefit such that it was worth \$30,000 of taxpayer funding to make this project happen, then the OEB should rightfully consider that \$30,000 government subsidy to be a revenue to the project (which it is). As a result, costs would be \$100,000 and revenues would be \$70,000 + \$30,000, for a PI of 1.0. The project could therefore proceed as it would pass the EBO 188 test.
94. On the other hand, if the government was only prepared to give a \$5,000 subsidy, then that means that the government did not value the benefits of the project as being as high

as the costs; the government felt there was some benefit, but not enough to justify all of the costs. The total benefits would be \$75,000 while the costs remain at \$100,000. The PI would be 0.75 and the project would not proceed at this stage, which is the correct result because the social benefits were judged by the government to be less than the cost, or put another way, insufficient to justify the costs.

C. Step 3: Allow for new customer contributions

95. If a project still has not passed the EBO 188 test, even when the social benefits have been quantified and considered, then the potential new customers, who would be the ones to benefit directly, may in fact place a higher value on the benefits they will receive than might have otherwise been attributed to them. If they wish to make up the shortfall and make an additional contribution (effectively a CIAC), then they should be allowed to do that. The additional value that they attributed to the project should also be recognized, again by assessing how much extra they are willing to pay (again, the value of an item is whatever someone is willing to pay for it). For example, if customers will save \$1000 per year from the project, then they may be willing to pay an extra \$900 per year to make it happen. Or they might consider a broader choice of energy products to have value in a volatile market, and be willing to pay \$100 for that benefit. They should be given the opportunity to do that.
96. The PI test should be run again, this time including the original economic value from project operations, and the social benefit value attributed and paid by government, and the additional value attributed and paid by the benefitting customers.

D. Step 4: Allow LDC to contribute

97. If the project still does not have a sufficient PI, then the total value of the project likely does not exceed the cost and the project should not proceed. However, if the LDC considers the project to be essential, meaning that the LDC sees some value in the project that no one else saw, then the LDC should be free to quantify and invest that value as well. Perhaps the LDC is taking a longer term view than others and sees some additional value to the LDC's business model 40 years out. Perhaps the LDC believes that the project would generate some goodwill for the company. If the LDC believes there is some additional value to it from the project, then the LDC can pay that value either by assuming some of the costs or by reducing its ROE, or some other method that allows the LDC to contribute the value it has assessed in order to get the project constructed.
98. Once again, the PI test should be run, including all of the quantified values attributed by government, customers and the LDC. If after considering the social benefits (government subsidy) and the local benefit valuations (customer contributions) and the LDC's own value placed on the project, the PI is still <1.0 , then the benefits do not exceed the costs by any measurement. There is no reason to proceed if nobody (not the government, not the customer, not the LDC, and not the three of them together) considers the benefits to exceed the costs. That is precisely the type of irrational project that should not proceed.

E. Benefits of a completely voluntary framework

99. In the CPA's proposed framework, each group – government, new customers, LDCs – is free to decide for itself, based on economics, social benefits, cost savings, shareholder returns, system reliability, etc., if the project is worth doing, and exactly how much the project is worth to them. They are then free to choose to contribute those amounts in order to move the project from “uneconomic” to “economic”.
100. Unlike the framework proposed by Union and Enbridge, no group is forced to pay unwillingly. In other words, no group is forced to pay a price that is higher than the value they actually attribute to the project. Everyone pays exactly the value that they attribute to the project, and in this manner, costs follows benefits.
101. The CPA proposal does enable what are currently considered “uneconomic” projects under EBO 188 to proceed, and they will absolutely proceed, as long as the total benefits – economic, social, goodwill, reliability etc. – outweigh the costs.
102. If the total benefits – economic, social, goodwill, reliability etc. – do not outweigh the costs, then by any measure the project should not proceed, and the under the CPA proposal, it would not.

F. Precedent for the CPA proposal

103. There is precedent for the CPA proposal and it was discussed in the evidence of this proceeding. In the Red Lake project, Union advised that Gold Corp. (the main benefitting customer) and both levels of government each paid a CIAC.⁵³ In other words, each of those parties believed that there was a benefit they or the citizens they represented would realize, and they were willing to pay for that benefit. That model is essentially what the CPA is proposing here: let each party decide what they believe the project is worth to them and how much they are willing to pay for those benefits. Then use those economic valuations to feed into the OEB's economic model to see if that changes the PI from <0.8 to >0.8 or changes the rolling PI from <1.0 to >1.0.

G. Principled approach

104. The CPA framework is consistent with “he who benefits should pay” principle. If some generic environmental or economic benefits accrue to the whole province, then the whole province (which is represented by the government) should pay. If some economic benefits accrue to new customers, then new customers should also pay.

⁵³ Transcript Vol. 6, page 214.

105. The CPA framework is also consistent with the OEB's role as an economic regulator, as it calls for the OEB to continue to apply a strictly economic test as in EBO 188. KPMG, in its report commissioned by the OEB, found that

No jurisdiction we evaluated was prepared to depart significantly from the practice of using an economic test – based in part in a net present value calculation or similar metric – for determining whether a proposed expansion project should be approved.⁵⁴

The OEB need not be the first to depart. The CPA framework allows the OEB to continue to apply an economic test, while including within that test the economic valuations that various parties may voluntarily choose to attribute to otherwise non-economic benefits.

IX. COSTS

106. The CPA hereby requests that the OEB order payment of our reasonably incurred costs in connection with its participation in this proceeding. It is submitted that the CPA has participated responsibly in all aspects of the process in a manner designed to assist the OEB as efficiently as possible.

All of which is respectfully submitted.



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⁵⁴ EB-2016-0004, Evidence of CPA, Exhibit 8, Tab 8, Page 6 of 65, filed 2016-03-21.